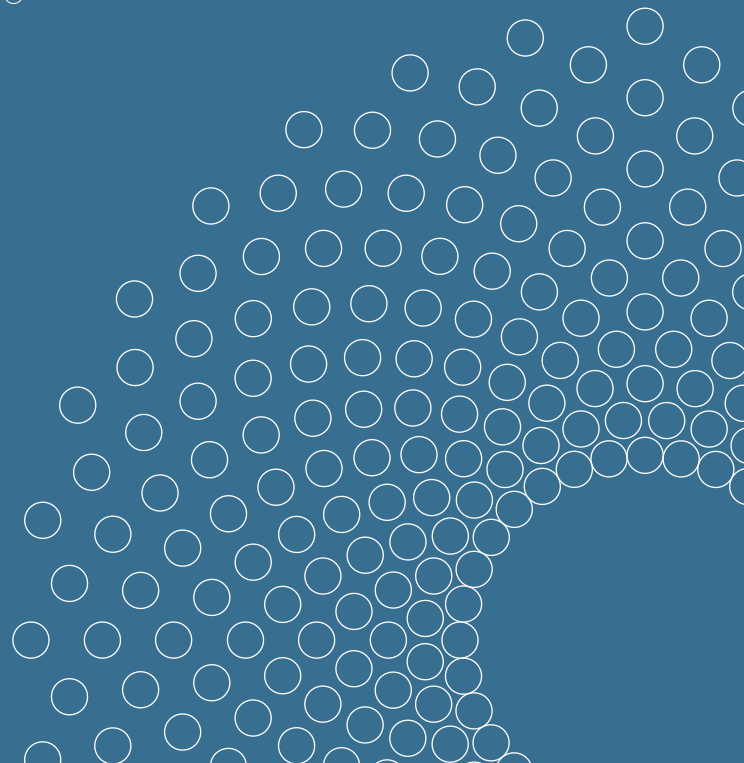
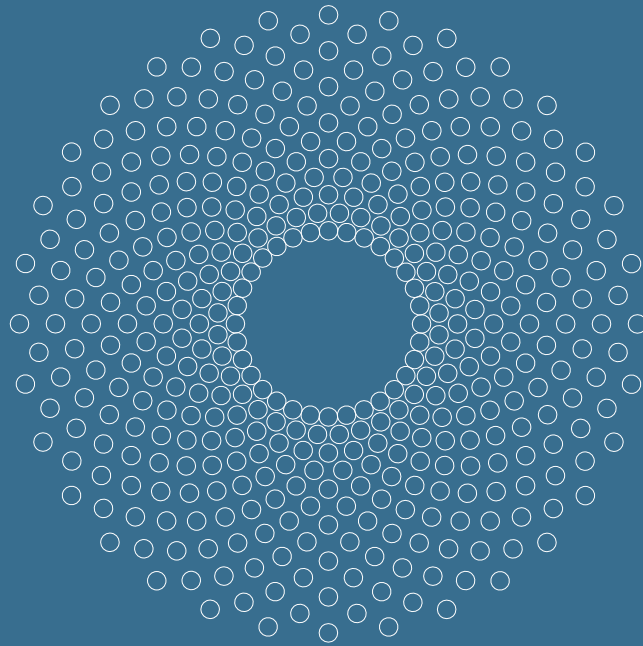




Ministry of
JUSTICE

The Human Rights Framework as a Tool for Regulators and Inspectorates



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Foreword

The Ministry of Justice (MoJ) recognises that regulation has become an increasingly important element in the management of public services and that regulatory bodies have a hugely important role to play in promoting human rights in public services. This is true not only through ensuring that public authorities take account of human rights, but also through providing guidance, disseminating best practice and involving service users in monitoring standards.

I am pleased to note as the Minister responsible for Human Rights that a wide range of organisations have worked in partnership with MoJ to produce *The Human Rights Framework as a Tool for Regulators and Inspectorates* handbook.

This handbook explains how the Human Rights Act can be used as a helpful set of standards to improve decision making, particularly when elaborating and implementing regulatory principles and resolving complex issues which call for the balancing of competing rights and interests.

Many of those who will use this guide have already taken human rights, and the Human Rights Act itself, into account in the design and monitoring of their regulatory or inspection standards. However, *The Human Rights Framework as a Tool for Regulators and Inspectorates* handbook aims to expand this important work across the field by;

- explaining how the Human Rights Act is relevant to the work of inspectorates and regulatory bodies;
- showing how it can be used as a tool for improving effectiveness; and
- including best-practice examples, which illustrate how many inspectorates and regulators have already successfully applied the human rights framework and engaged services users in their work.

By using a human rights framework in the design, interpretation and application of regulatory and inspection practices, bodies working in this field can benefit from improved coherence and the protection of human rights at all levels within their organisation.



Rt. Hon. Michael Wills MP

Part 1

Introduction and Background

Who should use this handbook and why?

If you work for a regulatory body or inspectorate, this handbook can give you more knowledge about how the Human Rights Act (1998) relates to what you do and how you do it. After reading this, you will have a better understanding of how to use the human rights framework as a tool for effective, efficient and objective regulation and inspection.

What is the human rights framework?

In the context of this handbook, “human rights framework” refers principally to the human rights drawn from the European Convention of Human Rights that are contained in the Human Rights Act 1998 (known as “the Convention rights”), along with associated guidelines and principles about how they should be interpreted and applied. These are outlined in Part 3 of this handbook.

The Convention rights are particularly important, because they have been given further effect in UK law through the Human Rights Act. However, many areas of regulation will also require consideration of other human rights, drawn from a wide range of international human rights instruments. For example regulation of immigration matters is likely to draw crucially on the Refugee Convention; regulation of places of detention will require knowledge of the UN Convention Against Torture and its Optional Protocol; regulation and inspection of services including education, health, social care, and other local authority services will require knowledge of the UN Convention on the Rights of the Child, the UN Convention on the Elimination of All Forms of Discrimination against Woman, and the UN Convention on the Rights of Disabled Persons. The precise application of such rights will vary from sector to sector and is therefore not considered in detail in this publication. In general, however, it should be remembered that, whilst such standards may form part of the background to regulation in these areas, and may be used in a positive way to influence service provision, in most cases they do not have binding legal force in UK law.

How is the human rights framework relevant to regulation and inspection?

The Human Rights Act gave a number of the rights from the European Convention of Human Rights direct effect in UK law. As public authorities, regulators and inspectorates are themselves required by section 6 of the Act to comply with these rights in their dealings with private individuals and non-governmental bodies. In some instances they may also have a role to play in ensuring human rights compliance on the part of the public authorities which they regulate (although this is a complex area where legal advice may be required – see paragraph (a) on page 21). But the main focus of this guide is on other ways in which a human rights framework may be used, which go beyond questions of strict legal compliance by regulators and those they regulate. Using human rights principles in this wider way can assist in ensuring delivery of effective public services, which respect individual rights and put the needs of individual service-users at their heart.

In recent years, significant progress has been made by regulators and inspectorates in ensuring that their own policies, procedures and activities comply with the Human Rights Act. However, the Act is still often seen in a negative light because it is considered to have placed an additional legislative burden on public authorities. This handbook has been designed to show how the human rights framework can be a valuable, positive tool for inspectorates and regulators, by contributing to effective but proportionate regulation – and can thereby also be a positive influence on the provision of services by regulated public authorities. Applying human rights principles, such as justification and proportionality, can be a powerful tool for elaborating and implementing regulatory principles and resolving complex issues which call for the balancing of competing rights and interests.

Regulation has become an increasingly important element in the management of public services. As the services themselves have become subject to market disciplines and the private sector has become more involved in the delivery of services, regulators and inspectorates have assumed the responsibility of defending the public interest. This involves a range of duties, including supervising the governance of services, and ensuring that administration is transparent, accountable and manages risk in an appropriate manner.

At the same time, there has been growing recognition that regulation itself can become a burden for public service managers, and that there is a need to ensure regulation is effective but not overly bureaucratic.

For this reason, the Government's own Better Regulation Task Force has produced Principles of Good Regulation, calling upon government departments and regulators to apply these principles when considering the regulatory role.

According to these principles, regulation should be:

- Proportionate: regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- Accountable: regulators must be able to justify decisions, and be subject to public scrutiny.
- Consistent: Government rules and standards must be joined up and implemented fairly.
- Transparent: regulators should be open, and keep regulations simple and user friendly.
- Targeted: regulation should be focused on the problem, and minimise side effects.

The human rights framework can be used to interpret and apply these principles in your everyday work, fleshing out what they mean for regulators and inspectors in practice. Proportionality is a key principle within the human rights framework. Under the European Convention, some rights can be restricted in certain circumstances, for example to protect the rights of other individuals or if the restriction is in the public interest. However, any restriction must be strictly proportionate or, in other words, "*you mustn't use a sledgehammer to crack a nut*". Public authorities must interfere with the right in question as little as possible, only going as far as is necessary to achieve the desired aim. Under the human rights framework, blanket measures or rules are discouraged as they do not take into account the varying ways in which the rights of others will be affected. The human rights framework can therefore help you to take account of the needs of individual service users, targeting interventions in ways that take the rights of all stakeholders into consideration.

In short, the human rights framework is a powerful tool for designing, interpreting and applying regulatory and inspection principles in a way that is in accordance with national and international law, that is objective and fair to all stakeholders and that places the dignity and respect that all individuals deserve at the core of policy and procedure.

What you will find in this handbook

- Information on the Human Rights Act and the European Convention on Human Rights relevant to people working at all levels within regulatory bodies.
- An outline of how to use the human rights framework to assist your work (Part 2).
- Case studies that show how regulators and inspectorates have successfully used human rights frameworks in their work (Part 2).
- The background on where the Human Rights Act originated and the rights it protects (Part 3).
- Explanations of human rights and what they mean in practice for different public authorities (Part 3). A further detailed explanation of each Article can be found in a separate Ministry of Justice handbook, *Human Rights: Human Lives* (see links on page 49).
- A jargon buster and answers to frequently asked questions (Part 3).
- Details on where to find further information and useful contacts (Part 3).

What you will not find in this handbook

- A substitute for proper legal advice or an exhaustive explanation of human rights law: always take proper legal advice if you have a specific issue to deal with.
- Detailed sector-specific information. This guide is deliberately generic to make it as relevant as possible to a broad range of regulatory bodies and inspectorates.
- Lots of legal jargon.
- Detailed information about other human rights instruments.

Part 2

How can human rights assist regulators and inspectorates?

Using the human rights framework in your everyday work can help you to:

- 1) Make the right decisions when faced with a complex problem
- 2) Design regulatory and inspection frameworks which help to build more effective public services
- 3) Ensure that public services meet the needs of individual service users
- 4) Ensure you meet your legal obligations.

Each of these is discussed in more detail below.

Using the human rights framework to make the right decisions when faced with a complex problem

The human rights framework provides guidance on how to interpret rights and balance them against each other. This can help you to manage risk by fairly and objectively mediating between competing claims from individuals, and through balancing the rights of one person against the needs of the wider community.

a) Types of rights

The framework classifies rights according to whether it is acceptable to place restrictions on them in certain circumstances:

Absolute rights: These rights must be upheld at all times. There is no possible justification for interference with them and they cannot be balanced against any public interest. Examples include the prohibition of torture and inhuman or degrading treatment (Article 3), and the prohibition of slavery (Article 4).

Limited rights: These rights can only be limited under explicit and finite circumstances as laid out in the European Convention. An example is the right to liberty and security (Article 5).

Qualified rights: These are rights that can be limited in order to protect the rights of other people or the public interest. In particular, the rights in Articles 8 to 11 can be restricted where it is lawful, necessary and proportionate to do so in order to achieve a legitimate aim as specified in the European Convention. Examples of these include freedom of thought, conscience and religion (Article 9), and freedom of expression (Article 10).

b) The principle of proportionality

The distinction between absolute, limited and qualified rights can help you decide what action to take when faced with a decision. You can only make decisions that will involve restricting a person's right if the right is

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

In short, the human rights framework's classification of rights, coupled with the notion of proportionality, makes it a useful tool to use when making complex decisions such as where to draw the line between an individual's concerns and the wider public interest when designing regulatory standards. Importantly, the human rights framework can help you to ensure that the decision you arrive at is made objectively and takes into account the effect on all stakeholders involved.

It is important to note that if you are responsible for dealing with official decisions or appeals, Article 6 of the Convention may be relevant. This provides people with the right to have their civil rights and obligations determined within a reasonable time by an independent and impartial court or tribunal. However not all decisions are covered by Article 6. As this is a complex area of law, inspectorates and regulators are advised to take legal advice in order to identify whether Article 6 does apply to their decisions, and if so, as to the impact which it has on decision-making processes. In areas not covered by Article 6, it will still be best practice to ensure that official decisions are made in an unbiased way and using fair procedures.

Case Study: Using the human rights framework as a tool for decision making

Focus rights:

Article 10 – Freedom of expression

Article 8 – Right to respect for private and family life

Article 6 – Right to a fair trial

Freedom of expression is a qualified right and can be restricted, but only when strictly necessary in a democratic society and to pursue one of the recognised legitimate aims laid out in the European Convention. **Ofcom** (the Office of Communications) has a statutory duty to protect audiences against harmful or offensive content, but also recognises that upholding and exercising the right to freedom of expression can mean that some people may be offended by broadcast content. Ofcom has developed the Broadcasting Code which sets standards for the content of television and radio broadcasting. Standards in the Code around harm, offence, fairness and privacy have been designed to be compliant with the human right to freedom of expression.

In line with the principle of proportionality, Ofcom does not monitor broadcast content but rather intervenes only when complaints are made. Where members of the public complain that their privacy has been breached in a broadcast, Ofcom balances broadcasters' rights to freedom of expression under Article 10 with the rights of those referred to in the broadcast under Article 8, the right to respect for private life. Ofcom first asks if the complainant's right to respect for private life has been interfered with, and then asks if this interference was warranted. For example, was the interference in the public interest, helping to preserve freedom of expression of journalists and meeting the cases in which the right to respect for private life can be limited as defined in Article 8? If the broadcaster is judged to have interfered with the complainant's right to respect for private life, care is taken to ensure that a solution is found that is proportionate and that maintains standards in a manner that best guarantees freedom of expression, both for the people in the case in question and through setting precedent for the wider media industry.

Ofcom's decision-making procedure is consistent with the values of Article 6, the right to a fair trial. Using a human rights framework helps Ofcom to ensure that its procedures are robust and that its decisions are fair, taking the rights of all parties into consideration and balancing these with the rights of the wider community.

Using human rights principles to design regulatory and inspection frameworks which help to build more effective public services

a) Clarifying priorities for public service providers

An important role for regulators and inspectorates is to defend the public interest. As human rights are based on internationally accepted standards of how to treat people with dignity and respect, assessing whether the public services that you work with are meeting human rights standards is an effective way of doing this.

Where regulators and inspectors have the power to set or influence regulatory and inspection frameworks, using human rights standards explicitly will allow you to identify where public services could do better, and to make recommendations for improvements.

For example, where the public services you are regulating or inspecting are provided to disabled people you should take account of the provisions of the UN Convention on the Rights of Disabled Persons, as well as the Human Rights Act.

Case Study: Using the human rights framework to design and report on standards

Focus rights:

Article 5 – Right to liberty and security

The human rights framework is very relevant to healthcare service providers as they deal with issues that affect the inherent dignity and respect of service users on a daily basis. The Care Quality Commission has an important role to play in helping to build a health system that responds effectively to the needs of staff and individual service users in a manner that protects their fundamental human rights.

One way that the **Care Quality Commission**, formerly through the **Healthcare Commission**, is responding to this challenge is through referring to human rights standards explicitly in its reports on reviews and inspections. This is helping healthcare service providers to understand what upholding staff and service users' human rights means in practice, so that they can make improvements through putting appropriate procedures and practices in place.

For example, the Healthcare Commission recently reviewed the quality of acute inpatient mental health services and psychiatric intensive care provided by NHS trusts. Article 5(2) of the European Convention, the right to liberty and security, requires that anyone arrested or detained should be *"informed promptly, in a language which he understands, of the reasons for his arrest"*. They must also know under whose authority the detention has been made, and know how they can challenge it.

The Commission's report of its review explains that this provision of the Convention places a wider obligation on healthcare service providers to provide information to detained patients than the 1983 Mental Health Act. Drawing on evidence from the former **Mental Health Act Commission**, now also part of the Care Quality Commission, the report states that, in 10% of the case notes checked, there was no formal record that service users had had their rights explained to them. A key recommendation of the report is that *"Staff should consider how practices can be adapted to involve and engage service users as much as possible, however unwell the person may be. Involvement should be based on a human rights approach, so that services are focused around the needs of service users rather than those of the services"*.

Further steps to use the human rights framework that are being taken by the Care Quality Commission will hopefully lead to the incorporation of human rights standards into more of the Commission's inspections. For example, human rights criteria have recently been added to the Care Quality Commission's equality impact assessment process. This is a toolkit and framework that staff complete when designing and implementing new policies, projects and functions in order to ensure that their impact on equality and rights issues are taken into consideration. The incorporation of human rights standards into the assessment and action plan is an important step towards building a human rights framework into all of the Commission's work.

The Healthcare Commission, Commission for Social Care Inspection and the Mental Health Act Commission ceased to exist on 31 March 2009. The Care Quality Commission is the new health and social care regulator for England following the Health and Social Care Act 2008.

b) Using human rights as an additional lever for regulators and inspectors to raise standards of service.

Using human rights language when reporting on inspections or decisions regarding complaints can give these assessments added weight, rooting them in international and national standards. Whilst final

judgments about whether rights have been violated in a specific case can only be made by the courts, regulators and inspectorates can highlight instances where rights are likely to have been neglected and make recommendations as to how public service providers can remedy the situation, improve services and avoid legal challenge.

Case Study: Using the human rights framework to assess complaints

Focus rights:

Article 8 – Respect for private and family life.

The **Local Government Ombudsman** regularly uses human rights standards to assess complaints that it receives from members of the public about treatment that they have received by local councils. The human rights framework not only helps the Ombudsman to make fair and balanced recommendations that take the needs of all stakeholders into consideration, but also adds moral weight and authority to the decision.

The Ombudsman has received a number of complaints that relate to accusations that the local government has breached the privacy of complainants. Article 8 of the European Convention states that everyone has the right to respect for private and family life, home and correspondence. The right to a private life includes protection of reputation and of personal data. In such cases, the Ombudsman looks to see if the individual rights of the complainant have been appropriately balanced with the interests of the wider community to arrive at a solution that has taken the needs of all stakeholders into account.

For example, in one case, a local council sought to evict a group of travellers living on an unauthorised site through exercising planning enforcement powers. The council published sensitive information about a number of the travellers and their families in a public report to its Development Control Committee. This included details of medical conditions, financial affairs, children's schools and a named child's learning difficulties. The individuals concerned complained to the Local Government Ombudsman as they were shocked that such sensitive information had been made public, and were concerned about the possible repercussions for themselves and their children.

The Ombudsman recognised the need for the council to collect information about the travellers' circumstances, but concluded that the decision to publish all of the information in the report was maladministration. He concluded that the council had failed to properly balance the need for open decision-making with its duty to respect the private lives of the individuals concerned, and that the information could have been handled in such a way as to achieve the desired aim whilst also respecting the complainant's right to respect for private life.

The Ombudsman acknowledged that only the courts could determine whether there had been a breach of Article 8 of the Convention, but was still able to conclude that, *"the Council should have given more considered and conscious attention to the principle of respect for private life enshrined in Article 8 and, if it had done so, it is likely that it would have reached a more proportionate decision that did not imperil the privacy of vulnerable children and members of their families."*

Case Study: Using the human rights framework to assess complaints

Focus rights:

Article 3 - Prohibition of torture (including the right not to be subjected to treatment or punishment that is inhuman or degrading).

Article 8 - Respect for private and family life.

Article 14 - Prohibition of discrimination.

A joint investigation by the **Health Services Ombudsman** and the **Local Government Ombudsman** used human rights standards to assess and explain why a county council and NHS trust were guilty of maladministration in the care they provided to an adult (Frank) with severe learning disabilities. The investigation found that the adult's needs had not been adequately assessed at the outset of care, particularly in relation to taking human rights into account in planning and providing services. The report found that Articles 3, 8 and 14 had not been given proper or timely consideration.

The investigation found that this failure to take adequate steps to protect rights was likely to be the result of the care service providers only considering human rights as an indirect part of their decision making, rather than addressing them directly and consciously. The report concludes that *“a proper consideration of human rights issues at any point would have led to improvements in Frank's and his parents' situation.”*

Case Study: Using the human rights framework to design and report on standards

Her Majesty's Inspectorate of Prisons has developed and published criteria for inspecting prisons, referenced to international human rights standards and aimed at achieving best practice. These criteria, called Expectations, go behind processes and output measures to examine the quality and outcomes for prisoners of the application of Prison Service standards and policies. For example, they explicitly require that 'all prisoners are treated with humanity and with respect for the inherent dignity of the person.' Sometimes, they go beyond what an overcrowded prison system can currently achieve: for example, criticising the practice of holding two men in a cell meant for one, with a shared toilet, and where they eat all their meals; or sanitary arrangements which mean in practice that prisoners have to use buckets. It is important to set out these deficiencies; otherwise what is becoming normal may become normative.

c) Addressing inequality in a way that goes beyond mechanical adherence to the law

When considering the prohibition of discrimination within the human rights framework (Article 14), it is important to note that this is a 'conjunctive right', meaning that a claim under this Article can only be made in relation to the protection of one of the other rights contained in the European Convention. Furthermore, differential treatment may be justified where it is proportionate to a legitimate aim. It may therefore be legitimate to treat people differently in some circumstances.

Nonetheless, using a human rights framework can help you to address issues of inequality within public service provision. Rather than simply seeing equality issues as a matter of compliance with legislation such as the Race Relations Act and the Disability Discrimination Act, human rights help to place these issues within a broader framework of what it means to treat people with the dignity and respect that they deserve. This can help to shift the emphasis from negative compliance to positive cultural change. As well as considering whether you and the public services that you work with are complying with the law, the human rights framework can help to highlight what extra steps can be taken to make human rights real for service users.

With regard to disability, for example, the UK has ratified the UN Convention on the Rights of Disabled Persons and the Convention is, therefore, part of this human rights framework. Whilst the Convention does not establish new human rights for disabled people it expresses existing rights in a manner that addresses the needs and situation of persons with disabilities. In doing so, it sets out with much greater clarity the obligations on States to promote, protect and ensure the rights of disabled people. The Convention covers key areas including the right to life, access to justice, personal mobility, health, education, work and recreation, and cites practical measures to be taken. A copy of the Convention can be found on the UN website at: <http://www.un.org/disabilities/>

Case Study: Designing people-centred inspection frameworks

Focus rights:

Article 14 - Prohibition of discrimination

Article 8 - Respect for private and family life.

Article 14 of the European Convention is a key right for regulators and inspectorates, as it can help to determine whether public authorities are meeting the needs of all service users equally or whether some are being treated differently. The Article states that all rights and freedoms in the Convention should be enjoyed by all people, without discrimination on any ground. The Article contains a short list of discriminatory grounds such as sex, race, language or religion, but this list is not exhaustive. Whilst the question of exactly where Article 14 applies may be a complex one in legal terms, it can be useful to use principles of equality drawn from Article 14 in a wider range of circumstances, regardless of whether this is strictly required as a matter of law. Using the human rights framework in this way can help to bring the notion of equality to life, exploring what it means in practice for service users. Regulators and inspectors can devise mechanisms and make recommendations to ensure that all service users receive equally good levels of service.

One example comes from the former **Commission for Social Care Inspection (CSCI)**, now part of the **Care Quality Commission**, which has designed a framework to enable inspectors to understand the experience of people using care services by users who are unable to share this information directly due to cognitive or communication impairments. Without a good understanding of the experience of these service users, inspectors would be unable to determine accurately whether they are being discriminated against because of their disability, for example whether they enjoy the same respect for private and family life as other service users. The framework is called **SOFI – Short Observational Framework for Inspection** – and is used to find out whether people are receiving good quality care that meets their individual needs regardless of their ability to make their voice heard in other ways.

SOFI consists of a datasheet that is filled in by inspectors at five minute intervals over the course of two hours whilst they are observing people receiving care. A maximum of five people are observed in one session, and all people present, including service users and staff, are given information about the procedure so they know what is happening.

Observations are made in three categories concerning the service users' state of well-being, their engagement with the surrounding environment and their interaction with staff. Evidence collected using the framework is triangulated with that collected using other inspection tools to increase accuracy and reliability.

This framework is important as it ensures that people with cognitive and communications impairments are involved in the inspection process. It allows inspectors to ensure that no service user is discriminated against as a result of disability, and helps to identify areas where service providers can make improvements so that everyone can enjoy the principle of equality that is enshrined in the human rights framework.

Using the human rights framework to ensure that public services meet the needs of individual service users

One of the major benefits of a human rights framework is that it helps public authorities to consider members of the public as individuals, rather than as blocks of people. This is because human rights standards are based on the basic principles that everyone deserves to be treated equally and with dignity and respect. People are entitled to be able to act autonomously, in so far as this does not interfere disproportionately with the rights of other people. But what do these principles mean in practice for regulators and inspectorates?

In short, it means having a full understanding of how individual users experience public services, of what their needs are and of whether these needs are being met. One way to do this is to engage directly with service users in order to build a more individualised approach to standards assessment. Many regulators and inspectorates are already doing this, working directly with service users to assess and monitor standards and drawing on their knowledge and experience of using services to improve the accuracy and effectiveness of their work. For example, the former Mental Health Act Commission, now part of the Care Quality Commission, has encouraged a more systematic involvement of service users through establishing a Service User Reference Panel and through direct patient contact on wards. These panels have helped produce easy-read materials, improving communication with patients and carers. Another example comes from the Commission for Social Care Inspection's Experts by Experience programme (see case study).

Once you fully understand the needs of service users, you can help the public authorities that you work with to build people-centred services that meet these needs. One way to do this is to develop guidelines and tools for service providers to use. For example, the Audit Commission's Knowing your Communities toolkit includes an online human rights assessment and best practice case studies so that public authorities can better understand and meet the needs of the people that they serve.

The notion of treating service users as individuals is closely related to the idea of 'proportionality' – that is, all measures that are taken to balance one individual's rights against those of others or of the wider public

Case Study: Transforming service user experience into effective inspection

Human rights are built on principles of individual dignity, equality and autonomy, and public services should always support these principles. One way of doing this is to ensure that public services meet the needs of their users. Involving service users in inspections can help to clarify and address these needs.

The former **Commission for Social Care Inspection (CSCI)**, now part of the **Care Quality Commission**, involves people who have experience of using the social care system in its inspections through the Experts by Experience programme. Following training in inspection procedures, the experts by experience accompany inspectors on visits. Because the experts by experience have used social care facilities themselves and understand the needs of service users, they are able to pick up on details that others might miss. These might include problems with accessibility and care practices. Experts by experience also help with communication between inspectors, service users and service providers. Referring to their experience of an inspection involving an expert by experience, one person with learning difficulties said: *“thank you for sending someone who really understands me.”*

The programme has been extremely successful, with positive reports from the experts themselves, service users, and CSCI inspectors. One inspector commented, *“this is one of the most positive things that CSCI have introduced in a long time. The insight that the experts have provided has been invaluable, and they have been extremely well received by care homes.”*

Using the human rights framework to ensure that you – and the public services you regulate - meet your legal obligations under the Human Rights Act.

a) Avoiding legal challenges

Under the Human Rights Act, public authorities, including regulatory bodies and inspectorates and many of the service providers they regulate, have an obligation not to act incompatibly with the Convention rights. Any member of the public who feels their rights have been infringed by a public authority can take their complaint to a UK court or tribunal, as can non-governmental organisations (including some regulated bodies). It is therefore important that you understand the Convention rights and the way they apply to you and those you regulate.

The Human Rights Act says that persons carrying out certain functions of a public nature will fall within the definition of a public authority. You will need to take advice on whether your organisation has potential liabilities under the Human Rights Act, and to be aware of the extent to which those you regulate are exercising public functions (which are also governed by the Human Rights Act), or purely private functions (which are not). This guide does not attempt to offer the necessary legal advice in this area, which will require close attention to the specific circumstances of each regulator. If you are unclear of the position in relation to your organisation and those you regulate, it may be necessary for you to secure separate legal advice on such issues. However general adherence to the values and principles which underpin the Convention rights will assist in ensuring compliance with any actual responsibilities envisaged by the Act.

It should also be borne in mind that very few of the Convention rights under the Human Rights Act are absolute – most contain some limitations or require a balance to be struck between the rights of the individual and the wider public interest. It is the Government's strong view that public authorities should approach this balancing exercise in a robust way giving human rights due consideration, but also giving proper weight to the rights and interests of others. In particular it is of paramount importance that public authorities take appropriate steps to protect the life and security of the public. Regulators and inspectorates need to remain aware of this at all times when exercising their functions. They must ensure that a proper emphasis on compliance with human rights does not inadvertently lead to a situation where the wider public interest and the importance of public safety and security are obscured.

It is also worth remembering that the work of public authorities is usually governed by specific legislation or policies which, in most cases, already take full account of human rights requirements and include any safeguards and procedures necessary to ensure compliance. For example where appeal rights are set out in legislation, this will generally already have taken account of any applicable rights under Article 6 of the European Convention on Human Rights (the right to a fair hearing). On a day-to-day basis, front-line officials are expected to apply the legislation and policy specifically applying to them, rather than second guessing whether it fully complies with human rights requirements (which would be a recipe for inconsistent decision-making, and could easily lead to legislation being improperly disregarded). Regulators and inspectorates should not act in a way which might undermine the certainty which this approach provides. Human rights compliance is more likely to be relevant at the stage when a public authority is formulating, or assessing the impact of, policies and practices, or in areas where legislation and policies do not set out what is required. If you are unsure of the way in which human rights and legislation interact in the area for which your organisation is responsible, you may wish to seek further advice.

b) Meeting the State's positive obligations

Most human rights law is concerned with things that the state must not do, and puts public authorities under an obligation to refrain from interfering with a right. However, the European Court of Human Rights 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.

The circumstances in which a positive obligation will arise under the Convention are generally quite narrow. It is recognised that public authorities cannot be expected to intervene to deal with completely unforeseeable events and levels of knowledge and available resources can justifiably limit the extent of positive obligations. However there is a more general duty on the state to put in place systems and procedures to protect individuals and regulatory and inspection systems often play an important part here. So it is important that when planning policies and activities you consider risks to the life, liberty and security of end users of services, and ensure that the regulatory and inspection system you operate is an effective way of detecting and deterring these.

Case Study: Designing people-centred inspection frameworks

Focus rights:

Article 2 - Right to life

Article 3 – Prohibition of torture & inhuman or degrading treatment or punishment

Under Articles 2 and 3 of the European Convention, public authorities are obliged to take appropriate steps to protect the lives of individuals and ensure that they do not suffer from torture or from inhuman or degrading treatment. Public institutions such as prisons and care homes are responsible for both intentional and unintentional adverse treatment that people receive whilst they are under their care and could be held liable if an incident occurs that could have been foreseen and prevented and which falls within the remit of either or both of these articles.

Regulators and inspectorates have an important role to play in ensuring that these rights are upheld. In certain circumstances they will have a legal responsibility to investigate thoroughly incidents in which these rights may have been violated. They also have a responsibility to ensure that appropriate positive steps are taken to minimise the risk of the rights being violated in the first place, for example by helping public authorities to ensure that appropriate procedures and facilities are in place.

For example, **Her Majesty's Inspectorate of Constabulary** and **Her Majesty's Inspectorate of Prisons** have worked together to develop a joint programme of inspection of police custody, based on an agreed framework. This is just one part of the joint programme of work being developed by criminal justice inspectorates. It is a programme of regular inspection, as part of the UK's obligations under the Optional Protocol to the UN Convention against Torture, which requires the regular independent inspection of all places of detention. This framework is based on the underlying principles of treating all detainees with respect whilst ensuring that they are safe from harm at all times. The framework draws on the knowledge and experiences of service users to understand what these principles mean in practice, as well as on the experience of inspectors from the healthcare, police and prison sectors.

As well as being used in inspections, the framework is being circulated to all police forces so that they can start to take active steps to ensure that the rights of people held in police custody suites are always upheld, without having to wait for inspection visits before they can begin to do so. In this way, the inspectorates are helping the police force to build effective services that protect the rights of all stakeholders, including members of the public and detainees.

Applying a human rights flowchart - next steps for using a human rights framework in your work

In order fully to capture the benefits of the human rights framework as a tool for effective regulation and inspection, it is important to build rights principles and approaches into the fabric of your organisation. Rather than simply seeing human rights as a matter of compliance, putting the needs of individuals at the heart of your organisational thinking and processes is key to achieving sustainable organisational change. The result should be one where human rights are embedded not only in its structure and policies, but also in the culture of an organisation.

To assist in this process we have developed the following flowchart (set out on page 26) to illustrate the steps that you can take within your organisation to harness the human rights framework and make it work for you. These steps start at the broad organisational level, looking at whether human rights are part of your corporate culture, including whether there is an organisational understanding of which human rights are relevant to your work and whether your own internal and external policies and procedures are compliant with human rights, and then narrow the focus down to look at how you can use the rights framework in your day to day work. If you answer 'no' to any of the questions, look at the examples contained in this handbook for ideas on how to harness the human rights framework as a positive tool. You will need to tailor this tool so that it can meet your specific needs and address the issues that you face. However, this initial ground work will yield significant benefits, helping you in your day to day work whilst also ultimately ensuring that public service users can enjoy effective services which meet their needs and uphold their fundamental rights and freedoms.

If we look at the flowchart in more detail there are a number of steps to help you harness the human rights framework as a tool for effective regulation and inspection:

Step One is to consider whether there is a clear understanding of human rights within your organisation - and in particular, whether the distinction between absolute, limited or qualified rights is understood, and whether you have a clear appreciation of the application of the Convention rights to those you regulate (see paragraph (a) on page 21). This would affect the approach you will take to any potential

breach. If you believe there is insufficient understanding of human rights that affect your working environment within your organisation, then it might be appropriate to provide training.

A good example of an integrated organisational approach to human rights practice is that of the Parliamentary and Health Service Ombudsman, who have initiated what they see as an organic process of embedding human rights principles in the organisation. This has involved training and awareness-raising around the human rights dimensions of complaints so that staff cease to be afraid of human rights or see them as legalistic. Similarly, the Healthcare Commission has employed external trainers to help staff to develop action plans for implementing the human rights framework in their work. If you have any questions or queries on design or implementation of training, the Ministry of Justice is happy to provide help and advice where possible.

Step Two is to examine, in more detail, whether your internal and external policies and procedures are sufficient to make the human rights framework operational by undertaking a policy review. This assessment of your own internal and external policies and procedures would, at the outset, include an identification of the rights that are most relevant to your particular regulatory role and deciding which are most likely to require reflections in your own policies and procedure. Following this, to establish whether your policies are compliant with human rights, you should assess whether these objectives are being met in practice and applied within your organisation. This will require attention to internal procedures that ensure appropriate scrutiny and monitoring. It might be beneficial to seek external assistance at this stage. As an extension of this, it may be useful for regulatory bodies to designate human rights champions who can act as a focus of expertise and source of support to give people the confidence to apply what they have learned in an unfamiliar environment. This could make up part of your internal challenge function, with human rights champions helping your organisation to ensure that policy and practice are in line with human rights standards and principles. The champions would in this way be able to act as a continued source of advice and support.

Step Three is for the regulator to ask whether it is applying the human rights framework in its

strategic approach as well as embedding this in the organisational culture. One way of initiating this process is to undertake an organisational human rights review or assessment, involving all staff and relevant stakeholders. This would include methods of assessment such as questionnaires and interviews with all staff members, as well as more in-depth conversations and interviews with key staff and stakeholders. This process is useful for developing a shared organisational understanding of how human rights are relevant to your specific area of work, and how you could use the human rights framework as a positive tool for effective regulation or inspection. This should help create an assessment of strategic organisational human rights, which is an accurate reflection of actual practice and attitudes within your organisation. This should also be instrumental in ensuring buy-in and engagement by staff, who are often excluded from these types of consultations. One example of such a review is the former Mental Health Act Commission's Making It Real project (see case study on page 27).

This stage, by developing an organisational understanding of the human rights framework, puts the regulator in a better position to use human rights as a positive tool for carrying out its work, not just in the narrow sense of carrying out the legal responsibilities but in the broader sense of helping public authorities design and assess standards and for building people-centred public services. Further, it enables staff and stakeholders alike to see themselves as part of the wider strategic picture and provide an understanding of how their daily contribution and interactions can contribute to the wider agenda of embedding human rights in their particular regulatory environment.

Step Four is to consider whether human rights principles are used in the day to day work of the regulator itself. The important question here is whether the human rights framework is found to be useful in the day to day interaction between regulator and staff. Perhaps, notwithstanding the overarching policy framework, staff continue to be unconvinced of the "added value" that a human rights framework can bring to their own dealings with the services they regulate. Given the fear of human rights (and particularly of human rights litigation) that can affect organisations, and the attendant publicity, this would be perfectly understandable. One response is to provide staff

training, based interactively around case studies, to demonstrate how the human rights framework could be applied. In addition there might be a role for the human rights "champions" referred to above, who can provide points of expertise and reassurance to your staff.

Step Five the final stage, requires that regulators consider carefully how utilising a human rights framework helps public services engage with service users as individuals rather than as blocks of "clients". Although apparently simple this is a significant organisational challenge. Even if the regulator believes that this is common practice, it is worth looking at best practice across the regulatory environment. Here, a hands-on approach, which puts the user at the centre, is key to engaging effectively with the user on an individual level. For example some regulators themselves have established direct links with groups of service users for purposes of consultation, to ensure that their views form a key element of how public services are managed and delivered.

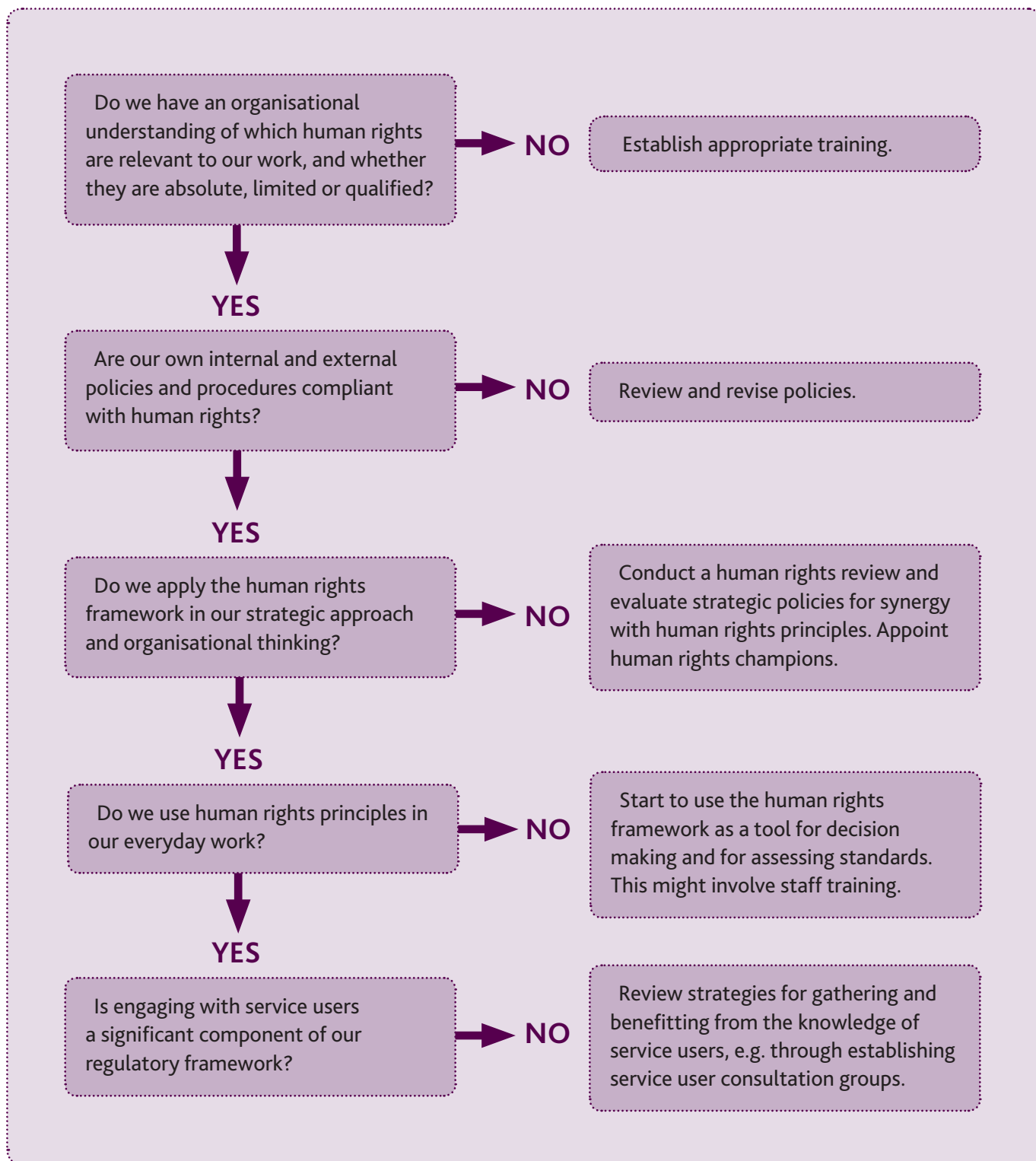


Figure 1 - A step by step process for harnessing the human rights framework as a tool for effective regulation and inspection

Case Study: Embedding human rights in organisational culture

The former **Mental Health Act Commission (MHAC)**, now part of the Care Quality Commission, launched Making It Real in January 2006, a project designed to strengthen the Commission's understanding of the relevance of human rights to its work. The project involved:

- Extensive consultation with staff, commissioners and service users about attitudes to human rights.
- Training in human rights, including a DVD to share best practice.
- The identification of opportunities to integrate a human rights approach into the Commission's work.
- Development of a human rights strategy.

As a result of the project, the MHAC and its staff have a good understanding of how human rights are relevant to the organisation, and are using its findings to bring human rights to life through its work. Initiatives have included the systematic involvement of service users in the Commission's planning, inspection and communications work through the Service User Reference Panel, and the explicit incorporation of human rights standards into inspection frameworks.

The MHAC's chairman believes that the project has yielded benefits both for service users and for the Commission itself: *"Human rights can have a real impact on the daily life of service users: they are a lever for effecting change and improvements in services for people who are less able to assert their rights or are more vulnerable, and can make a real difference to people's every day lived experience"*.

"But what this project has also shown, which I had not particularly predicted, is that a clear focus on human rights can have a positive impact on organisations themselves as well as for those who use services. A framework for human rights is potentially a powerful tool for organisational development".

Part 3

An Overview of the Human Rights Act

What is the European Convention on Human Rights?

The European Convention on Human Rights was 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 signed the Convention. Anyone who believes that a state has breached their human rights should first take every possible step to have their case resolved in the domestic courts of that state. If they are unhappy with the result 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 force in the UK in October 2000. The Act incorporated provisions contained in the European Convention on Human Rights into UK law and enabled people in the UK to take cases about their human rights to a UK court. Previously they had to take complaints about their human rights to the European Court of Human Rights in Strasbourg.

What are human rights?

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. The following is a brief outline of the human rights that are included in the Human Rights Act. For a more detailed explanation of the rights and how they apply to the work of public

authorities, see the separate handbook by the Ministry of Justice, *Human Rights: Human Lives*.

Article 1

This article is introductory and is not incorporated into 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 in self-defence.

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.

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 against them and to cases determining 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 press and public from the hearing (though not the judgment) 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 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 are qualified rights and may be limited where that is necessary to achieve a legitimate aim. The precise aims 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. National law will govern how and at what age this can take place.

Article 13

This article is procedural and is not included in the Human Rights Act.

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 personal status, unless there is an 'objective

justification' for the difference in treatment. Everyone must have equal access to the Convention rights, whatever their status.

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.

The Convention rights in more detail

This section contains a detailed explanation of what the rights protected by the Human Rights Act mean in practice for public authorities. It is important for regulators and inspectors to understand human rights so that they can uphold them directly in their own work and also help the public services that they work with to do the same.

When reading the explanations of Convention rights contained in this section, try to think about how they apply to the work that you – and those you regulate – do and how you could use the human rights framework to balance out different people's interests when you make decisions.

It is important to note that this section is not intended to be a comprehensive guide to the legal position, which will change as new cases are decided by the courts. It provides only a general introductory guide to the kinds of issues which are covered by each Article. If you require a definitive view as to the requirements of any of the Convention rights, you must take legal advice as appropriate.

Article 2: Right to life

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 its citizens. However, there are three very limited circumstances when taking life may not contravene Article 2:

- when **defending** oneself or someone else 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 absolutely necessary, which 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 illegal under a state's law.
- 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.

Public safety

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 safeguard the lives of its citizens. 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), 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. In particular the rights in Articles 8 to 11 can be restricted where it is necessary and proportionate to do so in order to protect public safety.

Is Article 2 relevant to my work?

Article 2 will be relevant particularly if you, or the public services that you work with, are involved in any of the following:

- policy decisions that may affect someone's right to life
- care for other people or protecting them from danger
- investigation of deaths
- use of the power of arrest
- work with police officers, prison officers or parole officers
- 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 care of a person, for example by putting them in prison or placing them in a home, then it must take appropriate steps to safeguard the life of that person.
- The protection of the right to life also means that there should be an effective official investigation into deaths resulting from the use of force by a public authority. This duty to investigate may also be triggered in other situations where there has been a suspicious or unlawful killing.
- 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 may in certain circumstances be an obligation to take certain 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 3: Prohibition of torture

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.

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, 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.

Is Article 3 relevant to my work?

Article 3 will be relevant particularly if you, or the public services that you work with, are involved with any of the following:

- caring for other people
- detaining people or looking after those in detention
- removing, extraditing or deporting people from the UK
- working in a place where someone may be inadvertently placed in a humiliating position, for example in nursing homes or hospitals.

What must a public authority do?

- There is a negative obligation to refrain from subjecting people to torture or to inhuman or degrading treatment or punishment. But in some cases this may necessitate the application of extra resources in order to prevent inhuman or degrading treatment.
- There is a positive obligation on public authorities to 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.
- There is an obligation not to expose a person 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.
- There is a positive obligation on states to investigate any allegations of torture or of inhuman or degrading treatment or punishment.

Article 4: prohibition of slavery and forced labour

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:

- 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
- any work that forms part of a normal civic obligation (for example compulsory fire service, or maintaining a building if you are a landlord).

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 under the menace of a penalty. This covers all kinds of work and services and the interpretation of penalty is wide.

Is Article 4 relevant to my work?

Article 4 will be relevant particularly if you, or the public services that you work with:

- suspect that someone is being forced to work without suitable recompense
- have powers to make people work in an emergency.

Article 4 in practice: What must a public authority 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.

Article 5: Right to liberty and security

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' arbitrarily (although it has been held

not to apply to stopping someone to search them, for example). 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 competent 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 shown to be of unsound mind, an alcoholic, a drug addict or a vagrant, 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 concerns 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 also applies to any detention (e.g. compulsory detention of mental 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' or to be released pending trial
- 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 they are 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, or the public services that you work with, 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 you are dealing 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 his 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 6: Right to a fair 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 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 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. But that is not the end of the matter. 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. You must also consider 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 a '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 though it is not part of the criminal law in the UK.

What is a 'civil right or obligation'?

Civil rights and obligations cover some rights and obligations that are recognised in UK law, for example contractual rights or property rights etc. Again, UK law is not conclusive of the matter because 'civil rights or obligations' has its own special meaning under Article 6. It is not confined to traditional private law rights, recognised as such in domestic law, but extends to rights and obligations of a 'civil character'. Where the content and effect of a domestic law right are of a predominantly personal, private or economic nature, the right will usually be a 'civil right' for the purposes of Article 6.

What sort of cases fall outside Article 6?

Article 6 does not always cover disputes under immigration legislation, or concerning extradition, tax, or voting rights. These will often fall outside the scope of Article 6 altogether.

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 (particularly if you are dealing with a 'civil right or obligation') 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 in every civil case involving a person who cannot afford to bring proceedings. However, legal aid may be required by Article 6 in some civil cases, for example in cases or proceedings that are very complex, or in circumstances where a person is required to have a lawyer representing them.

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.

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 executive, of the legislature and 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 very 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 is a fair and impartial tribunal for the purposes of Article 6 is therefore a developing and complex area,

about which you might need specialist advice.

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 both sides
- the conduct and diligence of the court. Inadequacy of resources (for example social workers or judges) is not an excuse for excessive delay.

Additional rights in a criminal trial

These include:

- 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 by failing to attend, having been given effective notice of the hearing, but if he does so the court may continue with the trial and will not necessarily have breached Article 6 in doing so
- 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 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 to be informed promptly of the details of the accusation made against them and in a language they can understand
- 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 question prosecution witnesses and to call and examine defence witnesses under the same conditions
- the right of the defendant to defend themselves or the right to effective legal assistance (which must be funded by legal aid if the defendant cannot

afford it and it is in the interests of justice for them to have assistance)

- the right to a free interpreter where the accused cannot understand or speak the language used.

Is Article 6 relevant to my work?

Article 6 will be relevant particularly if you, or the public services that you work with, 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
- regulation of permission to undertake certain types of employment.

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.
- Ensure that any appeal process is readily available, fair and easily understood.
- Ensure that adequate time and facilities are given to prepare a defence or an appeal.

Article 7: No punishment without law

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, or the public services you work with, 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.

Qualified rights: Articles 8 to 11

Article 8: Right to respect for private and family life

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 not do more than is needed to achieve the aim desired.

Key words and meanings

Private life – The concept of 'private life' is broad. In general, the right to a private life means that a person has the right 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. Any interference with a person's body or the way the person lives their life is likely to affect their right to respect for their private life under Article 8. Article 8 rights encompass matters of self-determination that may include, for example:

- freedom to choose one's own sexual identity
- freedom to choose how one looks and dresses
- freedom from intrusion by the media.

The right to private life can also include the right to have personal information, such as a person's official records, photographs, letters, diaries and medical information, 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 respect for their private life under Article 8. Unless there is a very good reason, public authorities should not collect or use information like this; if they do, they need to make sure the information is accurate. Of course, they must also comply with data protection legislation.

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. 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 that defined as 'the nuclear family'. As such, it can include the relationship between an unmarried couple, an adopted child and the adoptive parent, or a foster parent and fostered child.

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. This 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. A person's 'home' may include their place of business. A person does not have to own their home to enjoy these rights.

Correspondence – Again, the definition of 'correspondence' is broad, and can include communication by letter, telephone, fax or e-mail.

Is Article 8 relevant to my work?

Article 8 will be relevant particularly if you, or the public services you work with, 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
- immigration and asylum
- handling environmental issues, such as waste management or pollution
- provision of medical treatment 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 and 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 is necessary to interfere with someone's Article 8 rights, it will need to make sure that the policy or action is in accordance with law, 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 8 in practice

Balancing – Article 8 is one of the Convention rights that may require you to strike a balance between a person's private rights and the needs of other people or society as a whole.

The right to respect for a person's private and family life, their home and their correspondence under Article 8 also raises issues in areas such as:

- 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
- the rights of homosexuals (there have also been recent developments in domestic law in this area, such as the Employment Equality (Sexual Orientation) Regulations 2003)
- the rights of transgender people (which are given effect in domestic law by the Gender Recognition Act 2004)

- certain aspects of the rights of prisoners
- employees' privacy, including the monitoring of e-mails and telephone calls
- the imposition of unreasonable mandatory dress codes or drug testing at work
- the use of CCTV and exchange of data obtained from it
- the 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 9: Freedom of thought, conscience and religion**What does this right mean?**

Article 9 protects people's rights in relation to a broad range of views, beliefs, thoughts and positions of conscience as well as to their faith in a particular religion.

The state is never permitted to interfere with a person's right to hold a particular belief. It can only restrict their right to manifest a belief (for example, worshipping, teaching, practising and observing their belief either in public or in private). However, the state would have to show that such interference has a proper legal basis, is necessary in a democratic society and pursues one of the following recognised legitimate aims:

- public safety
- the protection of public order, 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.

Is Article 9 relevant to my work?

Article 9 will be relevant particularly if you, or the public services that you work with, are involved in any of the following:

- taking decisions that may conflict with someone's religious beliefs, for example timetabling an examination on a religious holiday
- detaining or accommodating a person. You must take care to ensure that any interference with their freedom to manifest religious beliefs is proportionate
- situations where religious organisations provide a service to others.

What must a public authority do?

- Always be alert to policies or actions that might interfere with a person's right to manifest their religion or belief.
- Where possible, a public authority should try to ensure that its policies or decisions do not interfere with someone's right to manifest their religion or belief.
- If a public authority does decide that it is necessary to interfere with someone's right to manifest their religion or belief, it will need to make sure that the policy or action is in accordance with law, 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 9 in practice

Article 9 is one of the Convention rights that may require you (in relation to the manifestation of beliefs) to strike a balance between a person's rights and the needs of other individuals or society as a whole.

Under the Human Rights Act the right to freedom of belief under Article 9 may be relevant to areas such as:

- the actions of employers and schools to accommodate the Article 9 rights of their employees and pupils, which may include issues relating to time off for religious holidays, uniforms and so on
- the arrangements made to ensure prisoners can practise their religion
- how far people can go in trying to encourage others to convert to their religion.

Article 10: Freedom of expression

What does this right mean?

Everyone has the right to hold opinions, and to receive and impart information and ideas without interference by a public authority and regardless of frontiers.

However, the Article does not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

The right 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, territorial integrity or public safety
- 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.

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, or the public services that you work with, 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 in

accordance with law, 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, industrial action and 'whistle-blowing' employees. It has also been very important for the media. The press's rights under Article 10 have come into conflict with celebrities' rights to respect for private life 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.

Article 11: Freedom of assembly and association

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, or the public services that you work with, 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 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 in accordance with law, 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 reasonable aim of democratic society for these people to be politically neutral, and thus restricted from being closely associated with a particular political cause.

Article 12: Right to marry

What does this right mean?

Men and women have the right to marry and found a family provided they are both of marriageable age, and marriage between two individuals is permitted in national law. This final requirement gives authorities flexibility when placing limitations on marriage. However, the state must not impose limitations which impair the very essence of the right.

Is Article 12 relevant to my work?

Article 12 will be relevant particularly if you, or the public services that you work with, are involved in any of the following:

- registering marriages
- making decisions on fertility treatment.

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 or found a family, then it must be particularly careful to ensure that the decision is in accordance with the relevant national law.

Article 12 in practice

Transgender people – In the case of *Goodwin v UK*, the European Court of Human Rights interpreted Article 12 as providing postoperative transsexual people with the right to marry in their acquired gender. The Gender Recognition Act now allows transgender 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.

Article 14 Prohibition of discrimination

What does this right mean?

Discrimination means treating people differently, without an objective and reasonable justification, on certain prohibited grounds (this is known as direct discrimination). It can also cover situations where the same rule applies to everyone but in practice has greater impact on one particular group (this is known as indirect discrimination). Article 14 of the European Convention on Human Rights gives people the right to protection from 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 (though some of those areas are of course protected separately by anti-discrimination law which covers, for example, the pay and treatment of employees and the provision of services or public functions). The structure of Article 14 means that a person needs to be able to

identify another Convention right in order to make use of the non-discrimination protection. However, that person does not need to identify an actual breach of the right to claim that he or she has been discriminated against with respect to their enjoyment of it. 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 other types of personal status, for example:

- sexual orientation
- whether you were born inside or outside a marriage
- disability
- marital status
- age.

Is differential treatment ever acceptable?

Differential treatment may be acceptable in some circumstances. A public authority is entitled to treat people differently if there is a relevant difference in their situation, provided it is not one of the prohibited grounds above. For example it is lawful to impose a punishment only on people who have been found guilty of a criminal or disciplinary offence, because committing an offence is not one of the protected grounds; it is not a personal status but a historical fact. Similarly it may be legitimate for a public authority to make decisions about the medical treatment which is made available to someone based on a person's medical condition, whereas a decision based on their age could be challenged under Article 14. (This is a complex issue, however, since Article 14 also covers

indirect discrimination. So for example a decision taken on the basis of a person's dietary needs – not in itself a prohibited ground – could be challenged if it is shown to have a significantly greater impact on a particular group defined by reference to their religion – since this would be a prohibited ground.)

Where the only difference between people is one of the prohibited grounds, a public authority can still treat them differently in a way which is connected with their Convention rights if it can show that it is pursuing a legitimate aim and that the discriminatory treatment is proportionate to the aim. Only good reasons will suffice, especially where the difference in treatment is proportionate to the aim. This is known as justification. Particularly weighty reasons will be required for discrimination on one of the core grounds which a person cannot change, such as their sex, race or sexual orientation.

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 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.

Is Article 14 relevant to my work?

Article 14 will be relevant wherever any of the other Convention rights is 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, there must be an objective and reasonable justification for the discrimination.
- A public authority may be asked to produce reasons for its decisions.

Article 14 in practice

Positive discrimination occurs when a disadvantaged group is treated more favourably in order to assist them in redressing an existing situation of inequality. Such treatment will still amount to a breach of Article 14, unless a legitimate aim can be demonstrated.

Indirect discrimination occurs when a rule that applies equally to everyone results in a disproportionate disadvantage to a particular group, for example a requirement that a job holder must be over six feet tall would exclude more women than men, even though it might be possible for someone below six feet to do the job perfectly well.

Protocol 1, Article 1: Protection of property

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, or the public services that you work with, 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 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 2: Right to education

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. The Government has made a special reservation to the Convention in this area so that education provided by the state is limited to the extent that this is compatible with the need to provide an efficient education and the need to avoid unreasonable public expenditure. This means that a person may not have a right to the most expensive form of education if there are cheaper alternatives available, therefore the Government or local education authority must balance the right not to be deprived of an education against the spending limits it imposes. The Government has stressed that the cost of providing education is a relevant factor in making these decisions.

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.

In a recent case it was also held that the duty under Protocol 1, Article 2 is imposed on the state and not on any particular domestic institution. It does not create a right to be educated in a particular school or a particular manner. Thus, 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.

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, or the public services that you work with, are involved in any of the following:

- teaching or school administration
- providing non-school-based education
- education policy
- provision of funding for schools or other forms of education.

Protocol 1, Article 2 in practice: 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 3: Right to free elections

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. 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, or the public services that you work with, 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.

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. This means that it is unlawful for a public authority to act in a way that is incompatible with a Convention right. A person who feels that one or more of their rights has been breached by a public authority can raise that human rights 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, they may take their complaint to the European Court of Human Rights, an institution set up by the Convention 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. The Human Rights Act should 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 says that persons carrying out certain functions of a public nature will fall within the definition of a public authority. The courts are still deciding exactly what this means. The following are core public authorities which are subject to the Human Rights Act in respect of everything they do:

- central government
- courts and tribunals

- local government
- planning inspectorate
- executive agencies
- police, prison and immigration services
- statutory regulatory bodies
- state schools
- NHS Trusts.

There is also a second category, known as functional or hybrid public authorities, which are subject to the Human Rights Act only when they are exercising a function of a public nature, but not when they are doing something private in nature. So, for example, a private security company is subject to the Human Rights Act when running a private prison on behalf of the Government, but not when it is transporting money for a private bank. The list is not exhaustive. 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.

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. Therefore it is possible for new legislation to be incompatible.

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. This is explained in greater detail in Part 3 of this guide.

Who can bring a case under the Human Rights Act?

Any 'victim' 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.

Is any other guidance on the Human Rights Act available?

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

- *Human Rights: Human Lives – a handbook for public authorities*, produced by the Ministry of Justice. This handbook provides a detailed explanation of

human rights and explores how they are relevant to public authorities. You can download the handbook at: <http://www.justice.gov.uk/docs/hr-handbook-public-authorities.pdf>

- *Guide to the Human Rights Act 1998: Third Edition* produced by the Ministry of Justice, formerly the Department for Constitutional Affairs, available for download on our website: <http://www.justice.gov.uk/docs/act-studyguide.pdf>
- You will also find human rights guides in most bookshops. One such publication is the *Human Rights Toolkit*, by Jenny Watson and Mitchell Woolf, published by the Legal Action Group. This provides a more detailed practical guide to the Human Rights Act and its impact on public authorities.
- At page 50 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 2nd 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 3 of this handbook.

The Convention:

The European Convention on Human Rights and Fundamental Freedoms. Treaty of the Council of Europe that came into force 3rd September 1953. Signed by the UK on 4th November 1950. Ratified by the UK on 8th 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 inspectorate
- executive agencies
- police, prison and immigration services
- statutory regulatory bodies
- state schools
- 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.

Where to go for further information

Publications

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

- *Human Rights: Human Lives – a handbook for public authorities*, produced by the Ministry of Justice. This handbook provides a detailed explanation of human rights and explores how they are relevant to public authorities. You can download the handbook at: <http://www.justice.gov.uk/docs/hr-handbook-public-authorities.pdf>
- *Guide to the Human Rights Act 1998 (Third Edition)*, produced by the Ministry of Justice, formerly the Department for Constitutional Affairs, available for download at: <http://www.justice.gov.uk/docs/act-studyguide.pdf>
- You will also find human rights guides in most bookshops. One such publication is the Human Rights Toolkit, by Jenny Watson and Mitchell Woolf, published by the Legal Action Group. This provides a more detailed practical guide to the Human Rights Act and its impact on public authorities.

Organisations

Ministry of Justice
Human Rights Division
102 Petty France
London, SW1H 9AJ

Tel: 020 3334 3734

E-mail: humanrights@justice.gsi.gov.uk

The Equality and Human Rights Commission

3 More London,
Riverside Tooley Street,
London, SE1 2RG

Tel: 0845 604 6610 (England)

0845 604 5510 (Scotland)

0845 604 8810 (Wales)

E-mail: info@equalityhumanrights.com

The British Institute of Human Rights

The Law School
King's College London
26–29 Drury Lane
London, WC2B 5RL

Tel: 020 7848 1818

E-mail: admin@bihr.org

Useful websites

Ministry of Justice: www.justice.gov.uk/guidance/humanrights.htm

Equality and Human Rights Commission: www.equalityhumanrights.com

The British Institute of Human Rights: www.bihhr.org

European Court of Human Rights: www.echr.coe.int/
echr. Here you can use HUDOC to search for case law of this court.

Joint Committee on Human Rights (Houses of Parliament): www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm

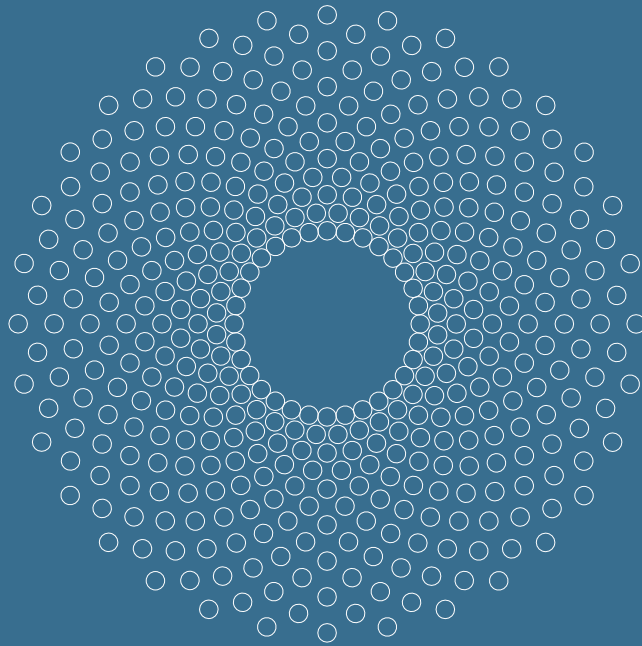
Liberty: www.liberty-human-rights.org.uk

Justice: www.justice.org.uk

See the case sheets at the NHSLA site: www.nhsla.com/Publications

United Nations: www.un.org
<http://www.un.org/disabilities>

Better Regulation Executive - link to their Principles of Good Regulation: <http://www.berr.gov.uk/whatwedo/bre/consultation%20guidance/page44482.html>



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