



## LESSON 2

### BACKGROUND INFORMATION FOR TEACHERS

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#### THE HUMAN RIGHTS ACT

The UK Government introduced The Human Rights Act 1998 with two main aims:

- To bring the human rights contained in the European Convention on Human Rights into UK law. This makes it possible for people to raise or claim their human rights within complaints and legal systems in the UK. The Human Rights Act therefore makes human rights more accessible – it is generally quicker, cheaper and more practical to bring a case before the UK courts.
- To bring about a new culture of respect for human rights in the UK. Human rights are not just about the law and taking cases to court. They are relevant to many of the decisions people make and the situations people experience on a daily basis. The government intended the Human Rights Act to place human rights at the heart of the way public services are delivered and ensure that people making decisions considered any impact that those decisions would have on people's human rights.

'[A culture of respect for human rights would exist when] ... there is a widely-shared sense of entitlement to these rights, of personal responsibility and of respect for the rights of others, and when this influence[s] all our institutional policies and practices.'

*Joint Committee on Human Rights, UK Parliament*

The Human Rights Act has a real application in our everyday lives in the UK. It has been used to protect older people who are being abused in care homes, to ensure that disabled children are provided with transport to get to school, and to protect women from domestic violence. The significance of the Human Rights Act is not restricted to decisions about individuals; it has been used to support policymaking and practice at an institutional level and can be applied to broader areas of society such as civic participation, involvement and community development.

#### THE RIGHTS CONTAINED IN THE HUMAN RIGHTS ACT

- The right to life
- The right not to be tortured or treated in an inhuman or degrading way
- The right to be free from slavery or forced labour
- The right to liberty
- The right to a fair trial
- The right to no punishment without law
- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression

- The right to freedom of assembly and association
- The right to marry and found a family
- The right not to be discriminated against in relation to any of the rights contained in the European Convention on Human Rights
- The right to peaceful enjoyment of possessions
- The right to education
- The right to free elections
- Abolition of the death penalty

## HOW THE HUMAN RIGHTS ACT WORKS

The Human Rights Act works in four main ways.

- All public authorities in the UK, including state schools, must respect the rights contained in the Human Rights Act in everything that they do. Public authorities are not just under a duty not to commit human rights abuses – sometimes public authorities have to be proactive in ensuring that human rights are respected, protected and fulfilled.
- Anyone who believes that their rights have been breached by a public authority can bring a claim against it. This can be in the UK courts, or in a range of other procedures including tribunals, hearings and complaints procedures. Anyone in the UK can bring a claim under the Human Rights Act – the Act is not limited to UK citizens.
- Wherever possible, existing laws have to be interpreted and applied in a way that fits with the human rights contained in the Human Rights Act. If it is impossible to interpret an existing piece of primary legislation in this way, the courts will issue what is known as a ‘declaration of incompatibility’. This sends a clear message to legislators that they should change the law to make it compatible with human rights. This sets up a ‘democratic dialogue’ between the branches of government, while ensuring that ultimately Parliament remains sovereign.
- For all new laws, the Minister responsible for the Bill must make a statement confirming that it is compatible with the Human Rights Act (or explain why it is not). This means that human rights have to be considered in the process of developing legislation.

### What is a public authority?

‘Public authority’ is not fully defined in the Human Rights Act but should be interpreted broadly. It includes all central government departments and local authorities, as well as state schools, NHS trusts, prisons, the police, courts and tribunals.

At the beginning of 2006 Parliament passed a law establishing a new Commission for Equality and Human Rights, now called the Equality and Human Rights Commission (EHRC). The EHRC opened in October 2007. It has an overall purpose to reduce inequality, eliminate discrimination, strengthen good relations between people and to promote and protect human rights. It has a statutory responsibility for promoting the importance of human rights and the Human Rights Act, and will encourage good practice within public authorities to respect human rights as well as providing advice, guidance and support to other organisations (voluntary and community organisations and businesses) and to individuals.

## BALANCING DIFFERENT HUMAN RIGHTS

Not all the rights in the Human Rights Act are of the same type. Some are 'absolute' rights, which means they can never be interfered with by the state, while others are 'non-absolute', which means they can be interfered with in certain circumstances.

There are three main types of rights:

**Absolute rights** cannot be interfered with or limited in any way. Examples of absolute rights are the right not to be tortured or treated in an inhuman or degrading way and the right not to be treated as a slave.

**Limited rights** can be limited in specific and finite circumstances, which are set out in the Human Rights Act. An example of a limited right is the right to liberty, which can be limited in certain cases, for example where someone has been convicted of a crime by a court or is being detained because of mental health problems.

**Qualified rights** can be interfered with in order to protect the rights of other individuals or the public interest, for example to protect national security or ensure public order. The majority of rights in the Human Rights Act are qualified rights. Any interference with a qualified right must be:

- in pursuit of a legitimate aim, for example to protect the rights of others or for the wider good
- lawful
- necessary
- proportionate (appropriate and not excessive in the circumstances).

Examples of qualified rights are Article 8 (the right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), and Article 11 (freedom of assembly and association).

**Note:** This information on the Human Rights Act has been adapted from Right Here, Right Now, Ministry of Justice/British Institute of Human Rights, 2009

## HUMAN RIGHTS IN NORTHERN IRELAND

A major development in the peace process in Northern Ireland was the Multi-Party Agreement. It was signed in April 1998 by ten political parties in Northern Ireland involved in the negotiations as well as the governments of the United Kingdom and the Republic of Ireland. The Agreement allowed the Northern Ireland Human Rights Commission to prepare advice on a Bill of Rights for Northern Ireland. This would define rights additional to those in the European Convention on Human Rights and would reflect the particular circumstances of Northern Ireland. More than 10 years later the people of Northern Ireland are still campaigning for a Northern Ireland Bill of Rights. There is more information at <http://www.amnesty.org.uk/northernireland>