

The Human Rights Act

Key Articles

Article 2: Right to Life

The right to life is an absolute right. It imposes two types of obligations on the state:

- A duty to take away anyone's life (apart from in certain limited circumstances¹)
- A **positive duty** to take reasonable steps to protect life

The positive duty to protect life obliges the state to intervene when someone's life is at risk from another person (and where the authorities know, or should know, about this risk.)

Example of Article 2 violations:

- Refusing to give life saving treatment to someone because of their age
- Deaths through neglect or negligence
- Failing to investigate suspicious deaths
- Deciding not to resuscitate someone (unless they have requested this)

Article 3: Right to be free from torture, inhuman and degrading treatment

- An absolute right
- Must be very severe treatment
- The state has a **positive obligation** to protect

Inhuman treatment:

- Less severe than torture, but still causes severe mental or physical suffering
- It does not need to be deliberate

Degrading treatment

- Treatment that grossly humiliates
- Designed to produce in the victim feelings of fear, anguish and inferiority

Examples of Article 3 Violations:

- Neglect/carelessness e.g. bed sores, not being fed properly

¹ These are to defend a person from unlawful violence to arrest a person or stop someone from escaping; and to stop a riot

- Poor conditions in hospitals or care homes
- Washing or dressing without regard to dignity
- Excessive force used to restrain
- Authorities failing to protect individuals from abuse
- Malnutrition and dehydration

Article 5: Right to liberty

A **limited right**, meaning a person's right to liberty can be breached in certain, very specific circumstances – including:

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 (Human Rights Act, Article 5(1)(e))

Detention

- A specific mental disorder must be involved, and the disorder must be extreme
- Detention includes secure facilities and extreme restriction on freedom of movement (e.g. sedation)
- Detention must be lawful, and should end when the disorder ends
- There must be periodic reviews by a Tribunal with power to discharge

Article 6: Right to a fair trial

Article 6 focuses on how decisions are made – it helps to open up decision-making processes to scrutiny and ensures that they are fair.

It applies to:

- Criminal proceedings
- Civil rights and obligations

Under Article 6, a person(s) whose rights are affected is entitled to:

- An independent and impartial tribunal
- Be present at some stage during the decision making process
- Be able to present their case before the decision is made
- Know and be able to challenge the case against them
- See all relevant documents
- Have the decision made within a reasonable time period

- Be given reasons for the decision made

Examples of decisions which require a 'fair trial'

- Decisions to suspend employees' from duties
- Confiscation of property/property disputes
- Planning proceedings
- Licensing decisions
- Compensation issues

Article 8: Right to private and family life, home and correspondence

- A qualified right – i.e. can be restricted, and has to be balanced against the rights of others and needs of society
- Protects four interests: family life, private life, home and correspondence
- The state has a **positive obligation** to protect this right

Family life

- Includes the rights to develop normal family relationships
- Includes the right to ongoing contact if family is split up

Private life

- Includes a rights to 'physical and psychological' integrity
- The right to participation in the life of the community
- The right to form and maintain relationships with other people

Home

- Not a general right to housing, but a right to the home you already have
- Care homes or hospital wards may be a person's home

Examples of Article 8 violations:

- Lack of dignity in respect of personal care needs
- Lack of privacy on wards
- Refusal to allow family visits or contact whilst in hospital/residential care
- Inappropriate use of restraint or medication
- Negative and patronising attitudes
- Insufficient attention paid to confidentiality

Article 14: Right to non-discrimination

- This must be linked to one of the other Convention rights
- It prohibits discrimination on any grounds. The list of grounds in Article 14 are open-ended and may include disability, gender, race, political views, carer status, marital status, being HIV positive etc.

Discrimination under the Human Rights Act can mean two things:

- Treating people in the same situation differently because of their status; or
- Treating people in a different situation – people who have different needs – in the same way, regardless of those needs.

Not all differential treatment will be considered to be discrimination, *only that which cannot be objectively and reasonably justified* by the State. The definition can therefore allow for positive discrimination in some circumstances.

Examples of Article 14 violations:

- Racial bullying or harassment
- Not allowing people of particular religions to observe religious practices
- A carer being harassed at work because colleagues feel she takes too much time off on account of her caring responsibilities