



HuMann Rights

*FURTHER
INFORMATION
ABOUT THE
HUMAN RIGHTS ACT*



**Isle of Man
Government**

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Wherever you see text in ***bold italics***, you can find that word or phrase explained in the glossary on page 29.

This document is only intended as a guide and in no way should be construed as legal advice.

It is also available in large print upon request

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PREFACE

The Human Rights Act is one of the most significant and exciting changes in Manx law for a long time. It marks a change in the constitutional relationship between citizens and the state.

For the first time, the Act incorporates the rights from the ***European Convention on Human Rights*** into the domestic law of the Isle of Man. The Government has sought to comply with those rights since the Convention was agreed fifty years ago. The Act will come into force during 2003; the exact date is yet to be decided by the Council of Ministers. From then, all ***public authorities*** (including the courts, the police, local authorities, hospitals, the prison and other agencies which perform public functions) will have to work in line with the ***Convention rights*** when they make decisions which affect you. If they interfere with your rights they will have to justify that interference in accordance with the new law.

Sometimes a ***public authority*** may make a mistake, or it may be difficult to agree about the balance to be struck between one person's rights and the rights of others. The Human Rights Act will allow such problems to be dealt with in our own courts. Under the current system, cases have to take the long and costly road to the ***European Court of Human Rights*** in Strasbourg.

The Isle of Man Government hopes that you find this guide useful - and that it helps you to play a full part in the creation of a culture of rights and responsibilities in the Isle of Man.

WHAT IS THE HUMAN RIGHTS ACT FOR?

We can be clearer about exactly what our rights are.

Most modern democracies accept that there are some rights and freedoms which are fundamental - every human being should be able to enjoy them. Many countries have written these rights down and provided a way of safeguarding and promoting them.

Unlike many other countries, the Isle of Man does not have a written constitution or 'Bill of Rights' as part of the national law. People here have long enjoyed a high degree of personal liberty but it has not always been easy to say exactly what was involved - or what to do when existing laws conflict with those liberties.

The **European Convention on Human Rights** is a binding agreement to which the Island has been signed up for over 50 years. It sets out basic civil and political rights. It is not yet part of Manx law though, so if you want to have your rights discussed in a court, you have to go to the **European Court of Human Rights** in Strasbourg. This is time consuming and expensive.

When the Act comes into force, the Human Rights Act will make the **Convention rights** part of Manx law, and therefore enforceable in Manx courts. The Act also gives people a clear statement of their basic rights and fundamental freedoms.

We have rights and responsibilities.

So, the Act is about giving further effect to the **Convention rights**, and ensuring that your rights are respected. However, it is important to remember that the Act aims to ensure that *everyone's* rights are respected, not just your own. This means that one person's rights will often have to be balanced against those of another.

The interests of the wider community may need to be taken into account; this idea is reflected in the text of the **Convention rights**. You can see this by taking a quick glance at the way Articles 8 to 11 are constructed (you can find them reproduced from page 67). These rights come in two parts: the first part sets out the right, and the second part describes how that right may need to be limited. For example it is in the interests of the community to protect public health, or to prevent crime. The whole system of protecting rights works best when people recognise that they have responsibilities as well as rights.

The Act is helpful for democracy.

The Human Rights Act ensures that these important ideas, as well as the supporting judgements of the **European Court of Human Rights**, are fully available to our courts. It also ensures that the people you elect to run the country are involved in making the difficult decisions about where to strike the balance between your rights and the rights of the wider community.

The Act requires courts to respect the laws passed by Tynwald. However, it allows certain courts to declare that a law cannot be understood in a way which is **compatible** with the rights. It is then up to Tynwald to decide whether and how to change the law. This means that a proper balance has been struck between the law-making and law-enforcing parts of the system.

The Act is for prevention, not just the cure.

The Act represents a major shift in the way our political and legal system works. It will mean that all **public authorities** must ensure that everything they do is compliant with human rights standards, unless an Act of Tynwald makes that impossible. People will be entitled to expect public bodies to respect their **Convention rights**. This provides a common set of binding values among **public authorities**, the individual and the community. **Public authorities** must have human rights principles in mind when they make decisions which may affect people's rights.

We can have more confidence.

Over time, a shared understanding about what is fundamentally right and wrong should lead to people having more confidence in key state bodies. This should also encourage more openness and participation in public life. The shared, basic values will help promote greater unity in our diverse community.

HOW DOES THE HUMAN RIGHTS ACT WORK?

The Act works in three main ways:

1. Compatible interpretation

The Act will require that all legislation is to be understood and given effect in a way which is **compatible** with **Convention rights**. If this is absolutely impossible, a court may

- quash or disapply **subordinate legislation**; or
- if it is a higher court, make a **declaration of incompatibility** in relation to **primary legislation**.

2. Public authorities

The Act will make it unlawful for a **public authority** to act incompatibly with the **Convention rights**. It allows for a case to be brought in an appropriate Manx court or tribunal against the authority if it fails to act in a compatible way. However, the **public authority** would not have acted unlawfully if it could not have acted any other way because it was following the instructions of an Act of Tynwald.

For example, a person would be able to argue that a decision violated their rights because it was a **disproportionate** interference with the right to respect for private and family life. This way, the language of human rights will become a common way of judging whether a **public authority** has acted unlawfully.

3. Courts

Manx courts and tribunals will have to take account of the rights in all cases that come before them, because courts themselves are '**public authorities**'. This means that they must develop the **common law** in a way which is compatible with the **Convention rights**.

Our courts will have to look, with "anxious scrutiny", to see if an interference was really necessary to achieve one or more of the **legitimate aims** recognised by the **Convention**. If the answer is no, the court will find that the actions of the **public authority** were unlawful. They won't just replace that decision with their own, their role is to review.

It is always better to see if a problem can be solved without going to court. People who feel their rights may have been breached should first talk to the person or body concerned. They should ask for an explanation and, if possible, for things to be put right. If court action cannot be avoided, three points need to be made clear:

Who is the victim?

Only a **victim** of a breach of **Convention rights** will be able to bring a case. If the action or decision complained of has directly affected you, there should be no problem about this. If it has had no impact on you personally, or a very indirect impact, further legal advice may be necessary.

Is a public authority responsible?

Courts will have to consider human rights in every case which comes before them, even if it does not involve a **public authority**. However, for a person to begin a separate case purely about their rights, a **public authority** must be responsible for the alleged breach. **Public**

authorities are bodies which carry out public functions. Examples include central Government, Government Departments, the local authorities, the police, the health service and schools. Private companies who are performing a function of Government may also come under this heading.

Sometimes, even if a **public authority** has not breached **Convention rights** directly, it may be responsible for failing to protect individuals from that breach. This is known as a **positive obligation**.

What about time limits?

Cases will have to be brought within one year of the day upon which the alleged breach took place. A court may extend this time period if you can give very good reasons to do so. You will not be able to bring a case purely about their human rights because of something which happened before the Human Rights Act comes into force.

However, if a **public authority** is taking legal action against you and the court hearing occurs after the coming-into-force day, you will be able to make reference to any relevant human rights points in your defence.

Depending on the circumstances, a person will be able to bring a case under the Human Rights Act either through an action in the High Court, by exercising a right of **appeal** (where this is available), or on a petition of doleance in the High Court. Legal advice may be necessary to decide which course of action would be the most appropriate.

What might the case achieve?

When a court considers a human rights issue in a case involving an act or omission by a **public authority**, it will look very carefully at the relevant law to see if the **public authority** had any choice in the matter.

The court looks to see if it is possible to interpret the legislation in a way which is **compatible** with the **Convention rights**. If the legislation can be interpreted compatibly but the **public authority** had interpreted it in a way which was not compatible, the court would be able to provide a remedy using its existing powers.

Any court that has the power to order payment of compensation in civil cases will be able to award damages under the Human Rights Act. The court will have to apply the same criteria that the **European Court of Human Rights** uses. So, courts will be able to award financial damages both for actual loss, i.e. loss of earnings, fines paid, loss of property value or employment prospects, as well as moral damages, like anxiety or distress. However, any damages will have to be a direct cause of the breach of rights.

If the breach of rights has been caused by the **public authority** following the instructions of **secondary legislation**, and the court cannot find a **compatible interpretation**, the court may quash or disapply that legislation.

If a breach of rights has been caused by the **public authority** following the instructions in **primary legislation**, and the court cannot find a **compatible interpretation**, higher courts can make a formal statement called a **declaration of incompatibility**. It will then be up to Tynwald to decide what to do. This outcome is likely to be quite rare.

WHAT ARE MY CONVENTION RIGHTS?

Each of the rights in the Human Rights Act comes from the ***European Convention on Human Rights***, where they are laid out in numbered paragraphs called Articles. There are some ideas and principles that it is important to understand before we go on to look at each Article in depth. These ideas do not appear in the text of the Act, but they must be considered together with the rights.

Living Instrument

The ***European Convention on Human Rights*** is a ***living instrument***. This means that although the rights were written down 50 years ago they must be understood in the light of present day conditions. Community values change over time, and the enforcement of the rights must move along with modern sensibilities.

Broad and Purposive interpretation

The ***European Convention on Human Rights*** seeks to give a practical and effective interpretation to the rights. Limitations on those rights, however, are interpreted narrowly. The general idea is to give individuals the full enjoyment of the ***Convention rights*** as far as possible.

Autonomous meaning

The use of a word or phrase in Manx law (for example whether a matter is considered to be ***criminal*** or civil) may not have the same meaning as it does in the ***European Convention on Human Rights***. The word or phrase must be used in the same way in all the states which are signed up to the Convention, and so when considering a human rights matter, the word or phrase is given the meaning that the ***European Convention on Human Rights*** uses. This is called an ***autonomous meaning***.

Margin of Appreciation

When a country is trying to balance rights, the ***European Court of Human Rights*** gives them a ***margin of appreciation***. This recognises that there are some decisions that the domestic authorities are better placed to make than the European Court. '***Margin of appreciation***' might be used in the domestic law context to allow courts to accept the opinions of expert decision makers, such as Government Departments.

Three kinds of rights

Not all the **Convention rights** are put together or used in the same way. There are three different types of rights, namely:

- **absolute rights** where there is absolutely no justification for interfering with that right.
- **limited rights** in which there are detailed and specific circumstances where an interference may be justified. This makes the distinction between an interference and a breach.
- **qualified rights** where interferences can be justified if
 - it has a basis in law; and
 - is done in the pursuit of a **legitimate aim**, and
 - it is fulfilling a pressing social need and it is **proportionate** (see below).

Proportionality

The tests set out in the bullet points above are very important in deciding whether rights have been breached. It could be said that the test of **proportionality** might be the most important. This means that **public authorities** must not use a sledgehammer to crack a nut! If there is a less intrusive way of achieving the **legitimate aim**, it should be used. The solution should be **proportionate** to the problem.

THE RIGHTS - A COMMENTARY

ARTICLE 2: THE RIGHT TO LIFE

You have the right to have your life protected by law. This means that the taking of the life of another must be illegal under Manx law, which it is. It also means you have the right to expect a proper investigation if a member of your family dies in circumstances where the state might be responsible (i.e. if they were in prison when they died). Everyone in the Island has these fundamental rights, including people like suspected terrorists or violent criminals.

There are some very specific circumstances where a **public authority** could justify causing a death, such as in self defence from unlawful violence or quelling a serious riot. In such a situation, the authority must justify that the use of force, and the level of force, was absolutely necessary and **proportionate** to that situation.

There are some circumstances where the state has a **positive obligation** to protect life. There are many questions about how far this obligation should go, especially in areas such as health care, unborn children or a situation where a life is forcibly saved i.e. to force-feed a hunger striking prisoner. The state also has a duty to investigate deaths caused by people other than **public authorities**.

The right to life does not mean that you have the 'right to die' - or choose to end your own life, expecting anyone who helped you to be immune from prosecution.

ARTICLE 3: FREEDOM FROM TORTURE OR INHUMAN OR DEGRADING TREATMENT

You have the absolute right not to be tortured or subjected to inhuman or degrading treatment or punishment. Even in times of war or public emergency you have this right. How treatment is classified depends upon the nature, seriousness and duration of the treatment, how it affected you and whether or not you are considered to be particularly vulnerable. This article covers **judicial corporal punishment**.

Torture is the most serious form of ill-treatment. It is deliberate inhuman treatment which causes very serious and cruel suffering. This could be mental suffering, physical or both. Inhuman treatment or punishment is less severe than torture and could include serious physical assaults, inhuman detention conditions or a real and immediate threat of torture. Degrading treatment or punishment is treatment which is grossly humiliating, judged upon whether most people your gender, age and health etc. would consider it such.

There are indications that sever forms of racial **discrimination** may be counted as 'degrading treatment'.

The Government has a **positive obligation** to prevent breaches of your Article 3 rights by one private individual against another, especially against children and other vulnerable people.

ARTICLE 4: FREEDOM FROM SLAVERY OR FORCED LABOUR

You have the absolute right not to be treated like a slave or forced to perform certain kinds of work. Slavery and servitude are rather old-fashioned terms. Being a slave means that someone actually owns you, like a piece of property. Servitude is similar, in that you may have to live on that person's property and may be unable to leave, but that person does not own you. Slavery has long been unlawful in the Isle of Man. This right also protects you

from 'forced or compulsory labour'. 'Labour' is given a broad meaning, and can cover all kinds of work or service, not just physical. It is 'forced or compulsory' if you are made to do it by threat of punishment which you have not voluntarily accepted.

Forced or compulsory labour does not include military service, community service or normal civic obligations such as maintaining your property if you are a landlord; or deducting taxes from your employees' wages if you are an employer.

There have been very few successful cases before the **European Court of Human Rights** under this Article. Unsuccessful ones have included cases like complaints about the voluntary work trainee lawyers have to do as part of their training, and complaints about withdrawal of unemployment benefits when a person refuses to accept a job.

ARTICLE 5: PERSONAL FREEDOM

You have the right not to be arrested or detained - even for a short period. This right is limited though - there are specific circumstances in which you can be arrested or detained. An arrest is a situation in which an officer indicates that you are not free to leave. Detention can include both closed and open prisons as well as mental health hospitals. Arbitrary or discriminatory detention may be considered to be a breach. If your arrest or detention was carried lawfully and for one of the following reasons, there has been no breach of Article 5:

- lawful detention following a conviction by a competent court;
- lawful arrest or detention to make you comply with a legal obligation (such as a court order to pay maintenance money);
- lawful arrest or detention to ensure that you attend court if there is reasonable suspicion that you have committed a crime, or to prevent you from committing more crimes or from escaping;
- if you are under 18, lawful detention to ensure that you have some educational supervision or to make sure you attend court;
- if you are shown to be of unsound mind, an alcoholic, a drug addict or a vagrant, or to prevent you from spreading an infectious disease, where your detention is provided for by law; or
- where this is necessary, to prevent an unauthorised entry into the British Isles, or to allow for you to be extradited if you face criminal charges in another country.

If you are charged with a **criminal offence**, you have the right to be brought before a court promptly, and the right to be granted bail (with certain exceptions). If you are arrested you have the right to have any charges against you explained in a language you understand.

ARTICLE 6: RIGHT TO A FAIR TRIAL

You have the right to a fair and public hearing before an independent and impartial court or tribunal within a reasonable time. This right covers civil cases (e.g. contracts, planning decisions, family law, social security issues, licences, professional discipline cases etc.) and criminal cases. Article 6 does not give an automatic right to an **appeal**, but the Article requires the decision making process as a whole, from beginning to end, to comply. Article 6 does not give you the automatic right to **legal aid**, but it may provide for it in particularly complex cases that you could not be expected to present yourself and you meet the financial criteria.

If you are charged with a **criminal offence** Article 6 provides some additional rights. These include the right to be physically present in court if you want to be there, the right to

silence' (although inferences may be drawn from that silence), the right to be presumed innocent until you are proved to be guilty, and the right to examine and cross examine witnesses on the same terms as the other party to the case.

ARTICLE 7: NO PUNISHMENT WITHOUT LAW

You cannot be found guilty of a ***criminal offence*** that was not considered to be a ***criminal offence*** at the time you committed it. You are also protected from increases in the severity of the punishment for a crime which are decided after you have committed that crime.

ARTICLE 8: PRIVATE AND FAMILY LIFE

You have the right to respect for your private and family life, your home and your correspondence. This is a ***qualified right***, so there are numerous situations in which a ***public authority*** could interfere with your private life without that behaviour constituting a violation.

You have the right to live your own life with such personal privacy as is reasonable, taking into account the rights and freedoms of others. Any interference with your body or the way you live your life must be justified. This article may also cover issues of self-determination such as your sexual identity, the way you look and dress and freedom from intrusion by the media. It also covers your right to have personal information about you kept private and confidential. The ***Data Protection Act*** goes a long way to secure this.

In some cases the state has a ***positive obligation*** to protect you from intrusions into your privacy by other people.

Your right to a family life also includes the right to have family relationships recognised by the law, and for your family to live together and enjoy one another's company. 'Family' always includes single parents, and may include foster families. You have the right to enjoy your home peacefully. You do not have to own your home to enjoy this right. Your correspondence can include things like communication by letter, telephone, fax or email.

The ***legitimate aims*** for an interference with Article 8 rights are:

- national security;
- public safety;
- the protection of the economy;
- the prevention of crime;
- the protection of health or morals; or
- the protection of the rights and freedoms of others.

As with other ***qualified rights***, ***public authorities*** will have to weigh up all the competing interests before making decisions in this area. Article 8 rights may clash with other rights, such as the freedom of expression.

ARTICLE 9: FREEDOM OF BELIEF

This Article protects your rights in relation to a broad range of views, beliefs, thoughts and positions of conscience as well as to your faith in a particular religion. You have the right to practice or demonstrate your beliefs in public or in private. This right is also ***qualified***, and for an interference to be justified it must be for the ***legitimate aim*** of either:

- public safety;
- the protection of public order;
- health or morals; or
- the protection of the rights and freedoms of others.

ARTICLE 10: FREEDOM OF EXPRESSION

This important right allows you to hold opinions and express your views singly or in conversation. Article 10 is also a ***qualified right***. 'Expression' can cover holding and sharing opinions, publishing books or pamphlets, broadcasting, works of art, communicating through the Internet and many other activities. It can also cover receiving information from others, so your rights protect you as a speaker and you as a member of an audience.

Even if your views are unpopular or shocking, you have the right to express them but offensive language insulting to racial or ethnic groups might be an example where a lawful restriction on expression may exist. The right to express political views and opinions is an especially important part of democracy.

Freedom of expression is also very important for journalists, television, radio and other parts of the media. The media performs an essential 'watchdog' function in a free democracy. On the other hand, this right must be balanced against other rights, like Article 8 rights to respect for your private life.

Article 10 makes it clear that freedom of expression carries both rights and responsibilities. ***Legitimate aims*** for restrictions on Article 10 are:

- national security;
- territorial integrity;
- public safety;
- the prevention of disorder or crime;
- the protection of health or morals;
- the protection of the rights and reputation of others;
- the prevention of the disclosure of information received in confidence; or
- maintaining the authority and impartiality of the judiciary.

ARTICLE 11: FREE ASSEMBLY AND ASSOCIATION

You have the right to assemble with other people in a peaceful way, which includes the right to join a trade union to protect your interests at work. It also includes the right to demonstrate peacefully, particularly against the state. In some circumstances the state has ***positive obligations*** to protect your Article 11 rights, such as to protect you from violence if you are demonstrating peacefully. Article 11 is a ***qualified right***, and restrictions must be for one of the following ***legitimate aims***:

- national security;
- public safety;
- the prevention of disorder or crime;
- the protection of health or morals; or
- the protection of the rights and reputation of others.

Further restrictions may be acceptable if you are a member of the armed forces, the police or a civil servant.

ARTICLE 12: MARRIAGE

Men and women have the right to marry and start a family. The Island can make its own laws governing this right, so long as the right to marry is not removed. This does not mean that two people of the same gender can marry one another here, although other European countries have allowed this.

The right to start a family means that restrictions on adoption in Manx law are only allowed if they serve an important purpose. If you cannot access fertility treatment, this Article *may* apply, but there is no right to require the State to provide this treatment.

ARTICLE 14: FREEDOM FROM DISCRIMINATION

Discrimination is when people in similar situations are treated differently without justification. You must be able to enjoy the rights and freedoms from the **Convention** without **discrimination**. You cannot be denied access to the rights on the grounds of your 'status'. Article 14 does not give you general protection from **discrimination** in all areas of your life, but only those covered by the other rights. Grounds upon which **discrimination** is not allowed include:

- gender
- race
- colour
- language
- religion
- political or other opinion
- association with a national minority
- property
- birth
- sexual orientation
- illegitimacy
- disability
- marital status
- age
- and many other categories. As the Act is a '**living instrument**', the categories will continue to grow.

PROTOCOL 1, ARTICLE 1: PROPERTY

You have the right to the peaceful enjoyment of your possessions. **Public authorities** cannot usually interfere with the things you own or the way you use them. Property can include land, a lease on a house or flat, your business and your pension rights as well as possessions you can feel and see like books or your car.

Possessions can even include invisible things like shares, goodwill, patents or a claim for damages. A **public authority** cannot take away the things you own or interfere with the

way you use them unless a law says they can and it is in the public interest. There is a public interest in the Government raising finance and in punishing crimes, so your rights are not breached by having to pay taxes or fines. The right tries to strike a balance between the general interest and the rights of individual property owners.

PROTOCOL 1, ARTICLE 2: EDUCATION

Children have the right not to be denied access to the educational system, and the right to an effective education. Parents have the right to expect that their religious or philosophical beliefs are respected when *public authorities* provide education for their children. However, the Isle of Man has negotiated a reservation to this right, so that education provided by the state is limited to what is necessary to provide an efficient education and is within reasonable public spending limits.

PROTOCOL 1, ARTICLE 3: FREE ELECTIONS

You have the right (subject to age restrictions etc.) to vote for Members of Tynwald and the members of your local authority in free and fair elections. Elections must be held at reasonable intervals and they must be conducted by secret ballot.

PROTOCOL 13: THE DEATH PENALTY

This provision abolishes the death penalty in all circumstances.

THE HUMAN RIGHTS ACT & COMMENTARY

THE HUMAN RIGHTS ACT 2001 (as amended by SD 110/2002 and SD 645/04)

AN ACT

to give further effect to rights and freedoms guaranteed under the *European Convention on Human Rights*, and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

Introduction

1. The Convention and the Sixth Protocol

(1) In this Act, "the *Convention rights*" means the rights and fundamental freedoms set out in —

- (a) Articles 2 to 12 and 14 of the Convention;
- (aa) Articles 1 to 3 of the First Protocol;
- (b) Articles 1 of the 13th Protocol,

as read with Articles 16 to 18 of the Convention.

(2) Those Articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 13 and 15).

(3) The Articles are set out in Schedule 1.

(4) The Council of Ministers may by order make such amendments to this Act as it considers appropriate to reflect the effect, in relation to the Island, of a protocol.

(5) In subsection (4), "protocol" means a protocol to the Convention which —

- (a) the United Kingdom has ratified on behalf of the Island; or
- (b) the United Kingdom has signed with a view to ratification on behalf of the Island.

(6) No amendment may be made by an order under subsection (4) so as to come into operation before the protocol concerned is in force in relation to the Island.

This section simply says which parts of the Convention are, by the passing of the Act, to be brought into domestic Manx law. These are the Convention rights as laid out in Schedule 1 on page 56. Many people wonder why Articles 1 and 13 are not included. Article 1 of the Convention is just an 'introduction' and Article 13 gives people the right to have their rights determined in their own country. It was felt that the Human Rights Act itself fulfils this Article and so it was not necessary to include it.

2. Interpretation of Convention rights

(1) A court or tribunal determining a question which has arisen under this Act in connection with a Convention right must take into account any —

- (a) judgement, decision, declaration or advisory opinion of the *European Court of Human Rights*,
- (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,

(c) decision of the Commission in connection with Article 26 or 27(2) of the Convention,
or

(d) decision of the Committee of Ministers taken under Article 46 of the Convention,
whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the
proceedings in which that question has arisen.

(2) Evidence of any judgement, decision, declaration or opinion of which account may have to be
taken under this section is to be given in proceedings before any court or tribunal in such manner as
may be provided by rules.

***This section says that the judiciary is obliged to 'take account of' case-law from
the European Court of Human Rights in Strasbourg. This means that they must look
at the precedent from Europe but they are not required to follow it if they don't
feel it is appropriate.***

Interpretation of legislation

3. Legislation

(1) So far as it is possible to do so, Acts and ***subordinate legislation*** must be read and given effect
in a way which is compatible with the ***Convention rights***.

(2) This section —

- (a) applies to Acts and ***subordinate legislation*** whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any incompatible
Act; and
- (c) does not affect the validity, continuing operation or enforcement of any incompatible
subordinate legislation if (disregarding any possibility of revocation) an Act prevents
removal of the incompatibility.

***This section is very important. It says that all legislation (past, present and
future) should be interpreted in a way which is compatible with the Convention
rights. Anyone following the instructions in the legislation will have to try very
hard to read the law in a way which fits in with the rights. This means that if a
law can be read in two different ways, only one of which is compliant with the
rights, the compliant understanding must be used - even if case-law has used the
other interpretation in the past.***

4. Declaration of incompatibility

(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of an
Act is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a
declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of
subordinate legislation, made in the exercise of a power conferred by an Act, is compatible with a
Convention right.

(4) If the court is satisfied —

- (a) that the provision is incompatible with a Convention right, and
- (b) that (disregarding any possibility of revocation) the Act concerned prevents removal
of the incompatibility,

it may make a declaration of that incompatibility.

- (5) In this section, "court" means —
- (a) the Judicial Committee of the Privy Council;
 - (b) the High Court.
- (6) A declaration under this section (in this Act referred to as "a **declaration of incompatibility**")
- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
 - (b) is not binding on the parties to the proceedings in which it is made.

This section says that if a senior court cannot find a compatible way to read the legislation, it will have to consider making a declaration of incompatibility. The law continues to stand and will only change if and when Tynwald choose to amend it.

5. Right of intervention

- (1) Where a court is considering whether to make a **declaration of incompatibility**, the Attorney General is entitled to notice in accordance with rules of court.
- (2) In any case to which subsection (1) applies, the Attorney General (or a person nominated by him) is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.
- (3) Notice under subsection (2) may be given at any time during the proceedings.
- (4) A person who has been made a party to criminal proceedings as the result of a notice under subsection (2) may, with leave, **appeal** against any **declaration of incompatibility** made in the proceedings.
- (5) If a court makes a **declaration of incompatibility**, it shall cause a copy of that declaration to be served on the Attorney General, whether or not he is a party to proceedings under this section or otherwise.

This section makes sure that if a court was considering making a declaration of incompatibility, the Attorney General (Government's principal Legal Adviser) would be given the chance to defend the legislation's compliance.

Public authorities

6. Acts of public authorities

- (1) It is unlawful for a **public authority** to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if —
- (a) as the result of one or more provisions of an Act, the authority could not have acted differently; or
 - (b) in the case of one or more provisions of, or made under, an Act which cannot be read or given effect in a way which is compatible with the **Convention rights**, the authority was acting so as to give effect to or enforce those provisions.
- (3) In this section, "**public authority**" includes —
- (a) a court or tribunal, and
 - (b) any person certain of whose functions are functions of a public nature,

but, subject to subsection (4), does not include —

- (i) Tynwald;
- (ii) the Legislative Council;
- (iii) the House of Keys; or
- (iv) a person exercising functions in connection with proceedings in Tynwald, the Legislative Council or the House of Keys.

(4) In relation to a particular act, a person is not a **public authority** by virtue only of subsection (3)(b) if the nature of the act is private.

(5) In this section, "an act" includes a failure to act but does not include a failure to —

- (a) introduce in, or lay before, Tynwald, the Legislative Council or the House of Keys a proposal for legislation; or
- (b) pass any Act.

This section makes it unlawful for a public authority to infringe rights, unless an Act of Tynwald leaves them no choice (in which case, s.4 Declarations of Incompatibility would be used). 'Public Authority' is not exhaustively defined but it is made clear that the term does include courts but does not include the legislature. The definition also allows certain private companies which perform public functions to be included in the term. This is quite usual - allowing your elected representatives to express themselves according to their conscience.

7. Proceedings

(1) A person who claims that a **public authority** has acted (or proposes to act) in a way which is made unlawful by section 6(1) may —

- (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
- (b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a **victim** of the unlawful act.

(2) In subsection (1)(a), "appropriate court or tribunal" means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.

(3) If the proceedings are made by way of petition of doleance, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a **victim** of that act.

(4) Proceedings under subsection (1)(a) must be brought before the end of —

- (a) the period of one year beginning with the date on which the act complained of took place; or
- (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule of law imposing a stricter time limit in relation to the procedure in question.

(5) In subsection (1)(b) "legal proceedings" includes -

- (a) proceedings brought by or at the instigation of a **public authority**, and
- (b) an **appeal** against the decision of a court or tribunal.

(6) For the purposes of this section, a person is a **victim** of an unlawful act only if he would be a **victim** for the purposes of Article 34 of the Convention if proceedings were brought in the **European Court of Human Rights** in respect of that act.

This section allows the victim of an unlawful act (an infringement by a public authority) to take legal action in the local courts. This section also puts in place the time limit of one year and defines the term 'victim'.

8. Judicial remedies

(1) In relation to any act (or proposed act) of a **public authority** which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including —

- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining —

- (a) whether to award damages, or
- (b) the amount of an award,

the court must take into account the principles applied by the **European Court of Human Rights** in relation to the award of compensation under Article 41 of the Convention.

(5) A **public authority** against which damages are awarded is to be treated for the purposes of the Civil Liability (Contribution) Act 1981 as liable in respect of damage suffered by the person to whom the award is made.

(6) In this section —

"court" includes a tribunal;

"damages" means damages for an unlawful act of a **public authority**; and

"unlawful" means unlawful under section 6(1).

This section sets out what kind of 'remedy' you may receive should you bring a successful case. This may include financial damages but it is very unlikely that this would be a large sum.

9. Judicial acts

(1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only —

- (a) by exercising a right of **appeal**;
- (b) on a petition of doléance; or
- (c) in such other forum as may be prescribed by rules.

(2) That does not affect any rule of law which prevents a court from being the subject of judicial review under a petition of doléance.

(3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.

(4) An award of damages permitted by subsection (3) is to be made against the Treasury; but no award may be made unless the Attorney General (or a person nominated by him), if not a party to the proceedings, is joined.

(5) In this section —

"court" includes a tribunal;

"judge" includes a member of a tribunal, a justice of the peace and a clerk or other officer entitled to exercise the jurisdiction of a court;

"judicial act" means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge.

This section explains how you could set about complaining about a decision made by a court or a member of the judiciary.

Other rights and proceedings

10. Safeguard for existing human rights

A person's reliance on a Convention right does not restrict —

- (a) any other right or freedom conferred on him by or under any law having effect in the Island; or
- (b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 7 to 9.

This section makes clear that the introduction of the Act does not undermine other legal rights and duties.

11. Freedom of expression

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied —

- (a) that the applicant has taken all practicable steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to —

- (a) the extent to which —
 - (i) the material has, or is about to, become available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published;
- (b) any relevant privacy code.

(5) In this section —

"court" includes a tribunal; and

"relief" includes any remedy or order (other than in criminal proceedings).

This section explains some of the extra rules involved with balancing the right to freedom of expression with the interests of the wider community. This includes rules about pre-trial publications and literary and/or artistic material.

12. Freedom of thought, conscience and religion

(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

(2) In this section, "court" includes a tribunal.

This section explains some of the extra rules involved with balancing the right to freedom of thought, conscience and religion with the interests of the wider community. This gives additional weight to religious freedom.

Derogations and reservations

13. Derogations and reservations

(1) In this Act, "designated derogation" means —

- (a) the derogation from Article 5(3) of the Convention which is set out in Schedule 2; and
- (b) any other derogation from an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Council of Ministers.

(2) In this Act, "designated reservation" means any reservation to an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Council of Ministers.

(3) A designation order may be made under subsection (1)(b) in anticipation of the making of a proposed derogation.

(4) The Council of Ministers must by order make such amendments to this Act as are necessary to reflect any designation order under subsection (1)(b) or (2).

(5) In this section, any reference to a derogation or a reservation is a reference to a derogation or reservation by the United Kingdom on behalf of the Island.

14. Period for which designated derogations and reservations have effect

(1) If an order under section 13 designating a derogation or reservation has not already been revoked, that derogation or reservation ceases to be designated for the purposes of this Act when —

- (a) in the case of a reservation, it is withdrawn, whether in whole or in part; or
- (b) in the case of a derogation, when it is amended or replaced.

(2) The Council of Ministers must by order make such amendments to this Act as are necessary to reflect the effect of subsection (1).

(3) Subsection (1) does not prevent the Council of Ministers from exercising its powers under subsection (1)(b) or subsection (2) of section 13 to make a fresh designation order.

These sections explain that if there is a derogation from the European Convention on Human Rights (an 'opt-out' for one particular aspect) that derogation shall be applied in our domestic law as well.

15. Periodic reviews of designated derogations and reservations: reports to Tynwald

(1) The Council of Ministers must review all extant designated derogations and designated reservations at least once in each succeeding period of 5 years following the date on which section 13 comes into operation.

(2) The Council of Ministers must cause a report on the results of the review to be prepared and laid before Tynwald.

(3) Where the Council of Ministers has notice of the happening of any of the events specified in paragraphs (a) and (b) of section 14(1) it must cause a report to be laid before Tynwald.

This section makes sure that any reservations ('opt-outs') are kept under periodic review by Tynwald.

Parliamentary procedure

16. Statements of compatibility

The explanatory memorandum of a Bill in the Legislative Council or the House of Keys must include either —

- (a) a statement to the effect that in the view of the member moving the Bill, its provisions are compatible with the ***Convention rights***, or
- (b) a statement to the effect that although the member is unable to make such a statement the member nevertheless wishes to proceed with the Bill.

This section requires that all new legislation must carry a statement about compliance with the Human Rights standards so that MHKs can debate the issue should they want to.

Supplemental

17. Rules and orders

(1) In this Act (with the exception of section 18), "rules" means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this Act by the Deemsters.

(2) In making rules for the purpose of section 7, regard must be had to section 9.

(3) All orders and rules under this Act (with the exception of orders under section 23(2)) shall be laid before Tynwald as soon as practicable after they are made, and if at the sitting at which any order or rule is laid or at the next following sitting Tynwald fails to approve it, the order or rule shall cease to have effect.

18. Extension of enabling powers

(1) A Department or other body or person which has power to make rules in relation to a particular tribunal may, to the extent it considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a ***public authority*** which is (or would be) unlawful as a result of section 6(1), by order add to —

- (a) the relief or remedies which the tribunal may grant; or
- (b) the grounds on which it may grant any of them.

(2) An order made under subsection (1) may contain such incidental, supplemental, consequential or transitional provision as the Department, body or person making it considers appropriate.

These sections allow technical and procedural mechanisms to be put in place.

19. Interpretation etc.

(1) In this Act —

"Act" means —

- (a) an Act of Tynwald;
- (b) an Act of Parliament which has effect in the Island (directly or by virtue of an Order in Council);
- (c) a Church Measure which has effect in the Island;
- (d) an Order in Council made in exercise of Her Majesty's Royal Prerogative and which extends to or has effect in respect of the Island;

and includes any provision of a public document, instrument or Order in Council which is excluded from the definition of "subordinate legislation";

"Church Measure" means —

- (a) a Measure of the Church Assembly;
- (b) a Measure of the General Synod of the Church of England;
- (c) a Measure enacted in accordance with the Church Legislation Procedure Act 1993;
- (d) a Measure under the Church (Application of General Synod Measures) Act 1979 which continues to have effect by virtue of section 5(1) of the Church Legislation Procedure Act 1993;

"the Commission" means the European Commission of Human Rights;

"the Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the Island;

"declaration of incompatibility" means a declaration under section 4;

"11th Protocol" means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;

"Protocol No. 13" means the protocol to the Convention (concerning the abolition of the death penalty in all circumstances) agreed at Vilnius on 3rd May 2002;

"subordinate legislation" means —

- (a) any public document; and
- (b) any instrument of a legislative character which has effect in, or in relation to, the Island and which is made under —
 - (i) an Act of Parliament; or
 - (ii) a Church Measure;

but does not include —

1. any provision of a public document or an instrument referred to in paragraph (b) which amends an Act;

2. any provision of an Order in Council which extends a provision of an Act of Parliament to the Island; or
3. any provision of a public document or an instrument referred to in paragraph (b) which operates to bring one or more provisions of an Act into operation;

"tribunal" means any tribunal in which legal proceedings may be brought.

(2) The references in section 2(1)(b) and (c) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the 11th Protocol.

(3) The reference in section 2(1)(d) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the 11th Protocol.

(4) The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the 11th Protocol (transitional provisions).

This section defines some of the terms used in the Act.

20. Saving for criminal law

Nothing in this Act creates a *criminal offence*.

21. Application to Crown

This Act binds the Crown.

22. Transitional

Section 7(1)(b) applies to proceedings brought by or at the instigation of a *public authority* whenever the act in question took place; but otherwise that subsection does not apply to an act committed before the coming into force of that section.

23. Short title and commencement

(1) This Act may be cited as the Human Rights Act 2001.

(2) This Act shall come into force on such day as the Council of Ministers may by order appoint; and different days may be appointed for different purposes.

SCHEDULE I THE ARTICLES

PART I: THE CONVENTION

Article 2: Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3: Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term "forced or compulsory labour" shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; or
 - (d) any work or service which forms part of normal civic obligations.

Article 5: Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) 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;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the *victim* of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6: Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public

may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a **criminal offence** shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a **criminal offence** has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7: No punishment without law

1. No one shall be held guilty of any **criminal offence** on account of any act or omission which did not constitute a **criminal offence** under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the **criminal offence** was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a **public authority** with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10: Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by **public authority** and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the

reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11: Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12: Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14: Prohibition of *discrimination*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without ***discrimination*** on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 16: Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17: Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18: Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

PART II: PROTOCOL No 13

Article 1: Abolition of the death penalty

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

PART III: THE FIRST PROTOCOL

Article 1: The Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2: Right to Education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions

Article 3: Right to Free Elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

RESERVATION

At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Act 2001 (of Tynwald) or, the coming into operation of that Act, the Isle of Man Education Act 1949, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure in the Isle of Man.

GLOSSARY

Absolute Rights

The rights come in three broad categories: absolute, *limited* and *qualified rights*. Any interference with an absolute right would be a breach of that right - nothing can justify an interference with an absolute right.

Appeal

If a party to a court case is not satisfied with the outcome or the decision made, he or she may apply for leave to appeal. This means that the case is examined again, usually by a more senior member of the judiciary.

Autonomous Meaning

In order to prevent States from evading their responsibilities under the Convention, the ***European Court of Human Rights*** uses the principle of autonomous meaning. For example, Article 6 (Fair Trial) extends more rights to a defendant in a criminal trial than in a civil trial. To escape this, a State could class everything as a civil offence. The ***European Court of Human Rights*** insists that just because an offence is criminal or civil in our domestic law, they will decide how to classify it using their own uniform criteria.

Common Law

Also known as case-law or the law of precedent. Most of our laws are written down in the Statute Book. They got there because Tynwald wrote them down and agreed to them. As well as this, there is a large part of the law based on previous decisions in similar cases - judge made 'case-law'.

Compatible Interpretation

The Human Rights Act states that all laws (past, present and future) must be subject to 'compatible interpretation'. This means that they must be read and understood in a way which fits with the ***Convention rights***. If a phrase can be understood in two different ways, the correct understanding would be the compatible option, even if courts have used the other in the past. This means that pre-Human Rights Act case-law can not always be taken for granted.

Convention Rights

The Human Rights Act is all about the rights which are laid out in the ***European Convention on Human Rights*** - they are set out in full from page 62 and you can find a commentary on their meaning from page 16.

Criminal Offence

Those accused of a criminal offence enjoy the full protection of Article 6 (the right to a fair trial). Even some cases that the Isle of Man considers to be 'civil' may be considered 'criminal' in ***European Court of Human Rights*** terms (see Autonomous Meaning).

Data Protection Act

The Data Protection Act helps to protect our right to privacy. More information can be found at www.gov.im/odps

Declaration of Incompatibility

Senior judiciary who cannot find a ***compatible interpretation*** of an Act may consider making a Declaration of Incompatibility. This is a formal statement saying that the law is at odds with our international obligations, but it does not affect the continuing validity of the law in question.

Discrimination

Discrimination is when a person suffers a difference in treatment which cannot be justified. Article 14 (discrimination) is a *parasitic right* and can only be used together with another of the Convention Rights. This is because the Act does not provide a 'blanket-ban' on discrimination - but you do have the right to enjoy the Convention Rights without discrimination or prejudice.

Disproportionate

See 'Proportionality'.

European Convention on Human Rights

The European Convention on Human Rights is the founding document of the Council of Europe - rather like the 'rules of the club'. Any member of the Council of Europe must commit to the European Convention on Human Rights and its principles.

European Court of Human Rights

The European Court of Human Rights is based in Strasbourg, France, and is the court you would use to enforce your rights at an international level. It will remain the highest court available for human rights cases even after the Act has come into force.

Judicial Corporal Punishment

When a convicted defendant is sentenced to physical punishment (such as a beating) it is called judicial corporal punishment. This practice is not considered to be compatible with human rights (under Article 3: Prohibition of Torture) and is no longer permitted in the Isle of Man.

Legal Aid

Certain circumstances may qualify people for financial assistance with legal costs. This depends upon your financial situation, the facts of your case and other criteria.

Legitimate Aims

Many ***Convention rights*** can be lawfully interfered with by public authorities. In order for such action to be lawful, among other tests, the action must be in pursuit of a 'legitimate aim'. These depend upon the right in question, but may include things like national security, the prevention of crime or to protect the rights and freedoms of others.

Limited Rights

Convention rights which are Limited may be lawfully interfered with only in very specific circumstances, which are laid out within the right.

Living Instrument

The ***European Convention on Human Rights*** was written 50 years ago, and remains unchanged today. However, the rights are always interpreted in the light of modern-day conditions. For example; although homosexual acts were unlawful in most of Europe in the 1950s, a person's sexuality is now one of the criteria upon which you must not discriminate under Article 14.

Margin of Appreciation

The ***European Court of Human Rights*** has long understood that there are some issues a nation state is best placed to make decisions about. This flexibility is known as the Margin of Appreciation.

Positive Obligation

The ***Convention rights*** do not just prevent the state from acting in a certain way. There are situations where the state has is obliged to act - such as the requirement to hold an enquiry into the circumstances of a death in custody.

Primary Legislation

An Act of Tynwald is primary legislation. These are the major pieces of legislation which set out the principles of a policy and provide powers to make ***subordinate legislation***.

Proportionality

The doctrine of Proportionality is at the heart of Human Rights thinking. Faced with an issue to resolve, a ***public authority*** will usually choose from a range of options for action. The chosen option should be proportionate - strong enough to solve the problem but no harsher or more intrusive than is necessary.

Public Authority

Any organisation which performs a 'public function'. This includes central government, local authorities, the health service, the police etc. and may even include some charities and private companies.

Qualified Rights

Qualified Rights may be lawfully interfered with, providing that the interference is set out in law and is ***proportionate*** to the ***legitimate aim*** pursued.

Subordinate or Secondary Legislation

Subordinate Legislation includes Rules, Orders, Regulations and any other law made under the powers of an Act of Tynwald.

Victim

Only a 'Victim' may bring a Human Rights case. A Victim is a person, group of people or corporate body who has directly suffered due to the act or failure to act of the ***public authority***.

GETTING MORE INFORMATION

More information will be available soon:

How will it affect you? - an introductory leaflet

Provides a basic and broad introduction to the subject of rights in the Isle of Man and to the Human Rights Act. Answers some frequently asked questions and sets out the rights in a simplified form.

This document and any others that are published by Government will be available free of charge from our web site:

<http://www.gov.im/cso/initiatives/human.xml>

Copies may also be requested by calling **685202** or by sending an email to:

[**enquiries.cso@cso.gov.im**](mailto:enquiries.cso@cso.gov.im)

USEFUL WEBSITES:

www.gov.im/cso/initiatives/human.xml
Isle of Man Government's Human Rights portal.

www.bihhr.org
British Institute of Human Rights

www.coe.int
Council of Europe

www.echr.coe.int
European Court of Human Rights

www.hrea.org
Human Rights Education Associates

www.nihrc.org
Northern Ireland Human Rights Commission

www.ohchr.org
Office of the High Commissioner for Human Rights (United Nations)

www.un.org
Official United Nations site

Further suggested reading:

Values for a Godless Age

Klug, Francesca
Penguin Books, 2000
ISBN 0-14-026678-X

From the book jacket:

"When the Human Rights Act came into force in October 2000, the United Kingdom at last acquired its own Bill of Rights. In this clear and accessible guide, one of its architects spells out its huge significance for us all...The Human Rights Act marks a historic turning-point and has an immense potential to transform our lives. This powerful book will help us seize the opportunity."

Human Rights and the End of Empire

Simpson, Professor Brian
Oxford University Press, 2001
ISBN 0-19-826289-2

"The European Convention on Human Rights ... established the most effective system for the international protection of human rights which has yet come into existence anywhere in the world. Since the collapse of communism it has come to be extended to the countries of Central and Eastern Europe, and some seven hundred million people now, at least in principle, live under its protection... It has now at last been incorporated into British domestic law. Nothing remotely resembling the surrender of sovereignty required by accession to the Convention had ever previously been accepted by governments...This book, which is based on extensive use of archival material, ... aims to break entirely new ground."

The Rights of Man

Paine, Thomas
Penguin Classics, 1985
ISBN 0-14-039015-4

**Blackstone's Guide to the Human Rights Act 1998
Edition 3Rev ed**

Wadham, John, Mountfield, Helen and Edmundson, Anna
Blackstone Press, 2003
ISBN 0199254532
