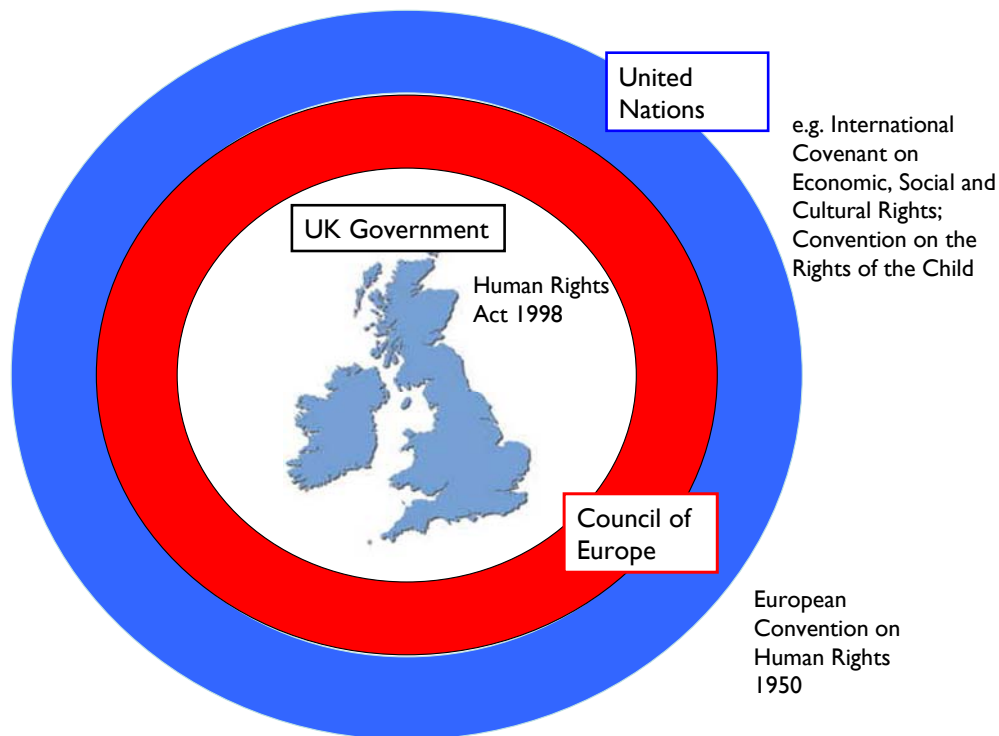


Protecting human rights in the UK

There are three main levels of human rights protection in the UK – domestic, regional and international. These are enforced and monitored in different ways.



Domestic law: the Human Rights Act

At the domestic level, the Human Rights Act came into force in the UK on 2 October 2000. The Human Rights Act places all public authorities in the UK, such as NHS Trusts, local authorities and central government departments, under a duty to respect the rights it contains in everything that they do. The Human Rights Act protects everyone in the UK, without any exceptions.

The Human Rights Act has two main aims:

i) To bring most of the human rights contained in the European Convention on Human Rights (see section below on regional law) into UK law

This makes it possible for people to raise or claim the human rights that are set out in the European Convention within complaints and legal systems in the UK. Prior to the Human Rights Act coming into force, if you wanted to bring a claim relating to these rights you had to take your case to the European Court of Human Rights in Strasbourg. The Human Rights Act therefore makes human

rights more accessible for people in the UK – it is generally quicker, cheaper and more practical to bring your case before the UK courts. If your case is not successful in the UK courts, you can still take your complaint to the European Court of Human Rights.

ii) To bring about a new culture of respect for human rights in the UK

Human rights are not just about the law and taking cases to court. They are relevant to many of the decisions people make and the situations people experience on a

daily basis. The government intended the Human Rights Act to place human rights at the heart of the way public services are delivered.

[Human rights provide] ‘... an ethical language we can all recognise and sign up to ... a language which doesn’t belong to any particular group or creed but to all of us. One that is based on principles of common humanity.’
Jack Straw 1999

The rights contained in the Human Rights Act:

- The right to life
- The right not to be tortured or treated in an inhuman or degrading way
- The right to be free from slavery or forced labour
- The right to liberty
- The right to a fair trial
- The right to no punishment without law
- The right to respect for private and family life, home and correspondence
- The right to freedom of thought, conscience and religion
- The right to freedom of expression
- The right to freedom of assembly and association
- The right to marry and found a family
- The right not to be discriminated against in relation to any of the rights contained in the European Convention on Human Rights
- The right to education
- The right to peaceful enjoyment of possessions
- The right to free elections

More on how the Human Rights Act works

The Human Rights Act works in four main ways:

i) All public authorities in the UK must respect the rights contained in the Human Rights Act in everything that they do. Public authorities are under a duty not to commit human rights abuses. Public authorities also have duties to take proactive steps (known as ‘positive obligations’) in order to ensure that human rights are respected, protected and fulfilled – for example if a public authority is aware that someone is being abused, they may have a duty under the Human Rights Act to investigate or intervene.

What is a public authority?

The term ‘public authority’ is not fully defined in the Human Rights Act, but it should be interpreted broadly. It includes all central and local Government agencies, as well as courts and tribunals. The NHS, state schools, social services departments and prisons are included, and, more generally, any person or organisation who performs functions of ‘a public nature’. The term also covers private organisations such as companies or charities, but only when carrying out a public function, for example a private hospital detaining someone under the Mental Health Act. There is currently some debate with regards to what counts as a public authority – if you are interested in this debate, please visit the policy pages of our website at www.bih.org.uk/policy.

ii) Anyone in the UK who believes that their rights have been breached by a public authority can bring a claim against the public authority. This can be in the ordinary UK Courts, and in a range of other systems and processes including tribunals, hearings and complaints procedures. Anyone in the UK can bring a claim under the Human Rights Act – the Act is not limited to UK citizens.

iii) Wherever possible, existing laws have to be interpreted and applied in a way that fits with the human rights contained in the Human Rights Act. All other laws should be compatible with the Human Rights Act. If it is impossible to interpret an existing Act of Parliament in this way, the courts will issue what is known as a ‘declaration of incompatibility’. This sends a clear message to legislators that they should change the law to make it compatible with human rights.

Example – Declaration of Incompatibility

If someone was detained under the Mental Health Act and wanted to be discharged, they used to have to prove that they were no longer suffering from a mental health problem that required further detention. In 2001 the UK courts declared that this was not compatible with the right to liberty, and therefore made a ‘declaration of incompatibility’. The UK Government then amended the law so that now the hospital has to prove that someone should still be detained.

iv) For all new laws, the Minister responsible for the Bill must make a statement confirming that it is compatible with the Human Rights Act (or explaining why it is not). This is a unique feature of the Human Rights Act, and means that human rights have to be considered in the process of developing legislation.

No provision was made in the Human Rights Act for a UK-wide human rights commission to promote and protect human rights. However, in 1999 the Northern Ireland Human Rights Commission (NIHRC) was set up to promote awareness of the importance of human rights in Northern Ireland. In England, Scotland and Wales the Equality and Human Rights Commission opened its doors in October 2007. The EHRC has an overall purpose to reduce inequality, eliminate discrimination, strengthen good relations between people and protect human rights. In addition, the 2006 Scottish Commission for Human Rights Act established the Scottish Commission for Human Rights, which will work alongside the EHRC to promote human rights in Scotland. Please visit the EHRC (www.equalityhumanrights.com) or NIHRC (www.nihrc.org) websites for more details.

Regional law – European Convention on Human Rights

At the regional level, the UK signed up to the European Convention on Human Rights in 1951. The Convention, which UK lawyers and civil servants helped to draft, was agreed after the Second World War by the Council of Europe. The Council of Europe was set up to safeguard and defend human rights, democracy and the rule of law across its 47 member states. It should not be confused with the European Union – although signing up to the European Convention is a precondition of European Union membership. The Council of Europe spans across the European continent and includes countries such as Russia, Turkey and the Ukraine.

The European Convention on Human Rights is enforced by the European Court of Human Rights based in Strasbourg, France. You can complain to this court if you think your rights set out in the Convention have been breached – but since the Convention became part of UK law in 2000 (see above) you need to have taken your case through the UK courts system first.

International law

The UK has signed up to a range of international human rights treaties (also often called conventions or covenants) that are monitored by the United Nations. The UK Government has to submit regular reports (usually every 4 – 5 years) that explain how the UK is implementing the rights in the treaty. The reports are examined by a committee of experts, which publishes its concerns and recommendations. Non-governmental organisations (NGOs) can produce ‘shadow reports’, which the committee will consider alongside the UK Government’s report. This is an important way in which NGOs can hold governments to account.

The UN human rights treaties are not part of the UK’s domestic law. This means that you cannot bring a case in the UK courts against the Government using one of these treaties. Some of the treaties have an optional mechanism that states can choose to sign up to, which means that individuals can make specific complaints to the relevant committee that their rights have been violated. Currently, the UK Government has chosen only to allow individual complaints for the Convention on the Elimination of Discrimination Against Women. Therefore, individuals in the UK who feel they have a complaint under this treaty can apply to the Committee on the Elimination of Discrimination Against Women, but will need to have taken their complaint through the UK courts system first. For more information on this process please visit the website of the UN High Commissioner for Human Rights at <http://www2.ohchr.org/english/bodies/cedaw/index.htm>.

There are nine core UN human rights treaties:

- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention Against Torture (CAT)
- The Convention on the Elimination of Discrimination Against Women (CEDAW)
- The Convention on the Elimination of Racial Discrimination (CERD)
- The Convention on the Rights of the Child (CRC)
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (the UK has **not** signed this Convention)
- The International Convention for the Protection of all Persons from Enforced Disappearances (not yet in force; the UK has **not** signed this Convention)
- The Convention on the Rights of Persons with Disabilities (CRPD) (signed, but not yet ratified, by the UK)