

Guide Number 1

The ILiS Do-It-Yourself Guide to

The Human Rights Act

This ILiS DIY guide introduces the Human Rights Act; what it is, why it's important and what it means for disabled people in Scotland. It is here to help you find out more about what the Act means and how you can use it to help you gain your rights as disabled people. This guide also tells you where you can get more information.

1. What's it all about?
2. What does it say?
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4. How can I use the Human Rights Act?
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1. What's it all about?

'Human Rights' are the basic rights and freedoms which we should all expect. We are all entitled to have these rights met.

How did human rights become law? After the Second World War the idea of universal human rights was established in response to the horrific circumstances and massive loss of life of that war. The **United Nations** was also created. It issued a statement on human rights which was later developed into a formal treaty at **European level called the European Convention on Human Rights (ECHR)**.

The **Human Rights Act (HRA)** became effective in the United Kingdom (UK) in 2000. The HRA brings most of the rights in the European Convention directly into UK law. The HRA applies to all public bodies in the UK, including central government, local authorities, the courts and any private bodies which carry out public functions. Governments and public authorities must respect the human rights of all UK citizens.

2. What does it say?

The human rights are set out under twelve **main articles**. A further four are also covered in the **additional protocols** to the Act, and these cover the **protection of property, the right to education, the right to free elections and the abolition of the death penalty**.

The **twelve** main articles are;

- The right to life (Article 2)
- The prohibition of torture or inhuman or degrading treatment (Article 3)
- The prohibition of slavery and forced labour (Article 4)
- The right to liberty and security (Article 5)
- The right to a fair trial (Article 6)
- No punishment without law (Article 7)
- The right to respect for private and family life (Article 8)
- Freedom of thought, conscience and religion (Article 9)
- The right to freedom of expression (Article 10)
- The right to freedom of association and assembly (Article 11)
- The right to marry and found a family (Article 12)
- The prohibition of discrimination (Article 14)

Some of these rights such as the prohibition of torture are **absolute** which means that they cannot be broken under any circumstances.

Others may be **limited** or **qualified** which means that in certain circumstances the government or public authorities can reduce your rights. They can only do this when it is in the wider interests of society. For example, a criminal who is sentenced to prison will have their right to liberty (Article 5) limited.



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Another example is that your right to freedom of expression (Article 10) does not allow you to abuse other people. Whenever the government limits or qualifies your rights, they must prove that it is lawful, necessary and appropriate for them to do so.

The **European Court of Human Rights** in Strasbourg was set up to consider cases brought by people who claim that their rights under the Convention have been broken. In many cases, it has ruled that the British government has breached the Convention. These cases have led to important changes in the law in this country.

Taking a case to the court in Strasbourg takes a long time. You must first take legal action in this country before you can consider taking a case to the court in Strasbourg. You can now only take a case to Strasbourg if you fail to win your case in the UK under the Human Rights Act.

3. Examples of rights

Independent living for disabled people is about human rights. This includes the protection and promotion of your human rights. Historically some of the worst breaches of disabled people's human rights have been when choice and control are removed. This can result in loss of dignity and freedom.

Some of rights in the HRA may be particularly relevant to many disabled people. Below you will find examples of these rights.

Article 2 Right to life

This means public authorities cannot take away your life and they must take all reasonable steps to protect it.

Example

A disabled woman was admitted to hospital with a chest infection. While there, a 'Do Not Resuscitate' order was placed on her file. This means that medical staff would not take action to prolong her life if she became more ill. The DNR order was made by medical staff who considered that her impairment meant she had a low quality of life. This could be challenged as a breach of the right to life.



Article 3

Right not to be treated in an inhuman or degrading way

This is essentially about human dignity. Sometimes disabled people face such bad experiences in health or care environments that the courts have decided that their treatment has been inhuman or degrading. The actions may be deliberate or may be the result of neglect, ignorance or inadequate practices.

Example

A disabled woman, who was a wheelchair user, was sent to prison for seven days during debt recovery proceedings. She was kept in a cell which was dangerously cold. She could not reach her bed, and was unable to keep clean or use the toilet. A court found these conditions to be degrading treatment.

Article 8

Right to private and family life

This is about how you are able to live with those closest to you. It covers issues around relationships, parenting and the practicalities of home life such as appropriate housing, integrated support or adaptations.

Example

A local authority ran a scheme where support workers accompanied disabled people to attend social events. A gay man asked for a support worker to accompany him to a gay pub. The scheme manager refused, stating that none of his staff were prepared to attend a gay venue. This situation could be challenged as a breach of the man's right to respect for his private life.



Article 14

Right not to be discriminated against

Within the HRA, this only protects against discrimination in relation to your ability to enjoy other rights. The Disability Discrimination Act offers wider general protection against discrimination.

Example

A young person with autism who'd left home at 16 was living in a local authority flat. His tenancy agreement was different from other people in similar situations and he felt he was being discriminated against in relation to his right to a private or family life.

As well as protecting people's individual rights, the HRA is also important in the way it shapes the public services that are delivered to disabled people. All providers of public services, such as health workers, residential support staff or education providers must proactively make sure that they do not breach your human rights. Because of this, it can be better to use the HRA to force public authorities to change the way they do things **before** an individual has to take a personal case.

4. How can I use the Human Rights Act?

If you think any public authority has breached your Convention rights (or that it is going to), you can take a number of steps.

1. Try and resolve it informally - perhaps through a meeting or by writing them a letter. They might not even be aware of the problem.
2. Use their formal complaints procedure
3. Raise it with the one of the Commissions listed below
4. Complain to the public sector ombudsman

If none of these approaches work you may have to take court proceedings against them. This can be a long and difficult process and you should get proper legal advice. You have to show that you have been or will be affected by what the public authority has done or is going to do.

If you want to challenge a decision made by a public authority or you want the court to order a public authority to do something or stop doing something, then you can apply for a procedure called a 'judicial review'. Under judicial review, a judge will look at your case and decide if the public authority has acted illegally.



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You have to start proceedings quickly, and at the latest within three months of the decision or action you are challenging. Judicial review can be an effective way of challenging a decision or action, and forcing an authority to change their behaviour.

5. Where can I get more information?

A lot of information is web-based. If you cannot access the internet why not ask a carer, local group or peer to obtain the information for you. Some website owners will have the information available in other formats too if you ask them. If not, you might want to raise this with them and challenge them to make all their information accessible to everyone.

- The British Institute for Human Rights has produced a full guide on Human Rights for disabled people, some of which is covered in this paper along with case study examples. You can download this at www.bihhr.org.uk/documents/guides/a-guide-for-disabled-people.

- The Equality & Human Rights Commission is responsible for promoting and enforcing human rights in the UK. It has a strategy for how it will do this. Visit their website at www.equalityhumanrights.com.
- The Scottish Human Rights Commission has responsibility for human rights in relation to devolved issues in Scotland. Their website contains lots of background detail on your human rights at www.scottishhumanrights.com.
- You can get some useful educational tools from the website of the United Nations High Commissioner for Human Rights at www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx.

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