



**Isle of Man**  
Government

*Reiltys Ellan Vannin*

# Human Rights Act 2001

---

**How will it affect you?**

**A Brief Introduction**

---

Chief Secretary's Office  
Third Edition – October 2006

---

## Preface



I am delighted to welcome the publication of this leaflet, which has been produced as part of the Isle of Man Government's commitment to the successful coming into force and operation of the Human Rights Act 2001.

It explains briefly and simply how the Act will work and what its implications are for the public and for those providing public services.

Human Rights is not just an issue for oppressive regimes in far away countries. Basic rights, like the freedom to express yourself and the right to have a fair trial, are vital to us all. The Human Rights Act 2001 will help to make Government more responsive by making rights an everyday part of Manx law and public service.

A handwritten signature in black ink, which appears to be 'D. Gelling'.

**Donald J Gelling CBE MLC**  
Chief Minister

---

## **What are Human Rights?**

Human rights are the basic rights and freedoms that an individual should be able to expect, regardless of their nationality or citizenship, in a free and fair society.

## **What is the Human Rights Act?**

The Human Rights Act 2001, which came into force on 1st November 2006, gives effect in the law of the Isle of Man to the fundamental rights and freedoms set out in the European Convention on Human Rights (ECHR), which has applied to the Island for more than 50 years. The Act will help the Island's courts to protect an individual's Convention rights.

## **What is the European Convention on Human Rights?**

The ECHR is a treaty made by the Council of Europe, a group of nations which came together after the Second World War. Their aim was to prevent the kind of atrocities and acts of cruelty which occurred in the war from happening again.

The Council of Europe, which now has 46 member countries, is quite separate from the European Union (EU). It has its own Court of Human Rights in Strasbourg. Isle of Man residents have been able to go to the Court in Strasbourg to claim their rights under the Convention for many years. However, until now the Convention has not been part of Manx law and so our courts have not normally been able to deal with claims.

## **Does the Human Rights Act change my rights?**

No, the Act does not grant any new rights or change any existing rights. However, it will make claiming your rights quicker and easier. Instead of having to go to the European Court in Strasbourg, you will be able to bring a case to a court in the Isle of Man. The Human Rights Act also makes your rights much clearer. Unlike some countries such as the USA, the Isle of Man has no written constitution or Bill of Rights. The Human Rights Act sets out our basic human rights in Manx law for the first time.

---

## **What will the Act do?**

The purpose of the Act is to do three simple things:

- To make it unlawful for a public authority (like a Government Department, your local authority or the police) to breach the Convention rights, unless an Act of Tynwald means that it could not have acted differently;
- To provide that cases can be dealt with in an Isle of Man court or tribunal. Before the Human Rights Act came in, anyone who felt that their rights under the Convention had been breached had to go to the European Court of Human Rights in Strasbourg, which could be a very long drawn out process; and
- To ensure all Manx legislation is given a meaning that fits in with the Convention rights, if that is possible. If a court says that it is not possible for an Act of Tynwald to be interpreted in a way that complies with the Convention, it will be up to Tynwald to decide what to do.

## **Balancing a person's rights against those of the general public**

When the Human Rights Act is interpreted properly by public bodies the rights of the individual should not endanger public safety.

The fact that a policy or decision restricts a person's human rights does not necessarily mean that this is incompatible with the European Convention.

A country has the fundamental responsibility to take appropriate steps to protect the safety of its people. If a restriction on a qualified right has a legitimate aim, such as public safety, and the restriction is only as much as is necessary to meet that aim, then it is likely that it is compatible with the Convention.

The Convention recognises that there are circumstances in which the state must be allowed to decide what is in the best interests of its people and the state, or public authority on behalf of the state, may restrict the rights of individuals accordingly.

---

## What restrictions can be placed on a person's human rights?

Not all of the Convention rights carry the same weight and some of them can be restricted, particularly where there is a genuine and serious risk to the public. The Convention rights fall into the following three broad types:

- **Absolute Rights** – the Government can never withhold or restrict these rights. An example of this category is the right of person not to be tortured (*Article 3*);
- **Limited Rights** – these rights may be limited under specific circumstances. An example of this type is the right to liberty (*Article 5*). Whenever a person is in doubt over whether rights can be restricted under this category they should seek legal advice;
- **Qualified Rights** – these are the rights which require a balance between the rights of the individual and the rights and needs of wider community or state. Examples of this type include: the right to respect for private and family life (*Article 8*); the right to manifest one's religion or beliefs (*Article 9*); freedom of expression (*Article 10*); freedom of assembly and association (*Article 11*); the right to peaceful enjoyment of property (*Protocol 1, Article 1*) and, to some extent, the right to education (*Protocol 1, Article 2*).

Interference with a person's **Qualified Rights** is allowed only if:

- There is a clear legal basis (e.g. an Act of Tynwald) for the interference;
- The interference is to achieve a legitimate aim. The legitimate aims are set out in each article of the Convention containing a qualified right, and they vary from article to article. Examples of legitimate aims include the interests of national security; prevention of crime or disorder; and the safety of the public. Any interference with the rights set out in articles 8 to 11 must fall within the relevant legitimate aims; and

- 
- The interference is necessary in a democratic society. This means that the interference must be in response to a “pressing social need”. The action must also be no greater than is necessary to address that need – it should not be “using a sledgehammer to crack a nut”.

Whenever a person is in doubt over whether rights can be restricted under this category they should seek legal advice.

## **The Convention Rights**

There are sixteen basic rights in the Human Rights Act, all taken from the European Convention. They do not only affect matters of life and death, like freedom from torture and being killed, they also affect your rights in every day life: what you say and what you do, your beliefs, your right to a fair trial and many other similar basic entitlements.

The Convention rights applied by the Act are:

*(Article 1 is introductory and not included in the Human Rights Act)*

### **Article 2: THE RIGHT TO LIFE**

You have the absolute right to have your life protected by law. There are only certain very limited circumstances where it is acceptable for the State to take away someone’s life, for example if a police officer acts justifiably in self defence.

### **Article 3: PROHIBITION OF TORTURE**

You have the absolute right not to be tortured or subjected to treatment or punishment which is inhuman or degrading.

### **Article 4: PROHIBITION OF SLAVERY AND FORCED LABOUR**

You have the absolute right not to be treated as a slave or forced to perform labour.

### **Article 5: RIGHT TO LIBERTY AND SECURITY**

You have the right not to be deprived of your liberty - ‘arrested or detained’ - except in limited cases specified in the Article (for example where you are suspected or convicted of committing a crime) and where this is justified by a clear legal procedure.

---

## **Article 6: THE RIGHT TO A FAIR TRIAL**

You have the right to a fair and public hearing within a reasonable period of time. This applies to both criminal charges against you, or in determining cases concerning your civil rights and obligations. Hearings must be by an independent and impartial tribunal established by law. It is possible to exclude the public from a hearing (but not the judgement) if that is necessary to protect things like national security or public order. If it is a criminal charge you are presumed innocent until proved guilty according to law and have certain guaranteed rights to defend yourself.

## **Article 7: NO PUNISHMENT WITHOUT LAW**

You normally have the right not to be found guilty of an offence arising out of actions which at the time you committed them were not criminal. You are also protected against later increases in the possible punishment for an offence.

*The rights in Articles 8 to 11 (except for the right to hold particular beliefs) may be limited where that is necessary to achieve an important objective. The precise objectives in each Article vary, but they include things like protecting public health or safety, preventing crime, and protecting the rights of others.*

## **Article 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE**

You have the right to respect for your private and family life, your home and your correspondence. This right can only be restricted in specified circumstances.

## **Article 9: FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION**

You are free to hold a broad range of views, beliefs and thoughts, as well as religious faith. Limitations are permitted only in specific circumstances.

## **Article 10: FREEDOM OF EXPRESSION**

You have the right to hold opinions and express your views on your own or in a group. This applies even if they are unpopular or disturbing. This right can only be restricted in specified circumstances.

---

## **Article 11: FREEDOM OF ASSEMBLY AND ASSOCIATION**

You have the right to assemble with other people in a peaceful way. You also have the right to associate with other people, which can include the right to form a trade union. These rights may be restricted only in specified circumstances.

## **Article 12: THE RIGHT TO MARRY**

Men and women have the right to marry and start a family. Isle of Man law will still govern how and at what age this right may be exercised.

*(Article 13 concerning remedies is not included in the Human Rights Act 2001 as this is covered by the procedures of the Act itself and the continuing ability to take a case to the European Court in Strasbourg if procedures in the Isle of Man have been exhausted and the person is still not satisfied)*

## **Article 14: PROHIBITION OF DISCRIMINATION**

In the application of the Convention rights, you have the right not to be treated differently because of your race, religion, sex, political views or any other status, unless this can be justified objectively. Everyone must have equal access to Convention rights, whatever their status.

## **Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms**

**(a Protocol is a later addition or amendment to a Convention)**

### **Article 1 of Protocol 1: PROTECTION OF PROPERTY**

You have the right to the peaceful enjoyment of your possessions. Public authorities cannot usually interfere with things you own or the way you use them except in specified limited circumstances.

### **Article 2 of Protocol 1: RIGHT TO EDUCATION**

You have the right not to be denied access to the educational system.

### **Article 3 of Protocol 1: RIGHT TO FREE ELECTIONS**

Elections for members of the legislative body (e.g. House of Keys General Election) must be free and fair and take place by secret ballot. Some qualifications may be imposed on those eligible to vote (like a minimum age).

### **Protocol 13: ABOLITION OF THE DEATH PENALTY**

This Protocol abolishes the death penalty in all circumstances.

---

---

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

All new Bills that the Government introduces into the Branches of Tynwald will have to include a written statement from the responsible Minister stating whether, in their view, the Bill is compatible with the European Convention on Human Rights. In most cases, of course, the statement will say that the Bill is compatible with the Convention rights. However, it is possible for the statement by the Minister to be that they cannot say that the Bill is compatible but they want to proceed anyway. Therefore, if such a Bill is approved by the Branches of Tynwald, it is possible for new legislation to be incompatible with the Convention rights.

## **Will the Human Rights Act affect the way the Government and public bodies behave?**

Yes. The Act says that all public authorities must pay proper attention to your rights when they are making decisions that affect the public. Public authorities include Government departments, local authorities and also agencies like the police; and even private companies carrying out public functions are covered by the Act.

This is not new – respecting rights and balancing rights and responsibilities has always been an important part of the public service ethos. The Human Rights Act will make sure that public bodies cannot ride roughshod over people's rights; even if they think they are doing it for a good reason. Public bodies will have to be careful about the balance they strike and think hard about how they can cause the least possible harm to individuals, whilst still meeting the needs of the wider community.

The Human Rights Act is about 'prevention' rather than 'cure'. Therefore public bodies will need to ensure their legislation and procedures comply with Human Rights standards. They must keep people's rights in mind when they make decisions and design new policies.

As we all get used to the Human Rights Act, we can develop a shared understanding about how the Act works in practice. This should lead to the people of the Isle of Man being able to have greater confidence in their Government.

---

## **But what has Human Rights got to do with me? – I don't torture or kill**

Numerous actions by public authorities touch on Convention rights in one way or another. The rights under Article 6 about a fair trial could apply to a hearing under an internal system or tribunal - or to the removal of someone's licence (e.g. a licence to sell alcohol or gun licence).

Article 8 rights to respect for private and family life may be harmed by the disclosure of personal information. The Convention rights are interpreted widely - and in the light of modern and developing standards of social policy.

## **Are human rights relevant to all decisions and actions by public bodies?**

No. Many everyday decisions and actions will have no human rights implications at all. However, by understanding human rights properly, the public bodies are more likely to know when human rights are relevant and, if they relevant, whether an individual's rights need to be balanced with the general public's rights and safety.

## **Can I use the Human Rights Act against another private individual who infringes my rights?**

Not directly. You cannot sue, or be sued by, another individual for breaching your Convention rights. This is because the Act is designed to prevent people in authority violating the rights of the public. However, people may benefit indirectly because all laws will have to be given a meaning which fits in with the Convention rights. It is also much easier to insist on your rights if they are written down. They can then be pointed out to the person who you think is ignoring them.

---

## **What about responsibilities?**

It is important to understand that having rights does entail certain responsibilities. Many of the rights in the Act have some boundaries to prevent them unfairly affecting other people's rights. In a democratic society everyone has rights, so we all have to accept some limits on our own rights in order to make sure that other people are treated fairly. Making decisions about Human Rights will often be a 'balancing act'. Not only will we have to balance our own rights with those of other individuals; but we must balance them with the rights of the rest of our community as a whole.

For example, a person's right to liberty might have to be restricted if they have committed a crime. Freedom of speech cannot mean the freedom to shout 'Fire!' in a crowded hall when there isn't one; doing so would be irresponsible and it could lead to panic and people being injured.

## **Will the Human Rights Act really change anything?**

It should do. This Act is a type of law that affects all other laws. The rights and their limitations are really a set of basic values. Respect for the rights and everything that goes with them should help to change the way people think and behave, creating an atmosphere in which decisions and policies are discussed and understood.

How far the Act will improve the quality of life in the Isle of Man will depend on how far we all respect the values it enshrines. People will still be able to take a case to the European Court in Strasbourg - but they will have to exhaust all the procedures on the Island first. This means that the case must have been heard by our highest court.

The Act will also make public authorities more accountable and they will have to think about whether their decisions can be justified in terms of Human Rights.

---

## **What does the Human Rights Act mean for democracy?**

Democracy is the only form of government which fits with the Convention rights. Tolerance and broadmindedness are the very foundations of both democracy and the Convention rights. Also, the Act means that decisions about the balance between rights can be made here in the Isle of Man instead of in Strasbourg.

It means that your elected representatives (the MHKs) will be considering your rights as new legislation is formed and passed by Tynwald. The Act recognises the central place of Tynwald in our democracy. It should encourage transparency and openness in Government because public authorities will be able to use the language of the Convention rights to debate issues. Because that is a language everyone can understand the public will be better able to understand what's being said - and to join in.

## **What does the Human Rights Act mean for our courts and judges?**

The Act will help the courts to protect an individual's Convention rights. They will also be able to check that the rights of the wider community are properly balanced. If an individual's rights have to be affected, the public authority will have to show that it is not using a sledgehammer to crack a nut. This is often referred to as 'proportionality': interfering with rights only in so far as it is necessary in order to achieve a specific purpose set out in the Convention.

For example, there is a fundamental right to assembly and a right to associate with others. So, if the police were thinking of banning or restricting a particular protest march, they would have to think carefully about what is proportionate. They must not go any further than necessary to guard against the risks to others which they reasonably anticipate.

Because the courts will consider your Human Rights in all their judgements, the 'common law' (which is based on decisions made in previous cases) will also develop in a way that fits with the Human Rights Act.

---

## **Does the Human Rights Act mean more court cases?**

Not in the long run. Going to court is always a last resort. The Act will help clarify rights and public authorities will soon understand how the courts are likely to interpret the law. In the early days people may try to use the new law to find out just how the balance will be struck between their rights and the rights of others.

Only a 'victim' (someone who is directly affected by the act in question, or who is at risk of being directly affected) will be able to bring court proceedings against a public authority under the Human Rights Act. A victim can be one person, a group of people or even a corporate body.

## **Is the Isle of Man Human Rights Act the same as the Act in the UK?**

The Isle of Man Act is based on the UK's Human Rights Act 1998 and is very similar to it. The Convention rights that apply in the Isle of Man are the same as those in the UK so this approach made sense. Guernsey and Jersey also based their human rights laws on the UK Act.

## **Will everyone be happy with the Human Rights Act?**

Not all the time. There is bound to be an argument over some decisions and clashes between rights. We won't all agree on subjects like privacy, criminals' and victims' rights and freedom of expression. Some people are bound to feel that the wrong answer is reached, but the Human Rights Act should ensure a proper debate and that basic rights are respected in a balanced way.

Unlike other laws, which must be interpreted in a very specific way, the Act is designed to be a 'Living Instrument'. This means that the Human Rights Act is supposed to be understood in a broad way which considers the reasons for the law's creation. It is designed to provide the most practical and effective solution to an alleged breach of your rights. It is to be interpreted in the light of present day conditions - so the balancing of your rights will stay up to date as time goes on.

---

## **Don't some people in the UK want their Human Rights Act to be changed or replaced?**

Some people have blamed the UK Human Rights Act for causing tragic circumstances where public safety has been put at risk. There seem to have been cases where the risk to the general public has not been taken into account when considering an individual's human rights. However, this doesn't necessarily mean that the Act itself is at fault. After carefully reviewing the issue, the UK Government has decided to keep the Act unchanged but it has issued stronger, clearer guidance for public officials on how to interpret the Act when there has to be a balance between the human rights of an individual and the right to safety of the general public.

The Isle of Man Government will continue to carefully monitor developments and if, in future, the UK Government decides to change or replace their Human Rights Act, the Government will consider whether those changes are appropriate for the Isle of Man.

Whatever happens, there is no likelihood that either the UK or the Isle of Man will withdraw from the European Convention on Human Rights, which means that in one way or another the rights set out in the Convention will still have to be complied with.

## **How can I find out more?**

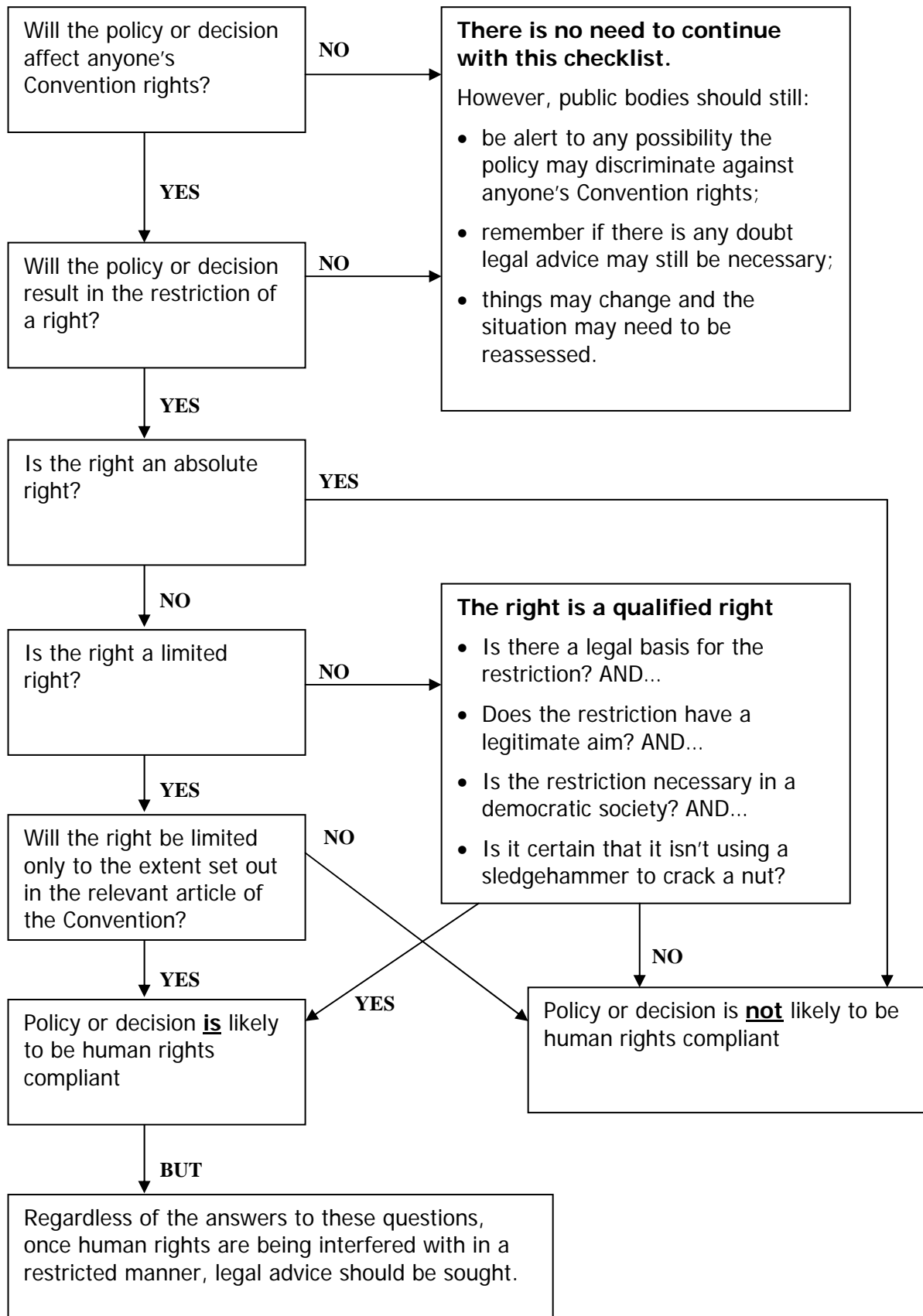
Further information and documentation is available on the Government website at:

[www.gov.im/cso/initiatives/human.xml](http://www.gov.im/cso/initiatives/human.xml)

In addition, information about the UK Human Rights Act and guidance on its interpretation can be found on the website of the Department for Constitutional Affairs at:

<http://www.dca.gov.uk/peoples-rights/human-rights/index.htm>

## Human Rights Flowchart



---

This booklet is intended as a guide and does not represent a full or authoritative statement of law.

This booklet is also available in large print format upon request.

Produced by  
The Chief Secretary's Office  
Isle of Man Government  
[www.gov.im/cso](http://www.gov.im/cso)

---