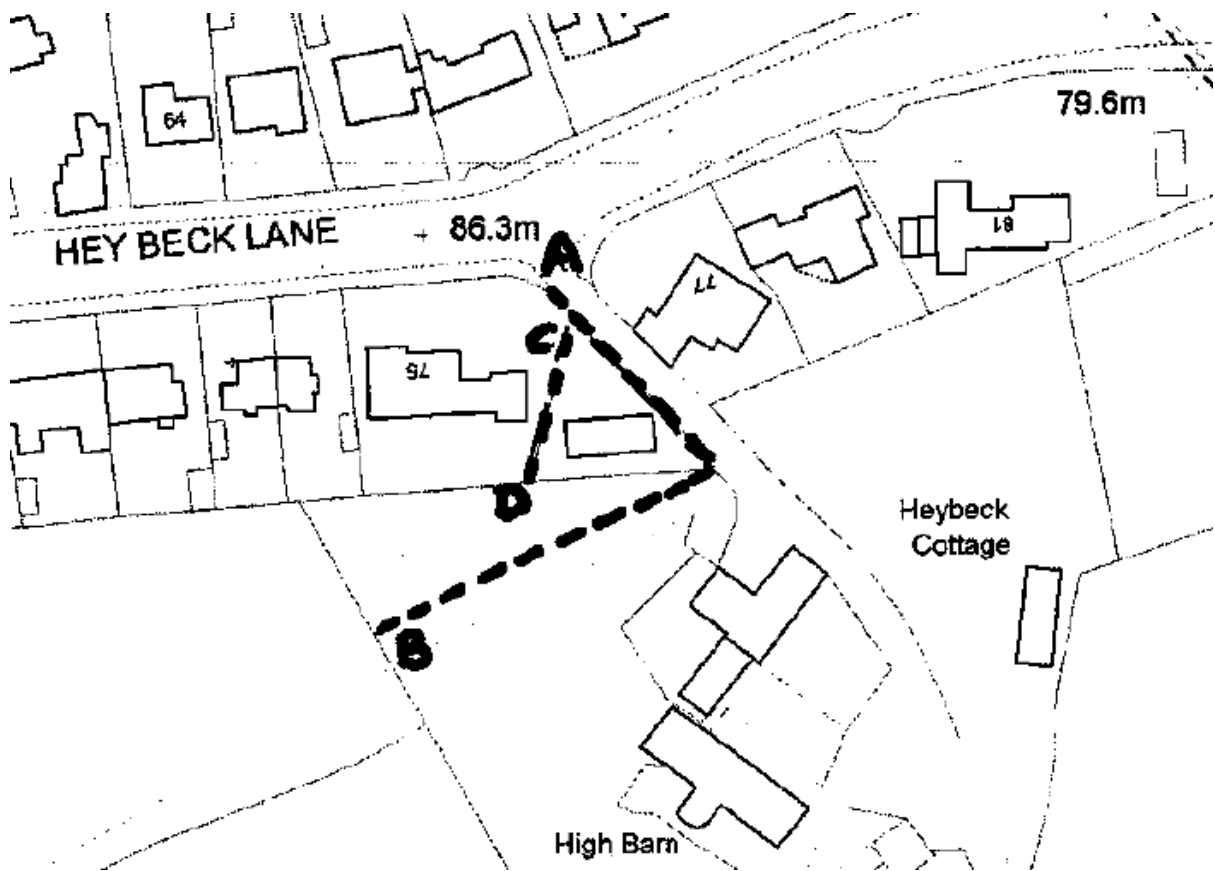
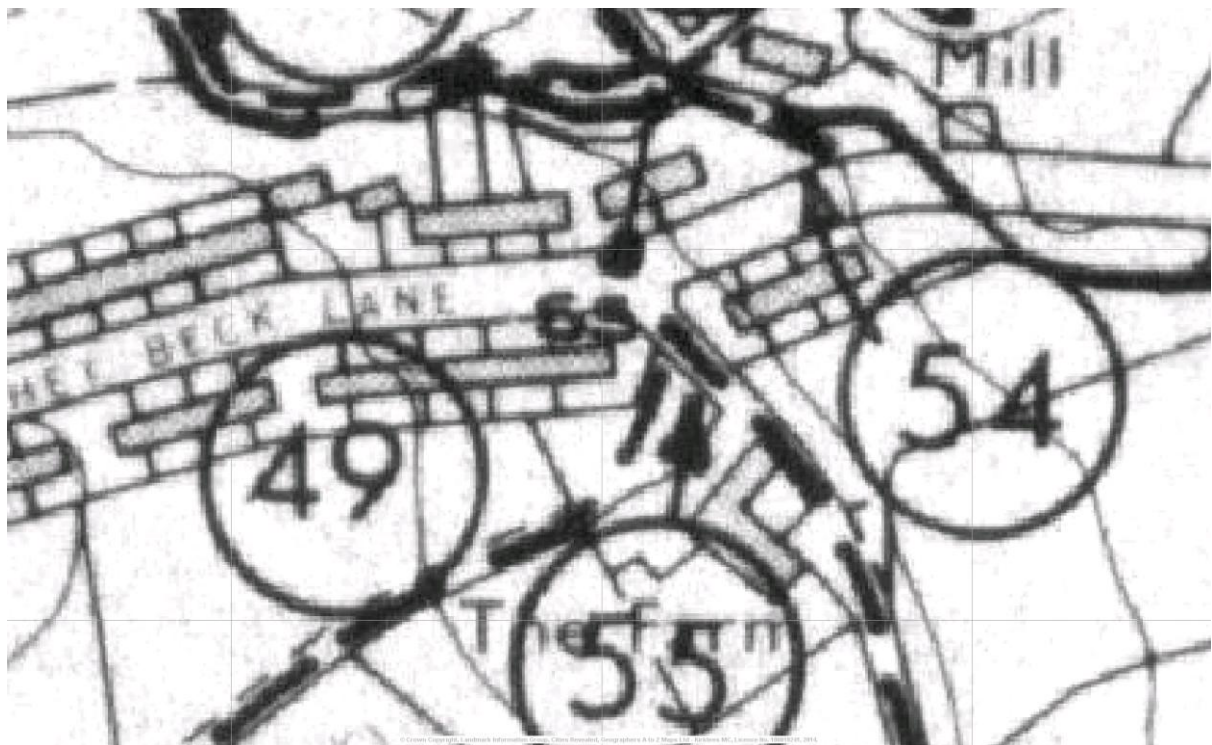


Routes in the application



The current definitive map



**KIRKLEES METROPOLITAN COUNCIL (Appendix 1)**

**AMENDMENTS (MODIFICATIONS) TO THE DEFINITIVE MAP**

**GUIDANCE NOTES FOR MEMBERS**

## **Introduction**

The Council is responsible for maintaining the Definitive Map and Statement of public rights of way. These are legal documents.

From time to time applications are made to amend the Definitive Map and Statement by adding previously unrecorded rights of way or deleting or altering the status of the public rights of way shown on the Definitive Map. Such applications must be accompanied by evidence. The process is often referred to as the “modification order procedure”. These notes outline the key principles which apply to this procedure.

## **The Legal Tests**

Any decision must be based on evidence. The process is about giving official recognition to what actually already exists. It is not a question of convenience (i.e. is the application a good idea?)

If the applicant is claiming that a right of way should be added then the Council has to be satisfied that the claimed right of way subsists or is reasonably alleged to subsist.

If the applicant is claiming that a right of way should be upgraded then the Council has to be satisfied on the balance of probabilities that the right of way subsists in its upgraded form.

The test in respect of a claim for a deletion or downgrade is more onerous. The applicant has to produce clear and cogent evidence to satisfy the Council that a mistake was made when the right of way was recorded in the Definitive Map and Statement

A right of way can come into existence by being expressly dedicated by the landowner. If this is the case, then (unless there is a dispute over the dedication or its terms) there is no need for claims or evidence to be considered.

The starting point is the test set out in the Highways Act 1980 (Section 31) that the way has been used in its claimed form without let or hindrance, for a period in excess of 20 years.

In effect this means that the public has used the path or way without the landowners express permission and without having to overcome barriers. The use must also be open and not in secret. Therefore it is presumed that the landowner does not object and has accepted public use. The erection of a notice by the owner in terms that the way is private can defeat the creation of a right of way by these means, as can certain other actions by the owner (see below).

A public right of way might arise at Common Law as a result of public user for a period of less than 20 years, but the tests for the establishment of a way by this means are more onerous than those stipulated by the Highways Act 1980.

The use must also be by the general public. Use of a route to visit the landowner is not public use. Thus people cannot claim a public right over the private drive where the use was for visiting the owner, delivering post or buying produce etc.

If, however the landowner has erected notices, gates or can produce evidence that it has never been their intention that a public right be created, then this is a hindrance or evidence of contrary intention. For instance, they may have turned back all the people seen using the way or locked a gate across the way on a certain date every year. There is also a procedure for registering with the local Highways Authority, documentation stating that there is no intention to create a new way.

## **Making the Order**

If the Council does not make an order, then the Applicant has the right of appeal to the Secretary of State. This is usually done on written representations. The Secretary of State decides whether a basic case exists. If he/she agrees with the Applicant then the Council will be directed to make an Order.

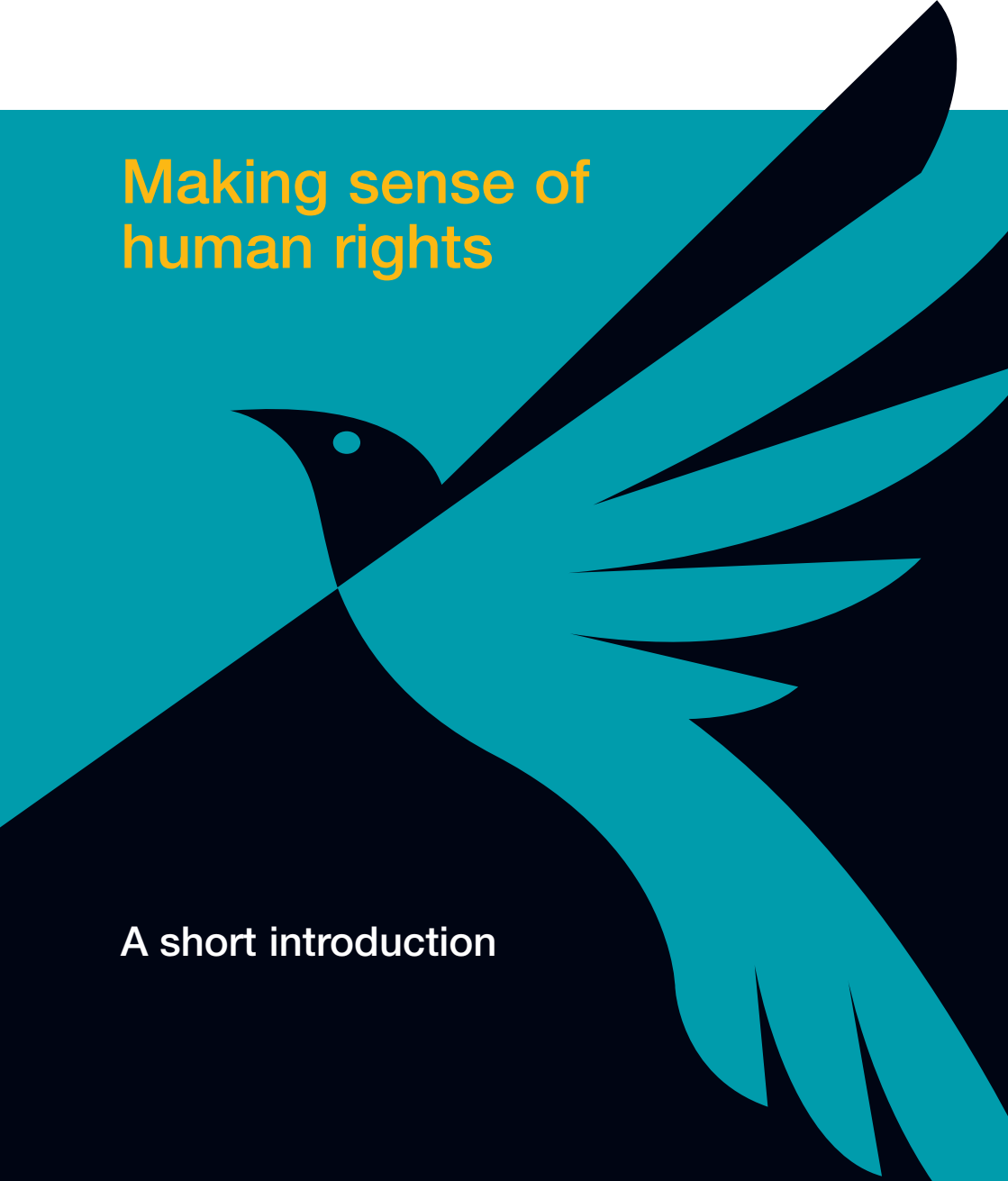
If an Order is made by the Council (whether by direction or not) then any person aggrieved by that Order can appeal. This usually leads to a Hearing or a Public Inquiry.



Ministry of  
**JUSTICE**

# Making sense of human rights

A short introduction





# Introduction

This guide is designed for officials in public authorities to assist them in working with the Human Rights Act 1998 – which has been described as the most important piece of constitutional legislation passed in the United Kingdom since the achievement of universal suffrage in 1918.

It tells you (at pages 6 to 9) what rights are contained in the Human Rights Act. It explains at page 3 how, in certain circumstances, rights can be refused or restricted – in particular where there is a real and serious danger to public safety.

This guide is short and simple. It gives you a brief introduction to human rights for use in straightforward situations. More detailed guidance can be found in the human rights handbook for public officials, *Human Rights and Human Lives*, produced by the Ministry of Justice.

**If you are unsure about anything, seek legal advice.**



## What are human rights?

Human rights are rights and freedoms that belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society.

## What is the European Convention on Human Rights?

The European Convention on Human Rights (ECHR) was drafted by the nations of the Council of Europe (including the UK) in the aftermath of World War II. The Council of Europe was founded to defend human rights, parliamentary democracy and the rule of law, and to ensure that the atrocities and cruelties committed during the war would never be repeated.

## What is the Human Rights Act?

In October 2000, The Human Rights Act came into effect in the UK. This meant that people in the UK could take cases about their human rights into a UK court. Previously they had to take complaints about their human rights to the European Court of Human Rights in Strasbourg, France. The rights contained in the Convention are included at Schedule 1 of the Human Rights Act. For the purposes of the Human Rights Act they are known as 'the Convention Rights'.



## What are the Convention rights?

There are 16 basic rights in the Human Rights Act – all taken from the European Convention on Human Rights. As you would expect, they concern matters of life and death, like freedom from torture and being killed, but they also cover rights in everyday life, such as what a person can say and do, their beliefs, their right to a fair trial and many other similar basic entitlements. They are listed at pages 6 to 9.

## Can I ever refuse or restrict a right that someone is claiming?

Sometimes – especially if there is a real and serious danger to public safety. Not all Convention rights carry the same weight. They can be grouped into three broad types:

- Absolute rights – such as the right to protection from torture and inhuman and degrading treatment (Article 3). The state can never withhold or take away these rights.
- Limited rights – such as the right to liberty (Article 5). These rights may be limited under explicit and finite circumstances. **If in doubt, seek legal advice.**
- Qualified rights – rights which require a balance between the rights of the individual and the needs of the wider community or state interest. These include: the right to respect for private and family life (Article 8); the right to manifest one's religion or beliefs (Article 9); freedom of expression (Article 10); freedom of 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 qualified rights is permissible only if:

- there is a clear legal basis for the interference with the qualified right that people can find out about and understand, and
- the action/interference seeks to achieve a legitimate aim. Legitimate aims are set out in each article containing a qualified right and they vary from article to article. They include, for example, the interests of national security, the prevention of disorder or crime, and public safety. Any interference with one of the rights contained in Articles 8–11 must fall under one of the permitted aims set out in the relevant article, and
- the action is necessary in a democratic society. This means that the action or interference must be in response to ‘a pressing social need’, and must be no greater than that necessary to address the social need.

**If you have any doubts about whether a right can be refused or restricted, seek legal advice without delay.**





## How do I know that I am respecting human rights?

The flowchart in this booklet's centre spread gives you broad guidance on reaching a decision that might restrict someone's rights, and is designed to help you in applying human rights in the workplace. It will be particularly relevant when you have to consider balancing one right against another, or one person's rights against the interests of society.

The flowchart is fairly self-explanatory. However, if you would like to understand it in greater detail, you can find a full explanation at page 56 of the human rights handbook *Human rights: human lives*.



# The Convention rights

*(Article 1 is introductory and is not incorporated into the Human Rights Act.)*

## Article 2: Right to life

A person has the right to have their life protected by law. There are only certain very limited circumstances where it is acceptable for the state to take away someone's life, e.g. if a police officer acts justifiably in self-defence.

## Article 3: Prohibition of torture

A person has the absolute right not to be tortured or subjected to treatment or punishment which is inhuman or degrading.

## Article 4: Prohibition of slavery and forced labour

A person has the absolute right not to be treated as a slave or to be required to perform forced or compulsory labour.

## Article 5: Right to liberty and security

A person has the right not to be deprived of their liberty – 'arrested or detained' – except in limited cases specified in the article (e.g. where they are suspected or convicted of committing a crime) and provided there is a proper legal basis in UK law.

## Article 6: Right to a fair trial

A person has the right to a fair and public hearing within a reasonable period of time. This applies both to criminal



charges against them and to cases concerning their civil rights and obligations. Hearings must be carried out by an independent and impartial tribunal established by law. It is possible to exclude the public from the hearing (though not from the judgment) if it is necessary to protect things like national security or public order. If it is a criminal charge, the person is presumed innocent until proven guilty according to law and has certain guaranteed rights to defend themselves.

## Article 7: No punishment without law

A person normally has the right not to be found guilty of an offence arising out of actions which at the time they committed them were not criminal. They are also protected against later increases in the maximum possible sentence for an offence.

***Apart from the right to hold particular beliefs, the rights in Articles 8 to 11 may be limited where that is necessary to achieve an important objective. The precise objectives for which limitations are permitted are set out in each article, but they include things like protecting public health or safety, preventing crime and protecting the rights of others.***

## Article 8: Right to respect for private and family life

A person has the right to respect for their private and family life, their home and their correspondence. This right can be restricted only in specified circumstances.



## Article 9: Freedom of thought, conscience and religion

A person is free to hold a broad range of views, beliefs and thoughts, and to follow a religious faith. The right to manifest those beliefs may be limited only in specified circumstances.

## Article 10: Freedom of expression

A person has the right to hold opinions and express their views on their own or in a group. This applies even if those views are unpopular or disturbing. This right can be restricted only in specified circumstances.

## Article 11: Freedom of assembly and association

A person has the right to assemble with other people in a peaceful way. They also have the right to associate with other people, which includes the right to form a trade union. These rights may be restricted only in specified circumstances.

## Article 12: Right to marry

Men and women have the right to marry and start a family. National law will still govern how and at what age this can take place.

*(Article 13 is not included in the Human Rights Act.)*

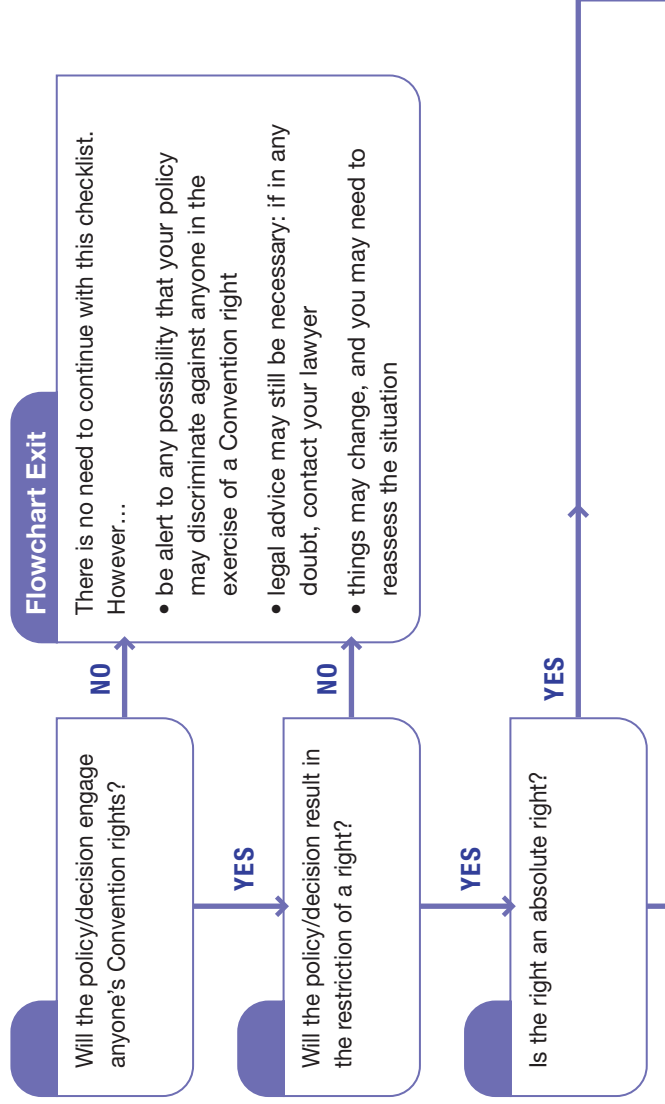
## Article 14: Prohibition of discrimination

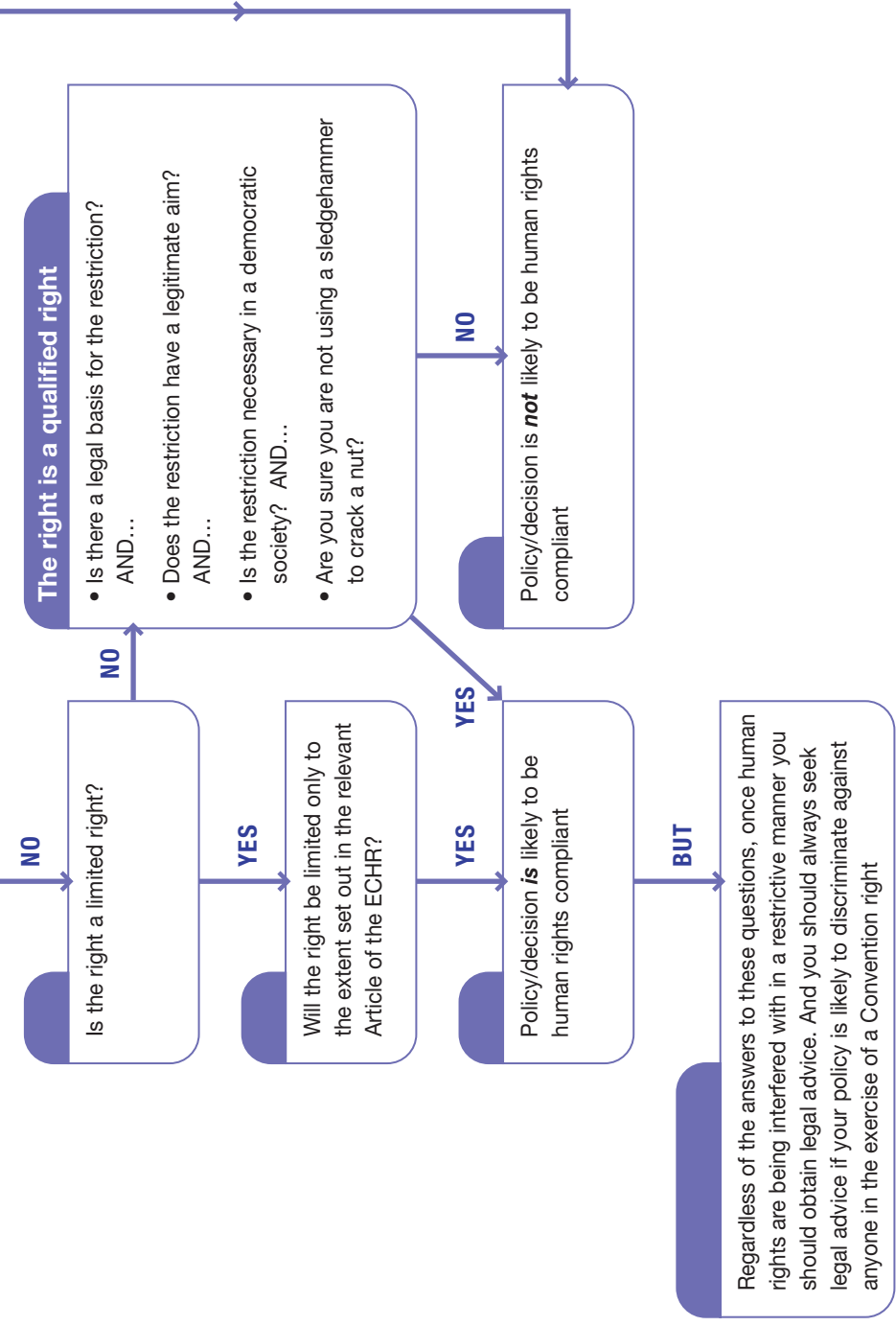
In the application of the Convention rights, a person has the right not to be treated differently because of their race,

*continued on page 9*



# Human rights flowchart







religion, sex, political views or any other personal status, unless this can be justified objectively. Everyone must have equal access to Convention rights, whatever their status.

## **Article 1 of Protocol 1: Protection of property**

*(A 'protocol' is a later addition to the Convention.)*

A person has the right to the peaceful enjoyment of their possessions. Public authorities cannot usually interfere with things people own or the way they use them, except in specified limited circumstances.

## **Article 2 of Protocol 1: Right to education**

A person has the right not to be denied access to the educational system.

## **Article 3 of Protocol 1: Right to free elections**

Elections for members of the legislative body (e.g. Parliament) must be free and fair and take place by secret ballot. Some qualifications may be imposed on who is eligible to vote (e.g. a minimum age).

## **Article 1 of Protocol 13: Abolition of the death penalty**

These provisions abolish the death penalty.



## Human rights in practice

### What does the Human Rights Act mean for public authorities?

The Human Rights Act has the following implications for the work of public authorities:

- It makes it unlawful for public authorities (these include central and local government, the police and the courts) to act in a way that is incompatible with a Convention right.
- Anyone who feels that a public authority has acted incompatibly with their Convention rights can raise this before an appropriate UK court or tribunal.

### What does the Human Rights Act mean for you as a public official?

All public authorities in the UK have an obligation to respect the Convention rights. That means that you must understand those rights and take them into account in your day-to-day work. That is the case whether you are delivering a service directly to the public or devising new policies or procedures.

### Points to remember

- The rights of an individual should never be allowed to obscure public safety.
- If you are unsure, or a matter is particularly complex, consider seeking legal advice.





## Balancing one person's rights against those of the community

The fact that a policy or decision restricts a Convention right does not necessarily mean that it will be incompatible with the ECHR. It is a fundamental responsibility of the state – arising from Article 2 of the Convention itself – to take appropriate steps to protect the safety of its citizens. In particular, if a restriction of a qualified right has a legitimate aim, such as public safety, and the restriction itself does not go any further than necessary to protect this aim, then it is likely that it will be compatible with the Convention. The Convention recognises that there are situations where a state must be allowed to decide what is in the best interests of its citizens, and enables a state, or public authority acting on behalf of the state, to restrict the rights of individuals accordingly.



## Frequently asked questions

### What does the Human Rights Act do?

It makes the human rights contained in the ECHR enforceable in UK law. This means that it is unlawful for a public authority to act in a way that is incompatible with a Convention right. Anyone who feels that one or more of their rights has been breached by a public authority can raise the matter in an appropriate court or tribunal. If they are unhappy with the court's decision and have pursued the issue as far as it can go in the UK, they may take their complaint to the European Court of Human Rights.

### Do judges now have more power than elected politicians?

The simple answer is no. Judges must interpret legislation as far as possible in a way that is compatible with the Convention rights. If this is not possible, courts can strike down incompatible secondary legislation (law made by ministers under powers granted to them in Acts of Parliament), or can make a declaration of incompatibility in relation to primary legislation (Acts of Parliament). They cannot strike down primary legislation.



## What is a declaration of incompatibility?

A declaration of incompatibility sends a signal from the courts to Parliament that the UK may be breaching its international obligations under the ECHR. Parliament does not have to change the law: it retains its sovereignty as the UK's law-making body.

## What difference does the Human Rights Act make?

The principal effect of the Human Rights Act is to enable people to enforce their human rights in the domestic courts. It should mean that people across society are treated with respect for their human rights, promoting values such as dignity, fairness, equality and respect.

## Are human rights relevant to every decision I make?

The short answer to this is no. Many everyday decisions taken in the workplace have no human rights implications. However, by understanding human rights properly you are more likely to know when human rights are relevant and when they are not. This should help you to make decisions more confidently, and ensure that your decisions are sound and fair.



## What is a public authority?

The Human Rights Act says that people carrying out certain functions of a public nature will fall within the public authority definition. The courts are still deciding exactly what this means. The following are definitely public authorities:

- central government
- local government
- local authorities
- police, prison and immigration services
- NHS Trusts
- courts and tribunals
- planning inspectorate
- executive agencies
- statutory regulatory bodies.

This list is not exhaustive. If you are unsure whether or not you work in a public authority you should check with your line manager. However, if you are reading this document, it is likely that you do work for a public authority. In any event, following human rights standards will be good practice, even in matters not strictly covered by the ambit of the Human Rights Act.



## **Do all new laws have to be compatible with the Human Rights Act?**

When a minister introduces a Bill to Parliament they are required to confirm in writing that, in their view, the Bill is compatible with Convention rights, or that they are unable to say that it is compatible but that they wish to proceed with the Bill anyway. Therefore it is possible for new legislation to be incompatible.

## **Are all Convention rights guaranteed, whatever the circumstances?**

Not all Convention rights are formulated in the same way. While some rights are protected absolutely, such as the right to be free from torture, others are limited in certain defined situations, or qualified so as to take account of the rights of others or the interests of wider society. This is explained in greater detail on pages 3 to 4 of this guide.

## **Who can bring a case under the Human Rights Act?**

Any 'victim' can. It is not necessary to be a UK citizen. Anyone starting proceedings must have been directly affected by an act or omission of a public authority.



## Is any other guidance on the Human Rights Act available?

For further information about human rights and the Act, we recommend:

- *Human rights: human lives* – a handbook for officials working in public authorities, produced by the Ministry of Justice and available for download on our website at **[www.justice.gov.uk/about/docs/hr-handbook-public-authorities.pdf](http://www.justice.gov.uk/about/docs/hr-handbook-public-authorities.pdf)**
- *A Guide to the Human Rights Act 1998: Third Edition* – produced by the Ministry of Justice and available for download on our website at **[www.justice.gov.uk/about/docs/act-studyguide.pdf](http://www.justice.gov.uk/about/docs/act-studyguide.pdf)**
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