

Our Human Rights Act Frequently Asked Questions



HUMAN RIGHTS

What are human rights?

Where does the Human Rights Act come from?

What is the Human Rights Act?

How does the Human Rights Act work across the UK?

Why do we need a Human Rights Act?

Who does the Human Rights Act protect?

Who has duties under the Human Rights Act?

What are the duties under the Human Rights Act?

What human rights do I have?

What is the most important human right?

How does the Human Rights Act work with other laws?

What does the Human Rights Act mean for Parliament?

How is the Human Rights Act used in the courts?

Does the Human Rights Act protect us all the time?

What's the difference between the Human Rights Act and the Equality Act?

Did Brexit change our human rights?

How can I use the Human Rights Act?

What happens if my human rights are breached?

What is happening with the Human Rights Act?

What can I do to stop the Government changing the Human Rights Act?



Our Human Rights Act Frequently Asked Questions

What are human rights?

Human rights are the rights we are all entitled to simply because we are human. These rights ensure that we are all treated with dignity, respect and without discrimination. They also ensure that we are listened to and that when we're interacting with public services, we can have a say over decisions that affect us.

Human rights are based on values such as fairness, respect, equality and dignity. However, they are more than values or principles, human rights are protected in law. After the horrors of World War II, it was recognised that whilst democracy is a partial check on power, it is not enough. The international community came together to agree on the Universal Declaration of Human Rights (UDHR) in 1948. The UDHR set minimum standards that protect everyone. This provides a way of ensuring that never again can an elected government decide who matters and who does not. This is the foundation for all human rights law, including the European Convention on Human Rights (ECHR) and our Human Rights Act which is our law here in the UK.

Where does the Human Rights Act come from?

The Human Rights Act (HRA) is based on the European Convention of Human Rights (ECHR) which the UK helped to write. The Convention was created by the Council of Europe in 1950, to protect human rights and the rule of law and to promote democracy across Europe. The ECHR protects the rights of people in countries that belong to the Council of Europe. The UK, alongside 46 other countries, have signed the ECHR which means people in the UK are protected by it and can take a case to the European Court of Human Rights in Strasbourg in France. The UK was one of the first states to sign the ECHR.

The HRA came after the ECHR, in 1998, it aimed to "bring rights closer to home". It does this by taking 16 of the fundamental human rights in the ECHR and putting them into our law here in the UK. This means that since the HRA was passed, people living in the UK can take a human rights case to court here rather than having to go to Strasbourg. However, it's still important that we have access to justice in Strasbourg should a person not be satisfied with the decision of UK courts. The HRA was passed with cross-party support by the UK Parliament in 1998. This means that it does not belong to any one political party.

What is the Human Rights Act?

The Human Rights Act (HRA) is the main law in the UK which exists to ensure that everyone's rights are respected here at home. It means that 16 of the fundamental rights contained in the European Convention on Human Rights (ECHR) are now in our law across the UK. The ECHR and the HRA set out a rule book for how the state (including local authorities, government departments, the police and the NHS) must treat individuals.

The HRA is the main human rights protection in the UK. It is important because it places duties on public bodies to respect and protect rights in everything they do. This means that when interacting with public bodies, people can expect to have their rights protected and if they don't, they can challenge this. This transforms public authorities into duty-bearers and individuals into rights-holders. The HRA creates a vital safety net for us all, especially when we are in vulnerable positions, for example when we need care, support or housing.

How does the Human Rights Act work across the UK?

The Human Rights Act (HRA) applies across the UK. The rights within the HRA, brought into UK law from the European Convention on Human Rights (ECHR), are interwoven into the devolution arrangements in Northern Ireland, Scotland and Wales. The Scotland Act 1998, the Wales Act 1998 and the Northern Ireland Act 1998 (which is part of an international peace process) established devolved legislatures and administrations. Each devolved nation has a range of issues for which it is responsible, many of which impact on human rights.

All the devolution arrangements prevent the parliaments and assemblies in devolved nations from passing laws which may be incompatible with Convention rights, as set out in the HRA. If a court in the devolved nations finds a law to be incompatible with human rights, it can be disapplied, because such a law would be outside the powers delegated to those bodies ("ultra vires"). This is not the same for UK Parliament which is sovereign. The mechanisms in the HRA and its position in devolution arrangements are part of what makes it such an innovative, distinct piece of legislation. In devolved nations, like Scotland, the HRA is a crucial building block for increased rights protections.

[You can watch a video about how the HRA works in Scotland by the Scottish Human Rights Commission here.](#)



Why do we need a Human Rights Act?

When the Human Rights Act (HRA) was created in 1998, there were two main purposes. The first aim was to “bring rights home”. Before the HRA, any legal cases using human rights would need to be taken to the European Court of Human Rights in Strasbourg, France. There are 46 states signed up to the European Convention on Human Rights, with approximately 675 million people who live across these countries. This means that it took a very long time for the European Court of Human Rights in Strasbourg to hear cases. It is also expensive to take a legal case to Strasbourg. Therefore, before the HRA, enforcing human rights using the legal system was inaccessible for many people.

The second purpose of the HRA was to create a culture of respect for human rights. This means that human rights should become a reference point for dealing with public authorities. It means that decision makers in public services should use human rights in making policy and decisions, to ensure that human rights are considered in everything they do, every day. We know through our work with public authorities that knowledge of human rights helps to create ‘light bulb moments’, when people make the connection between human rights and their practice. In this way, the HRA is a practical tool to support public authorities in their work.

Who does the Human Rights Act protect?

The Human Rights Act (HRA) protects everybody in the UK, and the rights contained in the Act belong to everyone in the UK. This is a key feature of human rights- they are universal and apply to everyone. They are not gifts from the government or rewards that you earn. You do not need to be a UK citizen to have these rights under the HRA. The rights in the HRA are there for everyone; they act as a safety net and offer protection for those in vulnerable situations.

The starting point for human rights is the same for everyone, no matter who they are. For some people however, this may require more action from the state or public authorities to realise the rights in the HRA. The HRA encourages an individualised approach which means that realising human rights may mean different things to different people.



Who has duties under the Human Rights Act?

Section 6 of our Human Rights Act (HRA) puts a legal duty on all “public authorities”, and their employees. There are two different types of “public authority” that must respect our human rights:

1. **‘Core’ public authorities:** these are bodies typically seen as public, for example, local authorities, emergency services, NHS, regulators, public education providers, and Government Departments, as well as courts and tribunals.
2. **‘Hybrid’ public authorities:** these are other bodies (for example private companies and charities) who must only follow the HRA when they are doing things which are “of a public nature”. This means that they are doing something which would typically be done by a core public body, such as a private company running a prison.

The duties under the HRA can be shared. This means that a variety of public authorities may have overlapping duties for an individual.

What are the duties under the Human Rights Act?

The Human Rights Act (HRA) places a duty on public authorities to respect, protect and fulfil our human rights across their actions, decisions, policies and services.

The duty to **respect** people’s human rights mean that public authorities must not restrict them or try to breach them. This is known as a negative duty. It means that staff should avoid interfering with someone’s rights unless it is absolutely necessary to protect that person or others from harm.

The duty to **protect** people’s human rights means that by law, public authorities must step in and take positive action to protect people from harm. This is known as a positive obligation. It could involve protecting a person from harm by another, non-official person, for example a family member or carer. This duty is usually called safeguarding. It could occur in domestic abuse cases, where the police are aware of what is happening but fail to step in and prevent any further harm from occurring.

The duty to **fulfil** people’s human rights means investigating when things have gone wrong and putting measures in place to stop it from happening again. This is also known as a procedural duty. It means that public authorities should take steps to strengthen access to and realise human rights. This was the duty used by the Hillsborough families to get justice through an inquest.

These duties apply to all the rights in the HRA. The public authorities that we work with tell us that they do not see these duties as a burden, but rather as an important tool to help them make rights-respecting decisions.

What human rights do I have?

There are 16 rights in the Human Rights Act. These cover things like the right to life and the right to education. You can read more about these rights here.

We call these 16 rights Articles. This is because that is what they are called in the European Convention of Human Rights.

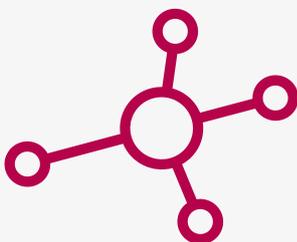
Some of these rights are absolute. This means that they can never be lawfully restricted. These rights are things like the right not to be tortured or treated in an inhuman or degrading way and the right to a fair trial.

Other rights can be restricted, but only if certain requirements are met. These are called non-absolute rights. These requirements are known as the three-stage test. These are rights such as the right to private and family life and the right to freedom of expression. For a restriction on a non-absolute right to be allowed, the restriction must be lawful, legitimate and proportionate. This means that there must be:

- a law which allows the measure, for example mental health or capacity legislation can allow for restrictions on a person's liberty. All of the safeguards within the law used must be met for it to be lawful.
- there must be a legitimate reason for the measure, for example, public health.
- Finally, the measure taken must be the least restrictive option. This is proportionality and involves considering the individual and their circumstances. You can read more about proportionality here.

What is the most important human right?

There is no hierarchy of rights in the Human Rights Act. All the rights are equally as important as they all relate to the inherent values of human dignity, fairness and respect. The rights also work together. For example, the right to be free from inhuman and degrading treatment (also known as Article 3) has a very high threshold which requires the impact of an action by the state to be very serious to be a breach of this right. Any acts which have a less severe impact are therefore not covered by Article 3 but may instead be covered by the right to wellbeing under the right to private and family life (also known as Article 8).



How does the Human Rights Act work with other laws?

Section 3 of the Human Rights Act (HRA) means that any laws in the UK (this includes legislation, but also regulation and statutory instruments) must be read and applied in a way which is compatible with the rights in the Act (which come from the European Convention on Human Rights), as far as it is possible to do so. In this way, the HRA operates as a foundation law. This means that all other laws, policy and practice must be compatible with human rights. This also means that it should be interpreted and applied in a way that upholds human rights as far as possible. The HRA can be used as a lens in which to view all other laws and policy. It means that other laws, for example mental health legislation, cannot be applied in a way that is incompatible with the HRA.

Section 3 an important tool for public officials to use to make rights-respecting decisions. If public officials apply other laws in a way that respects human rights in the first place, this improves decision-making. This reduces the need for people to take legal cases to courts to challenge decisions which do not respect human rights.

What does the Human Rights Act mean for Parliament?

The UK Parliament is sovereign; this means that Parliament can create or get rid of any law. It also means that courts cannot overrule Parliament and that Parliament cannot pass any laws which future parliaments cannot change.

[You can read more about parliamentary sovereignty here.](#)



The Human Rights Act (HRA) does not make Parliament less powerful. Section 19 of the HRA requires the Government to make an advisory statement on whether any laws they are proposing to Parliament are compatible with the rights in the HRA. This means that the Government can say that a proposed law is not compatible with human rights but Parliament could still pass this law.

This is not the same for devolved parliaments and assemblies. The devolution arrangements prevent the parliaments/assemblies in devolved nations from passing laws which may be incompatible with Convention rights, as set out in the HRA. If a court in the devolved nations finds a law to be incompatible with human rights, it can be disapplied, because such a law would be outside the powers delegated to those bodies (“ultra vires”).

How is the Human Rights Act used in courts?

Section 3 of the Human Rights Act (HRA) means that any laws in the UK (this includes legislation, but also regulations and statutory instruments) must be read and applied in a way which is compatible with the rights in the Act (which come from the European Convention of Human Rights), as far as it is possible to do so. This allows courts to interpret legislation in a way that is compatible with human rights, in cases where the ordinary, unambiguous meaning would result in a breach of human rights. The HRA was carefully written to make sure that the UK Parliament always has the last say; Section 3 does not mean that the courts can overturn or change laws (Acts) passed by Parliament.

Under Section 3, courts can only make interpretations that are rights-respecting where these are possible without changing the meaning of the law. Courts cannot change or disapply laws that are not rights-respecting.

Under Section 4 of the HRA, if a court decides the Human Rights Act has not been followed or if a law passed by Parliament does not support the rights in the Human Rights Act then the courts can issue a Declaration of Incompatibility. This is the court saying that it believes that a particular law is not compatible with the rights in the HRA. This does not automatically change the law. Instead, it is the responsibility of Parliament to decide whether to change the law or not.

This is not the same in the devolved nations. If a court in the devolved nations finds a law to be incompatible with the HRA, it can be disapplied, because such a law would be outside the powers delegated to the devolved parliaments and assemblies (“ultra vires”).

Does the Human Rights Act protect us all the time?

The Human Rights Act (HRA) applies all the time. This includes during times of war and times of national emergencies. This means that, regardless of external circumstances, public authorities still have the duties to **respect, protect** and **fulfil** human rights.

For example, any measures taken or decisions made during the Covid-19 pandemic still had to meet the obligations under the HRA. This doesn't mean that we have the same level of rights, all the time. Some rights can be restricted, for instance in order to protect public health or national security. These rights can only be limited if they meet the three stage test of the restriction being **lawful, legitimate** and **proportionate**. During the Covid-19 pandemic, there were various policies restricting visitation in care homes. This was a limitation on care home residents' Article 8 right to private and family life. To ensure they were rights-respecting under the HRA, these visitation policies needed to be **lawful, legitimate** and **proportionate**. Other rights can never be restricted, which means that there is never any lawful reason to restrict the right, no matter what the external circumstances are.

What's the difference between the Human Rights Act and the Equality Act?

Both the Human Rights Act (HRA) and the Equality Act provide protection against discrimination but in different ways. The Equality Act prohibits discrimination on 9 grounds, called protected characteristics. These are: age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, sex and sexual orientation. The Equality Act protects against discrimination on these 9 grounds from public authorities but also from private bodies, like businesses or organisations which provide goods and services.

Article 14 of the HRA also prohibits discrimination. This right is known as a piggy-back right, which means that it only applies if one of the other 16 rights under the HRA also applies. This means that the right to non-discrimination can only be raised if one of your other rights are at risk. Like the other rights in the HRA, Article 14 only places duties on public authorities, including 'hybrid' public authorities.

Unlike the Equality Act, Article 14 of the HRA does not have a set list of reasons you may be discriminated against. Article 14 is open-ended because it says "or other status", which courts have decided includes age, gender identity, sexual orientation, health and disability, parental and marital status and immigration status. Under Article 14, you can also be discriminated against for a combination of reasons, for example if you are a black, disabled and a woman.

Did Brexit change our human rights?

Brexit was the name given to the process of the UK leaving the European Union (EU). Our human rights in the Human Rights Act (HRA) come from the European Convention of Human Rights (ECHR), which is a treaty by the Council of Europe. These are two different and separate organisations. Although the UK has left the EU, we are still a member of the Council of Europe. This means that we have the same rights as we did before Brexit. Leaving the EU did not impact our rights under the HRA and the ECHR.

How can I use the Human Rights Act?

The Human Rights Act (HRA) can be used in courts but the main way it is used is every day, outside of the courtroom. The HRA means that we can speak up about our human rights which should be respected and protected. It also means that we can talk to services about whether they are meeting their legal duty to respect, protect and fulfil human rights. Finally, the HRA can be used to work with services to find better solutions without the need to go to a court or a use a lawyer. At BIHR, we hear about the HRA being used in this way all the time. [You can read some real life stories about how the Human Rights Act is used here.](#)

Please note that BIHR does not provide advice or casework. If you are an individual seeking advice and support about a human rights issue, [these organisations may be able to help you.](#)

What happens if my human rights are breached?

If your human rights are breached, as a rights-holder under the Human Rights Act (HRA), you can ask public authorities (or duty-bearers) to meet their duties to **respect**, **protect** and **fulfil** your rights. This includes properly investigating when something has gone wrong and putting in place measures to stop it from happening again. Using the language of human rights can help give you confidence to stand up for your rights and have a better experience when interacting with public services.

In some cases, the HRA can be used in court if a public authority does not take action after the situation has been raised with them.

Please note that BIHR does not provide advice or casework. If you are an individual seeking advice and support about a human rights issue, [these organisations may be able to help you.](#)

What is happening to the Human Rights Act?

In December 2020, the Government set up an independent Panel to review how the Human Rights Act (HRA) was working. This Panel wrote a report on their findings in October 2021 and submitted it to the Government.

On 14th December 2021, the Government published the Panel's report. The main finding was that the HRA works well but that there needs to be more education and awareness about it. On this same day, the Government also announced a consultation with their suggestions of ways to change the HRA and replace it with a Bill of Rights.

This consultation closed on 8th March 2022 for most people and 19th April 2022 for those who needed to use the Easy Read or audio versions of the document. Next, the Government may announce a Bill to replace the Human Rights Act. You can read our concerns about these changes in [our response to the consultation.](#)

What can I do to stop the Government changing the Human Rights Act?

The consultation to reform the Human Rights Act closed on 19th April 2022. We are now waiting to see what the Government's next steps will be.

To find out about any updates, you can [join our campaign list here](#).

You can also brush up on your human rights knowledge by attending [our online event on Thursday 12th May](#).



Have a question that hasn't been answered ?

Submit your questions and come along to our Lunch and Learn series to hear the answers.

[Find out more here](#)

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