



Isle of Man
Government

Reillys Ellan Vannin

Human Rights Act 2001

AN INTRODUCTION FOR PUBLIC SERVANTS IN THE ISLE OF MAN

Chief Secretary's Office
Second Edition – May 2006

Preface



I am delighted to welcome the publication of this leaflet, which has been produced as part of our commitment to the Human Rights Act 2001. It is targeted at the Government's workforce and serves as an introduction to the Act. It explains 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, consisting of several loops and a long horizontal stroke extending to the right.

Chief Minister

The Act will come into force on 1st November 2006 and we need to complete preparations before that date. It is likely that relatively little change will be required. The principles behind Human Rights are generally those of good government and natural justice which historically have guided our actions. Although an extensive information and training exercise took place in 2001/2002, now we know when the Act will come into force everyone in Government needs to remind themselves of what it says and what it will mean for the way we work.

A handwritten signature in black ink, written in a cursive style, reading "Mary Williams".

Chief Secretary

What is the Human Rights Act?

The Human Rights Act 2001 will come into force on 1st November 2006. It will give effect in the law of the Isle of Man to the fundamental rights and freedoms in the European Convention on Human Rights (ECHR).

What will the Act do?

This Act will do three simple things:

- It will make it unlawful for a public authority (like a Government Department or the police) to breach the Convention rights, unless an Act of Tynwald means that it couldn't have acted differently;
- It will mean that cases can be dealt with in a Manx court or tribunal. Before the Human Rights Act comes in, anyone who feels that their rights under the Convention have been breached has to go to the European Court of Human Rights in Strasbourg;
- It says that all Manx legislation must be given a meaning that fits with the Convention rights, if that is possible. If a court says that it is not possible it will be up to Tynwald to decide what to do.

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, with 46 member countries, is quite separate from the European Union (EU). It has its own Court of Human Rights in Strasbourg. Manx people are already able to go to the Strasbourg court to claim their rights. However, the ECHR has never been part of Manx law and so our courts have not normally been able to deal with claims.

Your Convention Rights

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

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.

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

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 & 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 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 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. Tynwald) 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 the Human Rights Act change my rights?

No, but the Act will make claiming your rights much quicker and easier. Instead of having to go to 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 countries like the USA, the Isle of Man has no written constitution or Bill of Rights. The Human Rights Act sets out in words our basic rights for the first time.

Will the Human Rights Act affect the way 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 government and also agencies like the police, and even private companies carrying out public functions. Wherever you work, if you are carrying out a public service on behalf of the Government, the chances are that you are covered by the Human Rights 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 we do not ride roughshod over people's rights, even if we think we are doing it for a good reason. We will have to be careful about the balance we strike and think hard about how we can cause the least possible harm to individuals.

The Human Rights Act is about 'prevention' rather than 'cure'. Therefore we will need to check our legislation and procedures to make sure that they comply with Human Rights standards. We must keep people's rights in mind when we make decisions and design new policies. Soon, whenever new laws are proposed in the Isle of Man, a statement will have to be made about how the new law fits in with the Convention rights.

As we all get used to the Human Rights Act, we can develop a shared understanding with the public about what is expected of us as public authorities. The people of the Isle of Man will be able to have greater confidence in their Government.

But what has Human Rights got to do with me? – I don't Torture or Kill

Many every day acts by public authorities touch on Convention rights in one way or another. Article 6 rights about a fair trial could apply to a hearing under your internal system or tribunal - or to the removal of someone's 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 standards of social policy.

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. But, people may benefit indirectly because all laws will have to be given a meaning which fits with the Convention rights. It's also much easier to insist on rights if they are written down. They can point them out to the person who they think is ignoring them.

What about Responsibilities? Are Rights under the Act unlimited?

They are not. Most 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.

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.

As a public servant, you have a particular responsibility to ensure that your organisation and the work you do does not violate the rights of others.

Will the Human Rights Act really change anything?

It should do. This is a type of higher 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 domestic procedures first. This means that the case must have been heard by our highest court and that they are not happy with its decision.

The Act may mean that your organisation makes some changes to your working practices to make sure that Convention standards are being met. It will make public authorities more accountable and so you may have to think about justifying your decisions 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 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's a language everyone can understand the public will be better able to understand what's being said - and to join in.

Will the Human Rights Act please everyone?

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, 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.

What does the Human Rights Act mean for our Courts and Judges?

The Act will help the courts to protect individual's Convention rights. They will also be able to check that the rights of the wider community are properly balanced. If 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.

Why Now?

The Government feels that the time is right to introduce this important and progressive law in the Isle of Man. Although many people may have been disappointed that the Act was not brought into force sooner, certain changes to legislation and practice were required before this could happen. The Government believes that sufficient progress has now been made and it looks forward to the Act coming into operation on 1st November 2006.

Should I be worrying about all this?

The Isle of Man already seeks to comply with the Convention rights. But interpretation of the Convention develops over time and there is always scope for legal challenge. No one should be complacent, but no one should be panicking either. Prepare carefully, checking in advance that your arrangements are compatible with the Human Rights Act. And even if you are satisfied about compliance, think about what you could do to foster human rights in your workplace.

How can I find out more?

Further information and documentation is available on the Government website at: www.gov.im/cso/initiatives/human.xml

In addition, each Government Department, Board and Office should nominate a person to manage the preparations for the Act's commencement and, once the Act is in force, this person should be the first point of contact for any issues which may have human rights implications.

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