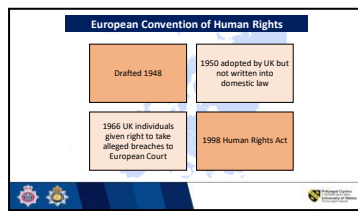




On successful completion of this module, learners will be able to:

1. Explain the history of the Human rights Act.
2. State the provisions of the Human rights act
3. Identify Human rights act articles 1 to 14
4. Explain situation when we do not meet requirements of the European Convention of Human rights.



The EC of HR was drafted after WW11 by the Council of Europe (group of like minded nations, pledged to defend HR, parliamentary democracy and rule of law & to make sure atrocities of the war never repeated.

The UK had a major role in the design and drafting of the EC of HR & ratified the Convention in March 1951. The Convention came into force in Sept 1953

The convention is made up of a series of Articles. Each Article defines a right or freedom. Eg Article 3 – prohibition of torture.

Anyone who believes a state has breached their human rights should try to resolve their case in domestic courts of the state. Then they can take their case to European Court of HR set up by the E Convention of HR and based in Strasbourg, France.

In 1966 it was recognised that UK law did not always meet the requirements of ECHR and defendants were allowed to take their case to the European Court of Human Rights in Strasbourg.

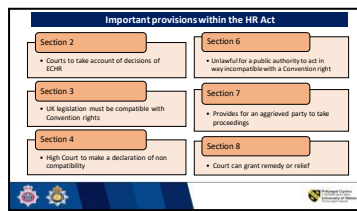
With increasing frequency decisions of our domestic criminal courts have been found wanting in the area of Human Rights by the European Court.

In 1997 the Labour Party stated that if brought into power they would create the Human Rights Act to bring the convention rights into our own legislation.

In 1998 the Human Rights Act came into force. HR Act came into effect in UK in Oct 2000. Enabled people in UK to take cases about their HR to a UK court.

In 1948 the United Nations General Assembly adopted The Universal Declaration of Human Rights.

In 1950 the United Kingdom ratified the European Convention on Human Rights and Fundamental Freedoms.



The Human Rights made a number of important provisions :

Section 2 Requires a court to take account of the opinions and decisions of the European Court of Human Rights, the Commission and Committee of Ministers when determining a question relating to a Convention right.

Section 3 Demands that all United Kingdom legislation must be construed and give effect in such a way as to be compatible with Convention rights.

Section 4 Permits the High Court to make a declaration of non compatibility on any question of United Kingdom law.

Section 6 Makes it is unlawful for a public authority to act in a way incompatible with a Convention right

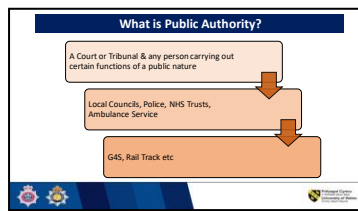
Section 7 Provides for an aggrieved party to take proceedings where a public authority has breached section 6.

Section 8 Empowers a court to grant such remedy or relief within its powers as it considers just and appropriate.

Human Rights are no longer some remote ideal over which decisions are made in some distant court in Europe.

The question of infringement of an individual's Human Rights will be open to examination in every criminal trial, civil or care proceedings and tribunals.

It could be argued that the Human Rights Act 1998 affects a wider spectrum of police investigation and procedure than any other piece of legislation ever to come onto the statute books.



The list is not exhaustive.

What makes the HRA different from the ECHR is how the HRA defines 'Public Authority'.

Whereas the ECHR is only concerned with the State, the HRA defined two 'public authorities'

the Human Rights Act was enacted at a time when the map of the public sector had been redrawn, as privatisation and contracting-out had increased the role of the private and voluntary sectors in the provision of public services.

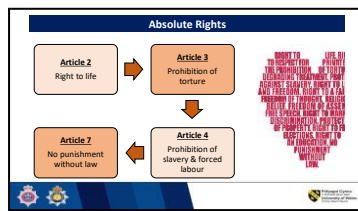
First, "pure" public authorities (such as government departments, local authorities, or the police) are required to comply with Convention rights in all their activities, both when discharging intrinsically public functions and also when performing functions which could be done by any private body. So, for example, a local authority must comply with the non-discrimination standards imposed by Article 14 of the Convention not only in its provision of public housing but also in its dealings with building contractors.

Second, are those who exercise some public functions but are not "pure" public authorities. They are required to comply with the Convention Human Rights when they are exercising a "function of a public nature" but not when doing something where the nature of the act is private. So, for example, a private security firm would be required to comply with Convention rights in its running of a prison, but not in its provision of security to a supermarket.

So, the police service and, therefore, every person working for the police whilst on duty will be classed as a pure public authority.

As you know you have a Duty of Care, the Act calls it Positive Obligation and that simply means that as an officer you cannot walk on by!

You must do something.....



There are 16 basic rights in the Human Rights Act – all taken from the European Convention on Human Rights

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.

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)

ABSOLUTE RIGHTS are those rights which are **musts** e.g. right to life, no torture.

Articles 2, 3, 4, and 7 are **absolute** which means they cannot be restricted or balanced with any general public interest.

Article 2.

A person has the right to have their life protected by law. Generally, the state must not take the lives of citizens. However, there are three very limited circumstances when taking life may not contravene Article 2:

- when it is to defend a person from unlawful violence
- when lawfully arresting someone or preventing the escape of someone lawfully detained
- when acting lawfully to stop a riot or insurrection.

How might this Article apply to the police?

The police would be able to provide a defence if some one died as a result of making an arrest, when acting in self defence or whilst the police are lawfully quelling a riot. An officer can use reasonable force in self defence.

Article 3.

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

Police Officers are obliged to make sure they do not subject people to torture or to inhuman or degrading treatment or punishment, eg twist of the handcuffs

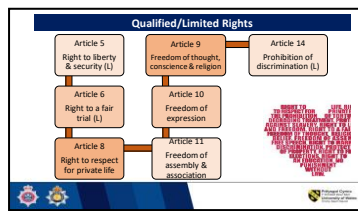
Police Officers are obliged to intervene to stop torture, inhuman or degrading treatment or punishment as soon as they become aware of it, even if a private individual is carrying it out, eg protecting or providing services to victims of domestic violence and sexual assault.

The police might act against this Article if they used any physical or mental abuse during arrest/detention, or deprived them of food, drink, sleep, or maybe even when handcuffing a suspect

Public authorities must take reasonable steps to protect your life, there are situations, however, when it does not apply

For example, a person's right to life is not breached if they die when a public authority (such as the police) uses necessary force to:

- stop them carrying out unlawful violence
- make a lawful arrest
- stop them escaping lawful detainment, and
- stop a riot or uprising.



QUALIFIED RIGHTS are those rights which can be suspended/taken away by authority in the interest of the rights of others. E.g. police arresting persons for public order offences, or when acting within the law, stopping and searching persons .

Qualified rights contain clauses which enable a public authority to justifiably balance or restrict them in the ‘public interest’.

A public authority can sometimes interfere with your rights if it’s in the interest of the wider community or to protect other people’s rights. These rights are **qualified**.

It can be limited where it is necessary and fair in order to protect:

- public safety
- public order
- health or morals
- the rights and freedoms of other people

Limited Rights - Articles 5 & 6 are sometimes referred to as ‘limited rights’ because of the extensive limitations which are placed within the Articles themselves.

These rights can be restricted for specific reasons; if it is proportionate – that is, it must be for a fair and valid reason.

For example, the right to liberty (Article 5) is a limited right. A person can be detained by the state for many lawful reasons including prison, mental health grounds and other reasons listed in the Article.

To illustrate the point we can take Article 5, the right to liberty, a basic and important right to which everyone is entitled but which may be limited in certain cases. For example, the police are given powers to deprive a person of their liberty by arresting them if they are suspected of committing a crime.

Article 5.

To keep within the ECHR any arrest & detention must be lawful

Article 6.

The law states that a person is presumed innocent until proven guilty according to law & must be guaranteed certain minimum rights in relation to the conduct of criminal investigation & trial.

PACE states that a suspect must be informed of nature of accusation against them

A suspect must be given time & facilities for defence.

The police allow time for a suspect to consult with a suspect

The police will also provide an interpreter if one is required

Article 8(2) states there shall be no interference by a public authority except ‘in accordance with the law and as necessary in a democratic society ‘.

What does this mean for the police?

It means that police officers can only justify interference with an individual’s qualified

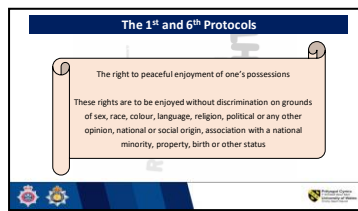
rights to the extent allowed by UK domestic law, for one of the interests specifically listed, for example national security or the prevention of crime, and only if it is absolutely necessary.

For example, if it was felt necessary to tap a drug dealer's phone, interfering with their right to privacy under Article 8, then it can only be done if:

There is a law that provides that power, in this case the Interception of Communications Act 1985, and

One of the interests can be used, again in this case to prevent crime and

It was necessary in a democratic society, in this case to gain sufficient evidence.



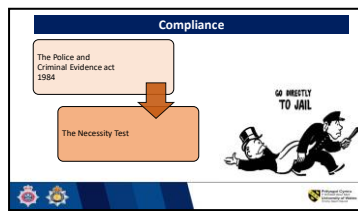
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As the Act has developed, later additions have been added.

A later addition to the Convention is known as a 'Protocol'

The 1st Protocol is broken by the police every time they seize property.

The 6th Protocol simply means the rights apply to everyone!



PACE is a good example of how the police treat people in accordance with the HRA in a variety of situations.

For example, protection it gives persons in detention where appropriate and the manner in which stop searches are carried out, although, if you read the papers you will know that this is a contentious issue that has been running for years and years. In fact PACE came about as a direct result of the Brixton Riots of 1981 and still is not resolved.

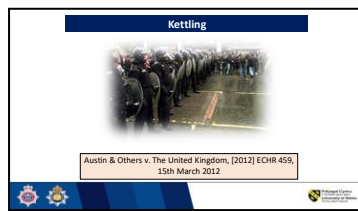
It is also a good example of where UK law did not meet the requirements of the The European Convention Of Human Rights.

Section 24 of PACE deals with a Police Officer's power to arrest a suspect. Prior to 1998 A Police Officer only had to know that the offence committed was an 'arrestable' offence.

This was not compatible with Article 5, the right to freedom and security.

Now officers have to prove that it is **necessary** to arrest a person after considering all other options for dealing with a suspect.

We will look at this in more detail later in the course.



The issue of 'Kettling', now a recognised verb in the English language meaning 'to contain demonstrators in a confined' area was brought before the Court of Human Rights in Strasbourg in 2012.

The background to the action, which took place in 2001, was that the police were planning for a May Day rally where intelligence identified that up to 1,000 activists would congregate that would become one of the most serious public order incidents ever seen in London.

The incident transpired as expected by the police and they decided to use containment tactics to keep the protestors confined to a particular area.

The four applicants who took the case to Strasbourg were caught up in the police cordon.

One was a protestor, one was out shopping and the other two were workers on their lunch break.

They were each held for between 5½ and 7 hours without access to food or water or toilets.

One needed to collect her daughter from the crèche at 4:30pm. She could not leave the cordon until 9:30pm.

Their case was that this amounted to a deprivation of their liberty within the meaning of Article 5 of the ECHR.

The facts of this case reveal a clash of perspectives between private and public interests. However, as the applicants argued, the deprivation of their liberty cannot be justified by a wider public interest motive.

The Grand Chamber of the Court of Human Rights resolved these rival submissions in favour of the UK.

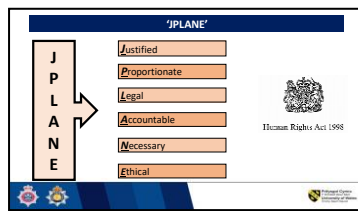
However, whilst an apparent conflict of high principle, ultimately its conclusion depended upon the judges' evaluation of the merits of the police's tactics whilst the joint dissenting opinion (including that of the President) ultimately reflected a different opinion of the merits of such tactics.

Hence, the majority commented that:

'The measure was imposed to isolate and contain a large crowd, in volatile and dangerous conditions. As the Government pointed out...the police decided to make use of a measure of containment to control the crowd, rather than having to resort to more robust methods, which might have given rise to a greater risk of injury to people within the crowd...The Court finds no reason to depart from the judge's conclusion that in the circumstances the imposition of an absolute cordon was the least intrusive and most effective means to be applied.

...the police could have been expected to apply less intrusive means. As it was, it

seems that all people who happened to be at Oxford Circus at around 2pm were treated like objects and were forced to remain there as long as the police had not solved other problems around the city.'



Police Officers should consider JPLANE before every decision,

Officers need to justify every decision they make

A balanced approach needs to be considered and demonstrated. The action must be proportionate, the minimum level needed to complete the legitimate aim.

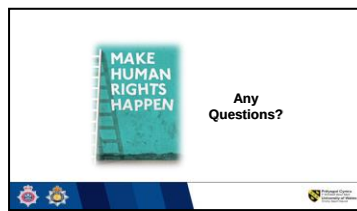
Any actions you take **must** have a basis in law.

Whatever intervention an officer selects will always have an affect on their accountability, ultimately in court.

A police officer must only do what is necessary to achieve the legitimate aim.

A police officer's actions must be ethical.

We must think PROMOTE HUMAN RIGHTS at all times.



Remember:

As police officers you should **WANT** to protect a person's Human Rights, it's been the basis of policing since its inception as a professional organisation in 1829.

It's everyone's right to live in a peaceful society and the police are the guardians of that peace.

When the police are confronted by individual's making comments like 'You can't touch me, I know my rights' or 'you're only arresting me because I'm black', officers need to assure themselves that they know and apply the Human Rights Act to all their actions.