

Q&A



HUMAN RIGHTS ACT

Answering complex questions about the HRA.

Is the HRA / ECHR anything to do with the European Union?

Absolutely not. Regardless of what you might read in the press, the European Court of Human Rights (ECtHR) and the European Union are totally separate organisations. The European Convention on Human Rights (ECHR) is an international treaty signed by many countries under the auspices of the Council of Europe to protect human rights and fundamental freedoms. The ECtHR was established under Article 19 of the ECHR to ensure that the Contracting Parties respect their obligations under the ECHR. Although all 28 members of the European Union are parties to the ECHR and ECtHR, there are 19 other countries like Russia and Turkey which participate in the ECHR and ECtHR but are not part of the EU.

Why do we need the HRA if these rights are protected under the ECtHR?

The Human Rights Act gives us the opportunity to enforce the core human rights protected by the European Convention on Human Rights in our national courts. Prior to the Human Rights Act coming into force, victims of human rights violations would have to take their case to Strasbourg, a process which is time consuming and expensive. However, it remains the case that if you believe that your rights have been violated and you have exhausted all domestic remedies, you can take your case to the European Court of Human Rights.

What is the Council of Europe?

The Council of Europe is an international organisation comprising of 47 Member States based in Strasbourg. Its main objectives are to promote democracy and to protect both human rights and the rule of law in Europe. It was formed in 1949 as part of the response of the Allied Powers to the horrors of the Second World War. The UK was a driving force in the creation of the organisation, whose founding members were Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, Turkey and the United Kingdom.

What's all this in the news about the prisoners' right to vote?

Back in 2005 the ECtHR ruled that the UK's blanket ban against prisoners voting in elections violated Article 3 of the First Protocol. Since then, on a number of further occasions the ECtHR has ruled against the UK's blanket ban on prisoners voting. On each occasion the UK Government has declined to change the UK law and responded that whether or not prisoners should be allowed to vote is an issue that should be decided in the UK.

Their argument is that regardless of their crime, they remain members of society and should be able to vote - removing the right to vote shouldn't be part of their punishment. Do you agree? What's your opinion on whether prisoners should have the right to vote?

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What constitutes a public body under the HRA?

Under section 6 of the Human Rights Act, it is unlawful for a public authority to act in a way which is incompatible with a Convention right. The definition of a 'public authority' for the purposes of the Act includes any person certain of whose functions are of a public nature. This has created legal difficulties where courts have had to consider whether private bodies contracted to carry out public functions on behalf of local authorities should be covered by this definition.

Can the courts strike down legislation which breaches human rights?

The courts cannot strike down legislation passed by the UK Parliament, even if it is in breach of human rights. However, courts do have the power to make a declaration of incompatibility in respect of the legislation. Where such a declaration has been made, the validity of the legislation will not be affected. However, it may influence the UK Government to seek to amend the legislation to make it compatible with human rights, even though it has no legal obligation to do so.

What remedy can the courts grant an individual whose human rights have been breached?

Where a court decides that the human rights of an individual have been breached, it can grant a number of remedies. Where it is found that a public authority has breached the human rights of an individual, the court may grant any relief or remedy or grant any order that is within its power and it considers to be just and appropriate. The courts also have the right to award damages to the individual whose rights have been breached, though there is no automatic right to compensation. Where it is found that an Act of the UK Parliament breaches human rights, the court may make a declaration of incompatibility stating that the legislation in question breaches human rights. This does not provide immediate relief to the claimant, as it does not affect the operation of the legislation - Parliament retains the power to decide whether or not to change the law.

THE RIGHT TO...



WHICH TO LOSE? ARE YOU WILLING

**DO THE HUMAN
RIGHT THING**
KEEP THE HUMAN RIGHTS ACT

Q&A



What's the future of the Human Rights Act?

In 2007, when he was Leader of the Opposition, David Cameron pledged to abolish the HRA and replace it with a British Bill of Rights. He was concerned that the HRA hindered the fight against crime and terrorism, and that it was impacting on the UK's ability to deport failed asylum seekers and foreign national prisoners. It has been argued that the Bill of Rights should not apply to foreign nationals, but should outline the rights of British citizens. Members of the Conservative Party have also argued that the HRA has imported European rules into the British legal system. The proposal to replace the HRA with a British Bill of Rights was included in the 2015 Conservative party manifesto and is now official Government policy. However, David Cameron has stated that this proposal should not mean that the UK will be leaving the European Convention on Human Rights.

Some of the areas you could ask the students to discuss might include the following. However, please make sure that you remain objective and do not make any subjective or political comments.

- *You may want to consider whether David Cameron was right. Also, have a think about why David Cameron may be concerned with the idea that the HRA hinders the fight against crime and terrorism.*
- *Do you think that complying with the European Convention on Human Rights and the proposed British Bill of Rights would be workable? What would happen if they contradicted each other?*
- *What should go into the British Bill of Rights? Which of the core fundamental freedoms contained in the HRA do you think would be carried over?*
- *Do you think that Parliament would support the repeal of the HRA? If you were an MP how would you vote?*