

# Q&A



## HUMAN RIGHTS ACT

### Why were human rights created?

Legally effective human rights, as we now know them, were created following World War II and the Holocaust in order to give individuals certain protections and freedoms, in the hope that similar atrocities would never happen again.

### What is the Human Rights Act 1998?

The Human Rights Act is a piece of UK legislation which was passed in 1998 as a way of "bringing rights home" by incorporating the European Convention on Human Rights into UK law.

### Why was the Human Rights Act passed?

The Human Rights Act was passed so that people in the UK could rely on the core rights set out in the European Convention on Human Rights in order to bring cases before British courts. Prior to this, cases had to be brought to the European Court of Human Rights in the French city of Strasbourg, and this was a long and expensive process. The UK Government and Parliament also wanted to enhance the awareness of human rights within British society.

### Has the UK only had human rights since 1998?

No. Human rights existed in the UK long before 1998, even if they were called by another name. The Magna Carta, signed in England in 1215, is one of the earliest examples of a human rights charter, and was the first document to proclaim that wealthy landowners had legal rights, and that a monarch (at that time, King John) was subject to the law (rather than being above the law). The Magna Carta also set out a citizen's right to habeas corpus - the right to protection against unlawful imprisonment. A Bill of Rights was passed in the UK in 1689, which set out the civil liberties and political rights of all men - not just landowners. This Bill included rights such as the freedom of speech and freedom from cruel and unusual punishment. Various freedoms have also been recognised through the common law, such as that the State does not have the right to enter private property unless it is expressly allowed by the law.

Then in 1950 the Council of Europe, an international organisation dedicated to fostering co-operation in Europe through the protection of human rights, democracy and the rule of law, drafted the European Convention on Human Rights. This explicitly set out some of the rights and freedoms which we now recognise from the Human Rights Act. In 1953, the European Convention of Human Rights took effect as a matter of international law in all nations which were members of the Council of Europe, including the United Kingdom.

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### What does the Human Rights Act actually do?

The Human Rights Act does a number of things. First, it makes it unlawful for public authorities to act in ways which are not compliant with protected human rights. This is likely to improve central and local government actions and policies. Second, it requires courts and tribunals to consider human rights implications when deciding cases, even where the cause of action is not a human rights complaint and where public authorities are not involved. As far as possible, courts should interpret legislation in a way which is compatible with the protected human rights; if that is not possible, the court should make a declaration of incompatibility. Third, it requires the Government to consider and justify how all new legislation is compliant with the protected human rights.



### Who must respect the rights contained in the HRA?

All public authorities in the UK must respect the HRA and treat everyone with fairness, equality and dignity. Examples of public authorities includes central government, hospitals and social services, the police and local councils. It also includes private organisations that perform public functions, such as running a prison.

### Can I be deprived of my human rights?

There are three types of rights protected by the Human Rights Act: **absolute** rights, **limited** rights and **qualified** rights.

- **Absolute rights** cannot be denied to any individual for any reason, e.g. freedom from torture.
- **Limited rights** can only be denied if it is expressly permitted by the law, e.g. right to liberty. For example, a person convicted of a criminal offence can be sent to prison.
- **Qualified rights** can be interfered with by a public authority if such interference can be properly justified. For example, the right to freedom of expression may be qualified by reference to other rights and/or legislation (e.g. a court could grant an injunction preventing a newspaper publishing a libellous article).

The justification required for a public authority to interfere with a qualified right must pass a three-part test. First, the power to interfere or the basis for the interference must be set out clearly in law. Second, the interference itself must be in pursuit of a legitimate aim. These aims are set out in the legislation, but might include national security or the protection of public health. Third, the interference must be proportionate, i.e. it must be no more than is strictly necessary in order to achieve the legitimate aim.

The Human Rights Act also expressly states that the protection of one person's rights cannot be used to justify the breach of another person's rights. Therefore, public authorities, and particularly the courts, are often required to balance conflicting rights. An example would be deciding whether the publication of a paparazzi photograph was justified given the subject's right to privacy and the publisher's freedom of expression. There is no correct answer based on the law alone, and these decisions often turn on the specific facts of the case.



### **Who is entitled to the rights in the HRA?**

Human rights are for everyone! The test set out in the ECHR is that the State must secure human rights to everyone within its jurisdiction, i.e. ensure that individual's human rights are not violated. This includes everyone who is physically present within the UK. It also includes people in areas overseas, which are under the effective control of the UK. For example, in times of armed conflict, areas under military occupation may fall within the jurisdiction of the occupying power. Everyone who is in the UK is entitled to human rights.

### **How does the Human Rights Act affect me? Who can bring a legal claim under the HRA?**

The HRA means that you can turn to UK judges and UK courts if you feel that your human rights are being infringed by the Government or a public authority. You can also bring a claim, if you believe that a public authority is proposing to act unlawfully and that you would be a victim of that act.

### **What remedies are available under the Human Rights Act?**

The Human Rights Act provides for remedies that offer "just satisfaction" to the victim of the violation. This could be a public admission of wrongdoing, rectification or the remaking of a decision, or the public authority may be required to review and make changes to its procedures to ensure that similar violations do not occur in the future. There may also be an award of financial damages, but this does not happen in every case and there is no automatic right to compensation. The courts may declare that legislation is incompatible with the protected rights, but do not have the power to quash that legislation - it remains in the hands of Parliament whether or not to change the legislation.

If a victim has exhausted all domestic remedies under the Human Rights Act, then they may take their case direct to the European Court of Human Rights in Strasbourg. This can be a long and expensive process. That case would be brought against the UK as a matter of international law, and any judgment would be enforced against the UK through the Council of Europe.