

## **The Human Rights Act 1998 - questions and answers**

The Human Rights Act 1998, which came into force in full on 2<sup>nd</sup> October 2000, is a key part of the Government's programme to modernise the constitution. It incorporates into domestic law the European Convention on Human Rights (ECHR) to which the UK has been committed since 1951. Convention principles were therefore already reflected in Government legislation and policies and have been informing best practice in health and social care. The Act modernises relationships between people, and between people and the State and embeds in a new way, values of fairness, respect for human dignity and inclusiveness in the heart of public services. To quote from the then Home Secretary, Jack Straw, *"I believe that in time, the Human Rights Act will help bring about a culture of rights and responsibilities across the UK.....the Convention rights.... are going to become an anchor for our laws and policies and a sail for service delivery."*

### **Is my work covered by the Act?**

The Act makes it unlawful for any public authority to act in a way which is incompatible with a Convention right. "public authority" is not defined but includes all obvious public authorities as well as private bodies when they exercise public functions:

### **EXAMPLES OF PUBLIC AUTHORITIES COVERED BY THE HUMAN RIGHTS ACT 1998 – THIS LIST IS NOT EXHAUSTIVE**

- NHS Trusts
- Private and voluntary sector contractors when undertaking public functions under contract to the NHS
- Local authorities, including Social Services
- General Practitioners, dentists, opticians and pharmacists when undertaking NHS work
- Primary Care Trusts

A body that has functions of a public nature (e.g. a professional regulatory body), even if it also has private functions.

### **What does the Human Rights Act do?**

The Act does not confer any new rights. Incorporation of the ECHR into domestic law enables people in the UK to enforce their existing Convention rights and freedoms in UK courts. As a result they will avoid the cost and delay of taking a case to the European Court in Strasbourg.<sup>8</sup> It is still open to people to petition the Court in Strasbourg once they have exhausted their domestic remedies..

The Act requires that, as far as possible, primary and secondary legislation is read and given effect in a way which is compatible with Convention rights. It also makes it unlawful for public authorities to act in a way which is incompatible with Convention rights unless they are acting under legislation which made it impossible to act differently. Public authorities therefore should always consider carefully the implications for Convention rights in all that they do, and ensure that they can justify any interference with Convention rights which their work gives rise to.

### **Who can bring proceedings under the Act?**

A person (which can include a corporate body, but not a public authority) who claims that a public authority has acted or proposes to act in a way which is incompatible with the Convention may bring proceedings but only if he is or would be a victim of the unlawful act. To be a victim a person must be directly affected by the act in question. Organisations and interest groups have no right to bring proceedings unless they are a victim but they may provide assistance to victims. Relatives may bring proceedings on behalf of a victim where a complaint is made about that person's death, or if the victim (a child for example) lacks the capacity to bring them in their own name. Victims may also rely on Convention rights in proceedings brought against them. Claims may be made relying directly on the Act in which case they must normally be brought within a year of the act complained of. Where appropriate, Convention rights can also be pursued in other proceedings such as judicial review. In such cases the limitation periods will be subject to those normally applying in the particular kind of case. Where a public authority is bringing proceedings against a person, that person will be able to rely on any breach of Convention rights whenever the act in question took place if it is relevant to his or her defence.

### **What remedies are available in the event of a successful legal challenge?**

The UK courts also are under an obligation to interpret legislation in a manner compatible with the ECHR. Where they cannot do so, they may quash or disapply subordinate legislation and certain courts can make a declaration of

incompatibility that the offending provisions of an Act of Parliament are incompatible with Convention rights. Remedies that may be awarded depend on the nature of the proceedings and the powers of the Court. Damages may be awarded if the Court has power to do so but the level awarded has to take account of the principles applied by the European Court of Human Rights when awarding damages.

### **What are the implications for the NHS and Social Services?**

The expectation is that best practice in the services already respects the Convention since the UK has been signed up to it for 50 years. Health and social care practice has the potential to affect some of the rights and freedoms in the ECHR. For example, the right to respect for private and family-life, the right to life and the right not to be subjected to inhuman and degrading treatment. Under the Human Rights Act people are able to challenge before the UK courts, what they consider to be unlawful interference with those rights by health and social care laws, policies, practices and procedures.

### **Does the Human Rights Act give patients more rights of access to NHS treatment than before?**

No. The same rights exist as before. Under the Act a person cannot compel the NHS to give him treatment or an operation except through the courts. It is not possible to predict whether challenges to treatment refusals may be successful where they would not have been before but it is unlikely that courts will adopt a very different approach, in cases where resources are an issue, to past cases involving refusals of treatment. What may happen is that the decision making process will come under greater scrutiny than before. In the future there may be test cases where the deployment of ECHR points may make a difference. Health authorities and trusts would need to identify these potential areas early if it is necessary to take prior action, for example because important policy or operational considerations are at stake.

### **Can users of social services insist on receiving particular forms of social care, for example staying in their own homes rather than going into residential care which maybe cheaper for the authority?**

Where a Social Services Department decides not to provide social services, or does not provide the services that the user wants, it is open to the user to challenge the decision through the Courts, in particular by means of judicial review. The challenge will generally focus on whether the Social Services Department decided the matter unfairly or unreasonably. The user could raise points under the ECHR. It would be advisable for social services authorities to identify the potential areas of challenge and take advice as to how this will affect their decision-making.

### **What should I do to ensure my policies comply with the Act?**

You need to continue to ensure best practice, a part of which is compliance and respect for Convention rights in all your work. If you are working in partnerships with other organisations or providers, you should make sure that your partners are alert to their obligations under the Human Rights Act. The Government's aim in bringing rights home is to bring about a culture of respect for individuals' rights and responsibilities across the UK. The [Local Government Association \(LGA\)](#) has worked with the National Human Rights Taskforce and Central Government to ensure that local authorities were prepared for implementation. The LGA circulated a detailed introductory guidance *Acting on Rights\**, specifically written for local councillors and local government officers. Local Authorities received copies of *Putting Rights into Public Service* and *A New Era of Rights and Responsibilities*, also drawing attention to the LGA's introductory guidance and sources of further advice in October 2000. The Department of Health, in collaboration with the national associations, continues to ensure that social services departments are informed of any major issues specific to their responsibilities.

### **\*Acting on Rights. A Guide to the Human Rights Act 1998.**

Local Government Association, 1999.

Available from IDeA Publications (tel: 020 7296 6600) £20 for 5 copies (£10 for 5 copies to Local Authorities). Social Service Departments may also wish to consider, with NHS organisations, opportunities for joint development of implementation and staff training, as the Act beds down.

### **Where can I go for more information about the Act?**

The Department of Health continues to review its health and social services legislation and there will be further notification or guidance to the service if any major issues arise. You should contact the relevant policy branch (in the case of Social Services contact your Regional Office SSI), or the Equality Strategy Group (Gill Russell 020 7972 4146, e-mail [mb-humanrights@doh.gsi.gov.uk](mailto:mb-humanrights@doh.gsi.gov.uk)) in the Department of Health if you become aware of results from the services suggesting that legislation or central guidance cannot be read compatibly with the ECHR. The [NHS](#)

[Litigation Authority](#) issued guidance to health authorities and trusts about litigation issues when the Act first came into force and will shortly make available a dedicated Human Rights Information Service for the NHS and Department of Health which will give access to a regularly updated database of issues and cases. As new information becomes available it will be put on the Communication Summaries or the NHS and Social Care Group websites.

**Other Useful Information**

More general information on human rights may be found on the Department for Constitutional Affairs website: [www.humanrights.gov.uk](http://www.humanrights.gov.uk). This site contains links to sources of training and further advice and an on-line Study Guide to the Human Rights Act, produced in association with the Bar Council. Further information is also available about the [Council of Europe](#) and the [Strasbourg institutions](#).