

Human Rights: Human Lives

A Guide to the Human Rights
Act for Public Authorities



**Equality and
Human Rights
Commission**

Equality and Human Rights Commission
www.equalityhumanrights.com

What is the aim of this publication?

This publication aims to help officials in public authorities understand how the Human Rights Act relates to what they do and how they do it. It provides handy information on what obligations public authorities have under the Human Rights Act, and how human rights are relevant to various roles.

Who is it for?

This guide is designed for officials in all public authorities, from central to local governments, the police and armed forces, schools and public hospitals, and other bodies.

What is inside?

In summary, this guide provides:

- Information relevant to people working at all levels within any public authority
- Information on the origins, aims and scope of the Human Rights Act (Part 1)
- Explanations of each right and how it may be relevant to different public authorities (Part 2)
- Real-life examples and case studies that show how human rights work in practice (Part 2)
- A jargon buster and answers to frequently asked questions (Part 3)
- Details on where to find further information and useful contacts (Part 3)

When was it published?

This guide was published in May 2014. It is based on the handbook for public authorities *Human Rights: Human Lives* published by the Ministry of Justice in 2006.

Why has the Commission produced it?

The Equality and Human Rights Commission promotes and enforces the laws that protect our rights to fairness, dignity and respect.

What formats are available?

This guide is available as a PDF file (in English and Welsh) and as a Microsoft Word file (also in English or Welsh) from www.equalityhumanrights.com. For information on accessing a Commission publication in an alternative format, please contact: correspondence@equalityhumanrights.com.

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The Equality and Human Rights Commission acknowledges the work done by Jenny Watson and Mitchell Woolf on their book, *Human Rights Act Toolkit* (LAG: London) which forms the basis for some sections in Part 3 of this handbook. We are extremely grateful to them for allowing this material to be used.

This guidance is based on the handbook for public authorities, *Human rights: human lives*, Ministry of Justice, 2006, © Crown copyright 2006. This information is licensed under the terms of the Open Government Licence – <http://www.nationalarchives.gov.uk/doc/open-government-licence/>.

Foreword

Our human rights safeguard the fundamental freedoms of everyone in the United Kingdom and they can support us in every aspect of our lives. Human rights are clearly defined and protected under British, European and international laws.

One effect of these laws is to oblige our public authorities, such as hospitals, the police and local councils, to treat everyone with dignity, respect and fairness. Another is to protect people's right to voice their ideas openly and to peacefully protest if they disagree with government actions or policies.

Importantly, our human rights laws protect us all from arbitrary and excessive action by public officials that could result in loss of life or liberty, amount to degrading treatment, or intrude into our lives.

The Human Rights Act 1998 is one of the most important pieces of legislation for public authorities. Everyone who works in public authorities must act in a way that is compatible with this Act. By providing services in a way that is compatible with the Act, a public body not only meets its duties but makes a positive difference to people's lives.

If you work in a public authority, this guide is for you. Whether you are delivering services directly to the public or developing new policies and procedures, it will help you to consider the potential impacts of your work on the rights of others.

The guidance contained in this guide is intended to help you to build your understanding of – and ability to identify and deal positively with – human rights issues. It also explains where the Human Rights Act came from and what rights are protected.

In summary, this guide provides:

- information relevant to people working at all levels within any public authority
- the origins, aims and scope of the Human Rights Act (Part 1)
- explanations of each right and how it may be relevant to different public authorities (Part 2)
- real-life examples and case studies that show how human rights work in practice (Part 2)
- a jargon buster and answers to frequently asked questions (Part 3)
- details on where to find further information and useful contacts (Part 3).

Importantly, this guide does not provide:

- a substitute for proper legal advice or an exhaustive explanation of human rights law: you should always take proper legal advice if you have a specific issue to deal with
- detailed, sector-specific information: the guidance contained in this guide is generic so that it may be relevant for as broad as possible a range of public authorities.

We would like to express our thanks to the Ministry of Justice for producing the original *Human rights: human lives* guidance and for their assistance with this updated guide. The Equality and Human Rights Commission has updated this guidance in order to help public authorities to understand the implications for their work of recent decisions by British courts as well as the European Court of Human Rights.

We hope that you will find it useful and we look forward to working with you to protect and promote the rights to which we are all entitled.

A handwritten signature in black ink that reads "Mark Hammond." The signature is written in a cursive, slightly slanted style.

Mark Hammond
Chief Executive



Part 1: Background

Who should use this handbook and why?

If you work in a public authority this handbook can help you to understand how the Human Rights Act relates to what you do and how you do it. The handbook is designed to give you information on how human rights are relevant to your role and what obligations public authorities have under the Human Rights Act. After reading this we hope you will feel confident in dealing with human rights issues in your day-to-day work, whether you are in central or local government, the police or armed forces, schools or public hospitals, or any other public authority.

What are human rights?

Human rights are the basic rights and freedoms that belong to everyone. Ideas about human rights have evolved over many centuries. But they achieved strong international support following the Holocaust and World War II. To seek to protect future generations from a repeat of these horrors, the United Nations adopted the Universal Declaration of Human Rights. For the first time, the Universal Declaration set out the fundamental rights and freedoms shared by all human beings.

What is the European Convention on Human Rights?

The European Convention on Human Rights was also drafted after World War II by the Council of Europe. The Council of Europe was set up as a group of like-minded nations, pledged to defend human rights, parliamentary democracy and the rule of law, and to make sure that the atrocities and cruelties committed during the war would never be repeated. The UK had a major role in the design and drafting of the European Convention on Human Rights, and ratified the Convention in March 1951. The Convention came into force in September 1953.

The Convention is made up of a series of Articles. Each Article is a short statement defining a right or freedom, together with any permitted exceptions. For example: 'Article 3 – Prohibition of torture. No one shall be subjected to torture or to inhuman or degrading treatment or punishment.' The rights in the Convention apply to everyone in the states that have ratified the Convention. Anyone who believes that a state has violated their human rights should first take every possible step to have their case resolved in that state, including through the courts. If they believe that their violation has not been resolved, they can then take their case to the European Court of Human Rights, set up by the European Convention on Human Rights and based in Strasbourg, France.

What is the Human Rights Act?

The Human Rights Act came into effect in the UK in October 2000. The Act enables people in the UK to take cases about their human rights directly to a UK court. Previously they were not able to rely directly on Convention rights in the domestic courts. It also provides public authorities with a legal framework to help them to ensure that their actions respect the human rights of those for whom they provide services, which may help prevent problems arising in the first place or enable a resolution without the need to go to court.

There are 16 basic rights in the Human Rights Act, all taken from the European Convention on Human Rights. They do not only affect matters of life and death like freedom from torture and killing; they also affect people's rights in everyday life: what they can say and do, their beliefs, their right to a fair trial and many other similar basic entitlements (a more detailed explanation of the types of rights is at page 10).

Article 1: Jurisdiction

This Article imposes a duty on the state to protect the Convention rights but it is not included in the Human Rights Act.

Article 2: Right to life

Everyone's right to life must be protected by law. There are only very limited circumstances where it is acceptable for the state to use force against a person that results in their death. For example a police officer can use reasonable force to defend themselves or other people.

Article 3: Prohibition of torture

Everyone has the absolute right not to be tortured or subjected to treatment or punishment that is inhuman or degrading.

Article 4: Prohibition of slavery and forced labour

Everyone has the absolute right not to be treated as a slave or to be required to perform forced or compulsory labour, except for certain limited types of obligations specified in the Article (e.g. work in prison).

Article 5: Right to liberty and security

Everyone has the right not to be deprived of their liberty except in limited cases specified in the Article (for example where they are suspected or convicted of committing a crime) and provided there is a proper legal basis in UK law for the arrest or detention.

Article 6: Right to a fair trial

Everyone has the right to a fair and public hearing within a reasonable period of time. This applies both to criminal charges brought against them, and in cases concerning their civil rights and obligations. Hearings must be before an independent and impartial court or tribunal established by law. It is possible to exclude the public from the hearing if that is necessary to protect things like national security or public order. A person who is charged with a criminal offence is presumed innocent until proven guilty according to law and must also be guaranteed certain minimum rights in relation to the conduct of the criminal investigation and trial.



Article 7: No punishment without law

Everyone has the right not to be found guilty of an offence arising out of actions which, at the time they were committed, were not criminal. People are also protected against later increases in the maximum possible sentence for an offence.

Apart from the right to hold particular beliefs, the rights in Articles 8 to 11 may be limited where that is necessary to achieve an important objective. The precise objectives for which limitations are permitted are set out in each Article – they include things like protecting public health or safety, preventing crime and protecting the rights of others.

Article 8: Right to respect for private and family life

Everyone has the right to respect for their private and family life, their home and their correspondence. This right can be restricted only in specified circumstances.

Article 9: Freedom of thought, conscience and religion

Everyone is free to hold a broad range of views, beliefs and thoughts, and to follow a religious faith. The right to manifest those beliefs may be limited only in specified circumstances.

Article 10: Freedom of expression

Everyone has the right to hold opinions and express their views on their own or in a group. This applies even if these views are unpopular or disturbing. This right can be restricted only in specified circumstances.

Article 11: Freedom of assembly and association

Everyone has the right to assemble with other people in a peaceful way. They also have the right to associate with other people, which includes the right to form a trade union. These rights may be restricted only in specified circumstances.

Article 12: Right to marry

Men and women have the right to marry and start a family. The national law will still govern how and at what age this can take place.

Article 13: Right to an effective remedy

This Article provides the right to an effective remedy for breaches of other Convention rights. It is not included in the Human Rights Act, as the Act itself is intended to provide such a remedy by enabling people to take proceedings in the British courts if they consider that their Convention rights have been breached.

Article 14: Prohibition of discrimination

In the application of the other Convention rights, people have the right not to be treated differently because of their race, religion, sex, political views or any other status, unless there is an 'objective justification' for the difference in treatment.

Article 1 of Protocol 1: Protection of property

(A 'protocol' is a later addition to the Convention.)

Everyone has the right to the peaceful enjoyment of their possessions. Public authorities cannot usually interfere with a person's property or possessions or the way that they use them except in specified limited circumstances.

Article 2 of Protocol 1: Right to education

Everyone has the right not to be denied access to the educational system.

Article 3 of Protocol 1: Right to free elections

Elections for members of the legislative body (for example Parliament) must be free and fair and take place by secret ballot. Some qualifications may be imposed on who is eligible to vote (for example a minimum age).

Article 1 of Protocol 13: Abolition of the death penalty

This provision prohibits the use of the death penalty in all circumstances.

Part 2 of this guide covers each of these rights (except Article 1, Article 13 and Article 1 of Protocol 13) and how they are relevant to public authorities in more detail.

What impact does the Human Rights Act have on public authorities?

Public authorities have an obligation to treat people in accordance with their Convention rights (see pages 10-63 for a more detailed explanation). Anyone who feels their rights have been violated by a public authority can take their complaint to a UK court or tribunal.

Wherever possible, existing legislation must be interpreted and applied in a way that is compatible with the rights set out in the Act. This means that legislation under which public officials operate may have to be interpreted and applied in a different way than before the Act came into force.

How does the Human Rights Act affect me?

Public authorities have an obligation to act in accordance with the Convention rights, and therefore public officials must understand human rights and take them into account in their day-to-day work. This is the case whether officials are delivering a service directly to the public or devising new policies or procedures. Understanding human rights can help in making the right decisions.

When it comes to decision-making, the rights of one person often have to be balanced against the rights of others or against the needs of the broader community (there is more detail on this in Part 3). But if you have to restrict somebody's rights, you must make sure that you are not using a sledgehammer to crack a nut. Any restriction must be no greater than is needed to achieve the objective. This is called 'proportionality'.

Always bear in mind that some Convention rights are absolute and can never be interfered with (for example the right not to be subjected to torture or inhumane or degrading treatment or punishment).



‘ Where after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works ... unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.’

Eleanor Roosevelt, Chairman of
the United Nations Human Rights
Commission, 1948

Part 2:

The Convention rights in more detail

Article 2: Right to life

Everyone's right to life must be protected by law. There are only very limited circumstances where it is acceptable for the state to use force against a person that results in their death, for example a police officer can use reasonable force to defend themselves or other people.

What does this right mean?

- 'The right to life' means that the state has an obligation to protect life. This means, generally, that the state must not take the lives of citizens.
 - However, there are three very limited circumstances when taking life may not contravene Article 2:
 - when it is to defend a person from unlawful violence
 - when lawfully arresting someone or preventing the escape of someone lawfully detained
 - when acting lawfully to stop a riot or insurrection.
- Nevertheless, even if the action taken by the public authority falls into one of these three categories, any force used must be no more than necessary. This means that it must be strictly proportionate to the situation.
- Article 2 also requires the state to take certain positive steps to protect the lives of people within its jurisdiction. For example, the taking of life must be a criminal offence under a state's law and there must be a law enforcement system responsible for investigating, preventing and punishing those guilty of committing the offence.
 - Article 2 can also create a more active obligation to protect life, for example where a public authority is aware of a real and imminent threat to someone's life, or where a person is under the care of a public authority.
 - Protection of the right to life may, in certain circumstances, also require an official investigation into deaths – especially deaths in state institutions or police custody.



Is Article 2 relevant to my work?

Article 2 will be relevant particularly if you are involved in any of the following:

- policy decisions that may undermine or threaten someone's life or put their life at risk
- care for other people or protecting them from danger
- investigation of deaths
- you have the power of arrest
- you are a police officer, prison officer or parole officer
- you suspect that someone's life is at risk.

What must a public authority do?

Article 2 impacts on the work of public authorities in many different ways.

For example:

- If a public authority knows of the existence of a real and immediate risk to someone's life from the criminal acts of another individual, then it should take appropriate preventive operational measures to protect that person.
- If a public authority undertakes the care of a person, for example by putting them in prison or placing them in a home, then it must take appropriate steps to ensure that the person is safe.
- The protection of the right to life also means that there should be an effective, independent official inquiry into deaths involving a public authority.
- The duty to investigate may also be triggered in other situations where there has been a suspicious or unlawful death.

- If a public authority is planning an operation which may result in a risk to life, the control and organisation of the operation must be such as to ensure that only the minimum necessary force is used.
- Where the work of a public authority concerns persons known to be dangerous, there is an obligation to take appropriate steps to safeguard the public from such persons. For example, this will be relevant to the parole and probation services, the police and social services.

Article 2 in practice

Case study:

Osman v the United Kingdom (1998)

A teacher had developed an unhealthy interest in one of his pupils that included following him home, locking him in a classroom, vandalising his home and victimising his school friend. The teacher's behaviour was reported to the headmaster and to the police. The teacher subsequently and unexpectedly shot the pupil and his father, injuring the pupil and killing his father. The European Court of Human Rights found that the police had not failed in their duty under Article 2 to safeguard the father's right to life. There was insufficient proof that the teacher posed a real and immediate threat to life which the police knew about or ought to know about. The positive obligation to safeguard life must not impose an impossible or disproportionate burden on public authorities.

Case study:

Pretty v the United Kingdom (2002)

A woman suffering from an incurable degenerative disease wanted to control when and how she died. In order to avoid an undignified death, through respiratory failure, she wanted her husband to help her die and sought an assurance that he would not be prosecuted for any involvement in her death. The European Court of Human Rights found that Article 2 does not create an entitlement to choose death rather than life. Accordingly, there was no right to die at the hands of a third person or with the assistance of a public authority.

her home leave she killed herself. The Supreme Court held that the Trust had a duty to take reasonable steps to protect her from the real and immediate risk of suicide and that it had failed to do all that could reasonably have been expected to prevent the risk.

Case study:

R (on the application of Amin) v Secretary of State for Home Department (2003)

In March 2000, a 19-year-old prisoner serving a sentence in a Young Offender Institution, was murdered by the man with whom he shared a cell. The issue in the case was whether the United Kingdom had complied with its duty under Article 2 to investigate the circumstances in which this crime came to be committed. The House of Lords (in its judicial capacity, and at the time the highest UK court) established that a full investigation must be carried out. The purposes of such an investigation are: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.

Case study:

Rabone and Anor v Pennine Care NHS Foundation Trust (2012)

A woman with recurrent depressive disorder had attempted suicide on several occasions. She was initially assessed by the hospital as being at high risk of deliberate self harm and suicide but, following treatment, she was reassessed as moderate to high risk of self harm. Her father was concerned about her condition and urged the hospital not to allow her home on leave or to discharge her too soon. Subsequently, the woman asked for home leave and was granted it for two days and nights against her parents' wishes. During



Case study:

R (JL) v Secretary of State for Home Department (2008)

A young man attempted to kill himself while in custody at a Young Offender Institution. He was left with serious permanent brain damage. The Prison Service asked a retired governor to investigate the incident but did not consider that it was necessary to hold a more detailed independent investigation. The House of Lords (in its judicial capacity, and at the time the highest UK court) held that to comply with Article 2 an independent investigation should be carried out in respect of near deaths in custody which result in serious injury. Such investigations should lead to preventative action and reduce the risk of similar incidents in future.

Article 3: Prohibition of torture and inhuman and degrading treatment

Everyone has the absolute right not to be tortured or subjected to treatment or punishment that is inhuman or degrading.

What does this right mean?

It is absolutely forbidden to subject any person to torture or to any treatment or punishment that is inhuman or degrading. Public authorities have an obligation to prevent such treatment, to investigate any allegations of such treatment, and to protect vulnerable individuals who they know or should know are at risk of such treatment.

Key words and meanings

Conduct that amounts to any one of these forms of ill-treatment will be in breach of Article 3.

Torture – deliberate infliction of severe pain or suffering, mental or physical, whether to punish or intimidate, or to obtain information.

Inhuman treatment – treatment which is less severe than torture but still causes serious physical and/or mental pain or suffering.

Degrading treatment – treatment arousing feelings of fear, anguish and inferiority capable of humiliating and debasing the victim.

To be considered a breach of Article 3 the conduct complained of must involve a minimum level of severity. Whether it does

will depend on the specific circumstances of the case, including the age and health of the victim. In general, the more vulnerable the victim the more likely it will be that the threshold will be met. If the ill-treatment does not reach this threshold it may still be a breach of another human right, such as Article 8 (see page 32).

Is Article 3 relevant to my work?

The protection against torture or inhuman or degrading treatment is not confined to prisons but extends to anyone who has been or is at risk of being seriously ill-treated or abused at home or in the community or when accessing a public service.

Article 3 will be relevant particularly if your job involves any of the following:

- caring for other people, especially those who are vulnerable because of their age (young or old) or for some other reason such as physical or mental health
- working in a place where someone may be inadvertently placed in a humiliating position, for example in nursing homes or hospitals
- detaining people (including children) or looking after those in detention
- removing, extraditing or deporting people from the UK
- protecting or providing services to victims of domestic violence and sexual assault.



What must a public authority do?

- Make sure they do not subject people to torture or to inhuman or degrading treatment or punishment. In some cases this may mean providing extra resources in order to prevent inhuman or degrading treatment (for example, to protect women at risk of domestic violence).
- Intervene to stop torture, inhuman or degrading treatment or punishment as soon as they become aware of it, even if a private individual is carrying it out.
- Take steps to ensure a person is not exposed to torture or inhuman or degrading treatment or punishment, which means that a person must not be removed, extradited or deported to a country in which there is a real risk that they will be treated in such a way. Governments may take steps to mitigate this through agreements with the country concerned.
- Investigate any allegations of torture or of inhuman or degrading treatment or punishment.

Article 3 in practice

In 2011, an Equality and Human Rights Commission inquiry into the experiences of older people receiving home care revealed many incidents of severe abuse and neglect and found that some would probably amount to inhuman and degrading treatment under Article 3. For example, the daughter of a woman with Huntington's disease said that her mother became extremely thin, and her clothes became damp and dirty, because she was not given adequate help with eating and drinking.

The Equality and Human Rights Commission inquiry into disability harassment highlighted the duty of all public authorities, including courts, councils, hospitals and schools, to take measures to protect people from ill-treatment. It provides guidance on how to prevent and respond effectively to ill-treatment.

Case study:

OOO (and others) v Commissioner of Police for the Metropolis (2011)

This case was brought by four young Nigerian women who were brought to England illegally, made to work in conditions of servitude and subjected to physical and emotional abuse that amounted to inhuman and degrading treatment. The High Court found that the Metropolitan Police had failed to take operational measures to protect victims of human trafficking, and had failed in their investigative duty under Article 3 after they received credible complaints of the alleged abuse. The claimants were awarded damages of £5,000 each.

Case study:

R (C) v Secretary of State for Justice (2008)

Secure Training Centres were established to accommodate vulnerable teenagers in custody. Until July 2007, physical restraint could only be used as a form of discipline in situations where it was necessary to prevent escape, damage to property or injury. Then new rules were introduced that expanded the permissible use of restraint to circumstances where it was 'necessary for the purposes of ensuring good order and discipline'. In this case, the Court of Appeal quashed the new rules on the basis that they breached Article 3. The Court of Appeal found that the use of physical restraint that includes the deliberate infliction of pain is degrading and an infringement of human dignity in breach of Article 3. It could not be justified as being strictly necessary for ensuring good order and discipline. Where a person has been deprived of their liberty and is dependent on the state, and is young and vulnerable, the state is under a special obligation to treat them with humanity.

Practice example:

The Care Quality Commission (CQC) and the Equality and Human Rights Commission have published joint guidance for CQC inspectors on equality and human rights. The guidance is aimed at ensuring people who are most vulnerable to harm have their rights upheld and respected. It shows inspectors what they have to look for when monitoring a care provider against standards. The guidance also lets inspectors know what to do if they suspect a human rights violation or find a breach in standards.

<http://www.equalityhumanrights.com/key-projects/care-and-support/guidance-for-care-quality-commission-inspectors/>



Article 4: Prohibition of slavery and forced labour

Everyone has the absolute right not to be treated as a slave or to be required to perform forced or compulsory labour, except for certain limited types of obligations specified in the Article (e.g. work in prison).

What does this right mean?

- Everyone has an absolute right not to be held in slavery or servitude or be required to perform forced or compulsory labour.
- The Article states that there are four types of work that are not to be considered as forced or compulsory labour:
 - any work that forms part of a normal civic obligation
 - work done during legitimate detention or on conditional release from detention (i.e. prison work or community service)
 - compulsory military service or civilian service as a conscientious objector
 - community service in a public emergency.

Key words and meanings

- **Slavery and servitude** are closely connected, but slavery involves being owned by another person – like a possession – whilst servitude usually involves a requirement to live

on another's property and with no possibility of changing the situation.

- **Forced or compulsory labour** arises when a person is made to work or perform a service against their will, and where the requirement to do the work is unjust or oppressive, or the work itself involves avoidable hardship. It can cover all kinds of work and services.

Is Article 4 relevant to my work?

Article 4 will be relevant particularly if you:

- suspect that someone is being forced to work without suitable recompense and under unjust conditions
- have powers to make people work in an emergency.
- have powers to regulate employers in relation to things like working conditions and health and safety.

What must a public authority do?

- Ensure all staff are properly recompensed for the work they do.
- There is a positive obligation on public authorities to intervene to stop slavery, servitude or forced or compulsory labour as soon as they become aware of it.
- There is a positive obligation to penalise and prosecute effectively those involved in any act aimed at keeping someone in slavery, servitude or forced or compulsory labour.

Case study:***R v Balira (2011)***

A 21-year-old woman, Ms M was brought to the UK from Tanzania by the defendant Mrs B. Ms M claimed that her passport had been confiscated and that Mrs B kept her as a slave in her flat in South London under unbearable conditions. Ms M alleged that she was forced to share a bed with Mrs B's 12-year-old son and was subjected to vicious assaults where she was punched and slapped on a regular basis. Ms M was never paid for the work that she had done. Mrs B was prosecuted once the authorities were alerted to situation. The jury convicted Mrs B under section 71 of the Coroners and Justice Act 2009 of the offence of holding a vulnerable young woman in servitude and she was found guilty of forcing her to work as a slave for six months. She was sentenced to six months imprisonment and was ordered to pay Ms M £3,000 in compensation.

Case study:***CN v the United Kingdom (2008)***

A 23-year-old woman travelled to the UK to escape from the sexual and physical violence she had experienced in Uganda. She entered the UK on a false passport and visa obtained by family members who then made her work in the care industry. In her final job, she was put to work as a live in carer for an elderly couple. She did not receive payment for her work. She was advised that she should not talk to anyone as she could easily be arrested or come to harm in London. She was permanently on-call during the day and night. She was allowed only a couple of hours leave one Sunday of each month but was not permitted to travel on public transport and was kept at the elderly couple's house at all times with instructions not to leave or talk to anyone.

Her asylum claim failed and the police discontinued their investigation into her allegation on the basis that they found no evidence of her having been trafficked. At that point there was no relevant offence in English criminal law which applied to forced labour or servitude of that kind. The European Court of Human Rights upheld the complaint that there had been a failure properly to investigate her complaints and that this failure was at least in part rooted in defective legislation which did not effectively criminalise the domestic servitude of which she complained which was contrary to Article 4.



Article 5: Right to liberty and security

Everyone has the right not to be deprived of their liberty except in limited cases specified in the Article (for example where they are suspected or convicted of committing a crime) and provided there is a proper legal basis in UK law for the arrest or detention. The focus of this right is upon preserving individual freedom from arbitrary detention rather than protecting personal safety. Therefore, the terms liberty and security should not be considered separately for the purposes of this particular right.

What does this right mean?

- Everyone has the right to liberty and security of person. This amounts to a right not to be 'arrested' or 'detained' even for a short period. This right is subject to exceptions where the detention has a proper legal basis in UK law and falls within one of the following categories of detention permitted by Article 5:
 - following conviction by a criminal court
 - for a failure to obey a court order or legal obligation (for example not paying a criminal fine)
 - to ensure that a person attends a court if there is a reasonable suspicion that they have committed a crime, or if it is reasonably necessary to prevent them committing a crime or escaping after they have done so
 - to ensure that a minor receives educational supervision or attends court
- in relation to a person who is mentally incapacitated, has an alcohol or drug dependency, is a rough sleeper, or who may spread an infectious disease if not detained
- to prevent unauthorised entry into the country or in relation to a person against whom steps are being taken with a view to deportation or extradition.

Other rights under Article 5

Article 5 also sets out the procedures that must be followed by those who have power to arrest or detain others. It gives the detained person the right:

- to be told promptly of the reasons for their arrest and of any charge against them, in a language which they can understand. The information must be given in simple, non-technical terms. This applies to any detention (e.g. detention of mental health patients), and is not limited to arrests of criminal suspects
- to be brought 'promptly' before a judge or judicial officer. This applies only to criminal offences
- to be tried for a criminal offence within a 'reasonable time'
- to challenge the lawfulness of their detention before an independent judicial body which will give a speedy decision and order their release if the detention is found to be unlawful
- to obtain compensation if he or she is arrested or detained in breach of Article 5.

In cases considering Article 5, the European Court of Human Rights has set out principles to be applied in a range of areas such as mental health detention, or bail in criminal cases. In the case of the latter, national law must generally allow bail pending a criminal trial, unless:

- there is a danger that the accused will not attend the trial, and the court cannot identify any bail conditions that would ensure his attendance
- there is a danger that the accused will destroy evidence, warn other possible suspects, co-ordinate his story with them, or influence witnesses
- there are good reasons to believe that the accused will commit further offences while on bail, or
- the seriousness of the crime and the public reaction to it are such that release would cause a public disturbance.

Is Article 5 relevant to my work?

Article 5 will be relevant particularly if you are involved in any of the following:

- arresting or detaining people
- limiting or curtailing people's liberty
- reviewing the detention of mental health patients
- military discipline procedures.

What must a public authority do?

- Ensure that any arrest or detention is lawful and is covered by one of the specified exceptions to the right to liberty (which are listed above).
- Ensure that any arrest or detention is not excessive in the particular circumstances being dealt with.

- Take all reasonable steps to bring a detained criminal suspect promptly before a judge.
- Take all reasonable steps to facilitate the detained person's right to challenge the lawfulness of their detention before a court.
- Obtain reliable evidence from an objective medical expert for detention on mental health grounds.
- Tell the person detained in a simple, clear, non-technical way – and without delay – why they are being deprived of their liberty. If they do not speak English, then get an interpreter to translate into a language that they can understand.

Article 5 in practice

Case study:

KB and others v Mental Health Review Tribunal and Secretary of State for Health (2002)

KB and others were patients detained under the Mental Health Act 1983. Each of them applied to a Mental Health Review Tribunal for a review of their detention. In each case, the hearing arranged by the Tribunal was repeatedly adjourned, leading to delays of up to 22 weeks.

Delays may result in the unjustified detention of patients who, if their cases had been considered earlier, would have been discharged. Cancellations of hearings, particularly if repeated, have other consequences: distress and disappointment for the



mentally vulnerable patient, the risk of damage to his or her relationship with the psychiatrists and other hospital staff, and loss of trust in the tribunal system.

KB and others argued that their cases were typical and that, on the specific facts of their cases, the delays they suffered could not be justified. The court found in each case that the delay in hearing each application was not justified and that the claimants had not received a speedy hearing as required by Article 5.

Practice example:

A hospital psychiatric department held a number of mental health detainees who spoke little or no English. Members of a user-led mental health befriending scheme were concerned about the fact that the services of an interpreter were not available when detaining these patients. They used human rights arguments based on the right to liberty (under Article 5) and the right not to be discriminated against on the basis of language (under Article 14) to argue successfully for a change in the hospital's practice of failing to provide an interpreter. (Example provided by the British Institute of Human Rights.)

Article 6: Right to a fair trial

Everyone has the right to a fair and public hearing within a reasonable period of time. This applies both to criminal charges brought against them, and in cases concerning their civil rights and obligations. Hearings must be before an independent and impartial court or tribunal established by law. It is possible to exclude the public from the hearing if that is necessary to protect things like national security or public order. A person who is charged with a criminal offence is presumed innocent until proven guilty according to law and must also be guaranteed certain minimum rights in relation to the conduct of the criminal investigation and trial.

What does this right mean?

Everyone has the right to a fair trial in cases where:

- there is a dispute about someone's 'civil rights or obligations', or
- a criminal charge is brought against someone.

The right includes:

- the right to a fair hearing
- the right to a public hearing (although there are circumstances where it is permissible to exclude the public and press, for example to protect a child or national security interests)
- the right to a hearing before an independent and impartial tribunal
- the right to a hearing within a reasonable time.

What kinds of cases are covered by Article 6?

The terms 'criminal charge' and 'civil rights or obligations' have very specific meanings under Article 6. It is important to know which type you are dealing with because the protection afforded by Article 6 is more extensive if there is a 'criminal charge' at stake. It is not always easy to determine whether a penalty is a 'criminal charge' or whether a dispute involves a 'civil right or obligation' under Article 6. Some disputes (for example, disputes about immigration control) will fall outside the scope of Article 6 altogether. This is an area which has generated a lot of cases through the courts. So if you are dealing with a penalty of some kind and you are not sure whether Article 6 applies, or whether the penalty is criminal or civil under the Article, then you should obtain further advice.

What is a 'criminal charge'?

Anything that amounts to a criminal charge in UK law will always be criminal under Article 6. That said, there are also certain other penalties that are not called 'criminal charges' in UK law (and do not result in a criminal conviction or criminal record), but which are considered to be 'criminal' under Article 6. This is because the classification of a penalty under UK law is not conclusive of a 'criminal charge' under Article 6. What matters is whether the nature of the 'offence' for which the penalty is imposed, and the seriousness of the possible punishment, make it very similar to a criminal charge. For example, a penalty that involves detaining a person



in custody, perhaps in a military discipline case or following a contempt of court, is likely to be regarded as ‘criminal’ for the purposes of Article 6. In the same way, a fine that is imposed to punish and deter people from doing certain things (such as evading tax or transporting illegal immigrants into the UK) may also be regarded as criminal for Article 6 purposes, even when it is not part of the criminal law in the UK.

What is a ‘civil right or obligation’?

Civil rights and obligations include many rights and obligations that are recognised in UK law, for example contractual rights, property rights and the right to compensation for illegal state actions etc. Again, UK law is not conclusive of the matter because ‘civil rights or obligations’ has its own special meaning under Article 6 (this has evolved through decisions of the European Court of Human Rights). Essentially this term describes cases involving disputes between private persons in their relationships with each other – such as tort and contract disputes, disputes about family and employment law, commercial and property law. It also covers certain disputes between the individual and the state about rights or the use of administrative powers which affect private rights, for example contracts (including most employment contracts), planning decisions and property disputes. Article 6 also covers disputes between an individual and the state concerning social security, except where this involves discretionary payments (as these do not qualify as ‘rights’).

What sort of cases fall outside Article 6?

Article 6 does not always cover disputes about administrative decisions under immigration legislation, or concerning tax or voting rights. These will often fall outside the scope of Article 6 altogether, as do: public law rights and obligations; the obligation to pay tax; political rights and obligations; and certain aspects of employment in the civil service (depending on the subject matter of the dispute).

What about appeals?

Article 6 does not guarantee a right of appeal but the general guarantees of Article 6 apply to the first level of proceedings, as well as to any appeal which is available. However, some of the more specific rights, such as the right to an oral hearing or to a public hearing, may not apply in full to an appeal.

If a case is decided by a non-judicial body, such as an administrative authority rather than a court, the proceedings may not always meet the full standard in Article 6. However, this need not matter if there is an appeal from the decision of that authority to a court or tribunal that does meet the Article 6 standard for fair trials and can deal with all aspects of the case. There need not be a full re-hearing of the facts of the case, for example where the earlier hearing took place in public.

The right of access to a court

As well as ensuring that the proceedings are conducted fairly, Article 6 gives you the right to bring a civil case to court. The legal system must be set up in such a way that people are not excluded from

the court process. The right of access to court is not, however, unlimited and the European Court of Human Rights has accepted that the following people can be restricted from bringing cases:

- litigants who keep bringing cases without merit
- bankrupts
- minors
- people who are not within a time limit or limitation period for bringing a case
- other people where there is a legitimate interest in restricting their rights of access to a court, provided that the limitation is not more restrictive than necessary.

The right to reasons

Article 6 generally includes a right to a reasoned decision, so that people know the basis for the decision sufficiently clearly to decide whether they can challenge it further.

What about legal aid?

Article 6 does not give a general right to legal aid involving a person who cannot afford to bring proceedings but legal aid may be required in certain circumstances in order to guarantee the effective right of access to the court in civil proceedings (for legal aid in criminal cases, see page 26). Although total 'equality of arms' is not expected, each side must have a reasonable opportunity of presenting their case and Article 6 may require legal aid to be available to parties in some civil cases, for example where proceedings are very complex, or in circumstances where a person is required by law to have

a lawyer representing them. Whether legal aid is necessary for a fair hearing depends on a number of factors, for example the complexity of the law and procedure, what is at stake for the party and their ability to represent themselves. It is acceptable to restrict access to legal aid by taking account of the party's financial circumstances and their prospects of success.

What does the right to a fair hearing mean?

This means, in essence, a person's right to present their case and evidence to the court (or the administrative authority who makes the decision) under conditions which do not place them at a substantial disadvantage when compared with the other party in the case. This includes a right to have access to material held by the other side, and – if there is a hearing – the ability to cross-examine witnesses on terms that are equal to the other side's. Witnesses and victims also have Convention rights. Where they are young or vulnerable the court must do what it can to protect them and acknowledge their rights.

What does the right to a public hearing mean?

In principle, this right means that both the public at large and the press have access to any hearing under Article 6. But a failure to provide a public hearing at the first level of proceedings is not necessarily a breach of Article 6. For example, where the initial decision-maker in a civil case is an administrative authority, then it may be sufficient to provide a public hearing at the appeal stage (see below). In any case, the right to a public hearing can be subject to certain restrictions in the interests of morals, public order or national



security or where the interests of those under 18 or the privacy of the parties require an exclusion of the public and the press. However, any exclusion of the public must only go as far as is necessary to protect those interests. Even where the public have been excluded from the hearing, the outcome of the case must be publicly available, whether it is read out by the court or available in written form. In a narrow range of particularly sensitive national security cases (closed material procedures) the public may be excluded from both the hearing and the judgment.

What does the right to an independent and impartial tribunal mean?

The court or other body that decides a case must be independent of the parties in that case. The way in which members of the court or body are appointed, or the way they conduct a particular case, can affect their independence.

Similarly, members of the court or decision-making body must be impartial, and not show prejudice or bias or give any other grounds for legitimately doubting whether they are being impartial. Sometimes a judge or an administrative decision-maker will have had some earlier involvement with the case before deciding the case. Or they may have links with either party, or very strong views. Generally speaking, however, prior involvement will not necessarily mean that the judge or the administrative decision-maker is not impartial. If there is no evidence of actual bias, then the test is whether there is an appearance of bias. For example, a judge or an administrative decision-maker who decides a case

should not later be involved in the appeal against their own decision in the same case because that would give the appearance of bias.

Do administrative decision-makers have to comply with these standards?

Decisions that are taken by administrative authorities, in cases affecting a 'civil right or obligation', do not necessarily have to comply with the full requirements of Article 6 (such as the right to a public hearing), provided that there is a right of appeal to a court or tribunal that does comply with those requirements.

However, in some cases the decision-maker may have a duty to act quasi-judicially, for example by holding a public hearing in a case where the facts are in dispute between the parties. There are also some types of decision which should not be made by an administrative authority (even at the very first level), but which should be allocated to a court. For example, a criminal charge should normally be tried by a court. Whether or not the decision-maker in a particular case has to comply with Article 6 will depend on the facts of the situation.

What does the right to a trial within a reasonable time mean?

People are entitled to have their case heard without excessive procedural delays. Whether or not a delay is excessive will very much depend on the circumstances of the case, including:

- the type and complexity of the case (for example, criminal cases and family cases involving children usually have a strict timescale)
- the conduct and diligence in the case of both sides
- the conduct and diligence of the court.

It is also worth noting that the European Court of Human Rights will look at the reasons for the delay and in previous cases has distinguished between 'chronic overload', for which the state may be liable, and a temporary backlog in the courts being addressed through remedial action – especially if the backlog was not foreseeable. Inadequacy of resources (for example court social workers or judges) would not be viewed as an excuse for excessive delay.

Additional rights in a criminal trial

These include:

- the right of the accused to be informed promptly of the details of the accusation made against them and in a language they can understand
- the right to a free interpreter where the accused cannot understand the language used
- the right to be presumed innocent until proven guilty, which means that it is usually for the prosecution to prove that the defendant is guilty of the offence
- the right of the accused not to say anything that may incriminate themselves, often called the 'right to silence'. However, if the accused exercises the right to silence, the court may be allowed to draw conclusions about why they chose to remain silent. So there is no absolute right to silence
- the right to adequate time and facilities to prepare a defence case, including the provision of legal aid where justice requires this, and the right to communicate with a lawyer in good time for the trial

- the right of the defendant to defend him or herself in person or through legal assistance of the defendant's choosing. Legal aid is to be available if the defendant does not have sufficient means to pay for legal assistance and it is required in the interests of justice
- the right of the defendant, as a general principle, to be in court during their trial. If the defendant is in custody it is the responsibility of the prison authorities to ensure they are at court. The defendant can waive their right to attend court, but they must do so freely and clearly. However, if the defendant deliberately chooses to be absent from court when the trial is heard, the court may continue with the case and will not necessarily have breached Article 6 in doing so
- the right of the defendant to question prosecution witnesses and to call and examine defence witnesses under the same conditions.

Is Article 6 relevant to my work?

Article 6 will be relevant particularly if you are involved in:

- processing benefits, awards, permits, or licences or if you deal with appeals and decisions
- decision-making procedures in the public sector, for example planning, child care, confiscation of property
- the work of courts and tribunals
- prosecutions, including those brought by a local authority and HM Revenue and Customs.

What must a public authority do?

- Build in the necessary procedures to any process of awards, appeals or



decisions to ensure that it meets the Article 6 standard.

- Ensure that any person who is subject to a decision-making process has access to an interpreter if needed.
- If the original decision-making process does not comply with the necessary standard of fairness (perhaps because there was no public hearing) then ensure that there is an appeals process in place which complies with the Article 6 standard.
- Give reasons for a decision (in most cases).
- Ensure that any appeal process is readily available, fair and easily understood.
- Ensure that adequate information about the case, time and facilities are given to prepare a defence or an appeal.

Article 6 in practice

Case study:

Begum v Tower Hamlets LBC (2003)

The Council offered the applicant accommodation which she said was unacceptable. The Council's rehousing manager conducted a review and decided that the applicant should have accepted the flat. The applicant appealed on the ground that she had not had a hearing before an independent tribunal, because the rehousing manager was not independent. The House of Lords (in its judicial capacity, and at

the time the highest UK court) held that the housing allocation decision was a 'determination of civil rights', but that she had had a fair hearing before an independent tribunal, even though the rehousing manager was not independent. The whole review procedure (the reviewing officer's decision plus an appeal to the County Court) provided the protections required by Article 6.

Case study:

DG v Secretary of State for Work and Pensions (ESA) (2010)

DG appealed against a decision to refuse him Employment and Support Allowance (ESA), which was taken after a medical examination. Even though DG requested Jobcentre Plus to contact his GP (also his nominated representative), no evidence was sought from the GP or DG's social worker. At the First Tier Tribunal, on the advice of Jobcentre Plus, DG waived his right to an oral hearing. The appeal was dealt with on paper and dismissed. On appeal, taking into account the bad advice from Jobcentre Plus, the claimant's difficulties arising from his mental health problems, and the failure of both the Department for Work and Pensions and the tribunal to communicate with his GP, the Upper Tribunal found that DG did not have a fair hearing of his appeal as required by Article 6.

Practice example:

A number of planning departments have allowed public participation at planning committees and changes to licensing procedures. (Example taken from the Audit Commission, *Human Rights – Importing Public Service Delivery (2003)*).

A borough council has improved its procedures for appeals by appointing an independent chair. (Example taken from the Audit Commission, *Human Rights – Importing Public Service Delivery (2003)*).



Article 7: No punishment without law

Everyone has the right not to be found guilty of an offence arising out of actions which, at the time they were committed, were not criminal. People are also protected against later increases in the maximum possible sentence for an offence.

What does this right mean?

- A person has the right not to be found guilty of a criminal offence for an act or omission they committed at a time when such an action was not criminal. Also, a person cannot be given a punishment which is greater than the maximum penalty available at the time they committed the offence.
- If, at the time the act or omission was committed, that act was contrary to the general law of civilised nations, then prosecution and punishment for that act may be allowed. This exception allowed for the punishment of war crimes, treason and collaboration with the enemy following World War II.

Is Article 7 relevant to my work?

Article 7 will be relevant particularly if you are involved in:

- creating or amending criminal law
- prosecution of criminal offences
- disciplinary action that leads to punishment, where the offence falls within the Convention concept of a criminal offence (see Article 6 above).

What must a public authority do?

- Take account of Article 7 when creating/ amending criminal legislation.
- Ensure that offences are clearly defined in law.
- Ensure that criminal laws and punishments are not applied retrospectively.

Article 7 in practice

Case study:

R v Secretary of State for the Home Department, ex parte Utley (2004)

In 1995, a man was convicted of various sexual offences, including rape. He was sentenced to 12 years' imprisonment. He was released after serving two-thirds of his sentence, subject to licence conditions until three-quarters of the way through his sentence. However, had he been convicted and sentenced at the time the offences took place, the legal provisions then in force would have entitled him to be released on remission without conditions. He argued that the imposition of licence conditions rendered him subject to a heavier penalty than that which was applicable at the time the criminal offence was committed, and that this was a breach of Article 7. The House of Lords (in its judicial capacity, and at the time the highest UK court) disagreed. They held that

Article 7 would only be infringed if a sentence imposed on a defendant exceeded the maximum penalty which could have been imposed under the law in force at the time the offence was committed. That was not the case here because, even at the date of the offences, the maximum sentence for rape was life imprisonment. Article 7 was not intended to ensure that the offender was punished in exactly the same way as would have been the case at the time of the offence, but merely to ensure he was not punished more heavily than the maximum penalty applicable at the time of the offence. In any event, the imposition of license conditions did not render the sentence heavier than it would have been under the earlier regime.



Qualified rights: Articles 8 to 11

Apart from the right to hold particular beliefs, the rights in Articles 8 to 11 may be limited where that is necessary to achieve an important objective. The precise objectives for which limitations are permitted are set out in each Article – they include things like protecting public health or safety, preventing crime and protecting the rights of others.

Article 8: Right to respect for private and family life

Everyone has the right to respect for their private and family life, their home and their correspondence. This right can be restricted only in specified circumstances.

What does this right mean?

Everyone has the right to respect for their private and family life, their home and their correspondence.

This right may be restricted, provided such interference has a proper legal basis, is necessary in a democratic society and pursues one of the following recognised legitimate aims:

- national security
- public safety
- the economic well-being of the country
- the prevention of disorder or crime
- the protection of health or morals
- the protection of the rights and freedoms of others.

But the interference must be necessary (not just reasonable) and it should be 'proportionate' – that is, not more than is needed to achieve the aim desired.

Key words and meanings

Private life – The concept of 'private life' under Article 8 is broad. In general, the right to respect for private life means that a person is entitled to live their own life with such personal privacy as is

reasonable in a democratic society, taking into account the rights and freedoms of others. For example, it gives people protection from intrusion by the media.

Respect for an individual's personal dignity is part of the protection of their private life. Any interference with a person's body or psychological integrity or the way they live their life is likely to undermine their dignity, potentially in breach of Article 8.

The right to respect for private life under Article 8 also encompasses matters of autonomy and self-determination that may include, for example:

- freedom to choose one's own sexual identity
- freedom to choose one's personal relationships
- freedom to develop one's own personality
- freedom to choose how one looks and dresses.

The right to private life can also include the right to have personal information, such as a person's official records, photographs, letters, diaries, medical information or DNA profile, kept private and confidential. Any disclosure of personal information about someone to another person or body is likely to affect a person's right to their private life under Article 8. Unless there is a very good reason, public authorities should not collect or disclose information like this;



if they do, they need to make sure the information complies with data protection legislation and ensure that the information is accurate.

Article 8 places limits on the extent to which a public authority can do things which invade a person's privacy in relation to their body without their permission. This can include activities such as taking blood samples and performing body searches.

Article 8 also places limits on most forms of surveillance, such as CCTV, phone-tapping, and surveillance by GPS.

In some circumstances, the state must take positive steps to prevent intrusions into a person's private life by other people. For example, the state may be required to take action to protect people from serious pollution where it is seriously affecting their lives.

Family life – The right to respect for family life includes the right to have family relationships recognised by the law. It also includes the right for a family to live together and enjoy each other's company. The concept of 'family life' under Article 8 is broader than the traditional family. As such, it can include the relationship between an unmarried couple (including same-sex partners), between siblings, an adopted child and the adoptive parent, grandparent and grandchild, or a foster parent and fostered child. Public authorities must not interfere in a person's family life unless the interference is lawful and proportionate.

Home – Everyone has the right to enjoy living in their home without public authorities intruding or preventing them from entering it or living in it.

People also have the right to enjoy their homes peacefully. A person does not have to own their home to enjoy these rights. A person's 'home' may include their place of business.

The right to respect for one's home may mean, for example, that the state has to take positive action so that a person can peacefully enjoy their home, for example, to reduce aircraft noise or to prevent serious environmental pollution.

Correspondence – Article 8 includes the right to respect for correspondence. Again, the definition of 'correspondence' is broad, and can include communication by letter, telephone, fax, text message or e-mail.

Is Article 8 relevant to my work?

Article 8 will be relevant particularly if you are involved in any of the following:

- accessing, handling or disclosing personal information
- entry to properties (including businesses)
- providing or managing housing
- surveillance or investigation
- dealing with families or children
- asylum or immigration control
- handling environmental issues, such as waste management or pollution
- provision of healthcare or social care.

What must a public authority do?

- Always be alert to policies or actions that might interfere with a person's right to respect for their private and family life, their home or their correspondence.

- Where possible, a public authority should try to ensure that its policies or decisions do not interfere with someone's right to respect for private and family life, their home and their correspondence.
- If a public authority does decide that it will be difficult to avoid interfering with someone's Article 8 rights, it will need to make sure that the policy or action is necessary, pursues one of the recognised legitimate aims and is proportionate to that aim. A public authority may be asked to produce reasons for its decisions.
- Public authorities may also need to consider whether there are situations putting them under obligation to take active steps to promote and protect individuals' Article 8 rights from systematic interference by third parties, for example, private businesses.
- the rights of lesbian, gay and bisexual people (there have also been recent developments in domestic law in this area, such as the Employment Equality (Sexual Orientation) Regulations 2003 – now part of the Equality Act 2010)
- the rights of transgender people (which are largely given effect in domestic law by the Gender Recognition Act 2004 and the Equality Act 2010)
- certain aspects of the rights of prisoners, for example, receiving private correspondence
- the rights of Gypsies and Travellers to have their identity and culture respected
- the right of people using healthcare or social care to be treated with respect for their dignity and personal autonomy
- public sector employees' rights to privacy, including the monitoring of e-mails and telephone calls without employee consent
- the imposition of unreasonable mandatory dress codes or drug testing on public sector employees
- the use of CCTV and exchange of data obtained from it
- an individual's right to refuse medical treatment
- the rights of egg and sperm donors, and children born as a result of artificial insemination
- the ability of the media to report details of the private lives of famous people.

Article 8 in practice

Balancing – Article 8 is one of the Convention rights that requires you to strike a balance between a person's private rights and the needs of other people or society as a whole (see 'Balancing one person's rights against those of the community' on page 70).

The right to respect for a person's private and family life, their home and their correspondence under Article 8 may be relevant in a wide range of areas, including:

- searches of homes and the use of covert surveillance, such as listening devices
- family law disputes or asylum cases where there is a risk that a family will be separated

As explained above, whether Article 8 rights are actually breached will depend on all the circumstances of the case. A public authority can interfere in someone's Article 8 rights, provided this is permitted by the law, is necessary, and is a



proportionate means of achieving one of the legitimate aims prescribed by Article 8(2).

Case study:

London Borough of Hillingdon v Steven Neary (2011)

This was a case involving a 21-year-old man with childhood autism and a severe learning disability who lives with, and is cared for by, his father, Mr Neary. Steven requires constant support and supervision, and Mr Neary was helped by an extensive care package provided by Hillingdon Council. In 2009, the local authority accepted Steven into respite care for a few days, but subsequently kept him there for a year, despite Mr Neary's insistence that Steven was best placed with him.

The case judgment focused on the unlawfulness of Steven's detention under Article 5 (the right to liberty), but also found Hillingdon council to be in breach of the right to respect for family life under Article 8, by failing to consider the human rights implications of keeping Steven away from his family for a long period of time.

One aspect of the Article 8 breach was based on the council's failure to listen to Mr Neary's complaints. The court said that: 'Hillingdon's approach was calculated to prevent proper scrutiny of the situation it had created. In the weeks after Steven's admission,

it successfully overbore Mr Neary's opposition. It did not seriously listen to his objections and the suggestion that it might withdraw its support for Steven at home was always likely to have a chilling effect. Once Mr Neary's resistance was tamed, the question of whether Steven was in the right place did not come under any balanced assessment.'

Case study:

Connors v the United Kingdom (2004)

A family had been settled for about 13 years on a site provided by the council for people with a nomadic lifestyle. The council then evicted them for causing a nuisance, using the summary eviction procedure. The family challenged the council's decision on the basis that their eviction from the site was an unjustifiable breach of their Article 8 rights. The European Court of Human Rights held that there had been a breach of the right to respect for the home under Article 8. The Court found that the legal framework applying to the occupation of pitches on local authority Traveller sites did not provide the family with sufficient procedural protection of their rights. Special consideration should be given to their needs and their nomadic lifestyle because of the vulnerable position of Gypsies in society. Any interference that would render them homeless could not be justifiable unless the public interest grounds were sufficiently weighty. The Court found that there were no such grounds and as such the decision infringed Article 8.

Case study:

AA v the United Kingdom (2011)

The decision to deport a Nigerian national, issued after he had served a sentence of four years' imprisonment following conviction for a serious criminal offence, violated his Article 8 rights.

His conduct since committing the offence (at the age of 15) was described as 'exemplary', including securing GCSEs, A-levels, a university degree and finding a stable job. An objective assessment concluded his risk of re-offending was low. The formative years of his life had been spent in the UK where most of his family also lived, and he had little connection to Nigeria. This outweighed the reasons for deportation – the seriousness of the offence and the need to protect the public. The decision to deport was held to be a disproportionate interference with his Article 8 rights to family and private life.



Case study:

Joseph Grant v the United Kingdom (2009)

A Jamaican national who had lived for 34 years in the UK from the age of 14, who had four British children and a grand-child, and who no longer had significant family ties in Jamaica, was nevertheless lawfully deported. He had been convicted and sentenced for over 50 criminal offences between 1991 and 2006 and, although he was not sentenced to over 12 months imprisonment for any of these offences, a deportation order was issued under the Home Secretary's discretionary powers to order deportation in the public interest. The scale and duration of the offences he had committed, and the risk of him committing further offences, meant the decision to deport was proportionate, outweighing his right to family and private life in the UK.

Case study:

Onur v the United Kingdom (2009)

A Turkish national granted indefinite leave to remain in the UK was lawfully deported after a string of criminal convictions including a conviction for armed robbery for which he was sentenced to over four years imprisonment. Although he had lived with his family in the UK since the age of 11, had two British children and had little connection with Turkey, the seriousness of the robbery offence and the risk of re-offending outweighed the interference with his Article 8 right to family and private life.

Case study:

Peck v the United Kingdom (2003)

A man suffering from depression attempted suicide by cutting his wrists on the street. CCTV cameras filmed him walking down the street with the knife. The footage was then published as film and as photographs without his consent and without properly concealing his identity. The European Court of Human Rights held that, although the filming and recording of the incident did not necessarily interfere with his privacy, the disclosure of the CCTV footage by the local authority constituted a serious interference with his right to a private life. In this case there were insufficient reasons to justify disclosure of the footage without the man's consent and without masking his identity. Accordingly, disclosure of the material was a disproportionate interference with his private life.

Practice example:

A physical disabilities team at a local authority decided to provide support workers to facilitate social activities. Residents were taken to a number of social events including visits to pubs and clubs. One service user who was gay asked for a support worker to accompany him to a gay pub but the manager of the scheme refused on the basis that none of his staff were prepared to attend a gay venue. Following training by BIHR, an advocate working on behalf of the service user realised that human rights arguments based on the right to respect for private life (Article 8) could be used to challenge practices of this sort. (Example provided by British Institute of Human Rights.)



Article 9: Freedom of thought, conscience and religion

Everyone is free to hold a broad range of views, beliefs and thoughts, and to follow a religious faith. The right to manifest those beliefs may be limited only in specified circumstances.

What does this right mean?

Freedom of thought, conscience and religion are essential requirements in a democratic society. Protecting this fundamental right requires the preservation of diversity and pluralism in society. Public authorities responsible for protecting and upholding this right should aim to remain neutral and impartial, and promote mutual tolerance rather than conflict between those holding different beliefs. Section 13 of the Human Rights Act 1998 requires courts and tribunals to pay specific attention to the importance of Article 9 rights when a question arises about a religious organisation's exercise of this right.

Who is protected?

The actual text of Article 9 does not define who is, or is not, protected; that task is left to the courts to determine on a case-by-case basis.

When interpreting Article 9, the domestic courts have ruled that a genuine and sincerely held belief must attain a certain cogency, seriousness and cohesion relating to an important aspect of human life or behaviour. The threshold for

demonstrating this has been set at a modest rather than substantial level.

Article 9 protects religious and non-religious beliefs; it encompasses freedom of religion and freedom from religion. It protects the rights of individuals and of groups/organisations sharing the same or similar beliefs – groups/organisations are protected as an entity and in their representational capacity.

A broad range of beliefs, thoughts and positions of conscience are protected under Article 9. A table with examples of beliefs that the courts have decided are, or are not, covered by Article 9 can be found at: <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/religion-or-belief-guidance-employers>

Overlap with other rights

There is a distinction between protected beliefs under Article 9, ideas and opinions covered by Article 10 (freedom of expression), and convictions covered by Article 2 of Protocol 1 (the right to education), although these rights may overlap in practice.

In certain cases, Article 9 may also overlap with Articles 8 (right to private and family life), 11 (freedom of assembly), 12 (right to marry) and 14 (non-discrimination). In particular, Article 14 specifically recognises religion as one of the grounds on which discrimination is prohibited while 'any other status' within Article 14 covers non-religious beliefs too. (See 'Prohibition of discrimination' on page 53.)

The difference between having and displaying beliefs

In interpreting Article 9, the domestic courts and the European Court of Human Rights make a distinction between, firstly, the right to hold beliefs and, secondly, the right to manifest those beliefs.

The right to hold and to change one's beliefs is absolute, meaning that interference with this aspect of Article 9 rights is not permitted.

Most cases will concern the right to manifest one's beliefs, which is a limited right. Interferences with manifestation rights can be justified if certain criteria are met. Displaying beliefs can occur through worship, teaching, practice and observance, in the public and private spheres. To attract protection under Article 9 there must be sufficient connection between the belief and manifestation of it, but recent case law of the European Court of Human Rights indicates that the two do not need to be 'intimately linked'. Generally recognised religious obligations and individual practices connected to beliefs are normally protected under Article 9.

Before recent case law (*Eweida & Others v the United Kingdom*), the courts took the view that the right to manifest a belief had not been interfered with in circumstances where the individual had an alternative choice that would enable them to comply with their beliefs – even when the choice was invidious, such as choosing to resign and find a more suitable job. Exceptions were made for people who had no choice, and who would find it impossible or extremely difficult to fulfil religious obligations by any alternative means, such as prisoners.

Recently, the European Court of Human Rights decided to depart from this approach. Thus interference with Article 9 rights can now occur even where, for example, the individual could choose to find another job or school that would accommodate the manifestation of their beliefs. It is not yet known whether the domestic courts will follow this new approach in future cases.

Justifying interference with Article 9 rights

To be capable of justification under Article 9(2), the interference with the right to manifest one's beliefs must be necessary, not just reasonable, and the interference should be no more than is needed to achieve a legitimate aim. The specific justification criteria are that:

- the interference has a proper legal basis
- it is necessary in a democratic society, and
- it pursues one or more of the following recognised legitimate aims: public safety, protection of public order, health or morals, or the protection of the rights and freedoms of others.

The right to manifest one's beliefs in public sometimes requires a balance to be struck between the needs of the individual, and the competing considerations of other individuals/groups, organisations, the wider community or society as a whole.

When assessing if interferences with Article 9 rights can be justified, the courts have given public authorities a significant amount of latitude. In comparison with other limited human rights, the current threshold to justify interferences with Article 9 rights is not set at a high level.



In practice, much depends on the relevant circumstances of each case and the weight attached to each competing consideration.

Relevant equality law

From 2003, domestic anti-discrimination provisions concerning religion or belief have complemented Article 9 rights. These anti-discrimination provisions are now in the Equality Act 2010, which prohibits unlawful harassment, victimisation and direct and indirect discrimination based on religion or belief in many settings, such as work, education, the provision of services and the exercise of public functions.

Indirect discrimination based on religion or belief under the Equality Act 2010, or interferences with Article 14 anti-discrimination rights, can be justified if it is proportionate and legitimate.

The Equality Act 2010 also requires public authorities to give due regard, when exercising their functions, to the need to eliminate prohibited conduct, advance equality of opportunity and foster good relations (generally referred to as the public sector equality duty). More specific action is also required, such as setting and publishing equality objectives (for English public authorities). Religion or belief is one of the characteristics covered by these positive obligations.

Certain religious groups, for example Jews and Sikhs, are also covered by the Equality Act 2010 under the protected characteristic of race.

There are some exceptions to the principle of non-discrimination based on religion or belief which is set out in the Equality Act 2010.

Is Article 9 relevant to my work?

Article 9 will be relevant if you are involved in any of the following:

- carrying out or exercising public functions
- delivering or providing services available to the public
- recruiting and employing people
- training, teaching or education
- conducting religious duties, services and ceremonies.

Set out below are some common examples of when Article 9 (and Article 14) could be particularly relevant:

- anticipating and, where possible, meeting the needs of employees and pupils who request time off for religious holidays
- setting dress requirements at work or education institutions
- meeting the dietary or other religious needs of prisoners
- reviewing policies to determine how far, in particular situations, people can articulate and promote their own beliefs
- making decisions about the allocation of work duties
- carrying out the swearing of oaths, or registration of births, marriages and deaths
- determining how services to the public are provided.

Article 9 in practice

To follow good practice a public authority is recommended to review policies, practices or decisions which interfere with a person's right to manifest their religion or

belief. Ideally a proactive assessment will be undertaken, for example, to discharge the public sector equality duty, though a review may take place as a response to an issue raised by an individual.

Engaging in constructive dialogue will assist in improving mutual understanding which will, in turn, help in making balanced, objective, justifiable decisions. Such dialogue will also assist in avoiding making any unwarranted assumptions about individual issues that are raised and the beliefs in question.

A public authority should try to accommodate the individual's religion or belief where possible. This will ensure it does not act in a way that unlawfully interferes with the individual's right to manifest their religion or belief, and/or infringe other relevant rights.

In some circumstances, a further assessment will be required to balance competing considerations, such as the impact on the individual, the impact on others (such as other employees, pupils/students or service users) and the costs or disruption to the business. An effective assessment will fully identify and consider the range of available options before going on to evaluate where the right balance should be struck in the circumstances of each case.

If, following such an assessment, a public authority decides that it needs to interfere with someone's right to manifest their religion or belief, it will need to make sure that the decision is necessary, pursues one or more of the recognised legitimate aims and is proportionate to that aim under Article 9. It is useful to record the decision-making process and reasoning in case the decision is challenged.

Case study:

Eweida v the United Kingdom (January 2013)

British Airways' decision to prevent Nadia Eweida, a Christian employee, from wearing a visible crucifix in a customer service role was disproportionate and unjustifiably breached her Article 9 right to manifest her beliefs at work. Although there was no religious requirement for her to wear a visible crucifix and she could have found another job which allowed her to do so, the European Court of Human Rights concluded too much weight had been given to the employer's corporate image in this case and not enough to Ms Eweida's right to wear a visible crucifix. Allowing the visible crucifix to be worn did not significantly affect British Airways' corporate image.



Case study:

***Ladele v the United Kingdom
(January 2013)***

A Christian marriage registrar who refused to perform civil partnerships for same-sex couples due to her religious beliefs lost her job and claimed her employer (Islington Council) had acted in violation of her Article 9 rights, amongst other claims. The domestic courts and the European Court of Human Rights dismissed her claims. In relation to Article 9 they decided that, where other rights were relevant, the employer's use of its corporate 'equality and dignity' policy to refuse to exempt an employee from those particular duties was justifiable. The wide discretion given to the employer in this case to strike an appropriate balance between competing considerations had not been exceeded. The argument that Ms Ladele's employer should have accommodated her conscientious objection was also rejected.

Case study:

***Begum v the Head Teacher and
Governors of Denbigh High
School (2006)***

Where a school provided a range of school uniform options to pupils, after consultation with local mosques, then that school's subsequent decision to prevent a female Muslim pupil from wearing an impermissible form of dress at school (a jilbab – that looked similar to a long coat) did not breach the pupil's Article 9 manifestation rights, according to the House of Lords.

The majority of the House of Lords (in its judicial capacity, and at the time the highest UK court) ruled that the pupil's Article 9 right to manifest her religion had not been interfered with in this case because she had chosen a school where such a policy existed and there were other schools nearby that she could have chosen to attend which permitted wearing of the jilbab, enabling her to comply with her religious beliefs.

Case study:

R (Ghai) v Newcastle upon Tyne City Council (2010)

The prohibition of cremation through an open-air funeral pyre (as opposed to cremation within a building which is lawful under the Cremation Act 1902 and associated regulations) engaged and interfered with Mr Ghai's Article 9 rights as a Hindu. The belief in the need to be cremated in the form Mr Ghai desired when he died was sufficiently closely connected to Hinduism and was more than a matter of tradition.

After considering and discarding the various alternatives to open-air cremation which would fall within the Cremation Act, the Court of Appeal decided to define the word 'building' in very broad terms so as to include certain structures that facilitated open-air cremation.

This allowed for a form of cremation that met Mr Ghai's religious needs (compatible with his Article 9 manifestation rights) and which was also compatible with the relevant domestic law.

Case study:

R (Surayanda) v Welsh Ministers (2007)

The decision to slaughter a sacred bullock (belonging to a Hindu temple) that suffered from bovine tuberculosis (bTB), at a time when measures were being taken to control the spread of this disease in the locality, was held to be justifiable under Article 9 by the Court of Appeal.

The grave and serious interference with the particular community's Article 9 right to manifest their belief in the need to protect life was outweighed by other relevant competing considerations. In particular, the legitimate aims of reducing the economic impact of bTB, maintaining public health protection and protecting animal health welfare, outweighed the community's Article 9 rights. That, together with the fact the action was prescribed by law, meant the decision to slaughter the bullock was justified under Article 9.

More information about the definition of religion or belief in equality and human rights law can be found at <http://www.equalityhumanrights.com/your-rights/equal-rights/religion-and-belief> and <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/religion-or-belief-guidance-employers>



Article 10: Freedom of expression

Everyone has the right to hold opinions and express their views on their own or in a group. This applies even if these views are unpopular or disturbing. This right can be restricted only in specified circumstances.

What does this right mean?

Everyone has the right to hold opinions, and to receive ideas and information without interference by a public authority and regardless of frontiers. The right also includes the freedom to express views. However, the Article does not prevent states from requiring the licensing of broadcasting television or cinema enterprises.

Since this right carries with it duties and responsibilities, it may be subject to formalities, conditions, restrictions or penalties, but these must have a proper legal basis. Furthermore, the interference must be necessary in a democratic society and pursue one of the following recognised legitimate aims:

- in the interests of public safety, national security or territorial integrity
- to prevent disorder or crime
- to protect health or morals
- to protect the reputations or rights of others
- to prevent the disclosure of information received in confidence
- to maintain the authority and impartiality of the judiciary.

But the interference must be necessary (not just reasonable) and it should not do more than is needed to achieve the aim desired.

Section 12 of the Human Rights Act 1998 requires courts and tribunals to pay specific attention to the importance of Article 10 rights when considering whether to grant any relief that might affect the exercise of those rights.

Key words and meanings

Expression – ‘Expression’ can cover holding views or opinions, speaking out loud, publishing articles or books or leaflets, television or radio broadcasting, producing works of art, communication through the internet, some forms of commercial information and many other activities. It can also cover the right to receive information from others, so you possess rights both as a speaker and as a member of an audience. You can express yourself in ways that other people will not like, or may even find offensive or shocking. However, offensive language insulting to particular racial or ethnic groups would be an example of where a lawful restriction on expression might be imposed.

Is Article 10 relevant to my work?

Article 10 will be relevant particularly if you are involved in any of the following:

- broadcasting, media and press work
- regulation of communications or the internet

- writing speeches or speaking in public
- decisions in relation to provision of information, for example to people in detention
- regulation or policing of political demonstrations.

What must a public authority do?

- Always be alert to policies or actions that might interfere with a person's right to freedom of expression.
- Where possible, a public authority should try to ensure that its policies or decisions do not interfere with someone's right to freedom of expression.
- If a public authority does decide that it is necessary to interfere with someone's Article 10 rights, it will need to make sure that the policy or action is necessary, pursues one of the recognised legitimate aims and is proportionate to that aim. A public authority may be asked to produce reasons for its decisions.

Article 10 in practice

The right to freedom of expression under Article 10 may be relevant to areas such as political demonstrations or campaigns, industrial action and 'whistle-blowing' employees. It has also been very important for the media. Press rights under Article 10 have come into conflict with celebrities' rights to privacy under Article 8 in several high profile cases. In addition, the interaction between Article 10 and the criminal law has been tested in several cases.

Case study:

Observer and the Guardian v the United Kingdom (1991)

The *Guardian* and *Observer* published some excerpts from Peter Wright's book, *Spycatcher*, which contained material alleging that MI5 had conducted unlawful activities. The Government succeeded in claiming an injunction preventing further publication until proceedings relating to a breach of confidence had been concluded. Subsequently, the book was published in other countries and then in the UK. The *Guardian* complained that the continuation of the injunction infringed Article 10.

The European Court of Human Rights held that although the injunction was lawful, as it was in the interests of national security, once the book had been published, there was insufficient reason for continuing the publication ban. The injunction should have been discharged once the information was no longer confidential.



Case study:

Sunday Times v the United Kingdom (1979)

The *Sunday Times* intended to publish an article examining the background to the introduction of the drug thalidomide into the British market and the proposed settlement of the claims against its manufacturers taken by children damaged by the drug. The Government succeeded in obtaining an injunction preventing its publication on the ground that it would be in contempt of court. The *Sunday Times* complained that the injunction violated Article 10.

The European Court of Human Rights held that Article 10 guarantees not only the freedom of the press to inform but also the right of the public to be informed. It held that there had been a breach of Article 10 as, on the particular facts, the public interest in freedom of expression was more important than maintaining the authority of the judiciary.

Case study:

Independent News and Media Ltd v A (2010)

Independent News and Media Limited made an application to attend Court of Protection proceedings relating to a very talented young man who was severely disabled, affecting his ability to manage his own affairs, about whose career they and other newspapers had already published a number of articles.

The Court of Protection Rules 2007 prohibit publication of information about proceedings or hearings in public unless ‘there is good reason’ for ordering to the contrary, in order to protect the privacy of vulnerable individuals.

In considering Article 10, the Court of Appeal found that it was possible to accommodate the legitimate concerns for privacy and the legitimate aspirations for publicity. It stated that the principle that Article 10 cannot give rise to a right to obtain information is not absolute and where the information sought consists of evidence given in a court of law, Article 10 may be engaged at least when the media are seeking the information for the purpose of disseminating it more widely because it is in the public interest.

Here ‘good reason’ was satisfied as: (i) the Respondent was well known to the public and all information permitted to be published was already within the public domain; and (ii) the Court was able to preserve privacy whilst addressing the issues in the case.

Article 11: Freedom of assembly and association

Everyone has the right to assemble with other people in a peaceful way. They also have the right to associate with other people, which includes the right to form a trade union. These rights may be restricted only in specified circumstances.

What does this right mean?

- Everyone has the right to assemble with other people in a peaceful way and the right to associate with other people, including the right to form a trade union. Everyone also has the right not to take part in an assembly or join an association if that is their choice.
- This right may be restricted provided such interference has a proper legal basis, is necessary in a democratic society and pursues one of the following recognised legitimate aims:
 - national security
 - public safety
 - the prevention of disorder or crime
 - the protection of health or morals
 - the protection of the rights and freedoms of others.

But the interference must be necessary (not just reasonable) and it should not do more than is needed to achieve the aim desired.

Key words and meanings

Freedom of assembly – This applies to static meetings, marches, public

processions and demonstrations. The right must be exercised peacefully, without violence or the threat of violence, and in accordance with the law.

Freedom of association – A person's right to freedom of association includes: the right to form a political party (or other non-political association such as a trade union or other voluntary group); the right not to join and not be a member of such an association or other voluntary group. This means that no one can be compelled to join an association or trade union, for example. Any such compulsion may infringe Article 11.

Is Article 11 relevant to my work?

Article 11 will be relevant particularly if you are involved in any of the following:

- making decisions regarding public protests, demonstrations or marches
- industrial relations
- policy making.

What must a public authority do?

Always be alert to policies or actions that might interfere with a person's right to freedom of assembly and association.

Where possible, a public authority should try to ensure that its policies or decisions facilitate peaceful protest and do not interfere with someone's freedom of peaceful assembly and association.



If a public authority does decide that it is necessary to interfere with someone's Article 11 rights, it will need to make sure that the policy or action is necessary, pursues one of the recognised legitimate aims and is proportionate to that aim. A public authority may be asked to produce reasons for its decisions.

Article 11 in practice

Restrictions – The state is allowed to limit the Article 11 rights of members of the armed forces, police and civil service, provided these limitations can be justified. This is based on the idea that it is a legitimate aim of democratic society for these people to be politically neutral, and thus restricted from being closely associated with a particular political cause.

Practice example:

The police have recognised their legal obligation to facilitate public protest.

In August 2010 the English Defence League (EDL) planned a protest in Bradford. A counter demonstration by Unite Against Fascism was also planned. The protest was not welcomed by some local people, who wanted the protest banned. Violence was feared, as previous protests by EDL had led to violent clashes.

West Yorkshire Police had a duty to protect the protest unless there was clear evidence that violence would occur. They facilitated the protest by carrying out a human rights impact assessment, and engaging with people, in particular the Muslim community of Bradford, about the right to peaceful protest. Although some people in the community were initially upset, they realised that the police had to allow the protest, and engaged with the police on how to persuade young people not to get involved in criminal activity around the protest.

Article 12: Right to marry and to found a family

Men and women have the right to marry and start a family. The national law will still govern how and at what age this can take place.

What does this right mean?

Under Article 12, men and women have the right to marry and found a family provided they are both of marriageable age, and the marriage is permitted in national law. Article 12 does not require the state to provide the right to marry to same-sex couples. States are permitted to exercise their broad discretion to legally recognise same-sex marriages if they wish to do so. If states choose to recognise same-sex marriages they will have to ensure there is no unjustifiable discrimination between same-sex and opposite-sex couples who choose to marry. National law may regulate form, conditions and capacity to marry but the state must not impose limitations which impair the very essence of the right.

The European Union Charter on Fundamental Rights reaffirms the rights, freedoms and principles recognised in EU law, and applies to the EU institutions and bodies as well as to EU Member States when they are acting within the scope of EU law. The rights are based on the fundamental rights and freedoms recognised by the European Convention on Human Rights, the constitutional traditions of the EU Member States, and other international conventions to which

the European Union or its Member States are parties. Article 9 of the Charter has modernised the wording of the right to marry to cover cases in which national legislation recognises arrangements other than marriage for founding a family, i.e. marriage is not the only way to establish family life with a right to be protected against state interference. In Great Britain, protection would also be provided for non-marital family unions and same-sex civil partnerships. However, the European Court of Human Rights has decided in *H v Finland (2012)* that this does not affect the general position under Article 12 of the Convention in that states may, but are not required to, make provision for the marriage of same-sex couples, and that is also the case under other relevant Convention rights such as Articles 8 and 14 (see also the Court's judgment in *Schalk & Kopf v Austria (2010)*).

Is Article 12 relevant to my work?

Article 12 will be relevant particularly if you are involved in any of the following:

- registering marriages or civil partnerships
- making decisions on fertility treatment
- making decisions on who can enter and remain in the UK.



What must a public authority do?

If a public authority takes a decision that has the effect of interfering with someone's right to marry, enter into a civil partnership or found a family, then it must be particularly careful to ensure that the decision is in accordance with the relevant law.

Article 12 in practice

Transsexual people

In the case of *Goodwin v UK (2002)*, the applicants argued that refusal by the UK government to provide for legal recognition of their permanent change of gender led to a violation of their right to family life because they could not, in law, marry someone of the opposite sex. The court ruled that their Article 12 (and Article 8) rights had been unjustifiably infringed. The Gender Recognition Act 2004 now allows transsexual people to obtain legal recognition in their new gender, and once they have obtained such recognition they can marry a person of the opposite gender. In *R & F v the United Kingdom (2006)* and *Parry v United Kingdom (2006)*, the court decided that the requirement to end a marriage once one party to it changes gender (and the effect is a change from an opposite-sex to a same-sex relationship) does not breach Article 12. Since there was no emerging consensus on the definition of marriage across the 47 signatory states, and practices varied considerably amongst them (with only a small number recognising same-sex marriages), uniform marriage requirements could not be imposed by the court; national authorities were best placed to assess and respond to the needs of society in this particular context.

Same-sex marriage

The Marriage (Same Sex Couples) Act 2013 was given Royal Assent on 17 July 2013 and the Government made arrangements to bring the provisions relating to marriage in to force so that marriages between same-sex couples have been able to take place since the end of March 2014.

The Act only applies to England and Wales and similar legislation concerning Scotland received Royal Assent on 13 March 2014. The Act:

- allows same-sex couples to marry in civil ceremonies
- allows same-sex couples to marry in religious ceremonies, where the religious organisation has 'opted in' to conduct such ceremonies
- protects those religious organisations and their representatives who do not wish to conduct marriages of same-sex couples from successful legal challenge
- enables civil partners to convert their partnership to a marriage, if they wish
- enables married individuals to change their legal gender without having to end their marriage.

The arrangements for allowing the conversion of civil partnerships to marriages, and allowing people who change their legal gender to remain in their marriages, will come into force towards the end of 2014.

Case study:

O'Donoghue and Others v the United Kingdom (2010)

A government scheme which charged some immigrants a fee to marry, but only if they were not planning to marry in the Church of England, was held to be discriminatory. The certificate of approval scheme was originally set up to deal with sham marriages.

Mr Iwu, a Nigerian national living in Northern Ireland, wished to marry his partner Ms O'Donoghue. Both were practising Roman Catholics. In order to marry in a Roman Catholic Church, Mr Iwu was required to obtain permission from the Secretary of State and pay £295 because he was subject to immigration control.

The European Court of Human Rights found that there had been a violation of the right to marry under Article 12. The application process made it clear that it did not apply to couples who wished to marry in the Church of England, in addition the process did not look at the circumstances of a case to determine whether the marriage was a sham. The scheme was deemed discriminatory on the grounds of religion and the government could not provide any objective and reasonable justification for the difference in treatment.

The Government abolished the scheme on 9 May 2011.



Article 14: Prohibition of discrimination

In the application of the other Convention rights, people have the right not to be treated differently because of their race, religion, sex, political views or any other status, unless there is an 'objective justification' for the difference in treatment.

What does this right mean?

Discrimination means treating people differently from others only because of a particular characteristic (race, gender, sexual orientation etc). This is known as direct discrimination. When seemingly neutral treatment creates a disproportionate disadvantage for people with a particular characteristic, compared to people who do not share the same characteristic, it is known as indirect discrimination. Article 14 of the European Convention on Human Rights gives people the right to protection against both forms of discrimination in relation to all the other rights guaranteed under the Convention. It means that everyone is entitled to equal access to those rights. People cannot be denied equal access to them on grounds of their personal 'status'.

How does Article 14 work?

Article 14 only works to protect people from different treatment in exercising their other Convention rights. It does not give people a general right to protection from different treatment in all areas of their life (such protection is to be found in the Equality Act 2010 in relation to some, but not all, grounds covered by Article 14). The structure of Article 14 means that a person needs to show that the facts of

the case fall within the scope of another Convention right in order to make use of the non-discrimination protection. However, that person does not need to claim an actual breach of the right in order to rely on Article 14. They simply need to show that the subject matter of the Convention right is activated.

On what grounds is discrimination prohibited?

Article 14 gives the following as examples of the grounds of discrimination that the Article does not allow:

- sex
- race
- colour
- language
- religion
- political or other opinion
- national or social origin
- association with a national minority
- property
- birth.

Importantly, though, Article 14 protects people from discrimination on the grounds of 'other status' too. This means that the categories are not closed. The other status ground could therefore be used to protect people from discrimination on the grounds of, for example:

- sexual orientation
- whether a person was born inside or outside a marriage

- disability
- marital status
- age
- trade union membership
- homelessness.

Is differential treatment ever acceptable?

Differential treatment will not always be discriminatory if there is an objective and reasonable justification for it. It may be legitimate to treat people differently based on their personal status – for example it is lawful to impose employment restrictions on people who are not from within the European Economic Area. Where there is any difference in treatment between different groups, a public authority will have to show that it is pursuing a legitimate aim and that the discriminatory treatment is necessary and proportionate to the aim. Only good reasons will suffice, and where the difference in treatment is in on grounds of sex or race there must be very strong reasons for it. This is known as justification.

There will be many ways in which Article 14, taken together with another Convention right, can apply to potentially discriminatory situations.

For example:

- It might not be a breach of a person's right to education if the state does not provide a particular kind of teaching. But if the state provides it for boys but not for girls, or for people who speak only a particular language but not another, this could be discrimination

in relation to the right to education. If this were the case, the people affected would rely on their rights under Article 14 (non-discrimination) taken with Protocol 1, Article 2 (education).

- It is unlikely to be a breach of the right to respect for your property for the state to impose a particular kind of tax – Protocol 1, Article 1 specifically preserves the state's right to assess and collect tax. But if the state taxes some people but not others in the same situation, then it might be a breach of Article 14 in relation to the right to respect for property. If this were the case, the people affected would rely on their rights under Article 14 (non-discrimination) taken with Protocol 1, Article 1 (property).

Article 14 has been successfully invoked under the Human Rights Act on behalf of a gay couple who wished to be treated in the same way as a heterosexual couple for the purposes of one partner succeeding to another under a tenancy (see case study).

Is Article 14 relevant to my work?

Article 14 is relevant to all people working in public authorities. It will be relevant where any of the Convention rights are in play – even if there is no breach of the other Convention right – particularly in any circumstances where different groups are treated in different ways.

What must a public authority do?

- Where possible, a public authority should try to ensure that policies or



decisions do not involve any form of discrimination on any ground.

- If it is necessary to treat some people more favourably than others, ensure there is an objective justification for the difference in treatment.
- A public authority should assess its policies and functions which are relevant to the rights under the Convention for discriminatory impact. In relation to characteristics protected by the Equality Act 2010, this closely overlaps with its obligations under the public sector equality duty.
- A public authority should document its decisions as it may be asked to produce reasons for those decisions.

Article 14 in practice

Case study:

R (L and others) v Manchester City Council and another case (2001)

Manchester City Council paid lower allowances to foster carers who were family members, compared to carers who looked after children who were unrelated to them. Two families with foster children from their own families alleged that the rates were so inadequate as to be in conflict with the children's welfare. They also argued that the rates were discriminatory; the council's failure to base calculations on the families' financial needs showed they had simply not considered the potential risk to Article 8 rights (right to respect for private and family life). The court held that Article 8 obliged the local authority to take 'all appropriate positive steps' to enable children to live with their families, subject to contrary welfare considerations. The payment of foster allowance fell within these positive duties and should not be done in a discriminatory manner. There had been a disproportionate difference in treatment on grounds of 'family status', which the council had failed to justify. This meant that the policy fell foul of Article 8 and Article 14.

Case study:

Ghaidan v Godin-Mendoza (2004)

Mr Godin-Mendoza shared a flat with his same-sex partner, who was the tenant. When the tenant died the landlord claimed possession. The county court judge ruled that Mr Godin-Mendoza could not succeed to the tenancy of the flat as a surviving spouse under the Rent Act 1977. He could succeed to an assured tenancy as a member of the original tenant's family – but this was a less advantageous status. The Court of Appeal overturned this decision in Mr Godin-Mendoza's favour, and the landlord appealed. The House of Lords (in its judicial capacity, and at the time the highest UK court) held that the interpretation of the Rent Act concerned the right to respect for a person's home guaranteed by Article 8 and must not be discriminatory; it must not distinguish on the grounds of sexual orientation unless this could be justified. In this case, the distinction had no legitimate aim and was made without good reason – the social policy considerations that were relevant to spouses should also apply to same-sex couples. The difference of treatment infringed Article 14 read in conjunction with Article 8. The court used its interpretative powers under the Human Rights Act to allow the Rent Act to be read in a way that complied with Convention rights – that

is, as though the survivor of a same-sex couple were the surviving spouse of the original tenant. The landlord's appeal was dismissed.



Protocol 1, Article 1: Protection of property

Everyone has the right to the peaceful enjoyment of their possessions. Public authorities cannot usually interfere with a person's property or possessions or the way that they use them except in specified limited circumstances.

What does this right mean?

The protection of property under Protocol 1, Article 1 has three elements to it:

- a person has the right to the peaceful enjoyment of their property.
- a public authority cannot take away what someone owns
- a public authority cannot impose restrictions on a person's use of their property.

However, a public authority will not breach this right if a law says that it can interfere with, deprive, or restrict the use of a person's possessions, and it is necessary for it to do so in the public interest. There is a public interest in the Government raising finance, and in punishing crimes, so a person's rights under Protocol 1, Article 1 are not violated by having to pay taxes or fines. The Article requires public authorities to strike a fair balance between the general interest and the rights of individual property owners.

The protection extends to businesses as well as to individuals.

When can the state interfere with the use of, or take away, a person's property?

A person has the right to use, develop, sell, destroy or deal with their property in any way they please. The right to protection of property means that public authorities cannot interfere with the way that a person uses their property unless there is a proper legal basis for this interference and such interference is justified.

For example, if a public authority plans to build a road over someone's land, it must have laws in place to let it do this. It must also have a procedure to check that a fair balance has been struck between the public interest in building the road, and the individual's right to their land. It will not normally be fair to deprive a person of their land unless the person can get proper compensation for it. An interference with a person's peaceful enjoyment of property may be necessary in the public interest – for example, a compulsory purchase of a person's property may be necessary, or a certain amount of noise from road traffic may intrude upon a person's home.

Key words and meanings

Possessions and property has a wide meaning, including land, houses, leases, money and personal property. It also covers intangible things such as shares, goodwill in a business, patents and some forms of licences, including those

which allow people to exercise a trade or profession. Entitlements to social security benefits are also generally classified as property.

Is Protocol 1, Article 1 relevant to my work?

Protocol 1, Article 1 will be relevant particularly if you are involved in:

- work in any area that can deprive people of their possessions or property
- taking decisions about planning, licensing or allowing people to exercise a trade or profession
- taking decisions about social security benefits
- compulsory purchase.

What must a public authority do?

- Where possible, a public authority should try to ensure that policies or decisions do not interfere with peaceful enjoyment of possessions, restrict the use of possessions or take away possessions.
- Where this is unavoidable, then the interference must be lawful and necessary in the public interest.
- If a public authority does decide that it is necessary to interfere with someone's possessions, there must be an objective and reasonable justification for that.
- A public authority may be asked to produce reasons for its decisions.
- Public authorities should take action to secure the right to property, as well as refraining from interfering with it.

Protocol 1, Article 1 in practice

Case study:

Sainsbury's Supermarkets Ltd v Secretary of State for the Environment, Transport and the Regions (2001)

A local authority made a compulsory purchase order in respect of the proposed development of a piece of land. This was challenged by a supermarket chain which owned some of the land concerned and had plans for its alternative development. The court found that the compulsory purchase decision struck a fair balance between the public interest and the commercial interest of the supermarket and was therefore compatible with Article 1 of Protocol 1.

Case study:

Davies & Anor v Crawley Borough Council (2001)

The local authority adopted a street trading scheme which made some of its streets prohibited for trading and some that required payment of a fee to trade. This affected Mr Davies' business as he owned a mobile snack van trading on a street designated as prohibited. The local authority offered Mr Davies the opportunity to move to a street where trading was permitted but where payment of a fee to trade was required. Again it was found that the council has struck a fair balance as there was a need to ease traffic congestion on the street in question.



Protocol 1, Article 2: Right to education

Everyone has the right not to be denied access to the educational system.

What does this right mean?

- A person has a right not to be denied access to the existing educational system.
- Parents have a right to make sure that their religious or philosophical beliefs are respected when public authorities provide education or teaching to their children.

Limits on the right to education

The general right to education is not an absolute right for a person to learn whatever they want, wherever they want and the government may take into account the needs and resources of the community. The duty is on the state and not on any particular domestic institution. For example, if an expelled pupil is able to have access to efficient education somewhere else, there would be no breach of his or her Convention right.

In addition, the UK government has made a special reservation to the Article so that the principle of education in conformity with parents' religious and philosophical convictions applies 'only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure'. This means that a parent may not have a right to the most expensive form of education if there are cheaper alternatives available. The government or local education authority must balance the need to respect

parents' religious and philosophical convictions against the spending limits it imposes. Parents cannot stop schools teaching subjects such as sex education if they are reasonable things for the school to teach, and so long as it is not trying to indoctrinate the children. However, parents can remove their children from sex education classes.

Punishments in schools

The right to education does not prevent schools from imposing disciplinary measures on pupils, provided they do not breach any other Convention right (for example ill-treatment which is contrary to Article 3). A school that imposes a penalty on a pupil will have to show that such a penalty pursued a legitimate aim (such as punishing cheating or ensuring compliance with school rules), and was proportionate.

Penalties imposed may include suspension or exclusion, provided the pupil still has access to alternative state education conforming to the parents' religious and philosophical convictions.

Is Protocol 1, Article 2 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- teaching or school administration
- providing non-school-based education
- further and higher education
- education policy

- provision of funding for schools or other forms of education
- special educational needs assessments.

What must a public authority do?

- Where possible, a public authority should try to ensure that policies or decisions do not interfere with the right to education.
- A public authority may be asked to produce reasons for its decisions.
- Public authorities should take action to secure the right to education, as well as refraining from interfering with it.

Protocol 1, Article 2 in practice

Case study:

A v Essex County Council & National Autistic Society (2010)

A suffered from autism, double incontinence and frequent epileptic fits. He had attended a special school, but his parents were asked to withdraw him because the school could not cope with his behaviour. The local authority was unable to provide a home tutor who was qualified to meet his needs. A medical assessment recommended a residential placement but due to delays in the assessment, in finding a suitable placement and then building works, 18 months had elapsed before A started at the new school.

The Supreme Court held that the right under Article 2, Protocol 1 was to effective access without discrimination to the educational provisions that the state provided. In the case of a child with special educational needs (SEN) he or she was only denied his or her right if denied access to such facilities as the state provided for such children. Even though the local authority may have failed over the 18 months in question to comply with its duties under the Education Act 1996 by not providing any significant education to A, it did not follow that there had been an infringement of the Article. The time taken to find a school that met these needs was attributable to limitation of resources.

Case study:

Simpson v the United Kingdom (1989)

State funding of a dyslexic school pupil's education at a private fee-paying school chosen by his parents was removed after the parents moved from one local authority area to another. The new local authority issued a new statement of educational needs which specified that the child in question should be offered education at an appropriate state-funded comprehensive school that could meet the child's special educational needs.



The court noted that state policy was to integrate rather than segregate disabled children within the school education system. In concluding the complaint under the right to education should be dismissed, it stated: 'While these authorities must place weight on parents' and pupils' views, it cannot be said that the first sentence of Article 2 of Protocol No. 1... requires the placing of a dyslexic child in a private specialised school, with the fees paid by the state, when a place is available in an ordinary state school which has special teaching facilities for disabled children.'

Consequently, parents of children with special needs can argue that the needs of their child require special facilities that may have to be respected by the educational authorities. However, this is not an absolute right, and the authorities will have discretion as to how they allocate limited resources. Under the Human Rights Act authorities can legitimately seek to integrate a child with special needs into a suitable mainstream school, even if this is not what the parents want.

Protocol 1, Article 3: Right to free elections

Elections for members of the legislative body (for example Parliament) must be free and fair and take place by secret ballot. Some qualifications may be imposed on who is eligible to vote (for example a minimum age).

What does this right mean?

Free elections must be held at reasonable intervals and must be conducted by secret ballot. They must be held in conditions that ensure that people can freely express who they want to elect. The state can put some limits on the way in which elections are held. Also, it can decide what kind of electoral system to have, such as 'first past the post' or proportional representation.

The right to free elections under Protocol 1, Article 3 applies only to those eligible to vote under the domestic laws, and only to certain elections. For instance, it covers the Westminster Parliament, the devolved assemblies and the European Parliament, but not local elections. In addition, Article 16 of the Convention provides that nothing in Articles 10, 11 or 14 is to be taken as preventing a state from imposing restrictions on the political activity of non-citizens.

Is Protocol 1, Article 3 relevant to my work?

It may be relevant, particularly if you are involved in:

- exercising decision-making powers

about voting rights or the right to stand for election

- arranging elections.

What must a public authority do?

- A public authority must respect the voting rights of individuals.
- Where possible, a public authority must enable those with a right to vote to use their vote if they wish to do so.
- Public authorities are required to ensure that elections are conducted freely and fairly.

Protocol 1, Article 3 in practice

Practice example:

In the general election of May 2010, a number of people were unable to vote due to long queues at polling stations, which by law had to close promptly at 10 pm. The Electoral Commission reviewed the arrangements made at polling stations. They found in some areas there had been poor planning, lack of adequate staffing and that contingency provisions did not work. They made a number of recommendations for future elections. These included that local authorities should review their planning of elections to ensure that similar problems did not occur in the future.



Prisoners voting rights

Prisoners serving a custodial sentence in the UK do not have the right to vote.

In 2005, the Grand Chamber of the European Court of Human Rights judged that the UK's current ban on all serving prisoners voting contravenes Article 3 of Protocol No 1 of the European Convention on Human Rights. It noted that prisoners generally continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, except for the right to liberty, and that there was no question that prisoners forfeit their Convention rights merely because of their status as detainees following conviction.

It has been the view of successive governments that prisoners convicted of a crime serious enough to warrant imprisonment should not be allowed to vote. In 2011, the Government intervened in an Italian prisoner voting rights case, *Scoppola v Italy (No.3)*. The Attorney General made an oral intervention to the Grand Chamber, stating the UK's firm view that prisoner voting is a political question for member states and that the European Court of Human Rights should maintain its policy of affording a 'wide margin of appreciation'.

In May 2012, the Grand Chamber announced its judgment in *Scoppola v Italy (No.3)*. In relation to the UK's intervention, the Grand Chamber reaffirmed that a general and automatic disenfranchisement of all serving prisoners was incompatible with Article 3 of Protocol No 1 but accepted the UK Government's

argument that member states should have a wide discretion in how they regulate a ban on prisoners voting.

The decision meant that the UK Government had six months to bring forward proposals to amend the law. Subsequently, the Government published a draft Bill for pre-legislative scrutiny on 22 November 2012, which canvassed three options: the continuation of the blanket ban, and enfranchisement depending on sentence length with cut-offs at six months or four years.

The Government requested that a Joint Parliamentary Committee of MPs and Peers be established to carry out pre-legislative scrutiny on the draft Bill and make recommendations.

The Joint Committee published its report on 18 December 2013. The Committee recommended that the Government introduce a Bill which should provide that: all prisoners serving sentences of 12 months or less should be entitled to vote in all UK parliamentary, local and European elections; and that prisoners should be entitled to apply, 6 months before their scheduled release date, to be registered to vote in the constituency into which they are due to be released.

The Government is considering the Committee's recommendations.

Part 3: Guidance and information

Human rights flowchart

This flowchart is designed to help you in applying human rights in the workplace. It will be particularly relevant when you are restricting a right – either by balancing one right against another, or when you are balancing the rights of an individual against the interests of the public. It may also be useful when you are making decisions or policies that are previously untested.

More detail on the questions contained in the flowchart can be found in the succeeding pages. Once you have read those and understand the full meaning of the questions contained in the flowchart, it will be a useful prompt to refer back to when you need to make decisions involving human rights.



Human rights flowchart explained

1. The policy/operational decision

These questions cover the basics. They ensure that all the information about the new policy/decision is in one place if someone else in the organisation needs to know about it, perhaps to provide additional help or advice.

1.1 What is the policy/decision title?

This is simply a question of labelling the policy/decision clearly so that it may be referred to without confusion.

1.2 What is the objective of the policy/decision?

Here you should set out the basic aim of the policy/decision. What are you setting out to achieve? You could break this section down into three sections:

- Why is the policy/decision being developed?
- Why is it needed?
- What is its purpose?

1.3 Who will be affected by the policy/decision?

To answer this you should look back at the objective you are trying to achieve and think about what groups of people are most likely to be affected by it. Answering this question now is important because it will help you at the next stage when you will be asked to decide whether or not the policy/decision has anything to do with human rights. Knowing who is affected by the policy/decision will help you answer this question. For example, if you are dealing with families, this might raise the

question of whether the right to respect for private and family life, protected in Article 8, is involved.

2. Human rights impact

2.1 Will the policy/decision engage anyone's Convention rights?

Here we advise you to refer to Part 2 (page 10) of this guide to look through all the rights and consider whether or not your policy/decision falls into any of the areas that are covered by the Convention rights.

Flowchart exit

If you decide that no Convention rights are engaged, there is no need to continue along the flowchart. However, there are three further points to note:

- First – be alert to any possibility that your policy/decision may discriminate against someone in the protection of a Convention right.
- Second – although this checklist is designed to help you identify any potential human rights impact, it may still be necessary to obtain legal advice. For example, the policy/decision may be particularly controversial or you may not be fully certain about whether or not certain human rights have been engaged.
- Third – even if you decide that the policy/decision does not engage anyone's Convention rights, things may change and you may need to reassess the situation.



2.2 Will the policy/decision result in the restriction of a right?

If you decide that your policy decision might engage a Convention right, the next step is to look at the nature of this engagement. Will the policy/decision restrict or limit any of the rights it engages? If so, you should log details of how the right is interfered with or limited.

You should remember that interference with a right may not always simply consist of an action that is not compatible with Convention rights; it may also be a failure to take action where a right places a positive obligation on public authorities to take action to preserve a right.

Once you have made your assessment, if you decide that although a right is engaged, the policy will not result in any restriction on that right, or that you are not under a positive obligation to act differently, then you may exit the flowchart, bearing in mind the points mentioned above in the 'Flowchart exit' box.

If, however, you do decide that there is a danger of Convention rights being restricted, it will be necessary to proceed to the next section.

3. Types of right

3.1 Is the right an absolute right?

If the right you are proposing to restrict is absolute, it may not be restricted, and any attempt to do so will be incompatible with the Convention. The prohibition of torture and inhuman or degrading treatment or punishment (Article 3), slavery and forced labour (Article 4) and retroactive laws (Article 7) are all absolute rights and may not be limited in any way. So is the right

to hold particular beliefs (the first part of Article 9) and the abolition of the death penalty (Protocol 13).

3.2 Is the right a limited right?

If the right you are proposing to restrict is limited, it may be restricted within the terms set out in the relevant Article. The terms will be different for different rights and they have been explained in relation to the individual rights in Part 2 of this guide. For example, there are six instances where the right to liberty and security set out in Article 5 may be lawfully restricted. These are set out in the section dealing with Article 5 in Part 2 of this guide (see page 19). One example is after conviction by a competent court. There are also some rights where there is no limitation mentioned in the text of the Convention, but where limitations have been read in through decisions of the European Court of Human Rights. For example, the courts have read in some limitations on the right to vote and stand for office (Protocol 1, Article 3).

3.3 Will the right be limited only to the extent set out in the relevant Article of the Convention?

If you decide that you are trying to restrict either an absolute or limited right, you may exit the flowchart at this point. However, you should then go on to consider your policy/decision further because it will either not be compliant with the Convention (if it restricts an absolute right), or you will need to check that your restriction is provided for in the text of the Article (if it restricts a limited right). You may need to take legal advice at this point.

If you are restricting a qualified right, then you will need to continue using the flowchart.

4. Qualified rights

In the case of qualified rights, the fact that a policy/decision restricts the right does not necessarily mean that it will be incompatible with the Convention. If a restriction has a legitimate aim, such as public safety, and the restriction itself does not go any further than absolutely necessary to protect this aim, then it is likely that it will be compatible with the Convention. The Convention recognises that there are situations where a state must be allowed to decide what is in the best interests of its citizens, and enables a state, or a public authority acting on behalf of the state, to restrict people's rights accordingly.

The following questions will help you to determine whether or not your policy/decision falls within this category of accepted restrictions.

4.1 Is there a legal basis for the restriction?

Any restriction must have a clear legal basis. The restriction must be set out in law, or in rules or guidance, and it must be communicated effectively to ensure that people to whom it applies can find out about it. This will allow them to prepare to change their behaviour in good time if they are required to do so. That might mean making guidance or other rules publicly available, perhaps via the internet, via other partner organisations, or through cross-agency working.

4.2 Does the restriction have a legitimate aim?

If you are restricting rights, you will need to identify a legitimate aim that you are trying to achieve. A legitimate aim is one

that is set out in the text of the Articles themselves, such as public safety, the protection of public order, national security or protection of the rights or freedoms of others.

You will find legitimate aims for restricting rights listed in the sections relating to each Article in Part 2 of this guide.

If the aim that you want to achieve does not fall within one of those listed in the text of the Article, it is likely that the restriction will not be legitimate. You should seek legal advice.

4.3 Is the restriction necessary in a democratic society?

For a restriction to be necessary in a democratic society there must be a rational connection between the legitimate aim to be achieved and the policy/decision that restricts a person's rights. It is not sufficient to put forward a legitimate aim if, in fact, the restriction will not make a real difference in achieving that aim.

4.4 Are you sure you are not using a sledgehammer to crack a nut?

A policy/decision should be no more restrictive than it needs to be in order to achieve its objective. This is called 'proportionality'. For example, a blanket application of a policy/decision to everyone concerned will often be considered disproportionate, as it does not take into account individual circumstances, and the individual rights of each person affected. It will have the effect of imposing restrictions in circumstances where they are not really needed.

Look at the objectives you identified at paragraph 1 of this section, and box 1 of the flowchart, and ask yourself whether the objectives can be achieved only by



the policy/decision you are proposing. Ask yourself if there is any other less restrictive way of achieving the desired outcome.

If there is another less restrictive way of achieving the desired outcome, but you decide not to adopt it, you will need to be prepared to say why you have made that choice. Your reasons will have to be good ones.

Exiting the flowchart

Even if you conclude that the policy/decision does not infringe one of the other Articles of the Convention, you will need to consider whether it discriminates against anyone in relation to the exercise of their Convention rights, contrary to Article 14. See page 53 for further details of the issues to be considered in relation to Article 14. You should think about the diversity of customers, staff and service users that your organisation works with. You must consider whether the restriction applies only to a particular group or class of people defined by one of the statuses discussed in relation to Article 14 (see page 53). Any differential impact should be noted, even if it is unintentional. Indirect impact also needs to be considered, for example where the restriction applies in principle to everyone but would have a particularly heavy impact on a particular group or class who would find it harder to comply.

If you decide that your restriction does apply unequally in the way a Convention right is enjoyed or protected, you will need to decide whether or not the differential treatment is justified. The approach here is rather similar to that applied in relation to the qualified rights (see above). It is necessary to consider:

- whether the differential treatment is in pursuit of a legitimate aim?
- whether the differential treatment is proportionate to that aim (i.e. is there no less discriminatory way of achieving the aim)?

If the answer to both these questions is 'yes', then it is likely that differential treatment will be justified.

The case studies in the relevant section of Part 2 will help you when working through this.

Points to remember

It will be useful to bear in mind the following points when reading this guide and also when applying human rights in the workplace:

- Whilst some rights conferred by the Convention are absolute (for example the right not to be subjected to torture or inhuman or degrading treatment or punishment), in general the rights of one person cannot be used to 'trump' the right of the general public to be kept safe from a real risk of serious injury or loss of life.
- More than one right may be relevant to a given situation.
- Always be aware of other existing guidance that may be relevant to the decision or policy that you are developing, and consider how it fits in.
- If you are unsure, or a matter is particularly complex, consider seeking legal advice if necessary. You should always take legal advice if you are proposing to interfere with Convention rights in a way which is restrictive, or if you have any concern that complying with human rights is putting other important policy goals such as public safety at risk.

Balancing one person's rights against those of the community

The fact that a policy/decision restricts a Convention right does not necessarily mean that it will be incompatible with the Convention. It is a fundamental responsibility of the state – arising from Article 2 of the Convention itself – to take appropriate steps to protect the safety of its citizens. The state also needs to take into account other general interests of the community. So while some rights conferred by the Convention are absolute (for example the right not to be subjected to torture or inhuman or degrading treatment or punishment), others are either limited or qualified in the way described in this guide. In particular, the rights in Articles 8 to 11 can be restricted where it is necessary and proportionate to do so in order to achieve a legitimate aim. Provided a restriction of such a right has a legitimate aim, such as public safety, and the restriction itself does not go any further than necessary to protect this aim, then it is likely that it will be compatible with the Convention. In this way the Convention recognises that there are certain situations where a state is allowed to restrict individual rights in the best interests of the wider community.

Three types of rights

Not all the Convention rights operate in the same way. Some are 'absolute' while others are 'limited' or 'qualified' in nature.

Absolute rights: States cannot opt out of these rights under any circumstances – not even during war or public emergency. There is no possible justification for interference with them and they cannot be balanced against any public interest.

Examples of absolute rights are the prohibition of torture and inhuman or degrading treatment in Article 3, and the prohibition of slavery in Article 4(1).

Limited rights: These are rights that are not balanced against the rights of others, but which are limited under explicit and finite circumstances. An example is the right to liberty and security in Article 5.

Qualified rights: These are rights that can be interfered with in order to protect the rights of other people or the public interest.

An interference with qualified rights may only be justified where the state can show that the restriction:

- is lawful – this means that it is in accordance with the law, which must be established, accessible and sufficiently clear
- has a legitimate aim – the restriction must pursue a permissible aim as set out in the relevant Article. Public authorities may only rely on the expressly stated legitimate aim when restricting the right in question. Some of the protected interests are: national security; the protection of health and morals; the prevention of crime; and the protection of the rights of others
- is necessary in a democratic society – the restriction must fulfil a pressing social need and must be proportionate to that need.

Proportionality

The principle of proportionality is at the heart of how the qualified rights are interpreted, although the word itself does not appear anywhere in the text of the Convention.

The principle can perhaps most easily be understood by the saying 'Don't use a sledgehammer to crack a nut'. When taking decisions that may affect any of the qualified rights, a public authority must interfere with the right as little as possible, only going as far as is necessary to achieve the desired aim.

It may prove useful to ask the following questions to determine whether a restrictive act is proportionate or not:

- What is the problem that is being addressed by the restriction?
- Will the restriction in fact lead to a reduction in that problem?
- Does a less restrictive alternative exist, and has it been tried?
- Does the restriction involve a blanket policy or does it allow for different cases to be treated differently?
- Has sufficient regard been paid to the rights and interests of those affected?
- Do safeguards exist against error or abuse?
- Does the restriction in question destroy the very essence of the Convention right at issue?

The following case study, based on the case of *R (A, B, X and Y) v East Sussex County Council (2003)*, illustrates these principles.

Case study:

A local authority had a policy requiring care staff to use hoist equipment in certain situations, on the basis that manual lifting posed a health and safety threat to its employees. For two severely disabled sisters, living in a specially adapted house, the policy restricted their ability to move about their home or to pursue activities outside it. The parties did not dispute that the local authority's policy was lawful, but the court set out the legal principles to be followed by the local authority when applying the policy to the sisters. It considered the extent to which the local authority had an obligation to allow manual handling in order to protect the rights of service users under Article 8 of the Convention (the right to respect for private and family life), while not exposing their employees to unacceptable risk. This required a balancing exercise, looking at the needs and rights of service users and the needs and rights of care workers. There will be situations where manual lifting, even though it carries a real risk of injury to the care worker, is necessary to provide appropriate care which respects the dignity of service users.

The European Court of Human Rights has also accepted that there are areas in which national authorities are better placed than the Court to decide what is best for those within their jurisdiction, and so to apply the Convention rights in their own way. This is particularly so where circumstances require rights to be balanced against national security, or wider economic and social needs, for example.

This is referred to as the margin of appreciation. Whether the Court allows a wide or narrow margin of appreciation depends on the nature of the right in question and the extent to which views on the issue diverge among the countries which have signed up to the Convention.

This in turn means that decisions of the Court may change over time to keep pace with changing conditions in the signatory states – for this reason the Convention is called a ‘living instrument’. It means that even where the European Court of Human Rights has ruled that a practice or policy is within a state’s margin of appreciation, this may change in the future if a new consensus evolves across a sufficient number of countries.

Although the margin of appreciation concerns the attitude of the European Court of Human Rights to decisions taken in individual states, courts in the UK have developed a similar approach when considering decisions made by public authorities in the UK. They will allow public authorities a degree of latitude in making decisions, particularly where the public authority is in a better position than the court to assess the issue (for example issues relating to social policy or allocation of resources). However, the courts will be more willing to intervene on issues such as discrimination or fair procedures.

Positive obligations

Most of the Convention is concerned with things that the state must not do, and puts states under an obligation to refrain from interfering with a right. However, the Court has decided that in order to make the Convention effective, a number of rights also place positive obligations on states. These require the state to take action to prevent the breach of a right. For example, Article 2 can create a positive obligation to take steps to protect members of the public, for example where a public authority is aware of a real and imminent threat to someone’s life, or where a person is under the care of a public authority. Because of the Human Rights Act, public authorities may have responsibility for positive human rights obligations in some circumstances. For example, a local authority may have a positive obligation to prevent human rights breaches of care home residents whose care it has commissioned from the private sector.

Frequently asked questions

What does the Human Rights Act do?

It makes the human rights contained in the European Convention on Human Rights enforceable in UK law. It does this by making it unlawful for a public authority to act in a way that is incompatible with a Convention right. A person who believes that one or more of their human rights has been breached by a public authority can raise that issue in the appropriate court or tribunal. If the person is unhappy with the court's decision and has pursued the matter as far as it can go in the UK court system, they may take their complaint to the European Court of Human Rights, an institution set up by the Council of Europe and based in Strasbourg, France.

Do judges now have more power than elected politicians?

The simple answer is 'no'. Judges must interpret legislation as far as possible in a way that is compatible with the Convention rights. If this is not possible courts can strike down incompatible secondary legislation, or can make a declaration of incompatibility in relation to primary legislation. They cannot strike down primary legislation.

What difference does the Human Rights Act make?

The principal effect of the Human Rights Act is to enable people to enforce their human rights in the domestic courts against public authorities. The introduction of the Human Rights Act should also mean

that people across society are treated with respect for their human rights, promoting values such as dignity, fairness, equality and respect.

Are human rights relevant to every decision I make?

The short answer to this is 'no'. Many everyday decisions taken in the workplace are not affected by human rights. However, by understanding human rights properly you are more likely to know when human rights are relevant and when they are not. This should help you to make decisions more confidently, and ensure that your decisions are sound and fair.

What is a public authority?

The Human Rights Act covers public authorities (that is, public sector bodies), which include:

- central government
- courts and tribunals
- local government
- planning inspectorates
- executive agencies
- police, prison and immigration services
- statutory regulatory bodies
- NHS Trusts.

This list is not exhaustive. If you are unsure whether or not you work in a public authority you should check with your line manager. In any event, following human rights standards, even in matters not strictly covered by the ambit of the Human Rights Act, will be good practice.

The Human Rights Act also says that other organisations carrying out functions of a public nature will fall within the definition of a public authority. The courts are still deciding exactly what ‘functions of a public nature’ means. For example, in *R (Weaver) v London & Quadrant Housing Trust (2009)*, the court found that a registered social landlord was performing public functions when allocating and managing social housing.

Do all new laws have to be compatible with the Human Rights Act?

When a Minister introduces a Bill to Parliament they are required to confirm in writing that, in their view, the Bill is compatible with Convention rights, or that they are unable to say that it is compatible but that they wish to proceed with the Bill anyway.

Are all Convention rights guaranteed, whatever the circumstances?

Not all Convention rights are formulated in the same way. While some rights are protected absolutely, such as the right to be free from torture, others are limited in certain defined situations, or qualified so as to take account of the rights of others or the interests of wider society.

Who can bring a case under the Human Rights Act?

Any ‘victim’ of a human rights breach can do so. It is not necessary to be a UK citizen. Anyone bringing proceedings must be directly affected by an act or omission of a public authority. However, the Equality

and Human Rights Commission has a special power that allows it to take proceedings on behalf of victims although not a victim itself.

Is any other guidance on the Human Rights Act available?

For further information about human rights and the Act, we recommend:

- *Guide to the Human Rights Act* produced by the Ministry of Justice, available for download on their website: www.justice.gov.uk/about/docs/act-studyguide.pdf
- The Equality and Human Rights Commission webpages on the Human Rights Act: <http://www.equalityhumanrights.com/your-rights-human-rights/what-are-human-rights/human-rights-act/>

The Equality and Human Rights Commission website also contains a collection of practical guidance designed as a resource to help you easily find the guidance you need to meet your human rights obligations and to implement good practice in your sector. The resource currently contains reviews of 39 pieces of guidance. We have drawn together a range of good practice and learning material on human rights, both generic and from across the public sector – education, children’s services, policing and criminal justice, health and social care – together with material on supporting the human rights of particular groups, such as older and disabled people and refugees and asylum seekers.

At page 76 we have listed some useful contacts and organisations for further advice and guidance.

Jargon buster

Human Rights Act:

The Human Rights Act 1998. Came into force on 2 October 2000. It makes certain rights contained in the European Convention on Human Rights enforceable in UK law. These rights are called 'the Convention rights' and they are set out in Part 2 of this handbook.

The Convention:

The European Convention on Human Rights and Fundamental Freedoms. Treaty of the Council of Europe that came into force on 3 September 1953. Signed by the UK on 4 November 1950. Ratified by the UK on 8 March 1951.

Articles:

The Convention is divided up into Articles. Article 1 is introductory whilst each of the Articles from 2 to 12 and Article 14 detail a different human right or freedom. Most other Articles of the Convention deal with procedural issues. Each of the Protocols is also divided up into Articles.

Protocol:

These are additions or amendments to the original Convention. They may be signed and ratified by parties to the Convention and are effective as if they were part of the original Convention. The UK has not signed all of the Protocols.

Legitimate aim:

Any interference with a qualified right for the relevant purpose of safeguarding an interest set out in the Article pursues a legitimate aim.

Proportionality:

This is best defined as not using a sledgehammer to crack a nut. Any restriction must go no further than is necessary in a democratic society to achieve the legitimate aim.

Margin of appreciation:

This is the degree of discretion allowed to the state by the European Court of Human Rights when interpreting and applying Convention rights.

Public authority:

This includes all government departments and other 'core' public authorities such as:

- central government
- courts and tribunals
- local government
- planning inspectorates
- executive agencies
- police, prison and immigration services
- statutory regulatory bodies
- NHS Trusts.

Outside this, private organisations whose functions are of a public nature are included in relation to those public functions.

Ratify:

Ratification is the process by which a member state adopts and agrees to be bound by an international treaty.

Victim:

A victim is someone who is or would be directly affected by an act or an omission of a public body.

Relevant organisations and contacts

Equality and Human Rights Commission (Manchester)

2nd Floor
Arndale House
The Arndale Centre
Manchester
M4 3AQ
Tel: 0161 829 8100

Equality and Human Rights Commission (London)

Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX
Tel: 020 7832 7800

Equality and Human Rights Commission (Cardiff)

Ground Floor
1 Caspian Point
Cardiff Bay
Cardiff
CF10 4DQ
Tel: 02920 447710

Equality and Human Rights Commission (Glasgow)

2nd Floor
151 West George Street
Glasgow
G2 2JJ
Tel: 0141 228 5910

Equality Advisory Support Service

FREEPOST
Equality Advisory Support Service
FPN4431
Tel: 0800 800 0082
Textphone: 0800 800 0084

Ministry of Justice

Human Rights and Security Policy
Area 6.16
102 Petty France
London
SW1H 9AJ
Tel: 020 3334 3734
Email: humanrights@justice.gsi.gov.uk

Northern Ireland Human Rights Commission

Temple Court
39 North Street
Belfast
BT1 1NA
Tel: 028 9024 3987
Email: info@nihrc.org

Scottish Human Rights Commission

4 Melville Street
Edinburgh
EH3 7NS
Tel: 0131 240 2989
Email: hello@scottishhumanrights.com

British Institute of Human Rights

School of Law
Queen Mary University of London
Mile End Road
London
E1 4NS
Tel: 020 7882 5850
Email: info@bihr.org.uk

Useful websites

Equality and Human Rights Commission:

www.equalityhumanrights.com/human-rights/

British Institute of Human Rights:

www.bihhr.org/

European Court of Human Rights:

www.echr.coe.int/echr/

Here you can use the HUDOC database to search for case law from this court.

Joint Committee on Human Rights (Houses of Parliament):

www.parliament.uk/business/committees/committees-archive/joint-committee-on-human-rights/

Liberty:

www.liberty-human-rights.org.uk/

Justice:

www.justice.org.uk/

Ministry of Justice:

www.justice.gov.uk/human-rights

NHS Litigation Authority:

www.nhsla.com/HumanRights/

For a series of case sheets highlighting key cases in healthcare law.

Northern Ireland Human Rights Commission:

www.nihrc.org/

Scottish Human Rights Commission:

www.scottishhumanrights.com/

UK Human Rights blog:

www.ukhumanrightsblog.com/

United Nations:

www.un.org/

The Human Rights: Human Lives A Handbook for public authorities was published by the Equality and Human Rights Commission. This publication and related equality and human rights resources are available from the Commission's website (www.equalityhumanrights.com).

For advice, information or guidance on equality, discrimination or human rights issues, please contact the **Equality Advisory and Support Service**, a free and independent service.

Website	www.equalityadvisoryservice.com
Telephone	0800 800 0082
Textphone	0808 800 0084
Hours	09:00 to 20:00 (Monday to Friday) 10:00 to 14:00 (Saturday)
Post	FREEPOST Equality Advisory Support Service FPN4431

Questions and comments regarding this publication may be addressed to correspondence@equalityhumanrights.com.
The Commission welcomes your feedback.

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