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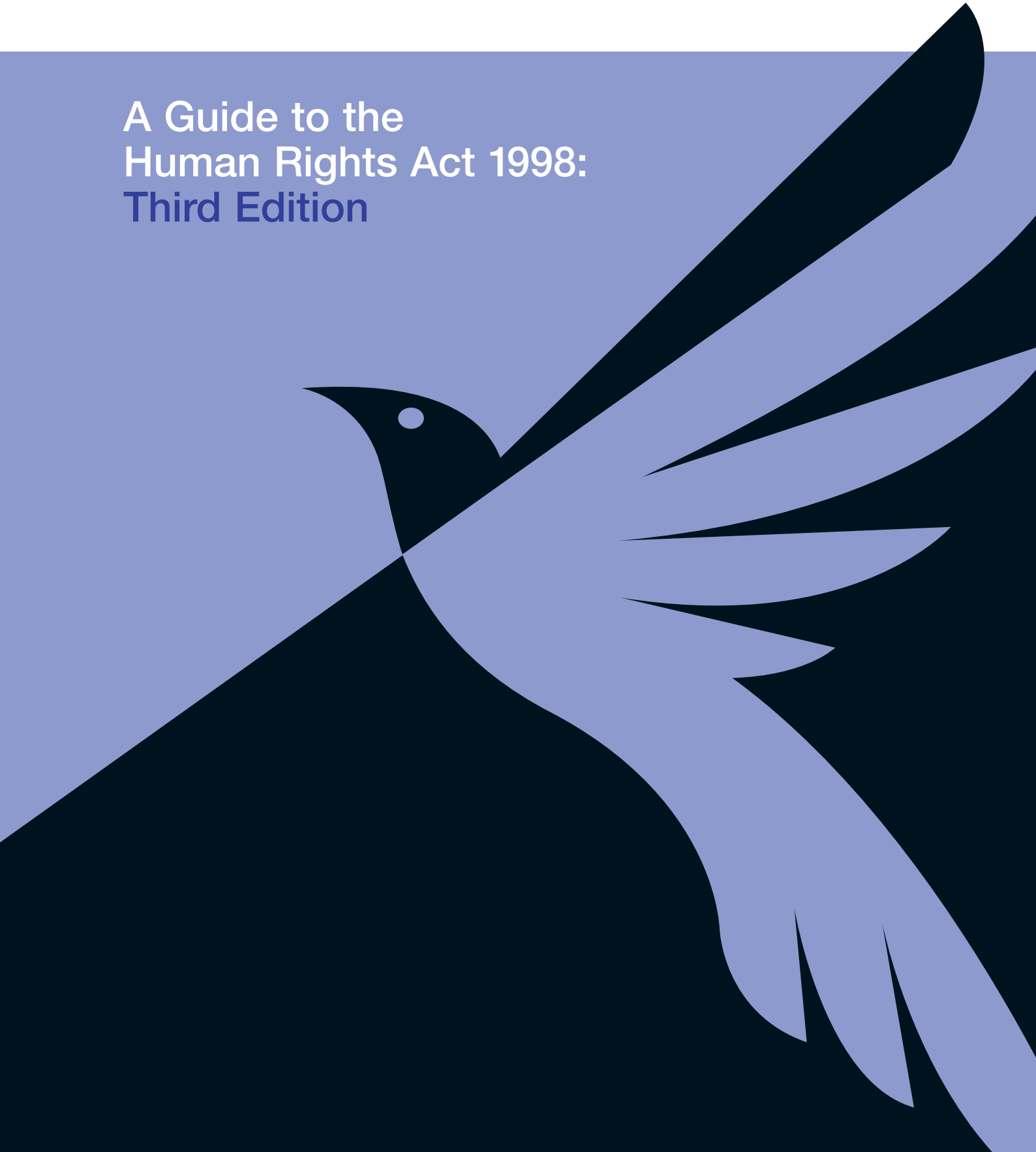
Department for Constitutional Affairs
Justice, rights and democracy

A Guide to the Human Rights Act 1998: Third Edition



A Guide to the Human Rights Act 1998:
Third Edition

October 2006

Note

This is the third edition of the Guide. It aims to take account of developments in the six years since the Human Rights Act came into force. Although every effort has been made to ensure that the Guide is as accurate and up-to-date as possible at the date of publication, it cannot be taken to be an authoritative statement of the law. It is not intended, and must not be used, as a substitute for taking proper legal advice.

The early drafts of the first edition were written by a group of barristers under the general editorship of the late Peter Duffy QC, whose work in advancing the cause of human rights was tireless and to whose memory the first edition was dedicated. The first edition was finally prepared under the joint editorship of Robin Allen QC and the Human Rights Unit (then based at the Home Office). The Unit, now the Human Rights Division of the Department for Constitutional Affairs, Robin Allen QC and Henrietta Hill, barristers, prepared the second edition. Henrietta Hill has also assisted with the third edition.

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Preface

This is the third edition of this popular Guide to human rights in the UK. Thousands of copies are distributed every year and are downloaded from our Departmental web-site. You may have accessed this copy because you are a sixth-form student or an undergraduate; or because you work in a public authority; or because you are an interested member of the public; or you may have come across it by accident on the web. However you have come across it, please take the time to read it. It deals with a vitally important topic and is designed to be straightforward and non-technical.

We all benefit from living in a society in which all public authorities deliver their services with human rights in mind. In doing that, they need to balance the rights of the individual with the rights of wider society. They get the overwhelming majority of those decisions right. Those that are thought to be wrong can be tested and where necessary our courts will deal with disputes.

In recent years human rights have been unfairly blamed for a range of ills in society. They have been blamed for encouraging a compensation culture. They have been blamed for forcing the release of dangerous prisoners to rape and kill again. They have been blamed for tying the hands of Government in dealing with the terrorist threat. A misapplication of human rights can lead to results which are the reverse of those intended. We have to be vigilant to ensure that human rights are properly understood and properly applied.

This third edition of the Guide in October 2006 is issued at a time when my Department is making renewed efforts to put the real message about human rights before the UK public by a wide variety of means. I believe that the real message about human rights is a message about the bedrock of the civilised society in which we all wish to live.

I invite you to help. Please spread the **real** word about human rights.

Whoever you are, I hope that you find the Guide clear and interesting, and if you do, that you will recommend it to friends and colleagues. Every little helps.

Rt Hon The Lord Falconer of Thoroton
Secretary of State for Constitutional Affairs and Lord Chancellor

1. What is the Human Rights Act for?

Being clearer about your rights

1.1 There are some rights and freedoms that are so important and so fundamental that many countries have written them down in a special form, and have made safeguarding and promoting them a fundamental aim for Government.

1.2 The UK does not have a written **Constitution**[1] as part of its national law. People here had long enjoyed a strong tradition of individual liberties but it has not always been easy to say precisely what was involved – or what to do when unwritten liberties conflict with other laws.

1.3 The 1950 **European Convention on Human Rights (ECHR)** is a binding international agreement that the UK helped draft and has sought to comply with for over half a century. The Convention enshrines fundamental civil and political rights, but for many years it was not a full part of our own law. Using the Convention usually meant taking a case to the **European Court of Human Rights** in Strasbourg. This was often time-consuming and expensive.

1.4 Since coming into force on **2 October 2000,** the Human Rights Act has made rights from the ECHR (the **Convention rights**) enforceable in our own courts. This is much quicker and simpler than the old arrangement. And the Act gives people a clear legal statement of their basic rights and fundamental freedoms. The key principle of the Act is that wherever possible there should be compatibility with the Convention rights.

Rights with responsibilities

1.5 So the Human Rights Act is about giving further effect to rights in the ECHR. And it is about respecting your rights. But it is important to understand that the Act, like the ECHR, aims to ensure that not just your, but *everyone's*, rights are properly respected.

1.6 This means that one individual's rights will often have to be balanced against another's. For example, your right to express your views publicly may need to be balanced against another person's right to a private life. Or the rights of a person accused of a crime to question witnesses may need to be balanced against the rights of victims and vulnerable witnesses.

1.7 The wider interests of the community as a whole may also need to be taken into account. This idea is reflected in the way that many of the Convention rights are written. You can see this by glancing at the text of Articles 8 – 11 of the ECHR (*see* Annex E to this Guide).

1.8 The first part of these Articles sets out the right and is followed by a second part describing how the right may need to be limited. For example, everyone's interest in combating crime and promoting public health is mentioned several times as a reason why public authorities might need to limit an individual's right. That kind of thinking is behind the statement that rights and responsibilities go together. The whole system of respecting rights works best when people recognise that and act responsibly towards others and the wider community.

Democracy

1.9 The Human Rights Act ensures that these important ideas, and the supporting judgments of the European Court of Human Rights, are fully available to our courts. It also ensures that Parliament has to reflect carefully, in considering proposed legislation, on the difficult question of where the balance lies between the individual's rights and the needs of the wider community.

1.10 The Human Rights Act requires our courts to respect laws passed by Parliament. However, it allows **a higher court**[2] to declare that a law cannot be given a meaning compatible with the Convention rights (*see* Part 2). Parliament can then decide whether and how to amend the law. In this way, the Act balances the rights and responsibilities of the law-making and judicial parts of our Constitution, leaving the final word to the democratic process.

Prevention, not just cure

1.11 The Human Rights Act is a major shift in the way our political and legal system works. Before the Act, our law did not spell out in so many words that public authorities and courts had to respect ECHR rights; and the courts would only look at the ECHR in exceptional cases, for example if UK legislation was unclear.

1.12 The Human Rights Act means all public authorities must ensure that everything they do is compatible with Convention rights unless an Act of Parliament makes that impossible. Prior to the Act coming into force, all Government Departments reviewed their existing legislation and procedures to see if they complied with human rights standards, and worked out ways in which they could foster human rights positively. People are entitled to expect that public authorities respect their Convention rights.

Public confidence

1.13 One of the main aims of the Human Rights Act is that, over time, a shared understanding of what is fundamentally right and wrong will lead to people having more confidence in key state bodies and that this will encourage more openness and participation in our democracy. Shared, basic values in the Human Rights Act will help to promote a greater unity and fairness in our society. The Act has been very widely publicised and we expect that most people in the country now know something about it, even if some of that information comes from mischievous sources which portray the Act in an undeservedly bad light. We are working to ensure that public confidence in state bodies will grow and that human rights will be recognised as the benchmark of all that they do.

1.14 The Human Rights Act means that:

- Convention rights and responsibilities form a common set of binding values for public authorities right across the UK
- Public authorities must have human rights principles in mind when they make decisions about people's rights
- Human rights must be part of all policy making.

2. How does the Human Rights Act work?

2.1 A short explanation of the relevant sections of the Human Rights Act can be found at Annex D at the back of this Guide. Briefly, the Act works in three main ways.

2.2 First, it requires all legislation to be interpreted and given effect as far as possible compatibly with the Convention rights. Where it is not possible to do so, a court may quash or disapply **subordinate legislation** (such as Regulations or Orders) or, if it is a higher court, make a **declaration of incompatibility** in relation to primary legislation. This triggers a power that allows a Minister to make a **remedial order** to amend the legislation to bring it into line with the Convention rights.[3]

2.3 Second, it makes it unlawful for a **public authority** to act incompatibly with the Convention rights and allows for a case to be brought in a UK court or tribunal against the authority if it does so. However, a public authority will not have acted unlawfully under the Act if as the result of a provision of **primary legislation** (such as another Act of Parliament) it could not have acted differently.

2.4 Since the Human Rights Act came into force, people have been able to argue that a decision violated their rights by being, for example, a disproportionate interference with the right to respect for private or family life. So the language of human rights is becoming more and more a common way of judging whether a public authority has acted unlawfully.

2.5 The Courts will look, with "anxious scrutiny", to see if the interference with the right in question was really necessary to achieve one or more of the stated aims recognised by the Convention. If the answer is no, the Courts will find that the public authority has acted unlawfully. The Courts will not, however, simply replace the decision-maker's view with their own, and so their role is still one of "review" rather than a full re-determination of the original decision. It is just that the nature of the review is now more intensive.

2.6 Third, UK courts and tribunals must take account of Convention rights in all cases that come before them. This means, for example, that they must develop the **common law** compatibly with the Convention rights. They must take account of **Strasbourg case-law**. For example, the Human Rights Act has been relied on to determine cases involving the competing interests of privacy and freedom of expression. Several well-known people have used Article 8 of the Convention (the right to respect for private life) to seek injunctions against newspapers to prevent them publishing personal stories about them.[4]

2.7 Different judges have taken different views on how far they can 're-interpret' existing law using their powers under s.3 of the Human Rights Act. However, there is now a line of cases that seems to demonstrate a consensus amongst the judges of the limits of section 3.[5]

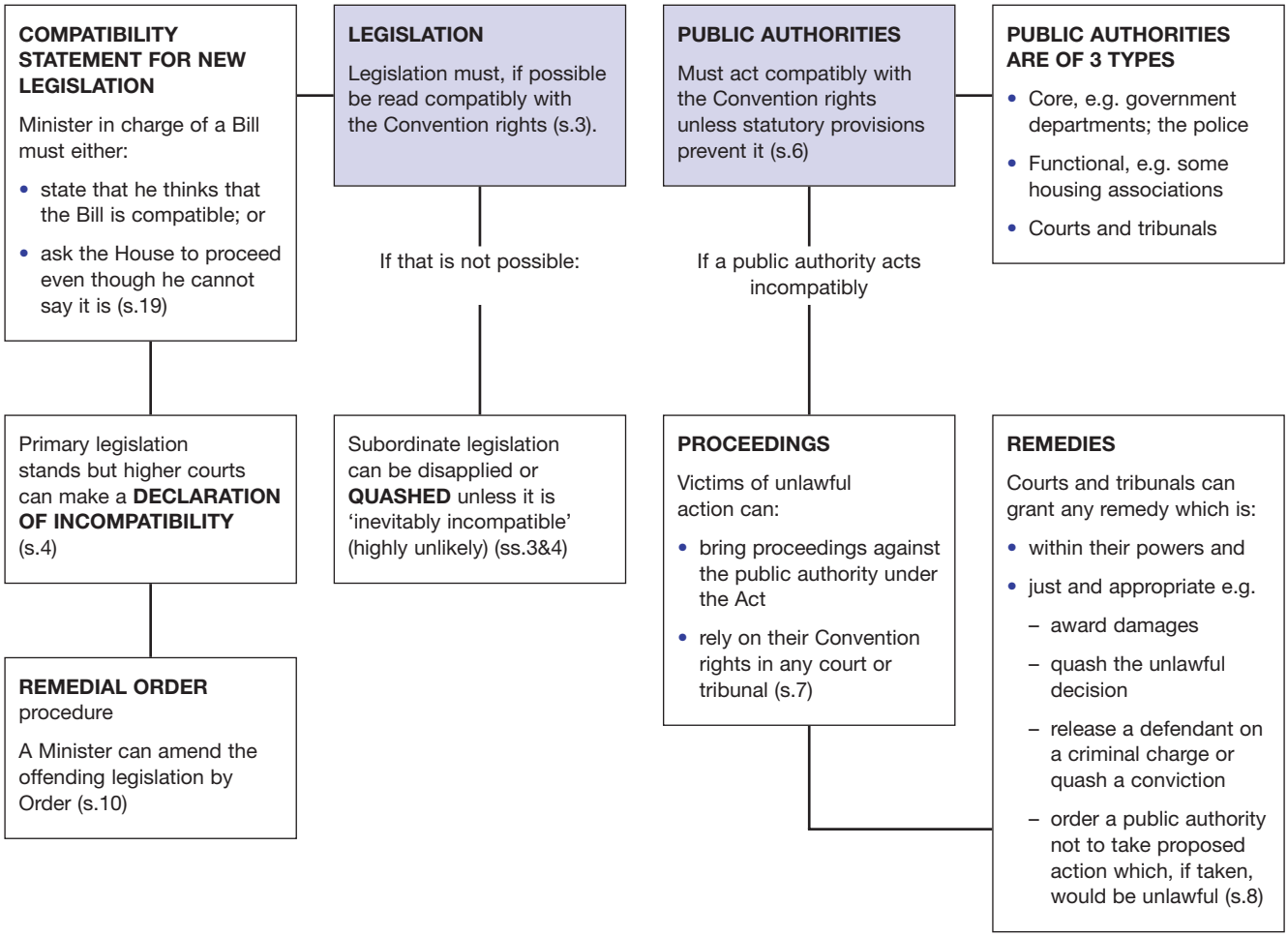
2.8 The key provisions of the Human Rights Act, and the way they relate to each other, are shown in Table 1 (overleaf).

What if you think Convention rights have been breached?

2.9 It is always better to see if a problem can be solved without going to court. So people who think their **Convention rights** have been breached will probably first want to point this out if they can to the person or body concerned. They should ask for an explanation and, if possible, for things to be put right. They might also be able to take the matter up with a complaints body appointed for the purpose. But if the matter does need to be considered by a court or tribunal, as the table explains, victims of unlawful action can raise the point in a case in which they are already involved, or bring a separate case under the Human Rights Act.

2.10 The Human Rights Act requires a court or tribunal considering the complaint to take account of Strasbourg case-law. And courts and tribunals must give laws a meaning, wherever possible, which is consistent with the rights protected by the Convention. Three points need to be checked:

HUMAN RIGHTS ACT 1998 – KEY PROVISIONS



Who is the Victim?

2.11 Only **victims** of breaches of **Convention rights** can bring proceedings under the Human Rights Act. If the act or decision being complained about has affected you, or is likely to do so, there should be no problem about this. However, if it has had, or will have, no impact on you personally, or only a very indirect impact, you may not be able to bring proceedings under the Human Rights Act. In such cases it may be necessary to get more detailed legal advice. The Courts have also recognised that the Human Rights Act can have some application outside the UK, if for example, a decision as to whether someone enters the UK, or is forced to leave, engages their Convention rights.[6]

Is a public authority responsible?

2.12 The courts must consider the **Convention rights** in all cases[7] even if they do not involve a public authority. But you can only take a separate case under the Human Rights Act itself if you believe that your rights are being breached by a public authority, rather than a private individual. Broadly, public authorities are bodies carrying out a governmental or public function. Examples are departments of central government, local authorities, the police, immigration officers, prison officers, and hospitals.

2.13 Proceedings in respect of a judge's actions or decisions, alleging a breach of Convention rights, may not be brought as a free-standing action. Although judges fall within the definition of a public authority, a challenge may only be brought where there is a right of appeal, or on application for judicial review, or in any other forum allowed by the relevant rules.

2.14 Private companies who are exercising public functions, such as organisations that run private prisons, will also be public authorities within the Act in respect of those functions. If a public authority of this kind has breached Convention rights, a claim can be brought against it.

2.15 There are some types of bodies that have mixed functions. For example some housing associations, and the privatised utilities such as water, gas and electricity companies have functions that will probably count as public under the Human Rights Act. If a body of this type has breached Convention rights, a claim under the Act is possible only if the act or decision complained about is in the public sphere. If it is a wholly private matter (for example where such a person, body or company is acting as an employer or in a commercial capacity), a claim under the Human Rights Act will not be possible. But if the body is exercising functions in the public interest, for example regulatory or safety functions, people will be able to bring legal proceedings.

2.16 In one case, for example, a company which had the power to exclude the claimant from holding a stall at the local farmers' market was found to be a public authority.[8] So, in another case, was a housing association that had a particularly close relationship with, and which was performing very similar functions to, a local authority.[9] But in other cases a charity providing residential care,[10] Lloyds of London[11] and a parochial church council[12] have been held not to be public authorities. This is a developing area and if you are concerned that the body which you think has breached your Convention rights might be a public authority, you should take specialist legal advice.

2.17 Sometimes, even if a public authority has not itself breached Convention rights directly, the authority may be responsible for failing to protect individuals from others who have. This responsibility to protect against the acts of other people which breach Convention rights is sometimes called a **positive obligation**. Some other examples of this are provided in part 3 of this Guide alongside the rights.

What about time-limits?

2.18 Cases in which a person complains that a public authority has acted in a way that is incompatible with Convention rights must be brought within one year beginning with the date on which the act complained of took place. That period can be extended by the court if it considers it equitable to do so. That means that there would need to be good grounds for an extension of time. The court will consider all the facts that are relevant.

2.19 However, the Human Rights Act also says that if there is a stricter time limit for the kind of proceedings used, that time limit will apply. So, for instance, if the complaint is by an application for **judicial review** it must be brought promptly and will normally have to be brought within three months at the latest. It is sensible to take detailed advice on time limits promptly. If any government body is bringing proceedings (such as a prosecution) the victim can rely on any breach of his or her human rights whenever it took place, if it is relevant to his or her defence.

2.20 However, if someone was convicted of a crime before the Human Rights Act came into force on 2 October 2000, they cannot use its provisions on appeal to overturn the conviction. If a case involving an alleged breach of Convention rights, by a public authority, straddles the 2 October 2000 commencement date, it would be advisable to take advice on the application of the Human Rights Act, as this is another quite difficult legal area.

Which court hears cases under the Human Rights Act?

2.21 A person bringing a separate case under the Human Rights Act will have to decide which court or tribunal to start the proceedings in. This is likely to depend on the subject matter of the complaint and the desired remedy. For example, if it is a complaint concerning welfare benefits it should probably start at an appeal tribunal. However, if the claim is based on a contract or is a civil wrong (for example a claim for personal injury, wrongful arrest, false imprisonment) any action should start in the **High Court** or a County Court, or the Sheriff Court or Court of Session. Where the case relates to the decision of a public authority, the appropriate action will usually be judicial review in the High Court.

What might raising a Human Rights Act point achieve?

2.22 When a court considers a human rights issue in a case involving an act or omission by a public authority, it looks very carefully at the relevant law to see if the public authority had any choice in the matter. The court looks to see if it is possible to interpret the legislation in a way that is compatible with the Convention rights. If the legislation can be interpreted compatibly, and the court finds that the public authority has wrongfully interfered with the rights, the court is able to provide a remedy using its existing powers.

2.23 By way of example, an **Employment Tribunal**[13] in an unfair dismissal case will continue to have the power to say that a complaint is well founded, to order compensation or even to order reinstatement or re-engagement. The Human Rights Act does not, however, give a court powers it does not already have. Thus, an Employment Tribunal does not have the power to make an order preventing the authority from breaching your human rights under the Act. For such an order you will need to go to a County Court or the High Court.[14] By using its existing powers it will be able to put right the complaint. These powers vary, depending on the court or tribunal in which the claim is brought.

2.24 The Human Rights Act extends the power to award **damages** for a breach of the Convention rights under the Act to any court that has the power to order payment of damages or compensation in a civil case. However, when considering whether to award damages (and if so how much) under the Human Rights Act, the courts will have regard to the principles applied by the European Court of Human Rights. Applying these principles, a disabled woman and her carer received £10,000 in damages under the Human Rights Act for the local authority's failure to provide adequate housing for them.[15] The judge specifically rejected the argument that damages under the Human Rights Act should be lower than under the pre-existing law, as that would diminish respect for the policy underlying the Human Rights Act. The judge in a subsequent mental health case,[16] where damages were awarded for the delay in arranging reviews of the claimant patients' respective detentions, took the same approach. However in a recent case the courts have stressed that in many human rights cases it will be a finding of an infringement that is the primary remedy, and that damages will only rarely be awarded.[17] For example, the House of Lords has held that where prisoners had been denied legal representation at internal disciplinary hearings, the finding that their rights had been breached was sufficient "just satisfaction" for them and they were awarded no damages at all, as it was felt this is what the Strasbourg court would have done.[18] Previous cases where damages had been awarded are therefore no longer a reliable guide and should be treated with caution.

2.25 Where the courts do award damages, these may cover actual financial loss, for example loss of earnings, fines paid, loss in the value of property, or loss of employment prospects. Damages may also cover feelings, such as anxiety or distress, but the courts have generally been reluctant to award this kind of damages in human rights cases, and have stressed that any damages must have been caused directly by the breach.

2.26 Where the breach of Convention rights arises out of the application of **subordinate legislation** (such as Regulations or Orders) and this breach is not inevitable because of primary legislation, the court may quash or disapply the subordinate legislation. The same applies in relation to legislation passed by the Scottish Parliament or the Welsh or Northern Ireland Assemblies, which is regarded as secondary legislation for the purposes of the Human Rights Act.

2.27 Where the breach arises out of the application of an Act of Parliament, it may be impossible for the court to read that Act in a way that is compatible with the Convention rights. If so, the Human Rights Act makes it possible for certain courts to make a **declaration of incompatibility** that the offending provisions of the Act are incompatible with Convention rights. To date, this power has been exercised on only 20 occasions since the Act came into force and six of those declarations have been overturned on appeal.

2.28 Only the Court of Session or High Court of Justiciary, the High Court, the Court of Appeal, the House of Lords, the Judicial Committee of the Privy Council and the Courts Martial Appeal Court can make a declaration of incompatibility. Such a declaration will not affect the validity of the Act of Parliament and a public authority will not be acting unlawfully in applying the legislation. But it confirms that

the Convention rights have been breached and provides the Government with the power to use a special procedure to amend the conflicting Act of Parliament quickly. It may also encourage the public authority to take steps to remedy the breach of the Convention rights as well as providing strong support for any application to the European Court of Human Rights.

2.29 Under the Human Rights Act, the Minister in charge of any proposal to make a new Act of Parliament has to state whether in his or her view the Bill setting out the proposal is compatible with the Convention rights. This ensures that the Government thinks about the impact of the Human Rights Act from the outset before the Bill is debated in Parliament and it assists Parliament in its task of scrutiny.

2.30 In the explanatory notes accompanying the Bill, the Government will also draw attention to the main Convention issues arising on the Bill. In the course of going through Parliament most Bills are considered by the Joint Parliamentary Committee on Human Rights, which may make proposals on how a Bill can be made more consistent with the Convention or with other human rights instruments.

2.31 This Guide is about your rights under the European Convention on Human Rights, and how they can be enforced through the Human Rights Act 1998 – but it is important not to forget that our laws already contain many ways of protecting human rights. In some cases, these are supported by **European Community law**, or other Treaties that the Government has signed. The Human Rights Act does not take away more detailed protection of human rights in other legislation.

Summary

- The Human Rights Act gives further effect in UK law to most of the rights under the European Convention on Human Rights
- The Act affects the way Government and other public authorities deal with individuals and is helping build a new culture of rights and responsibilities
- If your rights have been breached by a public authority, you can take them to court and seek redress
- A court considering any kind of case you bring (whether or not against a public authority) has to consider your rights
- Some courts have the power to declare that Acts of Parliament are incompatible with your rights, and this will be a strong signal to Parliament and the Government to think again to change them
- Parliament is having to think more carefully about the laws it passes, to make sure they comply with your rights
- The Human Rights Act does not take away existing human rights
- The courts have to interpret all legislation, and develop the law, in the light of the Human Rights Act.

3. What are my Convention rights?

3.1 Most of the rights in the ECHR have been included in the Human Rights Act. Each right is set out under a separately numbered paragraph of the ECHR, known as an **Article** (see Annex E). This part of the guide explains what each of the rights is, taking them in the order that they appear in the ECHR and the Human Rights Act. At the end of each Article, there are suggestions as to how the right may be relevant to individuals.

3.2 There are some important general points and principles to understand about the Convention rights before looking at the individual articles. These points and principles must, under the Human Rights Act, be taken into account by all UK courts and tribunals. All public authorities also need to bear these points in mind.

Living instrument

3.3 The ECHR is, in the words of the European Court of Human Rights, a "living instrument" which must be interpreted in the light of present-day conditions. Societies and values change and the Court takes account of these changes when interpreting the ECHR. In doing so, it looks to see whether there are common European standards. So the fact that a case has failed under the ECHR in the past does not necessarily mean that it will do so in the future, or that it will fail under the Human Rights Act.

Broad and purposive interpretation

3.4 The European Court of Human Rights seeks to give a practical and effective interpretation to the rights. But limitations and qualifications to the rights, for example to Articles 8 – 11, are interpreted narrowly. The general idea is to give individuals the full enjoyment of the Convention rights in so far as possible.

Autonomous meaning

3.5 The use of an expression in the law of an individual state (such as whether a matter is considered to be **criminal** or **civi**l) may not be the same as the definition of that expression in the ECHR. Terms and expressions in the ECHR have the same meaning for all the countries bound by it. That meaning is declared independently by the Strasbourg authorities and is called an "autonomous meaning".

Margin of appreciation

3.6 In relation to some Convention rights, particularly those requiring a balance to be struck between competing considerations, the European Court of Human Rights allows a margin of appreciation to the domestic authorities. This recognises that domestic authorities are better placed to make decisions about the merits of a case, at least in the first instance.

3.7 Prior to the coming into force of the Human Rights Act there was a certain amount of debate as to how far the 'margin of appreciation' would be relevant to the Act. Some commentators argued that since the margin of appreciation is, strictly speaking, a concept belonging to international law it should not prevent the UK courts examining the merits of a decision, policy or law and the reason for its adoption. Others suggested that the UK courts might develop an analogous doctrine similar to the margin of appreciation.

3.8 What has happened since the Act came into force is that in some cases the Courts have concluded that there are insufficient reasons to support the decision, policy or law (as indeed the European Court of Human Rights could itself ultimately do). However, in others the Courts have been willing to accept the opinion of expert decision-makers, such as a government department, health authority or Parliament. The Court has been particularly careful when the decision involved the balancing of competing rights and interests (such as the state's need to enforce immigration policy and an individual's wish to stay with his or her family in the UK).

"Absolute", "limited" and "qualified" rights

3.9 Not all the Convention rights are formulated in the same way. The different types of Convention rights are sometimes explained as:

- *absolute rights* such as the right to protection from torture, inhuman and degrading treatment and punishment (Article 3), the prohibition on slavery and enforced labour (Article 4) and protection from retrospective criminal penalties (Article 7)

- *limited right*s, such as the right to liberty (Article 5) which are limited under explicit and finite circumstances, set out in the ECHR itself, which provides exceptions to the general right

- *qualified right*s, which include the right to respect for private and family life (Article 8), religion and belief (Article 9), freedom of expression (Article 10), assembly and association (Article 11), the right to peaceful enjoyment of property (**Protocol** 1, Article 1) and to some extent the right to education (Protocol 1, Article 2). Interference with them is permissible only if what is done:

  A. has its basis in law, and

  B. is done to secure a permissible aim set out in the relevant Article, for example for the prevention of crime, or for the protection of public order or health, and

  C. is necessary in a democratic society, which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued (see below).

Part 3 of this Guide uses these terms and explains them further.

Proportionality

3.10 The points at A, B and C above are very important tests to see if interference by any public authority in an individual's rights is allowed under the ECHR. Of critical importance, however, is the proportionality condition in test C. What this means is that, even if a particular policy or action that interferes with a Convention right pursues a legitimate aim (such as the prevention of crime) this will not justify the interference if the means used to achieve the aim are excessive in the circumstances.

3.11 Any interference with a Convention right should be carefully designed to meet the objective in question and must not be arbitrary or unfair. Public authorities must not "use a sledgehammer to crack a nut". Even taking all these considerations into account, interference in a particular case may still not be justified because the impact on the individual or group is just too severe. For example, the European Court of Human Rights took this view in 2000 when it ruled that an outright ban on homosexual people serving in the armed forces was not compatible with the ECHR rights.[19] Under the Human Rights Act, the Courts have accepted that they need to consider proportionality. They do this by looking with "anxious scrutiny" at decisions that impinge on human rights, to see if they should be upheld.

Article 2: The right to life

3.12 In summary, you have the right to have your life protected by law. There are very limited circumstances when it is acceptable for the state to take away someone's life. You also have the right to an effective investigation if one of your family members dies in circumstances where the state might have had a part to play in the death. Everyone present in the UK has these rights, including those such as suspected terrorists or violent criminals who put the lives of other people at risk. Article 2 gives perhaps the most fundamental of all the rights under the ECHR.

What does my right include?

3.13 Article 2 requires states to make adequate provision in their laws so as to protect human life. This means that, generally, the taking of life must be illegal under a state's law. The fact that murder and manslaughter are crimes under domestic law satisfies this part of the Article 2 obligation on the UK.

3.14 Article 2 also provides that no-one can be deprived of their life intentionally by the state unless they have committed a crime for which the death penalty is provided. The UK has also ratified Protocol 6 and 13, which abolish the death penalty and the existing legal situation is that courts in the UK cannot order death as a sentence for any crime.

3.15 There are very limited exceptions to this right, under Article 2(2). In peacetime, a public authority – such as the army, the police, or a prison – may not cause someone's death intentionally or unintentionally unless one of several limited special circumstances apply. These circumstances are where the death results from force used:

- in acceptable self-defence or defence of another person from unlawful violence
- so as to arrest someone or prevent them from escaping detention (provided that the arrest or the detention is legal)
- in lawful action to quell a riot or insurrection.

3.16 In any such situation it must be shown that the *use* of force and the *level* of force used was absolutely necessary. It must also be shown that the use and level of force used was strictly proportionate bearing in mind what the

force was trying to achieve. For example, the level of force that is acceptable in one situation may be unacceptable in another. UK law currently has provisions relating to the level of acceptable force that are very similar to the standards set by Article 2.[20]

3.17 The Government must also take positive steps to protect life in all kinds of situations. The following are examples of areas where questions about how far this obligation should extend might be raised:

- **Hospitals** – Hospitals are under a duty to take positive steps to safeguard a patient's right to life. A hospital may therefore need to consider the implications of Article 2 (and possibly Article 3 – see below) before refusing life-saving treatment to a patient.[21]

- **Death threats** – The *Osman* case[22] established that if someone suffers a real and immediate risk to their lives from known individuals, the police or other state agents should take positive steps to protect them. This principle was applied in the case of soldiers giving evidence to the Bloody Sunday Inquiry who feared for their lives if they had to testify in Northern Ireland, so the court ruled that they should give their evidence in London.[23] This aspect of Article 2 was also the reason why the boys who killed James Bulger, and the serial killer Mary Bell, were able to obtain injunctions to protect their identities and whereabouts indefinitely from publication in the press.[24]

- **Expulsion from the UK –** It will not be acceptable to extradite, expel or deport someone to a country where there is a real possibility that their life is at risk. However the courts have applied fairly high thresholds for asylum seekers seeking to show that their life will be at risk if they are forced to return to their countries of origin.

- **The right to die –** It is now established that Article 2 does not include a right to take your own life. Diane Pretty suffered from motor neurone disease. Her husband was willing to assist her suicide. She sought the assurance of the Director of Public Prosecutions that he would not be prosecuted. The European Court of Human Rights ruled in 2002[25] that Article 2 could not be used in this way to guarantee the right to end life.

What if someone is killed in circumstances where the state may have had a part to play in the death?

3.18 If someone is killed by a state agent, such as a member of the police or the army, the death must be properly inquired into. The same obligation to investigate is triggered if it is alleged that someone has died through the negligence or omission of a state body, such as a hospital or prison.[26] This might apply where someone committed suicide in prison or police custody, or was murdered by another detainee. The duty to investigate may also extend to a situation where Article 2 is engaged (because someone's life is at risk) even if they do not die.[27]

3.19 The Article 2 investigation, whatever form it takes (and it may or may not be a coroner's inquest), must be prompt, effective and independent; there should be public scrutiny of it; and the family of the deceased should be involved. In certain complex cases in order for the family's involvement in the inquiry to be effective, they may need to be provided with legal aid if they cannot afford to instruct lawyers themselves.[28] If lethal force has caused the death, for example if the police or army have shot someone, the investigation should examine whether or not the force used was justified, having regard to all the circumstances of the case. These circumstances will include: the reasons for the use of force, including the planning and supervision of any action, and the degree of force used in the particular situation. In all cases where an Article 2 investigation is required, if the investigation takes the form of an inquest, that inquest must result in findings on the disputed factual issues which are at the heart of the case: not only by what means the person died but also in what circumstances the death occurred.[29] It will be up to the public authority to justify their actions.

3.20 Most of the time, if a death took place prior to 2 October 2000, the requirements of an Article 2 investigation do not apply,[30] but this is a complex and developing area where you may require legal advice.[31]

Article 3: Freedom from torture or inhuman or degrading treatment

3.21 You have the absolute right not to be tortured or subjected to treatment or punishment that is inhuman or degrading. The treatment prohibited by Article 3 is of the worst kind and Article 3 is one of your most fundamental

rights. Even in times of war or other public emergency, you have the right not to be treated in these ways.

3.22 How your treatment will be classified depends on many different factors, such as:

- the nature, seriousness and duration of the treatment
- how it affected you mentally and physically
- how old you are
- whether you are male or female
- your state of health.

What is torture?

3.23 Torture is the most serious kind of ill-treatment. It consists of deliberate inhuman treatment, causing very serious and cruel suffering. The suffering can be either mental or physical or both. In several non-UK cases, for example, the European Court of Human Rights has held that where suspects in a police station have been beaten in order to extract confessions and information about their political activities, this was torture.

What is inhuman treatment or punishment?

3.24 Inhuman treatment or punishment is less severe than torture. Circumstances in which inhuman treatment or punishment can arise include:

- serious physical assaults
- the use of psychological interrogation techniques
- inhuman detention conditions or restraints
- failing to provide or withdrawing proper medical help to a person with a serious illness
- a threat of torture, if it is real and immediate.

What is degrading treatment or punishment?

3.25 Degrading treatment or punishment is also less severe than torture. It may be degrading if it is ill-treatment which is also grossly humiliating. Whether or not treatment is "degrading" depends on whether a reasonable person of the same age, sex and health as you would have felt degraded. There are indications that severe discrimination based on race might constitute degrading treatment and this might extend to other forms of acute discrimination.

Do these definitions change over time?

3.26 Yes. In considering whether or not someone has been the subject of torture or ill-treatment, the European Court of Human Rights is very aware that social conditions change over time. This means that some practices that were acceptable in the past are now generally disapproved of, such as certain forms of corporal punishment.

Does it matter who has actually performed the torture or ill-treatment?

3.27 A public authority can be responsible for the acts of people who work for them even if they do not know or approve of what those people are doing. For example, several years ago the Turkish authorities were held responsible for rapes committed by its soldiers in Cyprus as they had not taken satisfactory steps to prevent the attacks and did not discipline the soldiers sufficiently afterwards. The state is under a positive obligation to prevent breaches of Article 3 by one private individual against another, particularly against children and other vulnerable persons, a principle that was recently reiterated in the *Z v UK*[32] case in Strasbourg. Covering up or failing to investigate a death or disappearance or an allegation of ill-treatment may itself violate the Article 3 rights of the immediate victim's family.

3.28 Although the threshold for showing an Article 3 violation is high, the following areas may lead to potential breaches:

- conditions in police cells, prisons, mental hospitals and other forms of detention centre[33]
- corporal punishment and child abuse
- deportation or extradition to countries where there is a real risk of torture, inhuman or degrading treatment
- the living conditions of asylum seekers while they wait for their applications to be determined.[34]

Article 3 has been used under the Human Rights Act in relation to areas as diverse as sentencing and hospitals.[35]

Article 4: Freedom from slavery or forced labour

3.29 You have the absolute right not to be treated like a slave or forced to perform certain kinds of labour.

3.30 This is another fundamental right in the sense that even in times of war or other public emergency, you have the right not to be treated in these ways.

What is slavery?

3.31 Article 4 protects you from being held in "slavery" or "servitude". These are very old-fashioned concepts, dating back to Roman times. Being a slave means that someone actually owns you just like a piece of property. Being in servitude is similar, in that you may have to live on the other person's property, and may be unable to leave, but is different in that the other person does not officially own you. The UK outlawed all forms of slavery in 1833. Sometimes newspapers report that a personal servant or other person is held in slavery in the UK. This is against the law and will usually involve a breach of both criminal and civil law.

What is forced labour?

3.32 Article 4 also protects you from having to perform "forced or compulsory labour". "Labour" is given a broad meaning, and can cover all kinds of work or service, not just physical work. It is "forced or compulsory" if you are made to do it by the threat of a punishment which you have not voluntarily accepted. The idea could apply to situations where immigrant staff have their passports removed to prevent them leaving work (though, of course, it is not the state who acts in this way).

What is not forced labour?

3.33 The following activities are specifically *excluded* from being forced or compulsory labour:

- work required to be done in the ordinary course of a prison sentence or a sentence of community punishment
- military service (whether voluntary or compulsory) or substitute civilian service
- community service in a public emergency, or a situation which threatens the life or well-being of the community
- normal civic obligations, which have been held to include:
  - compulsory fire service
  - maintaining a building if you are a landlord
  - deducting taxes from your employees' wages if you are an employer.

Cases under Article 4

3.34 There have not been very many cases before the European Court of Human Rights under Article 4. In nearly all of the cases, people have been unsuccessful.

3.35 For example, the Court has held that trainee lawyers could be made to undertake a certain amount of voluntary work as part of their training. This was not a breach of their rights under Article 4 because it was considered proportionate to require them to perform this unpaid work to avoid being struck off the lawyers' roll.

3.36 It has also been held by the Court to be acceptable for a Government to require an unemployed person to accept a job offer or risk losing their unemployment benefit.

Article 5: Personal freedom

3.37 You have the right not to be deprived of your liberty even for a short period. However, this right is a limited right and it does not apply where this detention is lawful and it is for one of six specified reasons (see paragraph 3.40).

What is an arrest?

3.38 An "arrest" technically occurs in any situation in which an officer indicates that you are not free to leave. It is irrelevant whether this indication is through words or conduct, including force. For example, if you are stopped by the police on the street so that they can question you, search you or conduct tests on you, this could be an arrest, even if you are only detained for a short period of time. However, not every command to stop is an arrest.

What is detention?

3.39 "Detention" can include both closed and open prisons and mental hospitals. Even if you volunteered to go to the police in order to be arrested or detained you are entitled to the protection of Article 5. It may even be a "detention" to be required to comply with

orders requiring you to reside at a particular place under conditions, such as reporting regularly to the police, following a curfew, avoiding contact with certain people or being accompanied by a police officer when you leave the house. A lot depends on the degree and intensity of the restriction on your liberty, which in turn requires consideration of matters such as the means, length, effect and manner of the detention.

Acceptable reasons for arrest or detention

3.40 Article 5 protects you from being deprived of your liberty unless it is in accordance with a procedure set down by law and is for one of the following six reasons:

- lawful detention following a conviction by a criminal court
- lawful arrest or detention to make you comply with a court order or to require you to fulfil some other lawful obligation
- lawful arrest or detention to ensure you attend at court, if there is a reasonable suspicion that you have committed a crime, or to prevent you from committing further crimes or escaping while you are under investigation
- if you are under 18, lawful detention to ensure that you are subject to educational supervision or to ensure you attend court, even where this is not because you are suspected of having committed a crime
- if you are shown to be of unsound mind, an alcoholic, a drug addict or a vagrant or to prevent you from spreading an infectious disease
- where this is necessary to prevent you from unlawfully entering the UK, or to allow your deportation to another state or extradition for a crime you face there.

3.41 If arrest or detention is not for one of these reasons, it will not be lawful and you may want to go to court to prevent or end it. Detention may also be unlawful if it is carried out in an arbitrary or discriminatory way.

Other Rights under Article 5

3.42 These include:

- the right to be brought before a court "promptly" once you have been arrested as a criminal suspect
- the right to bail pending your criminal trial, unless:
  - there is a danger that you will not attend for your trial, and the court cannot identify other conditions to ensure that you do so
  - there is a danger that you will destroy evidence, warn other possible suspects, co-ordinate your story with them, or influence witnesses
  - there are good reasons to believe that you will commit a crime of the same kind with which you have been charged
  - the seriousness of the crime and the public reaction to it are such that your release would cause a public disturbance
- the right to be tried within a "reasonable time"
- the right be told in non-technical terms and in a language you understand why you are being arrested
- the right to challenge the lawfulness of your detention before an independent judicial body, and the right to be released and obtain compensation if you win in some cases, the right to have your detention reviewed at various intervals.

3.43 The Convention allows signatory States to suspend some of the obligations in times of national emergency; these special measures are called **derogations**. The UK has, in the past, made use of derogations in relation to the length of time for which alleged terrorists may be detained without charge before being brought before a court.

3.44 Following the terrorist attacks on 11 September 2001 Parliament passed an Act[36] that involved the UK making use of its right to derogate, for a limited purpose, from Article 5 of the Convention. The arrangements applied to foreign nationals who the Secretary of State suspected were international terrorists and whom he intended to deport or remove on grounds of national security. Where there are legal or other reasons preventing deportation or removal, the Act allowed the suspected terrorists to be detained; and the UK's derogation took effect to the extent that this detention was not permitted by Article 5. However the House of Lords declared this part of the Act unlawful.[37] The Government has

brought in new procedures called "control orders" but these are also being challenged in the courts.[38]

3.45 The following are examples of situations in which allegations of breaches of the right to personal freedom under Article 5 have been made:

- the delays in making a quick decision on asylum applications, while holding the applicants in detention[39]
- the release of a patient under the Mental Health Act 1983 on conditions which were not fulfilled, and which left that person technically in detention[40]
- the imposition of "longer-than-normal" sentences under s.80(2)(b) of the Powers of Criminal Courts (Sentencing) Act 2000[41]
- the process for reviewing detention of mental health patients, and delays in arranging the same[42]
- the imposition of mandatory life sentences following convictions for murder[43]
- the fact that the Secretary of State for the Home Department was entitled, as a member of the executive, to fix the tariff element of a mandatory life sentence for murder[44]
- the return to London, under police escort, of a coach load of people intending to demonstrate against the war in Iraq.[45]

3.46 Complaints about the conditions of detention, rather than the fact of detention itself, will generally fall to be considered under Article 3 or Article 8.

Article 6: Right to a fair trial

3.47 You have the right to a fair trial. This is a key feature of a democratic society, and includes:

- the right to a *fair* hearing
- the right to a *public* hearing
- the right to a hearing before an *independent and impartial tribunal*
- the right to a hearing *within a reasonable time.*

What kinds of hearings are covered by Article 6?

3.48 Many kinds of hearing or dispute settlement, both criminal and civil, are covered by the general right to a fair trial. The terms "criminal" and "civil" have very specific meanings under Article 6. It is important to know which type of case is in question because the rights under Article 6 are more extensive for cases classified as criminal.

3.49 A criminal case can include a case that is not classified in that way in UK law. What matters is whether the nature of the offence and the seriousness of the possible punishment make it virtually the same as a criminal case – for example military discipline cases, or an application to commit to prison for contempt of court. There have been several cases under the Human Rights Act questioning whether a particular penalty is so severe that the full range of Article 6 protections should be available, notwithstanding that the penalty is classified as 'civil' in UK law.[46] The Grand Chamber of the European Court of Human Rights has also recently held that prison disciplinary hearings where the prisoner might be sentenced to additional days incarceration are protected by Article 6, so that s/he is entitled to legal representation.[47]

3.50 Again, whether or not something is a "civil" case for the purposes of the Human Rights Act can be a tricky area**.** Essentially this term describes cases involving disputes about private rights or the use of administrative powers which affect private rights, for example: contracts, planning decisions, property disputes, family law or employment law. It does not include purely public rights – such as rights that may be in dispute under immigration legislation.

3.51 To fall within Article 6, the civil dispute does not necessarily have to be in a court. If the procedure involves the decisive settlement of a genuine, serious dispute, for example concerning a right or obligation (not merely the exercise of discretion), Article 6 may apply. In some kinds of cases involving a public authority you might not have the specific protections of Article 6, even if you already have rights to a fair procedure under domestic law.

3.52 This is because a "civil" right has a technical meaning in the ECHR. Such cases might include: voting or election rights, tax disputes, treatment under the NHS, immigration or extradition. Whether or not Article 6 applies

has generated lots of different cases.[48] Therefore whether a particular sort of hearing is to be classified as criminal or civil for the purposes of Article 6 is a difficult area, and one on which you might need to take specialist advice.

What about appeals?

3.53 Article 6 does not guarantee a right of appeal but the general guarantees of Article 6 apply to the first level of proceedings, as well as to any appeal which is available. However, some of the more specific rights, such as the right to an oral hearing or to a public hearing, may not apply in full to an appeal.

3.54 If your case is heard by a non-judicial body, such as an administrative authority rather than a court, the proceedings may not always meet the full standard in Article 6. However, this need not matter if there is an appeal from the decision of that authority to a court that *does* meet the Article 6 standard for fair trials and can deal with all aspects of the case. There need not be a full re-hearing of the facts of the case, for example where the earlier hearing took place in public.

The right of access to a court

3.55 As well as ensuring that court proceedings are conducted fairly, Article 6 gives you the right to bring a civil case. The legal system must be set up in such a way that people are not excluded from the court process.[49] The right of access to court is not, however, unlimited and the European Court has accepted that the following people can be restricted from bringing cases:

- litigants who keep bringing cases without merit
- bankrupts
- minors
- people who are not within a time-limit or limitation period for bringing a case
- other people where there is a legitimate interest in restricting their rights of access to a court, provided that the limitation is not more restrictive than necessary.

The right to reasons

3.56 The Human Rights Act has been used to develop existing law which required decision-makers and the Courts to give reasons for their decisions in some cases, so that individuals know the basis for the decision sufficiently clearly to decide whether they can challenge it further.

What about legal aid?

3.57 Article 6 does *not* give you an absolute right to legal aid in all civil cases where you cannot afford to bring proceedings. However, legal aid may be required by Article 6 if the case or proceedings are so complex that you cannot be expected to present the case yourself, or in circumstances where legal representation is compulsory. In one recent case, for example, the Strasbourg court held that the assistance of a lawyer was essential in care and adoption proceedings, without which it could not be said that the parents' Article 6 rights had been adequately protected.[50] Similarly, in the case of two individuals who had been sued by McDonalds for defamation, the court recently held that the denial of legal aid to the applicants had deprived them of the opportunity to present their case effectively.[51]

What does the right to a fair hearing mean?

3.58 This means, in essence, the right to present your case and evidence to the court under conditions which do not place you at a substantial disadvantage when compared with the other party. You must therefore have, for example, access to material held by the other side, and the ability to cross-examine witnesses on terms that are equal with the other side's. Witnesses and victims also have rights under the ECHR. Where they are young or vulnerable the court must do what it can to protect them and acknowledge these rights. This may mean that you cannot, on your own, cross-examine a witness who alleges that he or she is a victim of an offence committed by you.

What does the right to a public hearing mean?

3.59 In principle, this right means that both the public at large and the press have access to any court hearing. Nevertheless, this right can be subject to certain restrictions in the interests of morals, public order or national security or where the interests of those under 18 or the privacy of the parties require an exclusion of the public and the press. However any exclusion of the public must only go as far as is necessary to protect those interests. Even where the public has been excluded from the hearing, the court must pronounce its judgment in public, whether it is read out or given in written form.

What does the right to an independent and impartial tribunal mean?

3.60 The tribunal that hears your case must be independent of you and of the other party to your case. The way in which members of the court or tribunal are appointed or the way they conduct a particular case can affect their independence.

3.61 Similarly, members of the court must be impartial, and not show prejudice or bias or give you any grounds for legitimately doubting whether they are being impartial. Sometimes a judge will have had some earlier involvement with the case prior to the trial, for example in making bail decisions for you. Or he or she may have links with either party, or very strong views. Generally speaking, however, prior involvement does not mean the judge is not impartial unless it involved him or her in assessing whether or not you were guilty. The test is always whether there is an appearance of a lack of independence or impartiality, whether or not such difficulties are in fact present. For example, in two cases under the Act it was held that licensing justices should not sit on the appeal in the same case as they decided previously.

3.62 Several cases under the Human Rights Act have involved a challenge to the procedure whereby ministers or local authorities, rather than courts, made important decisions about the use of land or people's enjoyment of property. It has been argued that in these circumstances the decision-maker is too closely connected to the subject matter to be impartial; or that the process is not sufficiently open to satisfy the other requirements of Article 6. The key case on this aspect of Article 6 is *Alconbury*,[52] where it was held that planning decisions could be made by ministers and not courts without Article 6 being breached. In that case, the House of Lords took into account the subsequent involvement of the courts in reviewing the decision.

3.63 However, other cases such as *Adnan*[53] and *Begum*[54] have raised issues about how decision-makers who are not courts need to act quasi-judicially (for example, by holding public hearings) where evidence is in dispute between the parties. They have also suggested that some other sorts of decisions cannot properly be allocated to decision-makers other than the Courts. Whether or not the decision-maker in a particular case is a fair and impartial tribunal for the purposes of Article 6 is therefore a developing and complex area, about which you might need specialist advice.

What does the right to a trial within a reasonable time mean?

3.64 You are entitled to have your case heard without excessive procedural delays. Whether a delay is excessive will very much depend on the circumstances of your case, including:

- the type and complexity of the case (for example, criminal cases and family cases involving children usually have a strict timescale)
- the conduct and diligence in the case of both sides
- the conduct and diligence of the court

Inadequacy of resources (e.g. social workers or judges) is not an excuse for excessive delay.[55]

Additional rights in a criminal trial

3.65 These include:

- the right, as a general principle, to be in court during your trial. If you are in custody it is the responsibility of the prison authorities to ensure you are at court. You can waive your right to attend court, but you must do so freely and clearly. However, if you deliberately choose to be absent from Court when your trial is heard, the Court may continue with the case and will not necessarily have breached your Article 6 rights in doing so.[56]
- the right not to say anything that may incriminate you, often called the "right to silence". (However, if you exercise the right to silence, the court may be allowed to draw conclusions about why you have remained silent.[57])
- the right to be presumed innocent until proven guilty, which means that it is usually for the prosecution to prove you are guilty of the offence.
- the right to be informed promptly of the details of the accusation against you in a language you understand.

- the right to adequate time and facilities to prepare your defence, including the provision of legal aid where justice requires this, and the right to communicate with a lawyer in good time for the trial.

- the right to question prosecution witnesses and to call and examine your own witnesses under the same conditions.

- the right to defend yourself or the right to effective legal assistance.

- the right to a free interpreter where you cannot understand the language used.

3.66 Under the Human Rights Act the right to a fair trial under Article 6 raises issues relating to:

- the disclosure of evidence between the two sides in a case – and it is now quite common for defence lawyers in criminal cases to rely on Article 6 in support of applications for disclosure of material by the prosecution

- the use of evidence obtained by informers and entrapment by *agents provocateurs*[58]

- the availability of legal aid in certain kinds of cases

- the conditions for the trial of juveniles

- certain aspects of internal military justice[59]

- the procedure adopted for certain kinds of informal or private hearings, applications for licences or permits[60]

- the use of evidence obtained by covert surveillance, for example phone-tapping and bugging. (However, a breach of Article 8 does not mean that Article 6 has necessarily been breached: it depends on how serious the Article 8 breach was and how it actually affects the fairness of your trial.)

Article 7: No punishment without law

3.67 You normally have the right not to be found guilty of a criminal offence arising out of an action that, at the time that you did it, was not criminal. You are also protected against any increase in the possible sentence for an offence that has taken place as a result of the law changing since the date of your action.

Article 8: Private life and family

3.68 You have the right to respect for your private and family life, your home and your correspondence. Article 8 is an example of a qualified right in the ECHR. This means that there is a framework in place against which any interference with your rights by the state must be judged to see if it is acceptable.

What does private life cover?

3.69 The concept of "private life" is broad. In general, your right to a private life means that you have the right to live your own life with such personal privacy as is reasonable in a democratic society, taking into account the rights and freedoms of others. Any interference with your body or the way you live your life needs to be justified. Your Article 8 rights include matters of self-determination that may include, for example:

- freedom to choose your sexual identity

- freedom to choose how you look and dress

- freedom from intrusion by the media.

3.70 Your right to private life can also include the right to have information about you, such as official records, photographs, letters, diaries and medical information, kept private and confidential. Unless there is a very good reason, public authorities should not collect or use information like this; if they do, they need to make sure the information is accurate.[61]

3.71 Article 8 places limits on the extent to which a public authority can do things which invade your privacy about your body without your permission. This can include activities such as taking blood samples and performing body searches.[62]

3.72 In some circumstances, the state must take positive steps to prevent intrusions into your privacy by other people. For example, the state may be required to take action to protect individuals from serious pollution where it is seriously affecting their lives.[63]

What does family life cover?

3.73 Your right to respect for family life includes the right to have family relationships recognised by the law. It also includes the right for a family to live together and enjoy each other's company. Unmarried mothers are always covered by "family"; foster families may be.

What does respect for my home cover?

3.74 You have the right to enjoy living in your home without public authorities intruding or preventing you from entering it or living in it. You also have the right to enjoy your home peacefully. This may mean, for example, that the state has to take action so that you can peacefully enjoy your home, for example, to reduce aircraft noise or to prevent serious environmental pollution. Your "home" may include your place of business. You don't have to own your home to enjoy these rights.

What about correspondence?

3.75 Again, the definition of "correspondence" is broad, and can include communication by letter, telephone, fax or e-mail.

Can a public authority interfere with my Article 8 rights?

3.76 Yes. But it would have to be shown that: the interference had a clear legal basis; the *aim* of the interference was either national security, public safety, protection of the economy, prevention of crime, the protection of health or morals or the protection of the rights and freedoms of others; it was necessary (and not just reasonable) to interfere with your rights for one of the permitted reasons; and that the interference was proportionate, going only as far as was required to meet the aim.

3.77 Before taking decisions affecting people's rights under Article 8, a public authority will have to weigh all the competing interests carefully so as to justify any interference. Rights under Article 8 may need to be balanced against other rights, for example the right to free expression in Article 10.[64]

3.78 The right to respect for private and family life, your home and your correspondence under Article 8 also raises issues in areas such as:

- searches of homes and the use of covert surveillance, such as listening devices[65]
- family law disputes or asylum cases where there is a risk that a family will be separated[66]
- the rights of homosexual people (there have also been recent developments in domestic law in this area, such as the Employment Equality (Sexual Orientation) Regulations 2003 and the Civil Partnership Act 2004)
- the rights of transsexual people[67] (which are now given effect in domestic law by the Gender Recognition Act 2004)
- certain aspects of the rights of prisoners[68]
- employees' rights to privacy, including the monitoring of e-mails and telephone calls
- the imposition of unreasonable mandatory dress codes or drug testing at work
- the use of CCTV and exchange of data obtained from it
- the right to refuse medical treatment[69]
- the rights of egg and sperm donors, and children born as a result of artificial insemination[70]
- the ability of the media to report details of the private lives of famous people.[71]

Article 9: Freedom of belief

3.79 Article 9 protects your rights in relation to a broad range of views, beliefs, thoughts and positions of conscience as well as to your faith in a particular religion.

Holding particular beliefs

3.80 You have the absolute right to hold the thoughts, positions of conscience or religion you choose. The state can never interfere with your holding of these views, whatever the circumstances of your case.

Manifesting particular beliefs

3.81 You also have the right under Article 9 to manifest your thoughts, positions of conscience or religion. This can include the right to practise or demonstrate your religion or beliefs in public and in private.

Acceptable restrictions on Article 9 rights

3.82 However, the right to manifest religious belief is "qualified" and interferences with it by the state can be justified in certain circumstances. The state would need to show that the interference had a clear legal basis, the *aim* of which was public safety, the protection of public order, health or morals or the protection of the rights and freedoms of others; and that it was *necessary* (and not just reasonable) to interfere with your rights and the interference went only as far as was required to meet the aim.

3.83 The Human Rights Act also provides that when a court is considering a question relating to the exercise by a religious organisation (itself or its members collectively) of its rights under Article 9 the court must have particular regard to the importance of that right.

3.84 Under the Human Rights Act the right to freedom of belief under Article 9 may be relevant to areas such as:

- the actions of employers and schools to accommodate the Article 9 rights of their employees and pupils, which may include issues relating to time off for religious holidays, uniforms etc[72]

- the arrangements made to ensure prisoners can practise their religions

- how far people can go in trying to encourage others to convert to their religion.

In one case,[73] Article 9 was used by a woman who sought to remove her late husband's ashes from a consecrated cemetery to a crematorium. Neither she nor her late husband had any Christian beliefs – he had been of part-Jewish parentage and was himself a Humanist. The Court held that Article 9 protected non-religious beliefs as well as religious ones, and so as to permit her to express her non-religious views, she was allowed to exhume her husband's ashes (when the common law rules would not have allowed her to do this). There have been several other unsuccessful cases under Article 9, such as an argument that it should provide a defence to a charge of cannabis possession (because of the importance of this to some beliefs, such as Rastafarianism); or that it should authorise the corporal punishment of children or make the ban on it unlawful.

Article 10: Free expression

3.85 Article 10 gives you a very important right to hold opinions and express your views singly or in dialogue. As with Articles 8 and 9, interferences with Article 10 rights must be justified according to the special framework set out in the ECHR.

What is expression?

3.86 "Expression" can cover holding views or opinions, speaking aloud, publishing articles or books or leaflets, television or radio broadcasting, producing works of art, communication through the internet, some forms of commercial information and many other activities. It can also cover the right to receive information from others, so you possess expression rights as a speaker and as a member of an audience. You can express yourself in ways that other people will not like, or may even find offensive or shocking. However, offensive language insulting to particular racial or ethnic groups would be an example of where a lawful restriction on expression might be imposed.

Political expression

3.87 The European Court of Human Rights has always stressed that the right to express political views and opinions is especially important. However, even when political views are being expressed, there can be a responsibility to respect the rights of others.

The media

3.88 Freedom of expression is also very important for journalists, television and radio reporters and other parts of the media. They must be free to criticise the state or other political parties and must be able to report news and current affairs fearlessly. The media performs an essential "watchdog" function in a free democracy. On the other hand, these rights must be balanced against others, for example those in Article 8 covering respect for private and family life.

Acceptable restrictions on Article 10 rights

3.89 Article 10 makes clear that the exercise of freedom of expression carries with it both duties and responsibilities. Interferences with Article 10 rights can take the form of "formalities, conditions, restrictions or penalties"; but the interference must have a clear legal basis. Furthermore, the *aim* of the interference can only be: national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the rights and reputations of others, the prevention of the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary. It must be *necessary* (and not just reasonable) to interfere with your rights and the interference must only go as far as was required to meet the aim.

3.90 For example, it is clear that freedom of expression can cover publications that many would regard as pornographic or otherwise offensive. However, where these forms of expression are concerned, restrictions can

more easily be justified in order to protect the rights of others and the interests of society. This means that there can be lawful restrictions on access to certain films, videos and publications so as to protect children.

3.91 Similarly, there can be lawful restraints on the right to speak out. Articles 17 and 18 (see paragraphs 3.136 and 3.137 below) set general limitations on the exercise of Convention rights. They could be particularly relevant here.

3.92 Restrictions that prevent broadcasts or publications occurring (known as "prior restraints") are rarely allowed.[74] The Human Rights Act contains special provisions limiting when and how prior restraints can be imposed and stressing the importance of Article 10. In particular, the Human Rights Act requires the courts to take into account any relevant privacy code. In practice this will mean codes like that issued by the Press Complaints Commission, Ofcom and the Information Commissioner.

3.93 The right to free expression under Article 10 may be relevant to areas such as political demonstration, industrial action and "whistle-blowing" employees. It has also been very important for the media. The press's rights under Article 10 have come into conflict with celebrities' rights to privacy under Article 8 in several high profile cases.[75] In addition, the interaction between Article 10 and the criminal law has been tested in several cases.[76]

Article 11: Free assembly and association

3.94 You have the right to assemble with other people in a peaceful way. You also have the right to associate with other people, which can include the right to form a trade union. Restrictions upon these rights must be justified by reference to special reasons and legal tests.

What is freedom of assembly?

3.95 Your right of peaceful assembly includes your individual right to protest in a peaceful way, particularly against the state. You can exercise this right freely provided that, while exercising your rights, you do not commit any wrongful act and you act peacefully and without violence or threat of violence.

3.96 You also have the right not to take part in an assembly against your will.

What is freedom of association?

3.97 Your right to freedom of association includes: the right to form a political party (or other association such as a trade union or other voluntary group); the right not to join and not be a member of such an association or other voluntary group. This means that an individual cannot be compelled to join an association or trade union, for example. Any such compulsion may infringe Article 11.

Protecting your rights under Article 11

3.98 The state is under a duty to take certain positive steps in order to ensure that you can properly enjoy and exercise your freedoms under Article 11. For example the state would act in breach of your Article 11 rights if it permitted "closed shop" agreements under which you could be dismissed for refusing to join a trade union at your work place. And the state should protect you from violence if you are engaging in a peaceful demonstration. The European Court of Human Rights has held that a pay system that penalised trade union members was a breach of this right.

Acceptable restrictions on Article 11 rights

3.99 It can be acceptable for the state to restrict your rights under Article 11 in certain situations, which must be narrowly interpreted. To show that a restriction was lawful, the state would have to show that: the interference had a clear legal basis; the *aim* of the interference was national security or public safety, the prevention of disorder or crime, the protection of health or morals, or for the protection of the rights and freedoms of others; it was *necessary* (and not just reasonable) to interfere with your rights; and that the interference went only as far as was required to meet the aim.

3.100 Greater restrictions may be acceptable if you are a member of the armed forces, the police or a civil servant.

Article 12: Marriage

3.101 Men and women have the right to marry and found a family.

Restrictions on your right

3.102 The state can regulate these matters by law as long as it does not effectively take away the right. The right to start a family includes adoption. This Article means that restrictions on adoption, set down by domestic law, are permissible only if they serve an important

purpose. Although there is no obligation on the state to provide any specific system of adoption, any system must not obstruct the right.

Artificial reproduction

3.103 Your rights under Article 12 may also be important in the context of artificial reproduction. If you are prohibited from seeking fertility treatment or from making use of artificial reproduction techniques, Article 12 may apply. But there is no right to require the state to provide such techniques.[77]

Transsexual people

3.104 In the case of *Goodwin,*[78] the European Court of Human Rights has interpreted Article 12 as providing post-operative transsexual people with the right to marry and to found a family (the Gender Recognition Act 2004 makes wider provision in this respect).

Article 14: Freedom from discrimination

3.105 Discrimination means treating people in similar situations differently, or those in different situations in the same way, without proper justification. Article 14 of the ECHR gives you the right to protection from discrimination in relation to all the other rights guaranteed under the Convention. It means that you are entitled to equal access to those rights. You cannot be denied equal access to them on grounds of your "status".

How does Article 14 work?

3.106 Article 14 only works to protect you from different treatment in exercising your other Convention rights. It does not give you a general right to protection from different treatment in all areas of your life. The structure of Article 14 means that you need to be able to identify another Convention right in order to make use of the non-discrimination protection. However, you do not need to identify an actual breach of the right to claim that you have been discriminated against with respect to your enjoyment of it. You simply need to show that the subject matter of the Convention right is activated.

On what ground is discrimination prohibited?

3.107 Article 14 gives the following as examples of the grounds of discrimination that the ECHR does not allow:

- sex
- race
- colour
- language
- religion
- political or other opinion
- national or social origin
- association with a national minority
- property
- birth

3.108 Importantly, though, Article 14 protects you from discrimination on the grounds of "any other status" too. This means that the categories are not closed but also extent to other types of personal status such as:

- sexual orientation
- whether you were born inside or outside a marriage
- disability
- marital status
- age

However "other status" is not completely unlimited – for example the courts have held that it does not cover purely historical facts, such as the fact that you have at some time been in policy custody.

Is a distinction in treatment ever acceptable?

3.109 Yes, in some circumstances. A public authority can only treat people differently in the way their Convention rights are exercised if it can show that it is pursuing a legitimate aim and that the discriminatory treatment is proportionate to the aim. Only good reasons will suffice, especially where the difference in treatment is on grounds of sex or race.

3.110 There will be many ways in which Article 14, taken together with another Convention right, can reduce or eliminate discrimination.

For example:

- It might not be a breach of your right to education if the state does not provide a particular kind of teaching. But if the state provides it for boys but not for girls, or for people who speak only a particular language, but not another, this could be discrimination in relation to the right to education. If this was your case, you would rely on your rights under Article 14 (non-discrimination) taken together with Protocol 1, Article 2 (education).

- It is unlikely to be a breach of the right to respect for your property for the state to impose a particular kind of tax (see para 3.113 – Article 1, Protocol 1 specifically preserves the State's right to asses and collect tax). But if the state taxes some people but not others in the same situation, then it might be a breach of Article 14 in relation to the right to respect for property. If this was your case, you would rely on your rights under Article 14 (non-discrimination) taken together with Protocol 1, Article 1 (property).

Article 14 has been invoked under the Human Rights Act on behalf of a gay couple who wished to be treated in the same way as a heterosexual couple for the purposes of one partner succeeding to another under a tenancy,[79] and also (though ultimately unsuccessfully) in relation to certain benefits which were payable to widows but not to widowers.[80] It was also used by the Association of British Civilian Internees to challenge the Secretary of State for Defence's decision to limit compensation to those interned by the Japanese during the Second World War to those with a blood link to the UK.[81]

3.111 There is a new Protocol to the Convention, Protocol 12, which will have the effect of creating a free-standing right to protection from discrimination when it is signed by sufficient states. At present, however, the Government has no plans to sign this Protocol or incorporate it into the Human Rights Act.

Protocol 1, Article 1: Property

3.112 You have the right to the peaceful enjoyment of your possessions. This means that public authorities cannot usually interfere with things you own or the way that you use them.

How wide is this right?

3.113 All sorts of things can count as property. Land is property. So is a lease on a house or flat. So is your business, or the money you use to pay your tax, or your right to a pension. Property you can see and touch such as books, or a car, is obviously included. So are invisible possessions such as shares, goodwill, patents, and compensation due under judgment debts or a claim for damages. Even entitlement to a social security benefit can be property. Companies, individuals, legal owners, beneficiaries, trustees and corporations can benefit from this right.

Can the state take away my property?

3.114 A public authority cannot take away what you own unless a law says that it can, and it is necessary for it to do so in the public interest. There is a public interest in the government raising finance, and in punishing crimes, so your rights under Protocol 1, Article 1 are not violated by your having to pay your taxes or fines. It tries to strike a fair balance between the general interest and the rights of individual property owners.

Can the state interfere with how I use my property?

3.115 You have the right under this Article to peaceful enjoyment of property without interference. You have the right to use, develop, sell, destroy or deal with your property in any way you please. The right to protection of property means that public authorities cannot interfere with the way that you use your property unless there is a law that lets them do it and unless interference is justified.

3.116 For example, if the state builds a road over your land, it must have laws in place to let it do this. It must also have a procedure to check that it is fair to take away your house in the public interest, and it must make sure that you can get proper compensation for it. An interference with your peaceful enjoyment of property may be necessary in the public interest – for example, a compulsory purchase of your property may be necessary or a certain amount of noise from road traffic may intrude upon your home.

Protocol 1, Article 2: Education

Children

3.117 You have a right not to be denied access to the educational system, and a right to an effective education. Education embraces the whole process where adults seek to transmit their beliefs, culture and other values to children. Teaching means the transmission of knowledge and intellectual development. This right is not necessarily confined to the education of children at school.

Parents

3.118 Parents have a right to make sure that their religious or philosophical beliefs are respected when public authorities provide education or teaching to their children. The current UK laws on education permit a wide range of educational establishments, whether funded by the State or otherwise.

3.119 The fact that a parent's wishes are a minority view does not necessarily mean that the majority's view prevails. A balance must be achieved which ensures a fair and proper treatment of minority views. Any abuse of a dominant position is to be avoided.

3.120 But parents cannot stop schools teaching about things like sex education if they are reasonable things for the school to teach, so long as it is not trying to indoctrinate the children. However, parents can remove their children from sex education classes.

Limits on the right to education

3.121 The general right to education is not an absolute right to learn whatever you want, wherever you want. The Government has made a special **reservation** to the ECHR in this area so that education provided by the state is limited to the extent that this is necessary to provide an efficient education and within public spending limits. You might not have a right to the most expensive form of education if there are cheaper alternatives available, but the Government or local education authority must balance the right not to be deprived of an education against the spending limits it imposes. The Government has stressed that the cost of providing education is a relevant factor in making these decisions.

In a recent case it was also held that the duty under Protocol 1, Article 2 was imposed on the state and not on any particular domestic institution. It did not create a right to be educated in a particular school or a particular manner, so that if an expelled pupil was able to have access to efficient education somewhere else, there would be no breach of his or her Convention right.[82]

Punishments in schools

3.122 Schools may legitimately impose penalties (provided they do not amount to ill-treatment within Article 3) on pupils as a form of discipline. A school that imposes a penalty on a pupil will have to show that such a penalty was necessary and a proportionate punishment.

3.123 A purely educational sanction (such as an exclusion) will be acceptable provided it does not breach the parents' right to ensure the education conforms to their own religious and philosophical convictions.

3.124 The right to education under Protocol 1, Article 2, may be relevant to areas such as: special educational needs provision; access to, or expulsion or exclusion of children from, schools; and (when taken with Article 14) the provision of, or exclusion from, education which is discriminatory as between sexes, races or other categories.

Protocol 1, Article 3: Free elections

3.125 If you have the right to vote for members of a legislative body, the elections in which you take part must be free and fair.

How must elections be conducted?

3.126 Elections must be held at reasonable intervals, and they must be by secret ballot. They must be held in conditions that ensure that people can freely express who they want to be a member of the legislature. If this provision is not followed, you can complain about it.

Can the state limit my rights to elections?

3.127 The state can put some limits on the way in which elections are held. Also, it can decide what kind of electoral system to have, such as "first past the post" or proportional representation.

3.128 The right to fair elections under Protocol 1, Article 3 applies only to those eligible to vote under domestic laws. In addition, Article 16 of the ECHR provides that nothing in Articles 10, 11 or 14 is to be taken as preventing a state from imposing restrictions on the political activity of non-citizens.

Protocol 13: The death penalty

3.129 Protocol 13 abolishes the death penalty in all circumstances, including crimes committed in times of war and imminent threat of war. The United Kingdom has ratified this Protocol which came into force in the UK on 22 June 2004.

ARTICLES 17 AND 18

3.130 Article 17 is a very general, but important, provision for preserving rights. It provides that the ECHR is not to be read as implying, for any state, group or person, any right to engage in any activity or perform any act aimed at destroying any of the rights set out in the Convention, or limiting them to a greater extent than is provided for in the ECHR.

3.131 Article 18 dictates that the restrictions to rights permitted under the ECHR are not to be used for any purpose other than those that have been specifically set out in the ECHR.

Annex A. Endnotes

[1] See the Glossary at Annex C (near the end of the Guide) for an explanation of this and other words and expressions relating to the Human Rights Act or European Convention on Human Rights which may be unfamiliar to some readers. Such words are shown in **bold type** for their first main use in the Guide.

[2] See paragraph 2.28.

[3] An example of this was the case of *R(H) v Mental Health Tribunal North and East London Region* [2002] QB 1 (CA) when the parts of the Mental Health Act which effectively placed the burden of proof on the patient to show that he or she was safe for release were declared to be incompatible with Article 5 of the Convention (the right to personal freedom). Parliament ultimately changed the law in this regard. This was the first use of the remedial order procedure.

[4] *Venables and Thompson v News Group Newspaper* [2001] 1 All ER 908; *Douglas v Hello! Ltd* [2006] QB 125; *Theakston v MGN* [2002] EWHC 137 (QB); *Campbell v Mirror Group Newspapers Ltd* [2004] 2 AC 457; *HRH Prince of Wales v Associated Newspapers Ltd.* [2006] EWHC 522 (Ch).

[5] *Ghaidan v Godin-Mendoza [2004] AC 557.*

[6] In *R (on the application of Farrakhan) v Secretary of State for the Home Department* [2002] ECWA Civ 606, for example, the Court of Appeal held that Mr Farrakhan enjoyed the benefit of Article 10 notwithstanding that he was living in the United States, as he had been refused a right to enter the UK. The Court of Appeal has also had to consider the extent to which the Human Rights Act applies to the actions of the British forces in Iraq. In *R (Al-Skeini and others) v Secretary of State for Defence* (2006) HRLR 7 the Court held that Iraqi citizens shot dead by British soldiers in their homes or in the street in Iraq during the British occupation did not come within the scope of the ECHR or the Human Rights Act, as the deaths occurred outside the jurisdiction of the United Kingdom. However, the death of an Iraqi citizen in the custody of British forces in Iraq did come within the scope of the Convention and of the Act as falling within the jurisdiction of the UK. The case is likely to be considered by the House of Lords in 2007.

[7] The consequences of this rule are sometimes referred to as **horizontal effect** – see Glossary at the end of this guide.

[8] *R v Hampshire Farmers Market Ltd, ex p Beer* [2002] EWHC 2559 (Admin).

[9] *Donoghue v Poplar Housing and Regeneration* [2002] QB 48.

[10] *Heather v Leonard Cheshire Foundation* [2002] 2 All ER 936.

[11] *R (West) v Lloyd's of London* [2004] 3 All ER 251.

[12] *Parochial Church Council of Aston Cantlow etc. v Wallbank* [2004] 1 AC 546.

[13] In Northern Ireland, an Industrial Tribunal.

[14] In Scotland, the Sheriff Court or Court of Session.

[15] *R (on the application of Bernard) v Enfield LBC* (2003) UKHRR 148.

[16] *R (on the application of KB) v Mental Health Review Tribunal (Damages)* [2004] QB 936.

[17] *Anufrijeva v Southwark LBC and others* [2004] QB 1124.

[18] *R (Greenfield) v Secretary of State for the Home Department* [2005] 1 WLR 673.

[19] *Lustig-Prean v UK* (No.1) (2000) 29 EHRR 548; *Smith and Grady v UK* [2000] 29 EHRR 493.

[20] This was established in the recent case of *R (Bennett) v HM Coroner for Inner South London and others* [2006] EWHC 196 (Admin).

[21] In *NHS Trust A v M* and *NHS Trust B v H* [2001] Fam 348 a hospital sought permission to discontinue artificial hydration and nutrition to a person, who in 1997 had been diagnosed as being in a "permanent vegetative state". The Court noted that Article 2 imposed a positive obligation to give life sustaining treatment where that is in the best interests of the patient – but not where it would be futile. Discontinuing treatment would not be an intentional deprivation of life under Article 2; and provided that withdrawing treatment was in line with a respected body of medical opinion, and that the patient would be unaware of the treatment and not suffering, there would be no torture under Article 3.

[22] *Osman v UK* (1998) 29 EHRR 245.

[23] *R v Lord Saville of Newdigate and others, ex parte A and others* [2002] 1 WLR 1249.

[24] *Venables v News Group Newspapers Ltd and Others* [2001] 1 All ER 908 and *X, a woman formerly known as Mary Bell v S, News Group Newspapers Ltd. and MGN Ltd.* [2003] EWHC 1101.

[25] *Pretty v UK* (2002) 35 EHRR 1.

[26] *R (on the application of Amin) v Secretary of State for the Home Department* [2004] 1 AC 653.

[27] *Menson v UK*, Application No. 47916/99, ECtHR, 6 May 2003; see also *R (D) v Secretary of State for the Home Department* [2006] EWCA Civ 143.

[28] *R (on the application of Khan) v Secretary of State for Health* [2003] EWCA Civ 1129.

[29] *R v HM Coroner for the Western District of Somerset (ex parte Middleton)* [2004] 2 AC 182.

[30] *In re McKerr* [2004] 1 WLR 807.

[31] Compare, for example, *Re Jordan's Application for Judicial Review* [2004] NI 198 2003 (Northern Ireland Court of Appeal) and *Commissioner of Police for the Metropolis v Christine Hurst* [2005] EWCA Civ 890 (Court of Appeal), both of which are to be considered by the House of Lords in 2007.

[32] *Z v United Kingdom* (2001) 34 EHRR 97.

[33] See, for example, *McGlinchey v UK* (ECtHR, 29 April 2003) where the Court held that a heroin addicted prisoner had died in conditions which violated Article 3 because of the failure of the prison authorities to take more effective steps to combat her withdrawal symptoms and deteriorating condition.

[34] Although in *R (on the application of S) v Secretary of State for the Home Department* [2003] EWCA Civ 1285 the Court of Appeal ruled that where an asylum seeker had shelter, sanitary facilities and some money for food, even though he was not entirely well physically, it was impossible to find that his treatment reached the Article 3 threshold.

[35] See, for example, *Lichniak v Secretary of State for the Home Department* [2002] QB 296 – where the Court did not accept that the mandatory life sentence for murder was so disproportionate a penalty in some cases that it constituted inhuman and degrading punishment in contravention of Article 3; see also *NHS Trust A v M and NHS Trust B v H* [2001] Fam 348 where it was held that to discontinue artificial hydration and nutrition to a person in a permanent vegetative state was not torture under Article 3.

[36] The Anti-Terrorism, Crime and Security Act 2001.

[37] *A (FC) and Others v Secretary of State for the Home Department* [2005] 2 AC 68.

[38] *Re Secretary of State for the Home Department v. MB*, [2006] EWCA Civ 1140.

[39] In *R (Saadi, Maged, Osman and Mohammed) v Secretary of State for the Home Department* [2002] 1 WLR 3131, detainees at Oakington detention centre argued that detaining asylum seekers in order to make a quick decision on their asylum claim infringed their right to liberty under Article 5. Although they won in the High Court, the Court of Appeal and House of Lords disagreed. The European Court of Human Rights has also now confirmed there was no breach of Article 5 (*Saadi v UK,* European Court of Human Rights (4th section) Application no. 13229/03, Judgment 11 July 2006).

[40] In *R v Secretary for the Home Department and Anor, ex parte IH* [2002] EWCA Civ 646, one of the concerns which used to arise under the Mental Health Act 1983 was that when a Tribunal ordered the release of a patient subject to conditions and the conditions were not fulfilled, the patient remained in detention even though a Tribunal had ruled that they do not need to be so detained. The Courts had previously ruled that once a Tribunal had made a decision to discharge subject to conditions, that was the end of its jurisdiction. The High Court ruled that Article 5 required the Mental Health Review Tribunal to monitor compliance with its order for a conditional discharge and if necessary amend the conditions so as to allow release.

[41] *R v Parole Board and Secretary of State for the Home Department, ex parte Giles* [2003] 4 All ER 429.

[42] *R (on the application of KB) v Mental Health Review Tribunal (Damages)* [2004] QB 936.

[43] *R v Lichniak; R v Pyrah* [2003] 1 AC 903.

[44] *R v Secretary of State for the Home Department, ex parte Anderson and Taylor* [2003] 1 AC 837.

[45] *R (Laporte) v Chief Constable of Gloucestershire Constabulary and others* [2005] QB 678. The case is likely to be heard by the House of Lords in due course.

[46] *Han and Yau, Martins and Martins, Morris v Customs and Excise Commissioners* [2001] 1 WLR 2253– where it was held that certain VAT penalties were criminal in nature, such that the protections of Article 6 applied; *International Transport Roth Gmbh and Others v Secretary of State for the Home Department* [2002] 3 WLR 344 – which held the same in relation to the penalties for lorry drivers carrying clandestine entrants to the UK; *McCann v UK* [1996] 21 EHRR 97 – which found that anti-social behaviour orders were not criminal; *McIntosh v HM Advocate, HM Advocate-General for Scotland*) [2001] 3 WLR 107 and *R v Benjafield* [2003] QB 728 – where it was held that confiscation orders against drug traffickers were civil rather than criminal; *Gough and others v Chief Constable of Derbyshire and others* [2002] 3 WLR 289 – where the Court found that international football banning orders were not criminal in nature, (though the standard of proof to be applied should equate to the criminal standard of proof beyond reasonable doubt); and *R (Mudie) v Dover Magistrates' Court* [2003] 2 WLR 1344 – where it was held that confiscation proceedings commenced by Customs and Excise under s.139 of the Customs and Excise Management Act 1979 were not criminal.

[47] *Ezeh and Connors v UK* (2004) 39 EHRR 1.

[48] For example, the recall of a prisoner on licence does not engage Article 5 or 6 (*R (West) v Parole Board* (2003) 1 WLR 705). In contrast, it has been held that the powers of the Kennel Club to ban a member from dog shows after she was convicted of cruelty did attract the protections of Article 6 (*Phyllis Colgan v Kennel Club* LTL 9/11/2001); and a post-tariff life prisoner is entitled to some Article 6 protections before the Parole Board (*Williams v Secretary of State for the Home Department* (2002) 1 WLR 2264).

[49] This aspect of Article 6 came into play in *Re S and Others: Re W and Others sub nom Re W and B(Children): W (Child) (Care Plan)* [2002] 1 FLR 815, a family law case where the Court of Appeal held that the making of full rather than interim care orders may invoke a violation of Article 6 where there was no ongoing supervision by the Court. Although the House of Lords overturned this decision, it urged Parliament to reconsider the question of court control of local authorities.

[50] *P, C and S v UK* [2002] 32 EHRR 31.

[51] *Steel and Morris v UK* (2005) 41 EHRR 22.

[52] *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] 2 WLR 1389.

[53] *Adnan v Newham LBC* [2002] 1 WLR 2120.

[54] *Begum v Tower Hamlets LBC* [2003] 2 AC 430.

[55] In *Re D (A Child)* [2002] 2 All ER 668, for example, it was held to be unacceptable for a trial of factual issues in a family case to be adjourned twice when the father had not seen his daughter for more than two years. In *HM Advocate v DP and SM* (16/02/01), the Scottish High Court of Justiciary held that the right to a trial within a reasonable time had been violated where there had been a 23-month delay between juveniles being charged with rape and the date fixed for their trial, when there were many unaccountable periods of inactivity by the prosecution. In *HM Advocate v JK* [2002] HRLR 21 the Privy Council felt that a 28-month delay in bringing a juvenile defendant to trial, for a number of serious sexual offences in relation to three of his cousins, was unduly long. However, whether or not there has been an unreasonable delay will depend very much on the nature of the offence, and the effect the delay has had on the defendant. In *Procurator Fiscal v Watson and Burrows* [2002] HRLR 21, for example, a delay of 20 months between the charge and trial of two police officers was not deemed to be unacceptable.

[56] *R v Jones* (2002) 2 WLR 524.

[57] In *Brown v Stott* [2001] 2 WLR 817 it was held that the obligation on the owner of a car to admit who had been driving when an offence was committed was a violation of this protection from self-incrimination but the Privy Council overturned this decision on appeal ((2003) 1 AC 681). It found that the provision in question (Section 172 of the Road Traffic Act 1988) addressed the problem of drunk driving in a reasonable and proportionate way. However, in *Beckles v UK* [2003] 36 EHRR 13 a complaint alleging a violation of Article 6 was upheld on the basis that the trial judge had failed to give appropriate weight in his direction to the jury to the applicant's explanation for his silence at the police interview. Similarly, in *Allan v UK* [2003] 36 EHRR 12 it was held that the admission of evidence which had been obtained by the police placing an informer in the cell of an applicant who had previously exercised his right to silence, violated Article 6.

[58] In *McNally v Chief Constable of the Greater Manchester Police* [2002] EWCA Civ 14, for example, it was held – partly in reliance on the Convention – that a person bringing a claim against the police for damages was entitled to know whether one of the key witnesses was an informant. Although in *R v Loosely* [2001] 1 WLR 2060 the House of Lords held that the current domestic law on entrapment was compatible with the Convention, in *Edwards and Lewis v UK* ECtHR, 22 July 2003 the Strasbourg Court expressed its concern about the procedure by which the judge determining an application for non-disclosure on grounds of public interest immunity may also therefore see the material which is determinative of the defendant's guilt, without the participation of his or her lawyers. The Grand Chamber did not depart from the earlier Court's ruling.

[59] In *Grieves v UK* (ECtHR, Grand Chamber, 1 October 2003), for example, it was held that while the Air Force court martial procedure introduced by the Armed Forces Act 1996 did not violate Article 6, the Navy court martial did.

[60] Although it was held in *Pine* v *The Law Society* [2002] 1 WLR 2189 that Article 6 did not require legal representation before the Solicitors' Disciplinary Panel.

[61] In *Norman Baker MP v Secretary of State for the Home Department* [2001] UKHRR 1275, for example, it was held that MI5 (the Security Service) could not operate an absolute policy of neither confirming nor denying whether they hold a file on an individual, but must decide by looking at each case what they can say about the information they hold to the person who is the subject of the information. Part of the reason for this was the individual's 'right to know' under Article 8 about data that relates to them. Similarly, in *Gunn-Russo v Nugent Care Society and Secretary of State for Health* [2002] 1 FLR 1 it was held that the Secretary of State had no power to compel a voluntary adoption agency to disclose adoption records to an adopted person, but the disclosure of adoption records by such an agency required a balancing exercise to be conducted between disclosure and confidentiality. Moreover the European Court of Human Rights recently held in *Craxi v Italy* (Application No. 25337/94, ECtHR, 17 July 2003) that when unauthorised disclosure had taken place, the positive obligation inherent in the effective respect for private life implies an obligation to carry out effective inquiries in order, so far as possible, to rectify the position.

[62] However, in *R (S) v Chief Constable of South Yorkshire and others* [2004] 1 WLR 2196 the House of Lords did not accept the argument that retaining samples and fingerprints after an acquittal constituted a violation of Article 8.

[63] In *Dennis v Ministry of Defence* [2003] EWHC 793, for example, the Court held that the MoD, as it was responsible for RAF Wittering, could be liable in nuisance and under the Human Rights Act to the owners of a nearby stately home. In contrast, the Grand Chamber of the European Court of Human Rights held in *Hatton v UK* (2003) 37 EHRR 611 that the applicants' Article 8 rights had not been infringed as a result of the implementation of a new night flight scheme at Heathrow Airport in 1993 which they complained had led to an increase in night-time aircraft noise.

[64] Examples of this principle in operation are: *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532 – where the Court held that a blanket policy of searching prisoner's cells (including opening letters from lawyers) was a violation of the right to privacy, as it interfered with his Article 8 to a much greater extent than was necessary and was therefore unlawful; *R (Robertson) v Wakefield MDC* [2002] 2 WLR 889 – where the High Court accepted the argument that Article 8 required an electoral registration officer to consider objections by an elector that his details on the register were being sold to commercial organizations who might then send him 'junk' mail; *R (Stevens) v Plymouth City Council and C* [2002] 1 FLR 1177 – where the Court of Appeal accepted that a County Council could disclose confidential information about an adult medical patient to his mother, as it was necessary for her to be involved in his care; and R *(P and Q) v Secretary of State for the Home Department* [2001] 2 FLR 1122– where the Court held that the Prison Service was entitled to operate a policy of allowing babies to remain with their mothers in prison only until they reached the age of 18 months, but that it must not operate it in a rigid manner disregarding the facts of individual cases.

[65] Although in *Jones v University of Warwick* [2003] EWCA Civ 151, the Court of Appeal held that covert filming of a personal injury claimant by the insurer's inquiry agent did not breach Article 8 or Article 6.

[66] Although in relation to an asylum seeker, in *Kugathas v Immigration Appeal Tribunal* [2003] EWCA Civ 31, the Court ruled that to seek the protection of the Article 8 right to family life, he or she had to establish a situation of genuine dependency.

[67] *Goodwin v UK* (2002) 35 EHRR 18.

[68] In *R (on the application of CD) v Secretary of State for the Home Department* (2003) 1 FLR 979, for example, it was held that the decision to exclude a mother from a prison's mother and baby unit, thereby separating her from her baby, was contrary to her Article 8 rights.

[69] In *Re C and F (Children) (Immunisation)* (2003) 73 BMLR 152, for example, the Court of Appeal was asked to determine whether two girls, aged 4 and 10, should be immunised against childhood diseases when their mother opposed it but their father was in favour of it. The Court ruled that immunisation was in the best interests of the children notwithstanding the mother's objections and that the Court may interfere with the rights of both parents and children where to do so is to protect the health of a child.

[70] In *Leeds Teaching Hospital NHS Trust v A* (2003) Lloyd's Rep. Med. 151, for example, the President of the Family Division held that where a mother had been impregnated with sperm not from her husband but from an unintended donor as a result of a hospital's mix-up, the sperm donor and not her husband was the biological father of the twins she had conceived. The Court had the task of establishing the different Article 8 rights as between the four adults involved, and how close their respective relationships were with the twins. In *Evans v Human Fertilisation and Embryology Authority* [2003] EWHC 2161, the Court held that a woman could not use the embryos which had been fertilised with the sperm of a partner from whom she had become estranged, who objected to her taking that course. Both parties had invoked Article 8 and the Court held that the balance was properly struck in favour of the man. The European Court of Human Rights later agreed (*Evans v UK*, ECtHR (Fourth Section), Application no. 6339/05, 7 March 2006) but the matter has now been referred to the Court's Grand Chamber. In *Rose and another v Secretary of State for Health and the Human Fertilisation and Embryology Authority* [2003] EWHC 1593, the Court held that the desire by a person born as a result of artificial insemination to know the details of their origin did engage Article 8 and placed the state under a positive obligation.

[71] See Paragraph 2.6 above.

[72] Although in *R (Begum) v Denbigh High School* (2006) 2 WLR 719 the House of Lords held that a school's refusal to allow a pupil to wear a jilbab at school did not interfere with her Article 9(1) rights, and, even if it did, the school's decision was objectively justified under Article 9(2).

[73] *Re Crawley Green Road Cemetery, Luton* [2001] Fam 308.

[74] One example of this was a decision of the BBC not to show a party political broadcast by the Pro Life Alliance, as it showed a graphic but accurate video of the abortion process, and the BBC felt that this contravened "taste and decency". The Pro Life Alliance challenged this but the House of Lords held that the BBC and other broadcasters were entitled to refuse to broadcast the video because it was so offensive to public feeling (*R (on the application of the Pro Life Alliance v BBC* [2004] 1 AC 185).

[75] See paragraph 2.6.

[76] See, for example, *R v Perrin* [2002] EWCA Crim 747– where the state's decision to criminalise obscene publications was held to be a proportionate infringement of the rights of freedom of expression; *Rusbridger and Toynbee v HM Attorney-General, and Director of Public Prosecutions* [2002] EWCA Civ 397 – where the Court of Appeal decided that a newspaper editor should be permitted to argue that no crime would be committed by publishing material calling for the establishment of a republic in the UK (the Treason and Felony Act 1848 would make this a crime otherwise); and

Percy v Director of Public Prosecutions [2001] EWHC Admin 1125 – where a protestor who defaced the US flag in front of US servicemen successfully used Article 10 to argue that it was disproportionate interference with the right to freedom of expression to convict her.

[77] In *R (Mellor) v Secretary of State for the Home Department* [2002] QB 13, a prisoner argued that he should also have the right to start a family by artificial insemination. However, the Court held that the exercise of conjugal rights was one of the things he had to forfeit as a prisoner, although allowance should be made for it in exceptional circumstances.

[78] *Goodwin v UK* (2002) 35 EHRR 18.

[79] *Ghaidan v Godin-Mendoza* [2004] 2 AC 557.

[80] *R (on the application of Hooper) v Secretary of State for Work and Pensions* [2005] UKHL 29.

[81] *Association of British Civilian Internees – Far Eastern Region v Secretary of State for Defence* (2003) 3 WLR 80.

[82] *See A v Head Teacher and Governor of Lord Grey School* (2006) 2 WLR 690.

Annex B. Where can I go for more information?

The Department for Constitutional Affairs website is: www.dca.gov.uk

The DCA Human Rights Division website is: www.dca.gov.uk/peoples-rights/human-rights/index.htm

Acts of Parliament can be found at: www.opsi.gov.uk/legislation

The decisions of the European Court of Human Rights can be found on their website: www.echr.coe.int

House of Lords judgments can be found at: www.publications.parliament.uk/pa/ld/ldjudgmt.htm

Other judgments can be found at: www.bailii.org/databases.html#new

Some judgments are available from HM Court Service website: www.hmcourts-service.gov.uk/judgments.htm

Books

There is a very wide range of publications on the subject of human rights, aimed at a range of audiences, from specialist texts for lawyers to general histories of the development of human rights and it is not possible to list them here. Your local library or legal bookseller will be able to point you in the direction of suitable material covering your particular interests. A search of the web will produce more references than you could possibly ever need.

Organisations

To find out the address of your local advice centre, contact your local library, or contact:

The Law Centres Federation
18-19 Warren Street
London W1P 5DB
Tel: 020 7387 8370
www.lawcentres.org.uk

National Association of Citizen's Advice Bureaux
Myddleton House
115-123 Pentonville Road
London N1 9LZ
Tel: 020 7833 2181 (Admin only)
www.nacab.org.uk to find your nearest CAB
www.adviceguide.org.uk for CAB information on-line

The following non-governmental organisations are active in the field of human rights and run an advice line:

Liberty
21 Tabard Street
London SE1 4LA
General Enquiries: 020 7403 3888
Advice line: 020 7378 8659 (Mondays and Thursdays 6-8pm, Wednesday lunchtimes)
www.liberty-human-rights.org.uk

The AIRE (Advice on Individual Rights in Europe) Centre
Third Floor
17 Red Lion Square
London WC1R 4QH
Tel: 020 7831 3850
Advice line: 020 7924 0927 (2-5pm, Tuesday to Thursday)
www.aircentre.org

The following non-governmental organisations are also active in this field and may be able to send you general information or have a publication that would help you:

Butterworths:
www.butterworths.co.uk

British and Irish Legal Information Institute:
www.bailii.org

Sweet and Maxwell:
www.sweetandmaxwell.co.uk

Justice
59 Carter Lane
London EC4V 6AQ
Tel: 020 7329 5100
E-mail: admin@justice.org.uk

Legal Action Group
242 Pentonville Road
London NW1 9UN
Tel: 020 7833 2931
www.lag.org.uk

Charter 88
6 Cynthia St
London N1 9JF
Tel: 0845 450 7210
www.charter88.org.uk
E-mail: info@charter88.org.uk

1990 Trust
Room 12
Winchester House
9 Cranmer Road
Kennington Park
London SW9 6EJ
Tel: 020 7582 1990
www.blink.org.uk

Beaumont Society (for Transvestites, Transsexuals and Cross Dressers)
27 Old Gloucester Road
London WC1N 3XX
Tel: 01582 412220
Advice Tel: 0700 028 7878 (7-11pm, Tuesday and Thursday)
www.beaumontsociety.org.uk

GALOP (London's lesbian, gay and bisexual anti violence charity)
P O Box 32810
London N1 3ZD
Advice line: 020 7704 2040 (Monday 5-8pm, Wednesday 2-5pm, Friday 12-2pm)
www.galop.org.uk

Refugee Legal Centre
153-157 Commercial Road
London E1 2DA
Tel: 020 7780 3200
Advice line: 020 7780 3220
10.30 – 4.30, Mon, Wed & Fri
Emergencies 07831 598057
E-mail: rlc@refugee-legal-centre.org.uk
www.refugee-legal-centre.org.uk

Northern Ireland Human Rights Commission
Temple Court
39 North Street
Belfast BT1 1NA
Tel: 028 9024 3987
E-mail: nichr@belfast.org.uk
www.nihrc.org.uk

Here are some important bodies which may be able to help with human rights problems:

Independent Police Complaints Commission
5th Floor, 90 High Holborn
London EC1V 6BH
Tel: 020 7404 0430
www.ipcc.gov.uk

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel: 01625 545 745
www.ico.gov.uk

Health Service Ombudsman for England
Millbank Tower
Millbank
London W1P 4QP
Tel: 0845 015 4033
Text telephone: 020 7217 4066
www.ombudsman.org.uk
E-mail: ohsc-enqu@online.rednet.co.uk

The Press Complaints Commission
Halton House
20/23 Holborn
London EC1N 2JD
Tel: 0845 600 2757
www.pcc.org.uk

Office of Communications
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Tel: 020 7891 3000
www.ofcom.org.uk

Commission for Racial Equality
St Dunstans House
201-211 Borough High St
London SE1 1GZ
Tel: 020 7937 0000
www.cre.gov.uk
e-mail: info@cre.gov.uk

Equal Opportunities Commission
Arndale House
Arndale Centre
Manchester M4 3EQ
Tel: 0845 601 5901
Fax: 0161 838 1733
www.eoc.org.uk
E-mail: info@eoc.org.uk

The Disability Alliance
First Floor
Universal House
88-94 Wentworth Street
London E1 7SA
Advice line: 020 7247 8776
E-mail: office.da@dial.pipex.com
www.disabilityalliance.org

Disability Rights Commission
Freepost MID 02164
Stratford-upon-Avon CV37 9BR
Helpline: 08457 622 633 (Monday to Friday 8am-8pm)
Text-phone: 08457 622 644
Fax: 08457 778 878
E-mail: enquiry@drc-gb.org
www.drc.org.uk

Some interest groups and lobbying bodies:

NACRO (National Association for Care and Resettlement of Offenders)
169 Clapham Road
London SW9 0PU
Tel: 020 582 6500
E-mail: communications@nacro.org.uk
www.nacro.org.uk

POPS (Partners of Prisoners and Families Support Group)
Valentine House
1079 Rochdale Road
Blackley
Manchester M9 8AJ
Tel: 0161 702 1000
E-mail: mail@partnersofprisoners.co.uk
www.partnersofprisoners.co.uk

Prisoners' Advice Service
PO Box 46199
London EC1M 4XA
Tel: 020 7253 3323
Freephone advice line: 0800 018 2156
E-mail: admin@prisonersadviceservice.org.uk
www.prisonersadviceservice.org.uk

Women in Prison
Unit 3b
Aberdeen Studios
22 Highbury Grove
London N5 2EA
Tel: 020 7226 5879
www.womeninprison.org.uk

INQUEST
89-93 Fonthill Road
London N4 3JH
Tel: 020 7263 1111
Fax: 020 7561 0799
E-mail: inquest@inquest.org.uk
Web: www.inquest.org.uk

Rights of Women (ROW)
52-54 Featherstone Street
London EC1Y 8RT
Advice line: 020 7251 6577 (2-4pm, 7-9pm Tuesday, Wednesday, Thursday; 12-2pm Friday)
www.rightsofwomen.org.uk

Stonewall Group
Tower Building
York Road
London SE1 7NX
Tel: 020 7593 1850
www.stonewall.org.uk
e-mail: info@stonewall.org.uk

MIND
Granta House
Broadway
London E15 4BQ
Tel: 020 8519 2122
www.mind.org.uk
e-mail: contact@mind.org.uk

Children's Legal Centre
University of Essex
Wivenhoe Park
Colchester
Essex C04 3SQ
Education Law Advice Line: 0845 456 6811
Tel: 01206 872466
www.childrenslegalcentre.com
E-mail: clc@essex.ac.uk

The Advisory Council for the Education of Romany and Other Travellers (ACERT)
Moot House
The Stow
Harlow
Essex CM20 3AG
Tel: 01279 418666

The Gypsy Council for Education, Culture, Welfare and Civil Rights
8 Hall Road
Aveley
Romford
Essex RH15 4HD
Tel: 01708 868 986
E-mail: thegypsycouncil@btinternet.com

Annex C. Glossary

Civil Law
The law governing rights and agreements between individuals. Examples include the tort of negligence and trespass. It is often distinguished from criminal law, see below.

Common Law
The law of the UK as laid down in decisions of courts, rather than by statute.

Constitution
The principles by which a state is governed. Usually (though not in the UK) a written legal document and subject to special rules relating to its amendment.

Convention rights
Under the Human Rights Act, "the Convention rights" means the rights and freedoms set out in Articles 2 to 12 and 14 of the Convention, Articles 1 to 3 of the First Protocol, and Article 1 of the Thirteenth Protocol.

Criminal Law
A legal term relating to acts committed against the laws of the land which are normally punished by the state. Examples include assault, theft and manslaughter. It is often distinguished from civil law, see above.

Damages
The financial recompense awarded by a judge or jury in a civil action for the wrong suffered by the claimant.

Declaration of incompatibility
A formal statement under the Human Rights Act that a provision of primary legislation (or inevitably incompatible subordinate legislation) is incompatible with a Convention right. A declaration does not affect the validity and continuing operation or enforcement of the legislation. It triggers a power to make a remedial order to amend the incompatible legislation. Declarations of incompatibility can be made only by a higher court.

Derogation
Under Article 15 of the ECHR, during "war or other public emergency threatening the life of the nation", governments can "derogate" from their obligations under the Convention. This means they can restrict the exercise of certain specified rights and freedoms without violating the ECHR. The measures taken must be strictly required by the exigences of the situation and be consistent with other international law obligations.

European Convention on Human Rights
The European Convention on Human Rights (ECHR) is an international agreement made by the member states of Council of Europe in November 1950. The Council of Europe is now an association of over 40 nations. It is separate from the European Union and European Community. The ECHR was ratified by the UK in 1951 and entered into force in September 1953. It consists of 59 Articles arranged in three sections and a series of protocols have been added, making further provision and adding new rights.

European Court of Human Rights
The European Court of Human Rights (ECtHR) is the enforcement machinery of the European Convention on Human Rights. The ECtHR hears complaints from individuals or states about alleged breaches of ECHR rights and freedoms by countries that belong to the Council of Europe.

Horizontal effect
A term often used to describe the impact of the Convention rights in legal relations between two private parties. It is distinguished from vertical proceedings brought by an individual to enforce obligations owed to him by the state. The main effect of the Human Rights Act is vertical, principally affecting cases between individuals and state or public authorities rather than disputes between private parties. However, the Act requires all legislation, as far as possible, to be read and given effect compatibly with the Convention rights. And all courts are public authorities for the purposes of the Act, required to act so far as possible compatibly with the Convention rights. This means that the Act will have some horizontal effect, allowing the Convention rights to be invoked in proceedings between private parties.

Judicial review
Judicial review refers to legal proceedings by which administrative decisions or actions by, for example, a government department can be challenged before the courts on the grounds that they have been made invalidly or are unlawful or irrational. Judicial review may result in the matter complained of being overturned, and a decision having to be re-taken.

Positive obligation
This is an expression found in the case law of the European Court of Human Rights, describing a duty on the state to take active steps to secure particular rights under the Convention.

Primary Legislation
This is defined under the Human Rights Act (section 21) as including not only Acts of Parliament but also Measures of the Church Assembly, Measures of the General Synod of the Church of England, certain Orders in Council and subordinate legislation which brings into force or amends any primary legislation. The term does not include any Act passed by the Scottish Parliament or the Northern Ireland Assembly.

Protocol
There are 14 Protocols to the ECHR which supplement provisions of the ECHR itself. Of the five Protocols which contain additional substantive rights, the UK has ratified Protocol 1 and Protocol 6 (replaced by Protocol 13) and will ratify Protocol 7 when parliamentary time allows.

Public authorities
Under section 6 of the Human Rights Act a public authority is required not to act incompatibly with the Convention rights unless statutory provision prevents that. Public authorities are not defined exhaustively in the Human Rights Act but the term covers three broad categories:
- obvious public authorities such as a Minister, a government department, local authorities, health authorities and trusts, the Armed Forces and the police. Everything these bodies do is covered by the Act. However, Parliament is not a public authority for the majority of its function
- courts and tribunals
- any person or organisation which carries out some functions of a public nature. Under the Act, however, they are only considered a public authority in relation to their public functions.

Remedial orders
Created by section 10 of the Human Rights Act, a remedial order empowers a Minister to place before Parliament a special order to bring legislation into line with the Convention following a declaration of incompatibility or a finding of the ECtHR.

Reservation
Signatories to the ECHR are entitled to enter certain reservations to their agreement to be bound by the Convention. These reservations are open to review. The UK Government has entered a reservation to Article 2 of Protocol 1 concerning the right to education – see Annex E.

Strasbourg case-law
Decisions of the European Court of Human Rights (and the former European Commission on Human Rights), which is based in Strasbourg.

Subordinate legislation

Under the Human Rights Act, subordinate legislation includes certain Orders in Council, Acts of the Scottish Parliament and Northern Ireland Assembly and rules, regulations and other instruments made under primary legislation – see section 21(1).

Victim

Under the Human Rights Act, "victim" refers to the person who could bring a case under the ECHR. Victims must be directly affected or be at risk of being directly affected by the act in question. Victims can include companies as well as individuals and may also be relatives of the victim where a complaint is made about his death. An organisation or interest group or trade union cannot bring a case unless it is itself a victim. But there is nothing to stop it providing legal or other assistance to a victim. Public authorities, such as local authorities, cannot be victims.

Annex D. Outline of the Human Rights Act 1998

This annex gives a brief outline of the main provisions of the Human Rights Act.

The Act itself can be found at: www.opsi.gov.uk/acts/acts1998/19980042.htm

Section 1
specifies which of the Convention rights are covered by the Human Rights Act.

Section 2
requires courts or tribunals determining questions which have arisen in connection with the Convention rights to take into account the decisions of Strasbourg (the European Court and Commission of Human Rights and the Committee of Ministers) so far as is relevant.

Section 3
requires legislation to be interpreted as far as possible in a way which is compatible with the Convention rights. This applies to all legislation, whenever enacted.

Section 4
allows the higher courts to make a declaration of incompatibility where they find that primary legislation is incompatible with a Convention right. The continuing validity and enforcement of the legislation is not affected by such a declaration.

Section 5
states that when a court is considering making a declaration of incompatibility, the Crown is entitled to notice and to be joined as party to the proceedings. This will enable a Minister to provide the court with information which may be relevant to the issue in question.

Section 6
defines a public authority and makes it unlawful for a public authority to act in a way which is incompatible with a Convention right unless it is required to do so by primary legislation or inevitably incompatible secondary legislation.

Section 7
victims may rely on the Convention rights in legal proceedings in UK courts and tribunals or institute separate proceedings. Separate proceedings must be brought within one year (or less) of the date on which the act complained of took place or after a longer period if the court or tribunal judges that to be fair under the circumstances. Shorter time periods may also apply. For example, if proceedings were brought by judicial review, then the shorter judicial review time limit would apply.

Section 8
the court may grant such relief as it considers just and appropriate, provided it is within its powers.

Section 9
concerns methods of challenging acts of courts and tribunals which are alleged to be incompatible with a Convention right.

Section 10
the relevant Minister may by order amend infringing legislation following a declaration of incompatibility or a finding of the European Court of Human Rights if he is satisfied that there is a compelling reason to do so.

Section 11
makes clear that the Act does not restrict any existing rights that an individual might have under UK law or his right to bring proceedings under existing law.

Section 12
contains safeguards concerning court or tribunal orders (particularly injunctions) which might breach the right to freedom of expression.

Section 13
obliges the courts to have particular regard to the importance of the right to freedom of thought, conscience and religion.

Section 19
requires that when legislation is introduced into either House for a second reading, the Minister responsible must make a written statement that he considers the Bill is compatible with the Convention rights or that he is unable to make such a statement but wishes Parliament to proceed with the Bill anyway.

Section 21
interpretation section, in particular defining the meaning of primary and subordinate legislation.

Section 22
ensures that victims can rely on their Convention rights in proceedings brought by a public authority, even if the act in question took place before section 7 comes into force.

Annex E.
The Convention rights

These are the Convention rights set out in Schedule 1 to the Human Rights Act.

Article 2
RIGHT TO LIFE
1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
(a) in defence of any person from unlawful violence;
(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3
PROHIBITION OF TORTURE
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4
PROHIBITION OF SLAVERY AND FORCED LABOUR
1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
(d) any work or service which forms part of normal civic obligations.

Article 5
RIGHT TO LIBERTY AND SECURITY (SUBJECT TO A UK DEROGATION RELATING TO THE SITUATION IN NORTHERN IRELAND)
1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
(a) the lawful detention of a person after conviction by a competent court;
(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6

RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interest of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

NO PUNISHMENT WITHOUT LAW

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8

RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9
FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION
1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10
FREEDOM OF EXPRESSION
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11
FREEDOM OF ASSEMBLY AND ASSOCIATION
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

Article 12
RIGHT TO MARRY
Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14
PROHIBITION OF DISCRIMINATION
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 16
RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS
Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17
PROHIBITION OF ABUSE OF RIGHTS
Nothing in this Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18
LIMITATION ON USE OF RESTRICTIONS ON RIGHTS
The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

The First Protocol

Article 1
PROTECTION OF PROPERTY
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2
RIGHT TO EDUCATION
No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the state shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. (The UK has accepted this Article subject to a reservation that it does so only so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable expenditure.)

Article 3
RIGHT TO FREE ELECTIONS
The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The Thirteenth Protocol (replaces The Sixth Protocol from June 2004)

Article 1
ABOLITION OF THE DEATH PENALTY
The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

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