

developing

the **act**

(learning about the Human Rights Act)

“All human beings are born free and equal in dignity and rights” [Universal Declaration of Human Rights – 10 December 1948]



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Foreword

In 2006 the Office of the First Minister and deputy First Minister published “Getting in on the Act”. This was a user friendly guide to our obligations under the European Convention on Human Rights and the UK Human Rights Act. The publication was well received for both its style and content and so I am delighted to introduce you to this new supplementary guide to human rights for public authorities in Northern Ireland.

While we need to continuously review and refresh our guidance on our obligations, it is particularly appropriate that we do so now, in this the 60th anniversary of the Universal Declaration of Human Rights and the 10th anniversary of the Human Rights Act.

We need to ensure that, as public servants, our actions serve to promote, protect and respect the rights and freedoms of our service users. This is consistent with the Reform agenda. All government bodies, departments, district councils, police, schools, hospitals together with non-public sector bodies carrying out public functions must act in accordance with the Convention rights when making legislation and policy and in our day-to-day decisions.

I trust that you will find this guide helpful in your individual roles – many thanks to the NI Human Rights Commission, amongst others, for its help in developing this guide.

Your actions will determine the extent to which rights and responsibilities are respected across the public sector in Northern Ireland. The Convention rights are basic values upon which the Executive’s over-arching aim **“to build a peaceful, fair and prosperous society in Northern Ireland, with respect for the rule of law and where everyone can enjoy a better quality of life now and in years to come”** is based.

I encourage you to explore this guide because your actions can influence the delivery of this aim and strengthen the rights of your fellow citizens.



A handwritten signature in blue ink that reads "Bruce Robinson".

Bruce Robinson
Head of NICS

Get in on the Act

1. This guide is intended to supplement the “Get in on the Act” document issued in 2006. It contains a decision flowchart, a number of practical examples of Human Rights cases and an explanation of some common concepts.
2. The Guide “**Get in on the Act**” may be found at:
www.ofmdfmi.gov.uk/human_rights_reportnew1-3.pdf
3. **There is also a Human Rights Act Impact Assessment Pro Forma** to assist policymakers in Northern Ireland to assess the potential human rights impacts of their policies and/or decisions. It can be accessed at:
www.ofmdfmi.gov.uk/humanrightsproforma.doc

Need Help?

4. Should you have any difficulty in using this guide, or have any further questions relating to it, please contact the Equality and Human Rights Unit, OFMdFM: Tel: 02890 523143.
5. This document is also available on our web-site at
www.ofmdfmi.gov.uk/human-rights
6. If this document is not in a format which meets your needs, please contact us.
7. Further information is also available from the Northern Ireland Human Rights Commission. Tel. 028 90243987 Web. www.nihrc.org

What is the European Convention on Human Rights?

8. The European Convention (ECHR):
 - is a binding treaty of the Council of Europe (CoE);
 - contains guarantees of protection for basic human rights - mostly civil and political rights and freedoms;
 - contains rights necessary in a democracy such as the right to life, liberty and security, a fair hearing, freedom from torture and slavery, freedom of speech, thought, religion, and assembly, rights relating to private and family life, etc;
 - contains protocols (clauses added later but equally binding) relating to education, property and abolition of the death penalty;
 - sets out which rights are absolute, and which may be restricted or qualified in certain circumstances;

- is described as a “living instrument”, to be interpreted by judges in light of its relevance to today; and
- the ECHR is enforceable through the European Court of Human Rights, and in UK domestic law, through the Human Rights Act.

Why is the Human Rights Act important?

9. The Human Rights Act 1998 (HRA) was introduced in October 2000. The HRA:
 - Makes the rights in the European Convention on Human Rights (ECHR) part of UK law, including the law in Northern Ireland;
 - Means that the human rights protected by the ECHR (the Convention rights) can be raised in our local courts and tribunals;
 - Ensures that all state bodies including government departments, councils, schools, hospitals, the police service, and other bodies carrying out a public function, protect and promote people’s human rights; and
 - Is contributing to building a society based on respect for fundamental rights and freedoms of all.

How does the Human Rights Act affect me?

10. Departments and their associated bodies have an obligation to act in accordance with the Human Rights Act and the European Convention on Human Rights and, therefore, you must understand human rights and take them into account in your day-to-day work. This is the case whether you are devising new policies or procedures, or delivering a service directly to the public. Understanding human rights can help you make the right decisions.

11. 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. If you have to restrict somebody’s rights, you must make sure that the restriction is no greater than is needed to achieve the objective. This is called ‘proportionality’ and is often described as ‘not using a sledgehammer to crack a nut’.

12. 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 inhuman or degrading treatment or punishment). Other rights can be interfered with only in specific circumstances. (See flowchart at **Annex A** and concepts at **Annex C**).

13. Also remember that case law is continually developing and reinterpreting the scope of the Convention rights - you need to be alert to developments affecting your area of work.

Delving deeper, seeking advice

14. There is a wide range of guidance available along with information on decisions of the courts, many of these will give further direction to appropriate sources. Some sources of information are given in **Annex D**.

15. If you are unsure, or a matter is particularly complex, you may wish to consider seeking legal advice from your Departmental Solicitor. 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.

16. If involvement of human rights is identified, you should consider approaching the Northern Ireland Human Rights Commission at an early stage (www.nihrc.org). The Commission may be able to provide helpful views or comments which will assist in ensuring your proposals are compliant with human rights. It may be better to get its views at the policy formulation stage rather than waiting until the formal consultation takes place.

17. Some departments / agencies (such as DHSSPS, NIO and NI Prison Service) have their own Human Rights Unit who can provide advice and guidance if you need it. Strategic advice on Human Rights can also be sought from OFMdFM. See **Annex D** for further details.

Human rights – the core principles

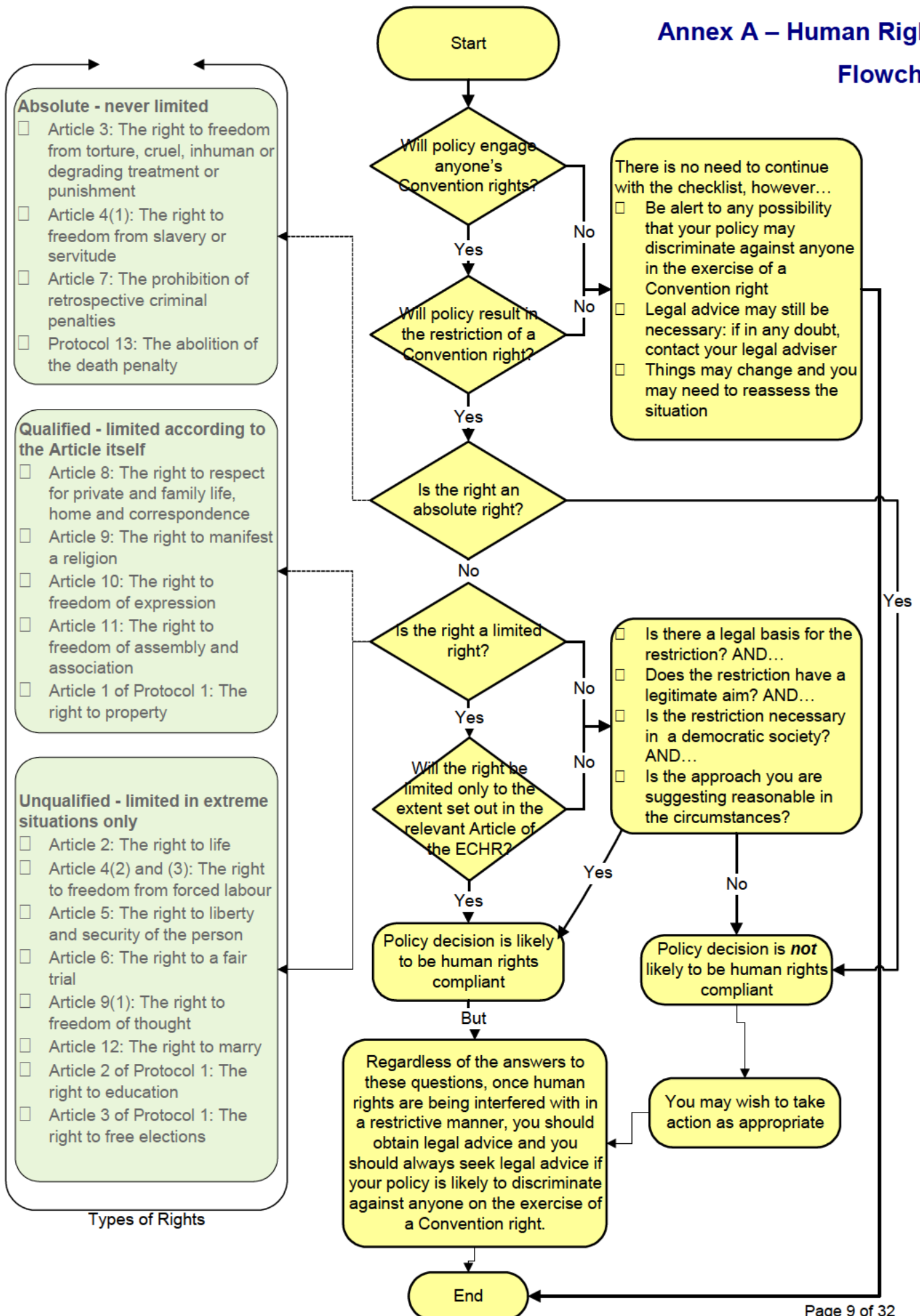
18. A good way to understand human rights is to see them as a vehicle for making principles such as dignity, equality, respect, fairness and autonomy central to our experience as human beings. These core principles are brought to life by a range of different human rights that make them real. For example, the principle of dignity is what lies beneath the right not to be tortured or treated in an inhuman or degrading way, while the principle of autonomy informs the right to respect for private and family life.

19. This means that obligations placed on public bodies to respect human rights can give these principles real meaning in people's lives. This is illustrated by the following diagram which shows how changing a policy or practice to respect, protect or fulfil a particular human right also supports a broader principle.

20. These core human rights principles are simple and resonate strongly with the personal values of both providers and users of public services. They are also of enormous practical use, for example as 'flags' that help people to identify when human rights may have been violated or as 'prompts' when solutions to human rights issues are being sought, whether in an individual case or at the policy level.

Principle	Human Right	Example Policy or Practice Change
Dignity	Right to Life (A2)	DHSSPS: Ensuring that there are sufficient staff to promptly change wet sheets to reduce the risk of people suffering degrading treatment.
	Right not to be tortured or treated in an inhuman or degrading way (A3)	PSNI / NIPS: There is an onus on PAs to ensure that their systems do not inadvertently subject a suspect / prisoners to inhuman or degrading treatment.
	Prohibition of slavery and forced labour (A4)	DSD: Social Services – there is a positive obligation to take appropriate action, e.g. if a child is at risk of inhuman or degrading treatment.
	Right to Liberty and Security (A5)	
Equality	Right not to be discriminated against in the enjoyment of other human rights (A14)	All Depts: Ensuring that people are not denied treatment solely on the basis of their age. All Depts: Ensuring that consultation on policies takes account of access to public meetings for those with dependants (e.g. times) and / or those with a disability. DE: Providing translation services in schools for children from multi-cultural communities.
	Right to respect for family and private life (A8)	DHSSPS: Respecting all diverse families e.g. same sex couples with children.
	Freedom of thought conscience and religion (A9)	DOE / DARD: PAs takes action to ensure that pollutants to the environment are dealt with quickly. They have a positive obligation under Article 8 to protect individuals from interference with their rights.
Respect	Protection of Property (P1/A1)	NICTs: Change of wording of the oath in NI courts by jurors etc.
	Right to a fair trial (A6)	DHSSPS: Ensuring that there is a robust and fair process for removing a doctor or dentist from the Performers List.
Fairness	Prohibition of retrospective criminal law (A7)	DSD: The need to process claims for benefit entitlement within a reasonable timescale to reduce the risk of interference to an individual economic right.
	Freedom of Expression (A10)	DFF: NICS Code of Ethics - to restrict civil servants from acting in a way that is determined by party political considerations, or use official resources for party political purposes
	Freedom of peaceful assembly and association (A11)	DEL / DE: The need to balance punishment (and Prohibition of Torture (A3)) within schools against the right to education (Campbell and Cosans v. UK).
	Right to Education (P1/A2)	NIO / PSNI: Part of the NI Parades Commission's remit includes "to promote and facilitate mediation as a means of resolving disputes concerning public processions". PSNI's role is to support the delivery of an approved parade whilst balancing that against safety of the public / protection of property (P1/A1).
	Right to Free Elections (P1/A3)	NIO: Introduction of electoral office reforms to combat electoral fraud.
Autonomy	Right to respect for family and private life (A8)	DHSSPS: Involving people in decisions made about their treatment and care.
	Right to marry and found a family (A12)	DSD / CSA: Transsexuals are now able to marry in their acquired gender.

Annex A – Human Rights Flowchart



- Absolute - never limited**
- Article 3: The right to freedom from torture, cruel, inhuman or degrading treatment or punishment
 - Article 4(1): The right to freedom from slavery or servitude
 - Article 7: The prohibition of retrospective criminal penalties
 - Protocol 13: The abolition of the death penalty

- Qualified - limited according to the Article itself**
- Article 8: The right to respect for private and family life, home and correspondence
 - Article 9: The right to manifest a religion
 - Article 10: The right to freedom of expression
 - Article 11: The right to freedom of assembly and association
 - Article 1 of Protocol 1: The right to property

- Unqualified - limited in extreme situations only**
- Article 2: The right to life
 - Article 4(2) and (3): The right to freedom from forced labour
 - Article 5: The right to liberty and security of the person
 - Article 6: The right to a fair trial
 - Article 9(1): The right to freedom of thought
 - Article 12: The right to marry
 - Article 2 of Protocol 1: The right to education
 - Article 3 of Protocol 1: The right to free elections

Types of Rights

Case Study 1: A new home for Carl?

Annex B - Case Studies

A new home for Carl?

Carl's story

This is the story of Carl and what happened to him when he was released from prison.



- In this case study, you'll see how authorities deal with situations when people's rights clash with each other.
- In particular, you'll look at how the right to freedom of expression can clash with the right to privacy.
- You'll see the variety of different people who have to consider human rights in the course of their jobs.

Carl and his family

This is Carl and his family.



Carl

Four weeks ago, Carl was released from a prison sentence that he was serving for a sex offence involving a young teenage girl. He has just moved back into the family home on the Foxley estate.

Jade

Jade is Carl's wife. She supported Carl during his time in jail. Jade has stayed in their home on the Foxley estate throughout Carl's sentence.

Jay and Zara

Jay is 16 and Zara is 14. They have lived on the Foxley estate all their lives. When Carl was convicted they suffered some verbal abuse from the other children on the estate, but it died down fairly quickly.

Jade's viewpoint. Carl's wife: Jade



Obviously I've been furious at him, for a long time. But he knew what he'd done. I couldn't abandon him when he'd been sent to prison. So I told him I'd be here when he got out. Now I just

want to get our family back together

Taunts and intimidation

Since Carl moved back into the family home, the whole family has suffered verbal abuse from other families on the estate.

Jay and Zara have started skipping school because some of the lunchtime staff at the school live on the estate, and they have started taunting Jay and Zara in front of the other children.

Carl decides to take action. He calls the police to report the behaviour of the families on the Foxley estate. Police are aware that the taunts of the other people may amount to offences under the [Public Order Act 1986](#). They also realise that the abuse may breach Carl and his family's right to a private and family life under [Article 8](#).

But it is not just Carl's rights that have to be considered.



Zara's viewpoint. Carl's daughter: Zara

Case Study 1: A new home for Carl?



It's not fair, I haven't done anything wrong. I hate living here at the moment. I don't go to school when I can help it now. I just tell Mum I don't feel well. I shouldn't have to put up with grown-ups abusing me anyway, and in front of other kids, too. Soon, everyone will know about Dad.

Calling the police

The police know that they can't just think about Carl's rights. They also have to think about the rights of the people responsible for the comments.

Which right in particular do police need to be aware of?



Start of options.

- Option 1: Article 5: The right to liberty
- Option 2: Article 10: Freedom of expression
- Option 3: Article 7: No punishment without law

- Option 4: Article 8: The right to a private and family life

End of Options.

Answer: Option 2

They have a right to express their opinions, even if these opinions are offensive to some people. However, they won't be allowed to express themselves to the extent that it breaks UK law.

Karen's viewpoint. An angry neighbour: Karen



After what he's done, he shouldn't expect to just be able to carry on as if nothing's happened. We don't want him here, and we're going to make sure he knows it. We've got our children's safety to worry about.

PC Kennedy's viewpoint. Policeman: PC Kennedy



Obviously the harassment is interfering with the family's life, but we have to consider the

other families on the Foxley Estate. They have rights too; they have the right to express themselves. We can step in if it really looks like things are going to kick off, but really, there's not much we can do to stop the odd jibe being shouted at them. If their behaviour amounts to a criminal offence, we will apply the law robustly. We won't hold off because of the protesters' Article 10 rights. The Articles can't be used to allow people to break the law. But in this case, I don't think the protesters are breaking the law.

A different solution

Carl realises that the police can't do much to change the behaviour of the other families on the estate.



He decides the only way to end his family's problems is to move them off the Foxley Estate.



He applies to the Housing Office, where Maggie is the [housing officer](#) who will be dealing with his case.

Case Study 1: A new home for Carl?



Maggie has some serious things to consider before she can transfer Carl and his family.

Carl's viewpoint. The ex-offender: Carl



I know I've done wrong, but I've done my time. I just want to be able to get on with life now. It's not fair on Jade or the kids to stay here any more.

I've asked to move to the Brook Estate. I've asked if the kids can move to the local school there too. That way the kids won't have to deal with the abuse they get on the Foxley estate, or at their current school.

What happens if they stay?

The first thing Maggie has to consider is how it might affect Carl and his family's rights if she decides to refuse their application and leave them on the Foxley Estate.

Which of these rights do you think may be

infringed if she leaves them where they are?



Start of options.

- Option 1: Article 8: The right to a private and family life
- Option 2: Article 5: The right to Liberty
- Option 3: Article 3: The right to freedom from torture, and inhuman or degrading treatment
- Option 4: Article 2 of Protocol 1: The right to education

End of Options.

Answer: Duty to act:
Option 1

Maggie decides that the abusive behaviour is serious enough that it might **engage** Carl's Article 8 rights. But if Carl's Article 8 rights were being infringed, either Maggie or the police would be under a positive obligation to act. What does the doctrine of positive obligations provided by the Convention **oblige** authorities to do?



Start of options.

- Option 1: To take the victims into protection immediately.
- Option 2: To ensure that no public authority personnel are amongst the perpetrators.
- Option 3: To actively make provisions to prevent rights being breached, even if the right is being infringed by a separate party.
- Option 4: To report the infringement to the [European Court of Human Rights](#).

End of Options.

Answer: Option 3

This means that even when a **public authority** has nothing to do with the breach; they have to stop other parties from interfering with rights.

This is the case here. It's down to Maggie as a representative of a public authority to take positive actions to stop Carl's rights being infringed by families on the estate

The Brook families' rights

Maggie also has to consider the rights of the families on the Brook Estate.

She considers whether Carl's presence on the estate will interfere with their rights under Article 3 and Article 8.

Case Study 1: A new home for Carl?



Article 3: The right to be free from inhuman or degrading treatment

Maggie needs to consider whether there is a risk that Carl will offend again and, if so, if any of the people on the Brook estate are likely to be victims.

Article 8: The right to private and family life

Maggie will have to decide if Carl's presence on the Brook estate will interfere with the Brook families' right to peacefully enjoy their homes under Article 8.

Telling the caretaker

Maggie decides that the risk of interference with the Brook families' rights is very small, and so it is safe for her to rehouse Carl there.



However, she decides to take the precautionary measure of telling Robert, the Brook Estate caretaker, about Carl's history, so that he can make sure Carl isn't doing anything that could

harm the residents of the Brook Estate.

Maggie thinks this step will help safeguard the rights of the Brook families.

But there is one more thing she needs to consider before she tells Robert.

Before Maggie tells Robert...

Maggie plans to tell Robert about Carl's past. But first she needs to think about someone else's rights.

Who do you think that is, and what right does she have to think about?



Start of options.

- Option 1: Robert and his right to a private life
- Option 2: Herself and her own right to freedom of thought
- Option 3: Robert and his right to be free from forced labour
- Option 4: Carl and his right to a private life

End of Options.

Answer: Option 4

Maggie needs to decide if the interference can be justified.

Robert's viewpoint. Brook Estate caretaker: Robert



I want to make sure this estate is a safe place for the people that live here. This includes everything from picking up broken glass to knowing who's who on the estate.

Telling Robert

Maggie has to think about whether she can justify interfering with Carl's privacy by telling Robert about his past.



Maggie has to consider whether telling Robert about Carl's past is proportionate. This means she has to see if there is a lesser action she can take.



Maggie decides that the interference with Carl's private life can be justified as it is in the wider public interest, so warns Robert about Carl's past.

Case Study 1: A new home for Carl?



She tells Carl that she has found a house for him on the Brook Estate. A few weeks later they move into their new home. But there's more trouble for Carl.

Jo's protest

When they have been in their new house a week, Jade is worried when she sees a group of parents protesting about sex offenders on the Brook estate.

She phones Maggie at the Housing Office. Maggie tells Jade that she will look into it, but warns her that the protesters have rights too. Which rights is she thinking of?



Start of options.

- Option 1: Article 10: The right to freedom of expression
- Option 2: Article 5: The right to liberty
- Option 3: Article 4: The right to freedom from forced labour
- Option 4: Article 11: The right to associate

End of Options.

Answer: Options 1 & 4

Maggie looks carefully at the circumstances of the protest.

Jo's viewpoint.
Brook Estate protester:
Jo



There's a rumour going round that sex offenders are being housed here when they get out of jail. We know they've got to live somewhere but we don't want them here. There are loads of kids living on this estate.

A quiet end

Maggie checks out what the protest is about, to make sure that Carl and his family are not at risk.



She finds that the protesters are actually concerned about the re-housing of sex offenders in general.



The protest was not specifically aimed at Carl, and he is not at risk from the protesters.



Carl and his family finally begin to settle into their new home on the Brook Estate.

Summary

Remember what you have found out from reading Carl's story.



- All parties had to be considered before a decision could be made. Everyone has rights. If they clash, then a balance must be reached.
- People working in public authorities, such as Maggie and the police, had to consider human rights as part of their decisions in a wide variety of circumstances.
- Sometimes public authorities will be under a positive obligation, meaning they have to take action to stop a breach of a right occurring by a third party.

Case Study 2: Restraining Marcus

Restraining Marcus

Marcus admits himself

This case study looks at how important human rights are for people in caring professions.

- It will look at what kind of treatment breaches Article 3 (The right to freedom from inhuman or degrading treatment)
- You'll see the sort of considerations that a public authority has to make when it is deciding if a right has been breached

The case study will focus on Marcus, a psychiatric patient with a history of schizophrenia. He has taken a turn for the worse recently and has voluntarily admitted himself into St Michael's Psychiatric Hospital. He is usually a quiet patient.



Marcus is distressed

One day, Marcus acts in a way that is very out of character.



After a visit from his parents, Marcus becomes very distressed. He runs into reception, where he begins throwing the furniture around.



A glass door is smashed. Marcus isn't responding to any verbal instructions or conversation.



Two nurses restrain Marcus and give him a tranquillizing injection. The incident is under control. But it has stayed in the mind of one person who witnessed it.

Claire Bryan's viewpoint. Hospital receptionist: Claire Bryan



It was just all of a sudden, he went berserk! He was throwing chairs about - big metal ones, they were. People were hiding behind doors, children were crying. Someone could've been seriously hurt.

Alex Cook's viewpoint. Senior Nurse: Alex Cook



In situations like that you have to act quickly, if you leave it too late patients may hurt themselves or someone else. We know Marcus well here. We know what medication he is on, and what he is allergic to, so we were able to administer the injection without any risk to his health. I maintain that I made the right decision in this situation.

A shocked witness

A few days later Andrew Jackson, the CEO of St Michael's, receives a letter from Hazel Gregory. She was in reception at the time Marcus was restrained and she is concerned that his treatment violated his human rights.

"...I am concerned about your protocol for dealing with these situations. As a mother of a patient at your hospital myself, I would like you to examine your procedures..."

Andrew Jackson decides to investigate this incident further, to ensure that the hospital isn't breaching patients' human rights.



Hazel Gregory's viewpoint. A witness: Hazel Gregory

Case Study 2: Restraining Marcus



The young man was obviously very upset, but I'm not sure they should have been so rough with him. And right out in public like that. I'm not a legal expert but my son is a patient at the hospital too. I know they've got to think about their human rights before they can do anything.

Andrew Jackson's viewpoint.
CEO of the hospital:
Andrew Jackson



We take human rights very seriously at the hospital. I will always investigate any allegations that our staff have acted improperly.

Degrading treatment?

Hazel Gregory was concerned that Marcus' treatment was degrading, and could have constituted a breach of his human rights. Read the viewpoints of people at the scene again.

From what you have read, do you think Marcus' treatment breached Article 3?



Start of options.

- Option 1: Yes
- Option 2: No

End of Options.

Answer: Option 2

There are rarely any clear-cut answers in human rights issues so there is no definite correct answer here. But Andrew decided that the treatment wasn't a breach of Article 3. The European Court has set a very high threshold for what kind of treatment will amount to a breach of Article 3, so treatment would have to be very bad indeed to breach Article 3.

Andrew felt confident that Article 3 hadn't been breached, so he went on to look at Marcus' other rights.

Where to find the rights?

Hazel also mentions a possible breach of Article 8. Andrew can't find anything in the text of the Convention which could be applied to this situation.

Is the text of the Convention itself the only place that sets out human rights?



Start of options.

- Option 1: Yes
- Option 2: No

End of Options.

Answer: Option 2

The Convention text doesn't list a complete set of rights.

The [European Court of Human Rights](#) at Strasbourg rules on the meaning and scope of the rights under the Convention and it develops the bare bones of the words of the Convention into other rights that are not specifically written down.

It has been ruled before that the right to respect for "private life" under Article 8 includes a right to [physical integrity](#).

Limiting Article 8 rights

Andrew Jackson thinks it's possible that the treatment did interfere with Marcus' right to [physical integrity](#). However, he decides that the interference was justifiable in the circumstances. Why do you think that was?



Start of options.

- Option 1: Those with mental health issues have no Article 8 rights
- Option 2: People behaving anti-socially have no Article 8 rights
- Option 3: Article 8 can be limited to protect the health, rights and freedoms of others
- Option 4: Article 8 rights can be limited if the public authority in question has too few staff

End of Options.

Answer: Option 3

Case Study 2: Restraining Marcus

Andrew Jackson decided that restricting Marcus' rights like this was necessary to protect the other people in the vicinity from his disruptive and violent behaviour.

However, Hazel has more concerns about Marcus' rights that Andrew needs to look into.

Andrew Jackson's viewpoint.
CEO of the hospital:
Andrew Jackson



I felt that the interference with Marcus' physical integrity was justified as if he'd been allowed to continue his violent behaviour someone could have been hurt. The rights of hospital staff, the other patients and the public have to be considered too.

Restraint

Hazel is concerned about the way that Marcus was restrained and believes it was unfair to take away his liberty. Andrew is aware that Hazel is worried about Marcus' Article 5 rights. However, the Convention says that certain people can have their liberty restricted, as long as certain criteria are fulfilled.

Who is included in this group of people?



Start of options.

- Option 1: Alcoholics or drug addicts
- Option 2: Those of unsound mind
- Option 3: Anyone refusing medical treatment
- Option 4: Those awaiting trial for an offence
- Option 5: All those with a life-threatening illness

End of Options.

Answer: Options 1, 2 & 4

In certain circumstances, those of unsound mind, people waiting for a trial, and alcoholics or drug addicts can have their right to liberty limited to protect themselves and other people.

Andrew is confident in this case that Marcus could be judged to be of unsound mind at the time of his restraint. Andrew feels sure that his staff have acted properly.

A reply for Hazel Gregory

Andrew is satisfied that he's fully investigated the hospital's protocol for dealing with disruptive and distressed patients.



He writes back to Hazel Gregory: *"...I feel that the hospital's protocol is in line with our human rights obligations, and hospital staff have not acted improperly..."*



Later in the week, Hazel phones Andrew.



"Thank you for looking into my concerns so thoroughly, I feel reassured that my son, and all the patients at your hospital, will be treated properly."

Andrew Jackson's viewpoint.

CEO of the hospital:
Andrew Jackson



I've looked into all of Hazel Gregory's concerns. I can see why she would be worried about Marcus' rights; we did have to limit his rights and freedoms to an extent, but I'm confident that staff interfered with his rights as little as possible in the circumstances. It is important to remember that there are other people's rights to consider too.

Case Study 2: Restraining Marcus

Summary

During his investigations, Andrew found out that the hospital's protocols were in line with human rights law.



- Andrew saw how, by ensuring human rights weren't breached, everyone was protected.
- Marcus' treatment had to be carefully thought about to ensure that it didn't restrict his rights any more than necessary.
- Staff and other patients at the hospital were protected because the impact of Marcus' behaviour on their rights was also considered.

Case Study 3: Protest in Belfast

Protest in Belfast

Belfast

This is the story of a protest in Belfast city centre, and what happened when it got out of control.



As you work through this case study, you will:

- see how human rights ensure that people are not treated below a basic standard
- think about the criteria that have to be met before a right can be limited
- find out what happens when something that is already part of UK law seems to contradict the Convention

So, how did this protest come about?

The protest plan

Several different environmental groups have got together to plan the protest.



The protest is planned to take place in a month's time to encourage the Assembly to take action against global warming.

They want the demonstration to have maximum visibility, so have planned for it to take place in the busy area of Belfast city centre.



They're intending it to be a peaceful but noticeable protest. The environmental group applied to PSNI / Parades Commission for permission to hold their protest. The Parades Commission had to decide whether to approve or not approve the protest.

Rumours

Which rights do you think the Parades Commission will have to try to balance here?



Start of options.

- Option 1: Article 2 (The right to life) and Article 5 (The right to liberty and security)
- Option 2: Article 8 (The right to private and family life) against Article 5 (The right to liberty and security)
- Option 3: Articles 10 (Freedom of expression) and 11 (Freedom to associate) against Article 1 of Protocol 1 (The right to enjoy property)
- Option 4: Article 2 (The right to life) and Article 3 (Freedom from torture) against Article 8 (The right to private and family life)

End of Options.

Answer: Option 3

When they have weighed up the rights, the Parades Commission have to decide whether or not to let the protest go ahead.

Demonstration day

The Parades Commission weighed up the rights of the people affected and decided to let the protest go ahead.



The day of the protest arrived. Superintendent Wilson was appointed as commander on the ground for the day.



Over 3,000 people came out to take part. This was many more people than had been anticipated.



Supt Wilson heard from the other officers that there was a small group of people determined to get violent, and sure enough some windows were smashed.

Corral

Supt Wilson took the decision to cordon off part of the city centre, and [corral](#) people in an attempt to calm down the unrest.

Case Study 3: Protest in Belfast



The corral caught lots of the protesters, but also many members of the public who had had nothing to do with the protest.

Supt Wilson was aware that he had to factor people's human rights into any decisions he made.

- Who has got human rights that he needs to think about?
- Does he have to consider the rights of people who aren't anything to do with the protest?
- What about the people responsible for the violence? Do they have rights too?

Interfering with Article 5

Supt Wilson is aware that the [corral](#) interferes with the Article 5 rights (the right to liberty) of everyone involved. He has to consider whether the interference can be justified.

Which of these points of the checklist do you think are satisfied?

Start of options.

- Option 1: The restriction is legal
- Option 2: The restriction has a legitimate aim
- Option 3: The restriction is necessary

- Option 4: The restriction is proportionate

End of Options.

Answer: Rarely clear cut – all options

Supt Wilson's viewpoint.
Commander-in-chief: Supt Wilson



I feel that corraling a portion of the crowd was the right decision. It was the only way I could prevent further damage to property and avoid injuries occurring. I feel that restricting people's movement in this way was for the good of all concerned. I don't think it was an excessive reaction to the situation I was faced with.

Supt Wilson's decision

Supt Wilson decided that:



- The limitation was **legal** because the [Public Order Act 1986](#) provides the police with powers to act in this way.
- The **legitimate** purpose which it intended to achieve was to prevent violence and possible injury.
- It was **necessary** to prevent violence and possible injury.
- It was **proportionate**, as it wasn't excessive considering the possible

risks. However, if the restriction carried on for a long time, it might have begun to fail the proportionality test.

So Supt Wilson felt the interference with Article 5 was justified, and the corral could continue.

Conditions at the corral

Supt Wilson had decided to continue the corral. Conditions in the area that had been cordoned off were not good.



A hot lady

It was a hot day, and many people didn't have any access to food, drink or shade.

A police search

Police decided to carry out weapons searches of people in the crowd using their powers provided by the [Criminal Justice Act 1994](#).

An angry businessman

People who were in the area on business unrelated to the protest got caught up and detained.

An out-of-order toilet

There was no access to toilet facilities.

Lily's viewpoint.
A protester: Lily

Case Study 3: Protest in Belfast



They kept us all trapped for so long. I mean, I can see why they might have started it, but there was no need to keep us there for 7 hours. It was so hot and no one had anything to drink. There weren't even any toilets. It really was an unacceptable way to treat people. Especially as most of us hadn't done anything wrong.

Mike's viewpoint.
A protester: Mike



The police just started searching anyone they felt like, just picking people at random. I don't see how they can just get people to turn out their pockets and search through bags like that. It's an invasion of privacy.

Rick's viewpoint.
A businessman: Rick



I didn't have any intention of going to the protest. I was just trying to get to a meeting. It seems ridiculous that they should just treat everyone like that, not bothering to try and isolate the troublemakers.

Taking the police to court

Eventually, Supt Wilson ended the [corral](#), but a group of people who had been caught up in it are [suing](#) the police for a breach of their human rights. They will be claiming a breach of Article 8 (The right to a private life) due to the intrusive police searches, and a breach of Article 5 (The right to liberty). They are also claiming that one other right was breached. Which one do you think this is?



Start of options.

- Option 1: Article 6: The right to a fair trial
- Option 2: Article 9: The right to free thought
- Option 3: Article 3: The right to freedom from torture and inhumane or degrading treatment.
- Option 4: Article 2: The right to life

End of Options.

Answer: conditions were so bad – Option 3

So the rights they are claiming have been breached are Articles 3, 5 and 8.

Let's have a look at their reasons for claiming that their Article 8 rights have been breached.

Incompatibility

The people caught up in the corral are arguing that the police searches were a breach of their rights under Article 8. The police were carrying out the searches under their powers to do so, provided by the [Criminal Justice Act 1994](#).

As they were acting according to UK law, is it possible that human rights were breached?



Start of options.

- Option 1: Yes. Parliament does not have to pay attention to the Convention when creating laws.
- Option 2: Yes. Not all UK law is always compatible with the Convention although parliament should aim to make it so.
- Option 3: No. Human rights are irrelevant when statutory powers are being exercised.
- Option 4: No. All statutes are entirely compatible with the Convention.

End of Options.

Answer: Option 2

If the court finds that the [Criminal Justice Act](#) is not compatible with the Convention, it may make a declaration of incompatibility. This makes parliament aware that there is a problem with the law, so they can go back

Case Study 3: Protest in Belfast

and reconsider that section of the Act.

Summary



This story shows some important things that you should remember in your day-to-day work:

- Human rights provide protection to everybody, so you need to make sure that nobody's rights are being breached, even those whom you are not directly working with.
- There are criteria that you need to make sure are satisfied before a right can be interfered with.
- UK laws won't always provide rules that are consistent with the Convention. Sometimes they will be incompatible.

Annex C - Concepts

Positive obligations

21. A positive obligation is a duty to actively make something happen:
- to make sure public authorities provide certain facilities and procedures; and
 - to make public authorities take action to stop breaches of rights by private individuals.

Types of rights

22. They are classified as different types of right according to the circumstances in which public authorities can limit them.
23. Some rights can be restricted in a much rarer set of situations than others.
24. Rights can be classified as either absolute, unqualified or qualified rights.

Absolute rights - rights can never be limited

25. Absolute rights can't be departed from under any circumstances, even in extreme situations such as in times of war.

Qualified rights - rights can be limited according to the Article itself

26. This type of rights can be limited in times of war and national emergency, but they can be limited in other circumstances too.

Unqualified rights - rights can be limited in extreme situations only

27. These are slightly more flexible than absolute rights, but not much. Public authorities may limit unqualified rights, but only in certain, specific circumstances which are described in the Article itself. They may also be limited in rare, serious situations such as in times of war or national emergency.

Restricting a right - a checklist

28. It won't be possible for everyone to have unrestricted enjoyment of all of their rights all of the time.

29. Sometimes a public authority might have to restrict an individual's right, if there is a situation where if that person was allowed to fully enjoy that right, another person's rights or freedoms might be infringed.

30. There will be situations where rights conflict with each other. When this happens, the public authority will have to **balance** rights against each other.

31. There are no definite rules about how this should be done, but the public authority will have to look carefully at **all the circumstances**.

32. This balancing act will often mean that one (or both) of the parties' rights are restricted in some way.

33. An individual's rights may have to be limited to make sure that other people's rights aren't forgotten about.

34. This step has to be taken carefully though, and public authorities should ask themselves the following questions:

Legal / Legitimate / Necessary / Proportionate

Is it legal?

35. The public authority needs to be sure that the decision has a clear legal basis, so that individuals aren't having their rights limited randomly, unexpectedly and illegally.

Is it for a legitimate purpose?

36. The Articles of the Convention set out the situations in which a right may be limited. The public authority should check that limiting the right is genuinely in line with the aims of the Article.

Is it necessary?

37. A limitation is not necessary just because it's useful or desirable. It must be actually necessary to protect other people's rights. The aim must be linked to a pressing social need.

Is it proportionate?

38. Proportionality is one of the key principles in the Human Rights Act.

39. Public authorities must make sure that any interference with a right is proportionate to the aim. This means that they have to make sure they aren't

interfering with anyone's right any more than necessary. It can be described as making sure they are not "using a sledgehammer to crack a nut".

The sledgehammer – the interference

40. The public authority should check that their measure is really the best one, and that there isn't a less restrictive step they could take that would achieve the same aim.

The nut – the “cracked nut” is the aim

41. The public authority should try to keep as much of the right intact as possible and only limit it where it really has to be.

Summary

42. In these situations they will have to limit someone's rights and come up with a balance.

43. But remember the key questions that should be asked before this is done:

- Is it legal?
- Is it legitimate?
- Is it necessary?
- Is it proportionate?

Incompatibility

44. What does it mean for UK law to be incompatible with the Convention?

45. If UK law and the Convention are **incompatible** it means that the UK law cannot be interpreted in a way which fulfils the requirements of the Convention.

46. Where it's possible, UK law should be interpreted so that it is compatible with the Convention. This means that when the law is being read, it should be given a meaning that supports what the Convention says as far as possible.

47. Sometimes, UK law just can't be read in line with the Convention. If they are both setting opposing rules, then they are **incompatible**. What can be done about this depends on the status of the UK law:

Secondary legislation

48. If the court decides that a piece of [secondary legislation](#) is incompatible with human rights, it can decide to overrule it or [disapply](#) it in certain circumstances.

Primary legislation

49. Courts can't [strike down primary legislation](#). If a court decides that an Act of Parliament is incompatible with the Convention they can make a **declaration of incompatibility** which lets Parliament know that the Act isn't compatible so they can go back and change the Act if they want to. However, it can't force Parliament to change anything.

- Wherever possible, UK law should be read so it supports the rights set out in the Convention, but the meanings of the words in primary legislation mustn't be strained so far that it amounts to an amendment of the legislation;
- In some cases they will just be incompatible. If this happens then:
 - Secondary legislation and case law can be overridden; and
 - A **declaration of incompatibility** can be made if primary legislation is at odds with the Convention.

The Convention - A living instrument

50. The way a particular part of the Convention is interpreted doesn't have to remain identical every time a new claim is made. The Convention can be interpreted in flexible ways to keep up with changing social and economic circumstances.

51. So, the way the [European Court](#) interprets the Convention can lead to new rights being [read into](#) the Convention and existing rights being re-interpreted. Have a look at how some of the Articles have been interpreted.

A birth certificate that has been changed from female to male

52. In 2002, the Court has decided that Article 8 includes the right for [transsexual](#) people to have their birth certificate changed to show their new gender.

A cane

53. In 1978, the European Court decided that having birching as a punishment that could be ordered by the courts was degrading and therefore in breach of Article 3.

A single-parent family

54. At the time the Convention was written, courts made a distinction between [legitimate](#) and illegitimate children. In 1979, the European Court ruled that this distinction was no longer relevant in modern society and children born outside of marriage have the same 'family life' rights as other children.

Summary

- Although it is good for legal certainty that [precedent](#) is used and previous decisions are followed, the European Court has ruled that it can depart from previous decisions if there are good reasons to do so.
- The Convention is interpreted by the [European Court](#) in the light of present day circumstances rather than the social situation when it was drafted.
- As a rule, the older a judgment of the Court, the less reliable a guide it is to the likely decision in a current case.

Convention Articles

The rights contained in the European Convention and Human Rights Act are:

- The right to life (A2)
- The right not to be tortured or treated in an inhuman or degrading way (A3)
- The right to be free from slavery or forced labour (A4)
- The right to liberty (A5)
- The right to a fair trial (A6)
- The right to no punishment without law (A7)
- The right to respect for private and family life, home and correspondence (A8)
- The right to freedom of thought, conscience and religion (A9)
- The right to freedom of expression (A10)
- The right to freedom of assembly and association (A11)
- The right to marry and found a family (A12)
- The right not to be discriminated against in relation to any of the rights contained in the European Convention (A14)
- The right to peaceful enjoyment of possessions (P1/A1)
- The right to education (P1/A2)
- The right to free elections (P1/A3)

Annex D – Advice / Guidance

55. **The NHS Litigation Authority Human Rights Act Information Service** provides access to a free database of human rights law of relevance to the NHS, a quarterly newsletter to keep NHS staff up-to-date with developments in case-law and a series of case sheets highlight key cases in specific areas of healthcare law, such as mental disorder, confidentiality and prison healthcare. The service can be accessed at www.nhsla.com/HumanRights

56. The **Department of Health** website has a range of information on the Human Rights Act. Their address is: www.dh.gov.uk/en/Policyandguidance/Equalityandhumanrights/Humanrights/index.htm

57. The **Department of Health**, in conjunction with the **British Institute of Human Rights**, has produced **Human Rights in Healthcare - a Framework for Local Action**. Access it at: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_073473

58. The **British Institute of Human Rights** has also produced "Your Human Rights". This is a series of four plain English, non-technical guides focusing on the practical relevance of human rights in the UK. Find it at: <http://www.bih.org.uk/resources/guides>

59. **If you wish to look further, the websites of the organisations above may provide useful information and links to other sources**, including the human rights section of the **OFMDFM** website at: <http://www.ofmdfmi.gov.uk/index/equality/human-rights.htm>

60. The **Ministry of Justice** has produced a range of guides which can be accessed on line. In addition to the Convention and the Human Rights Act, its website has information on other international human rights matters. Find these at: www.justice.gov.uk/guidance/humanrights.htm:

- **Human rights: human lives. A handbook for Public Authorities** (October 2006) (ref MOJ 4/07)
- **Making sense of human rights: A short introduction** (October 2006) (ref MOJ 5/07)
- **A Guide to the Human Rights Act 1998** (Study Guide, third edition, October 2006)

61. You can find the **Human Rights Act** on the Office of Public Sector Information website at: www.opsi.gov.uk/acts/acts1998/19980042.htm

62. The full text of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** is at:
www.conventions.coe.int/Treaty/EN/Treaties/Html/005.htm

63. **The Council of Europe** human rights website is:
www.coe.int

64. **The European Court of Human Rights** website is: www.echr.coe.int

65. **The UN** website is www.un.org and includes the **Universal Declaration of Human Rights** at: <http://www.un.org/Overview/rights.html>

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Annex E - Glossary

Article

An individual section in a Convention or treaty. In the first part of the European Convention on Human Rights, each Article defines a protected right or freedom.

Corral

To hold in an enclosure.

Criminal Justice Act 1994

A law mostly concerned with anti-social behaviours. At section 60 it says that police can stop and search people if they believe that they have something that they may use in a violent way.

Disapply

To decline to apply a rule or law that previously applied.

Engage

1. To bring into play/operation.
2. To involve or employ one's rights.

European Court of Human Rights

The court at Strasbourg that was set up by the Convention to adjudicate in cases of alleged breaches of Convention rights.

Housing officer

Housing officers are the people who deal with the management of local authority housing.

Legitimate

1. Allowed by (or not forbidden by) law.
2. (Of children) Born of legally married parents.

Oblige

Cause to act.

Physical integrity

The right to control what happens to one's own body.

Precedent

In the legal context, precedent is the system where courts are obliged to follow the decisions that higher courts have made on cases with similar circumstances.

Primary legislation

This is law which is made by Parliament and takes the form of Acts of Parliament.

Public Order Act 1986

This is the main law used by police to deal with crimes of violence and public disorder. It gives them the power to impose some restrictions on public gatherings.

Public authority

For the purposes of the Human Rights Act, a public authority is any person or body who carries out functions of a public nature.

This means that a private company could count as a "public authority" if, for example, it was contracted to run a prison.

Whether or not a body is carrying out a public function will depend on the facts of the case.

Read into

When it is said that rights are "read into" the Convention, it means that the words of the Convention are taken to mean something that they don't directly say.

Secondary legislation

Secondary (sometimes referred to as delegated) legislation allows the Government to make changes to a law without needing to push through a completely new Act of Parliament. The original Act (also known as primary legislation) would have provisions that allow for future delegated legislation to alter the law to differing degrees.

Strike down

To cancel.

Sue

To sue someone is to bring proceedings against them in court, to claim a right or to seek compensation for a right that has been breached.

Transsexual

Someone who has the deep conviction that their gender identity (believing oneself to be a man or a woman) does not match their body. This condition is called gender dysphoria (a medical condition recognised by the Chief Medical Officer) or gender identity disorder. The feeling can be so strong that individuals are driven to presenting themselves in the opposite gender.



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