



**DO THE HUMAN
RIGHT THING**

HUMAN RIGHTS ACT FREQUENTLY ASKED QUESTIONS

1. Why do we want to keep the Human Rights Act?

The Human Rights Act (HRA) brings human rights home. It protects us from abuse by the state. If you are lucky, you might never be directly aware of the protection it gives you, which means it is doing its job and your rights have been protected. But negative press coverage of human rights and calls for the HRA to be scrapped, have placed this key protection at risk.

We must stand up for human rights and protect the HRA - because holding the powerful to account is one of the pillars of our democratic society. The rights protected by the Human Rights Act are the least of what every member of our society is owed simply by virtue of being a human being. If we are being told that these basic, timeless rights are going to be attacked or reduced, then which of them should go? The European Convention on Human Rights protects just a handful of rights but they are fundamental ones and it is the HRA which makes them legal entitlements – it is extremely worrying that people in power are proposing cutting back on our claim to any one of them.

2. What is the Human Rights Act?

The HRA is an excellent example of national human rights protection – being effectively the British Bill of Rights and has had a positive impact for many individuals and for UK society generally, in a number of ways. For example a couple who used the HRA to challenge a decision which would have separated them after 65 years together.

It might not seem exciting, but the HRA is a brilliant piece of law, cleverly designed to suit and support the UK democratic system. Often attacked, rarely championed, and surrounded by myths and misconceptions, the HRA is vitally important.

3. How does the Human Rights Act (HRA) work?

The Human Rights Act ‘incorporates’ into English law most of the rights in the European Convention on Human Rights. The Convention was created from the ashes of the Second World War and it was inspired by the desire to protect individuals against those abuses happening again. It drew on a lot of British ideas; in fact, British experts drafted most of it and the UK was the first state to sign up to it in 1951.

The HRA ensures that the UK government must explain how all new laws proposed are compliant with human rights; and brings human rights into all state decisions, improving government and public authority actions and policies. If someone feels their rights are not being respected, they can challenge the state in court. But in the vast majority of HRA cases, the issue is settled out of court i.e. the government/public authority comes to an agreement with the individual about how to ensure its actions do not violate their rights and this can in some cases have a wider positive impact on policies or decisions affecting entire communities or the country as a whole.

The HRA brings human rights home – it allows people to turn to UK courts and UK judges if they feel their rights are not being respected by the government. It gives us power to challenge the decisions made by politicians and Public Authorities right here in the UK.

4. Who does the Human Rights Act work for?

Everyone! Hundreds of thousands of ordinary people in the UK use the HRA every year to make sure their rights are protected against the state. Not only does the HRA affect individual cases, it also leads to positive policy changes which can affect thousands of people.

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For example the HRA has been used to ensure dignity for the elderly and others receiving care at home; support for a young girl with learning disabilities to get to and from school; improved procedures to avoid disabled individuals falling into a gap between social services and housing departments; protect people who have been victims of trafficking; and put an end to blanket Do Not Resuscitate orders in hospitals.

Individuals have been able to use the Act to protect themselves in numerous ways, in and out of Court. Here are a few examples:

Keeping couples together: A husband and wife had lived together for over 65 years. He was unable to walk unaided and relied on his wife to help him move around. She was blind and used her husband as her eyes. They were separated after he fell ill and was moved into a residential care home. She asked to come with him but was told by the local authority that she did not fit the criteria. After relying on their family rights, the authority agreed to reverse its decision and offered the wife a subsidised place so that she could join her husband in the care home.

Keeping families together: A woman left her partner after discovering that he had been abusing their children. She and the children were placed in temporary bed and breakfast accommodation but were regularly moved. Eventually, the woman was informed by social workers that the children would be removed from her because she was unable to provide stability and was having difficulty getting them to school. The woman challenged the decision citing her and the children's right to respect for private and family life, and the children's right to education; the department decided not to remove the children.

5. Why am I told Europe is dictating to us?

The Human Rights Act allows people to pursue justice in the UK courts. There is an idea being put about that having human rights protections in the UK sends power to 'Europe' and that 'Europe' makes us do things we don't want to. Critics of the HRA should be honest- if we scrapped the HRA then instead of cases being heard in UK courts, people would have to go to European courts in Strasbourg if they wished

to challenge a decision, as they did before the HRA existed. This is because without the HRA the UK would still be a signatory of the European Convention on Human Rights, which provides the same rights to people across Europe. Without proper human rights protection at home, people would be forced to apply to the European Court of Human Rights for protection. Far from bringing power home, repealing the HRA would further outsource decision making.

It is true that Section 2 of the HRA says the UK Courts have to 'take into account' relevant decisions from the European Court of Human Rights (ECHR) in Strasbourg. That is because the HRA incorporates the rights of the European Convention on Human Rights and the ECHR is the overall overseer of the Convention.

This makes sense, and for the most part works without controversy, given the ECHR decides what the meaning of the Convention rights are; and as the HRA incorporates the Convention rights, they have to mean the same thing at their core in the UK as everywhere else. We need the same minimum standards even though each country will then adapt those to their own society.

To say "Europe" is dictating to us is inaccurate because:

- The ECHR rulings are nothing to do with the EU – **the Convention is not an EU law – it is a regional treaty overseen by a regional court made up of independent judges from all member states, including the UK**
- Sometimes the UK courts will go further than the ECHR and provide higher protection
- On rare occasions, with good reason, the UK will take into account but decide **not to follow clear and consistent guidance from the ECHR**. This can sometimes lead to a positive dialogue with the ECHR where the two Courts affect each other and improve each other's rulings.

6. So is the ECHR constantly ruling against the UK courts?

No. *Only a tiny proportion of cases pending at the Strasbourg Court are against the UK*
- Only 1.5% of cases pending at the Strasbourg Court as of 27 August 2014 were against the UK. Most are

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against Italy, Ukraine, Russia and Turkey (60% between them).

Of the cases which are brought against the UK, only a tiny number even get over the first hurdle and get looked at in detail

- The vast majority of cases lodged against the UK are ruled inadmissible or struck out, without the need for a full court judgment. In 2014 up to 27 August, 1,673 cases were lodged against the UK, but 1,657 were declared inadmissible or struck out - the vast majority.

When it does look at UK cases in detail, the Court does not always rule against the UK

- Of those cases brought against the UK which are admissible, Strasbourg often will find there has been no violation. In 2013, 19 full cases against the UK were considered, and only 11 decided against it.
- Overall, in 2012, only 0.6% of cases lodged against the UK led to a judgment that there had been a violation, and just 1% in 2011.

It is particularly unusual for the Strasbourg Court to stop people being expelled from the UK

- Of applications to Strasbourg seeking to stop expulsions from the UK (on human rights grounds) in 2013, 252 were found inadmissible, 112 struck out and only 4 actually received a full judgment.
- Of those 4, only 1 found a violation. So just 0.3% of applications made on this basis were successful

7. What about Abu Qatada and prisoner voting?

The controversial cases that are often quoted as proving that Europe is dictating to us and that the Human Rights Act must go, are those which many people find uncomfortable.

While we understand that, we have to remember that the human rights cases seen as controversial, either here in the UK or at the ECtHR, are the tiny minority. The cases that are likely to make the news are the ones which the government has challenged (the majority of cases are resolved out of court or are thrown out), which by definition are likely to involve less clear cut violations and/or particularly unpopular people or causes. Otherwise the government would likely have settled.

What we don't hear about are the hundreds of thousands of ordinary people who use the HRA in the UK – people who use it make sure they are not separated from their children if they are fleeing an abusive relationship, people who use it to make sure elderly relatives are treated with dignity.

Even the specifics of the controversial cases are often misrepresented – on prisoner voting the ECtHR said that a blanket ban on **all** prisoners being able to cast a vote was unfair and the UK parliament should revisit the policy. Parliament would likely be able to rule that just people convicted of driving offences could vote, or just people in custody for less than a month or some other more nuanced approach without violating human rights law. It is up to the UK Parliament to decide what that should look like.

On Abu Qatada, the bottom line is that human rights are for those we may dislike, as well as the rest of us. The ECtHR ruled that Qatada couldn't be deported to a country where he wouldn't be able to receive a fair trial and that evidence obtained through torture might be used against him. The right to a fair trial and the absolute prohibition against torture are both long-standing British principles.

Importantly, even without the Human Rights Act, the ECtHR rulings on Abu Qatada and Prisoner Voting, for example, would likely remain the same. Since the UK would still be a signatory to the European Convention on Human Rights, he would (like every individual) still be able to seek a judgment there for violations of the European Convention itself by the UK. So unless the UK left the European Convention altogether, which would be an unprecedented move for a democratic country, the rulings would remain the same.

8. Doesn't the Human Rights Act entitle people to ridiculous things?

Quite simply, contrary to some untrue press stories, the Human Rights Act has never been used to force police to give criminal suspects KFC during a siege, or to provide prisoners with access to hard-core pornography in prison. None of those things are sensible interpretations of what rights are meant to protect, and the Courts have never said differently, here or in Strasbourg.