

# Acknowledgements

---

Thank you to Sarah Cooke, Director of the British Institute of Human Rights, Silvia Casale and Edward Fitzgerald QC for commenting on a draft of this report.

---



---

# A HARD ACT TO FOLLOW?

## PRISONS AND THE HUMAN RIGHTS ACT

**“These are new rights for the new millennium. The Human Rights Act is a cornerstone of our work to modernise the constitution. It is one of the most important pieces of constitutional legislation the UK has seen.”**

*Jack Straw, Home Secretary, May 1999.*

### Introduction

On 2 October 2000, the Human Rights Act, passed by Parliament in 1998, comes fully into effect. From this date, the European Convention on Human Rights (ECHR) becomes part of United Kingdom law. Anyone who believes that their rights as set out in the ECHR (“Convention rights”) have been violated by a public authority will be able to raise their complaint before a UK court, rather than going to the European Court of Human Rights in Strasbourg, France, a process which is costly and can take several years. The Human Rights Act has the potential to be one of the most important constitutional changes since the Bill of Rights was enacted over 300 years ago.

As a public authority, the Prison Service has to comply with the Human Rights Act and respect the rights and freedoms that it guarantees. All prisons, including private prisons, will have fundamental obligations to prisoners under the Human Rights Act. English prisoners have taken many cases to the European Court of Human Rights in the past. Successful cases have included *Golder* on access to lawyers, *Silver* on censorship of mail and *Campbell and Fell* on disciplinary hearings. As a result of these actions, changes have taken place to a number of policies and practices. The Prison Service is likely to face an increased number of legal challenges under the Human Rights Act.

This report finds that the Prison Service has not done enough to prepare for the Human Rights Act. Many of the Prison Service’s policies and practices are in danger of violating the Act. The Human Rights Act confirms that prisoners remain citizens during a period of imprisonment. They should be held in conditions which resemble those in outside society as far as possible and must have their fundamental rights and freedoms respected by the Prison Service and upheld in the courts. The Human Rights Act should be seen as further official recognition that human rights do not stop at the prison gate.

The Prison Service should not wait for the courts to prove violations of the Human Rights Act, before introducing reforms. The Human Rights Act should be welcomed by the Prison Service as an opportunity to improve standards and make the changes necessary to enable the Service to fulfil its Statement of Purpose to “serve the public by keeping in custody those committed by the courts...[and] to look after them with humanity and help them lead law-abiding and useful lives in custody and after release”.

---

## What the Human Rights Act does

The Human Rights Act incorporates the ECHR into UK law. This will mean that new legislation will be expected to be compatible with the Human Rights Act. The Act requires Ministers, when presenting new laws before Parliament, to make a statement of compatibility, saying that the provisions of the Bill are compatible with Convention rights. If the Minister cannot do this, then a statement will have to be made saying that they are unable to do so, but that they would like Parliament to proceed anyway.

It will be unlawful for any public authority, including the Prison Service, to act incompatibly with the Convention rights. If someone thinks that a public authority has violated their Convention rights, then they can bring a case in a UK court or tribunal against that public authority.

All legislation will have to be interpreted and given effect as far as possible compatibly with the Convention rights. If this is not possible, the Human Rights Act preserves the supremacy of Parliament, and courts will have no power to strike down primary legislation. However, the High Court (and above) can make a declaration of incompatibility if a law cannot be interpreted so as to be compliant with the Human Rights Act. This triggers a new power that allows a Minister to make what is known under the Human Rights Act as “a remedial order”, so as to change the legislation to bring it into line with the Convention rights. Significantly, courts will be able to overturn secondary legislation, including Prison Rules, if it is incompatible with Convention rights.

The Human Rights Act itself does not automatically change laws. However, the Act does mean that some of our laws may be interpreted in a different way than before. Domestic courts may not always interpret Convention rights in the same way as the European Court of Human Rights has in the past. The Court at Strasbourg has been prepared to give domestic authorities a “margin of appreciation”, meaning that it has been reluctant to substitute its opinion for those of the national authorities. However, domestic courts will not be able to apply the margin of appreciation. They will therefore have more discretion to make decisions in areas in which the European Court of Human Rights has left to domestic authorities. This means that the fact that the European Court of Human Rights has already made a finding on a particular issue does not necessarily mean that it can no longer be tested in the UK.

## Making a claim under the Human Rights Act

Only a person considered a victim can bring proceedings against a public authority under the Human Rights Act. This mirrors the test of standing for bringing judicial proceedings against the UK at the European Court of Human Rights at Strasbourg and, on the face of it, is a narrower test than for judicial review.

A victim is someone who is directly affected by the act or omission in question, and can include relatives of the victim where a complaint is made about his/her death. A victim may also be a person who is at risk of being directly affected by a measure. An organisation or interest group cannot bring a case unless it is itself a victim. However, they will be able to assist individuals who do bring cases.

---

---

Prisoners wishing to make claims under the Human Rights Act, either using the ECHR principles set out in the Act or in any other context, can discuss this with their prison's Legal Services Officer or with their own legal advisor. If a prisoner thinks that the Prison Service has breached their Convention rights, they can:

- (a) take the Prison Service to court;
- (b) rely on the Convention rights in the course of any other proceedings involving a public authority, e.g. judicial review, criminal trial.

If the direct route as in (a) is taken, proceedings have to be brought within a year of the act or omission being complained about, although the court can allow proceedings to be brought after a longer period if it thinks this is fair in all the circumstances.

If the court finds that there was a breach of someone's Convention rights, it can award whatever remedy that is open to it and seems just and appropriate. This could include damages. In determining the level of damages to be awarded, a court or tribunal is instructed to take into account the principles applied by the European Court of Human Rights in Strasbourg. The damages awarded by the Strasbourg Court are usually modest. In some cases, the Court considers that a judgement in favour of a victim is sufficient remedy.

Cases will still be able to be taken to the European Court of Human Rights, although only if all domestic remedies have been exhausted first, including the legal routes opened up by the Human Rights Act.

### **Early warnings: lessons from devolution**

The Human Rights Act has already come into force in Scotland, Northern Ireland and Wales. Provisions were included in the Scotland Act, the Northern Ireland Act and the Government of Wales Act, to ensure that the devolved institutions would have to act in a way that was compatible with the Convention rights. However, the assemblies in Northern Ireland and Wales and the Parliament in Scotland do not share the supremacy of the Westminster Parliament. If they pass laws that the courts consider to have violated the Convention rights, the courts will overrule them.

In Scotland, many cases brought before Scottish courts on the basis of the ECHR have been unsuccessful. However, evidence from Scotland does suggest that the Human Rights Act will nonetheless have a significant impact in England and Wales. A number of successful challenges have been made. For example, provisions of the Road Traffic Act 1988 were found to contravene the right to a fair trial under Article 6 of the ECHR, as was the system of temporary sheriffs.

### **The Prison Service's response to the Human Rights Act**

The Prison Service believes that its policies and practices are compliant with the Human Rights Act. Although it recognises that it will face challenges under the Human Rights Act, it does not see this as an indication that its policies and practices are flawed. In the event that the courts make a finding against the Prison Service, it will review its policies and practices. Any member of staff operating in accordance with the Prison Service's mandatory instructions will be supported by the Prison Service (HM Prison Service, 2000b).

---

The Prison Service has changed very few policies and practices in the run-up to the Human Rights Act becoming law. A notable exception has been the elimination, in April 2000, of the use of unfurnished rooms, or strip conditions ('strip cells') for prisoners identified at risk of suicide/self-injury. The practice has been widely recognised as degrading and was "likely to be challenged under Article 3 of ECHR which comes into effect under the Human Rights Act 1998" (HM Prison Service, 2000a).

The Prison Service has been undertaking an awareness-raising programme in advance of the implementation of the Human Rights Act. This started with seminars for senior headquarters staff in the summer of 1999, which introduced them to the Human Rights Act and its implications. Presentations have also been given to area meetings, attended by the Area Manager and Governors or their deputies. Seminars have been held for Governors and key policy leads. Presentations to staff from all Directorates in headquarters have also taken place.

However, little has been done to raise awareness about the implications of the Human Rights Act among prison officers. Of all criminal justice agencies, arguably only the Probation Service has been less proactive than the Prison Service.

### The role of Boards of Visitors

The duty of Boards of Visitors is to independently assess "the state of prison premises, the administration of prisons and the treatment of prisoners" (HM Prison Service 1999). For the purposes of the Human Rights Act, Boards of Visitors are public authorities. It will therefore be very important for Boards of Visitors to exercise their powers correctly. Removal from association under Prison Rule 45 and authorisation of restraint under Prison Rule 48 will have to be addressed properly.

Although Boards of Visitors will not be able to bring cases on behalf of prisoners, they will be in a good position to assist prisoners with any action taken. Boards should use the Human Rights Act as an opportunity to enforce higher standards and to adopt a more proactive role.

### The main implications of the Human Rights Act for prisons

The Prison Service is likely to be challenged under almost every article of the Human Rights Act. Some of the possible implications of the Human Rights Act are discussed below. Articles 1 and 13 of the ECHR are procedural and so do not form part of the Act.

#### ARTICLE 2

##### ***Everyone's right to life shall be protected by law***

This is one of the most fundamental of the Convention rights. It is an absolute right. Public authorities, including the Prison Service, must not cause the death of any person. Lethal force may only be used where it is absolutely necessary, such as when defending a person from an attack, to effect a lawful arrest or when quelling a riot. Public authorities also have a positive obligation to protect the

right to life of people in their care and to hold an effective investigation of suspicious deaths and to enforce the law. In 1999, 91 prisoners committed suicide in England and Wales. Between 1 January 2000 and 30 June 2000, there were 72 deaths in custody, of which two were homicides and 41 were self-inflicted.

**Areas that may be challenged under Article 2 include:**

- The Prison Service's use of methods of restraint on prisoners that have been shown to risk death. This may lead to the abolition of the use of certain restraints, for example the bodybelt.
- Where the Prison Service is thought to have responded inappropriately to information about a potentially violent prisoner.
- Where it is alleged that inadequate prison healthcare led to the death of a prisoner. This could include where a prisoner contracts a communicable disease. Prison healthcare staff have been warned of the need to meet their positive obligations to prevent communicable disease. For example, in 1995, the Prison Service's Director of Healthcare wrote to all Heads of Prison Healthcare, warning that prison doctors may be in breach of their duty of care if they do not prescribe condoms to a prisoner who requests them and that prisoner contracts HIV in prison.
- Where the Prison Service has not done enough to prevent suicides. When he inspected Dorchester Prison in October 1999, the Chief Inspector of Prisons reported that: "Staff training in suicide awareness went the way of all other training at Dorchester, being cancelled because staff were needed on other duties", and that at night "staff did not carry ligature scissors with them as a matter of course, nor did they have cell keys" (HM Chief Inspector of Prisons, 2000c). Similar problems have also been found at Portland Young Offender Institution (YOI) (HM Chief Inspector of Prisons, 2000b). These sorts of omissions could be challenged under the Human Rights Act if they are thought to have contributed to a prisoner's death by suicide.

### ARTICLE 3

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

This article sets out an absolute and fundamental right not to be tortured or subjected to treatment which is inhuman or degrading.

The key question here with regard to prisons is at what point do conditions become inhuman or degrading. The European Court of Human Rights has set a very high threshold in a succession of Article 3 cases. Inhuman and degrading treatment must "attain a high level of severity" and not just be unpleasant. Overcrowded and insanitary UK prison conditions have been recognised in Strasbourg as unsatisfactory, but not severe enough to constitute inhuman or degrading treatment.

In *Delazarus v UK*, a prisoner was segregated for over four months as a result of a disciplinary charge. He could not communicate with other prisoners and was

locked in his cell 23 hours a day. Moreover, the segregation unit was cold and infested with cockroaches. However, the European Commission on Human Rights declared the application inadmissible. Another unsuccessful Article 3 case involved a prisoner who was refused a move from a prison in England to one in Scotland to facilitate visits from his fiancée (*Wakefield v UK*).

However, the President of the European Court of Human Rights has said that Article 3 will be interpreted more strictly in Strasbourg in future. Moreover, domestic courts, unable to apply the margin of appreciation, may take a harder line against poor prison conditions. There are signs that this is already happening. In a decision in July 2000, an English court ruled that a prison's policy of keeping prisoners in the prison segregation unit who refused to wear prison clothing, and who were thus precluded by the prison rules from leaving their cells to collect their meals, with only one meal a day in their cell, was unlawful and may breach Article 3 of the ECHR (*R v Governor of HMP Frankland, ex parte Russell and another*).

In May 2000, the Magistrates' Courts Service Inspectorate warned that "the Human Rights Act will have implications for almost every aspect of the criminal justice system, but particularly in relation to the detention and custody of suspected offenders. For the future, higher standards are going to be required". Prisoners taken in handcuffs through public areas, both within and outside courts, may claim that this practice infringes Article 3, as may prisoners held in "unsatisfactory cells (i.e. dirty, small, overcrowded etc)" (HM Magistrates' Courts Service Inspectorate, 2000).

**Other areas that may be challenged under Article 3 include:**

- ❖ Overcrowded prison conditions. On 28 July 2000, Preston was overcrowded by 83 per cent, Leeds by 61 per cent, and Leicester and Usk by 60 per cent. At Birmingham Prison over 750 prisoners were held in overcrowded cells, at Leeds over 600 prisoners, at Preston and Durham over 500 prisoners and at Liverpool over 400 prisoners. In March 2000, at a speech to the Prison Governors' Association Conference, the Governor of Birmingham Prison, Chris Scott, described overcrowding as an "obscenity" which produces impoverished prison regimes. In a report of a visit to the United Kingdom, the Council of Europe's Committee for the Prevention of Torture (CPT) stated that: "For so long as overcrowding persists, the risk of prisoners being held in inhuman and degrading conditions of detention will remain" (Council of Europe, 2000). However, in answer to a written parliamentary question on 23 March 2000, the Prisons Minister Paul Boateng stated that "there is no immediate prospect that overcrowding will be ended" (*Hansard*, 23 March 2000).
- ❖ Where prisoners, especially juveniles, have very little time out of their cells. At Feltham YOI in Middlesex, the average time out of cell in 1999 was just 3.45 hours per day for unsentenced prisoners under 18 years and 3.29 hours per day for those aged 18 to 21 (*Hansard*, 22 February 2000).
- ❖ Generally inadequate prison conditions. At Onley, the Chief Inspector of Prisons has reported that "many young prisoners lacked sufficient access to fresh air" (HM Chief Inspector of Prisons, 2000d). Similarly at Glen Parva YOI

the Chief Inspector stated that "the continued failure to ensure that every prisoner has time in the fresh air every day gives great concern" (HM Chief Inspector of Prisons, 2000a). At Portland YOI, the Chief Inspector of Prisons found that young prisoners were forced to live in "disgraceful squalor", in conditions described by the Governor as a "moral outrage" (HM Chief Inspector of Prisons, 2000b).

- ⊗ Conditions in segregation units and Close Supervision Centres. In a report on Close Supervision Centres published earlier this year, the Chief Inspector of Prisons criticised conditions at Woodhill, in particular the "extreme levels of sensory deprivation and under-stimulation and the complete lack of social interaction associated with segregation on A and D wings" (HM Chief Inspector of Prisons, 2000e).
- ⊗ Where particularly vulnerable prisoners, such as juveniles, the disabled and mentally ill prisoners are ill-treated.

Challenges are more likely to be successful where there are a number of serious problems. When the Committee for the Prevention of Torture (CPT) visited the UK in 1990, it found that prisoners in Wandsworth, Brixton and Leeds which were inspected, were subjected to inhuman and degrading treatment – because of overcrowding, lack of integral sanitation and inadequate regime activities (Council of Europe, 1991). However, many prisons are still overcrowded with poor regime facilities. Parts of some prisons are still without integral sanitation. Prisoners in England and Wales now receive just 10 minutes a day more purposeful activity than 10 years ago.

#### ARTICLE 4

***No one shall be held in slavery or solitude or be required to perform forced or compulsory labour***

This does not apply to "any work required to be done in the ordinary course of detention". This article is unlikely to have much effect in the UK.

#### ARTICLE 5

***Everyone has the right to liberty and security of person***

Everyone has the right not to be arrested or detained, except where the detention is authorised by law. Article 5 guarantees rights relating to arrest or detention, for example prompt appearance before a court, seeing a solicitor and challenging detention. Article 5 also sets out that everyone who has been the victim of arrest or detention in contravention of the provisions of the Article shall have an enforceable right to compensation.

UK prisoners have successfully brought a significant number of cases under Article 5 before the European Court of Human Rights. For example, changes to the procedures for reviewing the detention of all discretionary lifers came about following rulings in *Weeks v UK* and in the case of *Thynne, Wilson and Gunnell v UK*. The Court ruled that discretionary lifers were entitled to have their detention reviewed by a court or court-like body once they had completed their tariff or following recall to prison. This led to the current arrangements for

judicial determination for discretionary lifers by the Parole Board. In *Wynne v UK*, the European Court of Human Rights held that the mandatory life sentence authorises punitive detention and that Article 5 is therefore not applicable in the same way to mandatory lifers. However, it is applicable to juveniles detained at Her Majesty's Pleasure, who following the ruling in *Hussain and Singh v UK* in 1996, have been able to enjoy the same rights as adult discretionary lifers.

**Areas that may be challenged under Article 5 include:**

- ✱ Prison discipline, where prisoners have been given additional days at an adjudication. Article 5 may require that such decisions are taken by a court.
- ✱ The detention of life sentence prisoners. Further cases are likely to be brought by lifers.

## ARTICLE 6

***Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law***

This article guarantees the right to a fair and public hearing for anyone who is accused of a criminal charge or having their civil rights determined. Anyone charged with a criminal offence must be accorded certain rights, including the right to be presumed innocent until proven guilty and to be given adequate time and facilities to prepare their defence.

Article 6 could have significant effects on the prison disciplinary system. Until 1991, Boards of Visitors had the power to impose unlimited numbers of additional days to a prisoner's sentence for offences against prison discipline. Since this power was removed, disciplinary powers have rested with prison governors, who can add up to 42 additional days to a prisoner's sentence. The addition of 42 extra days represents a significant loss of liberty, equivalent to a Magistrates' Court sentence of almost three months, as a prisoner would be automatically released half-way through a three month court sentence. Moreover, a prisoner who has been found guilty in prison disciplinary proceedings may find it more difficult to gain parole, again leading to a loss of liberty. There were 104,400 proven offences against prison discipline in 1999. The most common offences were disobeying lawful orders, unauthorised drug use and possessing unauthorised articles. The most common punishment was the imposition of additional days, followed by the forfeiture of privileges and stoppage/reduction of earnings. The average prison population in 1999 was increased by 1,150 as a result of days added to sentences (Home Office, 2000).

The law, domestically and under the ECHR, has only really dealt with arrangements pre-1991, when Boards of Visitors had disciplinary powers. However, pre-1991, decisions by the European Court of Human Rights were instrumental in reform of the prison disciplinary system.

There have also been significant decisions in Strasbourg under Article 6 with respect to the setting of tariffs. In December 1999, in the case of *V and T v UK*, the European Court of Human Rights ruled that it violated Article 6 for the Home Secretary, rather than a judge, to set the tariffs of juveniles detained at Her

Majesty's Pleasure. In the same case, it was also found that the boys' trial in an adult court breached the ECHR.

**Areas that may be challenged under Article 6 include:**

- ⊗ Prison discipline. If prison disciplinary charges, or at least the imposition of additional days, are shown to be criminal charges, then the rights guaranteed in Article 6 apply. The current system would have to be reformed, as a hearing before a prison governor cannot be regarded as 'independent'. Prisoners, especially juveniles, accused of disciplinary offences could also be entitled to legal representation. At present, this is left to the Governor's discretion. There may also be challenges to the practice of not holding adjudications in public.
- ⊗ The setting of tariffs of adult life-sentence prisoners by the Home Secretary.

## ARTICLE 7

***No one shall be subjected to retrospective penalties or law***

This article prohibits the imposition of a heavier penalty than was applicable at the time an offence was committed. A law imposing a criminal offence or penalty must be clear enough so that a person can reasonably be able to foresee the legal consequences. This has implications for the Prison Service with regard to sentence calculation. Procedures in place when someone was convicted must be followed.

## ARTICLE 8

***Everyone has the right to respect for their private and family life, home and correspondence***

This article protects the individual's right to privacy and prevents public authorities from interfering disproportionately in a person's private life. It is not an absolute right. Limitations can be placed "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 8 has been important in the past in protecting prisoners' rights to privacy of correspondence. Correspondence includes writing, as well as other forms of communication. The issue of written correspondence has come up before the European Court of Human Rights on many occasions. These cases have led to amendments to the Prison Rules and to the administrative guidance to Governors.

**Areas that may be challenged under Article 8 include:**

- ⊗ Restrictions on, or surveillance of, telephone calls by prisoners.
- ⊗ The Prison Service's policy on searching cells in the absence of the prisoner.
- ⊗ Restrictions on visits, including banning visitors. Also, conditions of visits, including strip searching of visitors and closed visits.

- ✿ Arrangements for prisoners to have their babies in prison. At present, there are mother and baby units in four women's prisons. There are no father and baby units, although some male prisoners are sole carers.
- ✿ The prohibition of conjugal visits and arrangements for artificial insemination.
- ✿ Where prisoners are held a long way from their homes, making visits from families impossible. At present, 25,000 prisoners are held over 50 miles from their committal court town, 11,000 of whom are in prisons over 100 miles away (*Hansard*, 23 March 2000). Almost half of all women prisoners are held over 50 miles from their homes (*Hansard*, 6 July 2000).

## ARTICLE 9

### ***Everyone has the right to freedom of thought, conscience and religion***

Everyone has the right to hold whatever thoughts and beliefs they wish. The right to worship is guaranteed. Any restrictions to this right must serve a legitimate aim.

The Prison Service has a restrictive approach to the recognition of religions and faiths. For example, Scientology, Nation of Islam and Rastafarianism are not recognised.

The Prison Service may argue that these are not legitimate religions. However, the courts may hold that unless there are any genuine and identifiable security reasons, prisoners should be allowed to worship as they choose and to have all relevant facilities.

## ARTICLE 10

### ***Everyone has the right to freedom of expression***

This is regarded as one of the most important of the Convention rights. The Human Rights Act instructs judges to pay particular attention to the fundamental nature of this right when considering whether to impose any restrictions on it.

In *Bamber v UK*, a prisoner complained that he was not allowed access to broadcasting and radio facilities in order to protest his innocence. The European Commission on Human Rights ruled that it was legitimate for effective controls to be exercised on communications by prisoners with the media in the interests of order and the morals or rights and freedoms of others. In this case, the prisoner was able to use other means of communicating with the media such as correspondence and, to a limited extent, through visits. The Commission did however highlight the essential importance of freedom of expression and the valuable role that the media play in cases where there has been a miscarriage of justice.

**Areas that may be challenged under Article 10 include:**

- ✿ Restrictions on the use of computers and the internet.
- ✿ Bans on prisoners writing memoirs and articles.
- ✿ Restrictions on prisoners' access to the media.

---

## ARTICLE 11

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

This article guarantees freedom of assembly and association. This includes the right of people to demonstrate peacefully, and to join – or choose not to join – a trade union. Prisoners should be free to join trade unions. However, the article does not concern the right of prisoners to have 'association' with other prisoners.

## ARTICLE 12

***Men and women of marriageable age have the right to marry and to found a family***

The right of prisoners to marry was established by statute following *Hamer v UK*, where the European Court of Human Rights ruled that Article 12 of the Convention guaranteed the right of prisoners to marry. However, the European Court of Human Rights has stated that the prohibition of conjugal visits for prisoners does not violate the right to marry and found a family.

Cases could be brought under this article with regard to the ban on same sex marriages. Article 12 may also be used in support of further cases regarding conjugal rights, as well as by prisoners claiming a right to artificial insemination.

## ARTICLE 14

***Freedom from discrimination***

This guarantees the equal rights of all citizens to the rights set out in the Convention, regardless of "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". Differences in treatment with respect to the Convention rights are not allowed without an objective and reasonable justification.

Any prisoner who feels that they are being treated differently from a prisoner in a similar situation to themselves without adequate justification may bring an action under Article 14 with respect to any of the Convention rights.

**Areas that may be challenged under Article 14 include:**

- ⊗ Race relations issues, including the treatment of foreign nationals and immigration detainees.
  - ⊗ Where male prisoners argue that certain rights or privileges available to women prisoners should be made available to them – or vice versa. For example, women prisoners are able to wear their own clothes, whilst this is not the case for many male prisoners.
  - ⊗ The treatment of disabled prisoners. At present, some disabled prisoners are unable to secure transfers to open prisons because they are not fit for work. As a result, they have to remain in prisons with fewer facilities.
-

- ⊗ If prisoners in one part of the country are held in overcrowded conditions with poor regime facilities then an Article 14 case may be brought under the remit of Article 3 (freedom from torture or inhuman or degrading treatment or punishment).
- ⊗ Racial or gender bias in sentencing may also form the basis of Article 14 challenges.

The European Court of Human Rights has not been particularly sympathetic to Article 14 cases, but the UK courts are thought to be likely to impose a heavier burden on the state to demonstrate clearly that it did not discriminate.

#### PROTOCOL 1 ARTICLE 1

##### ***Everybody is entitled to the peaceful enjoyment of their possessions***

This guarantees property rights and extends to prisoners. However, this does not "impair the right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest". As a result, severe limitations are allowed to be placed on the property rights of prisoners.

#### PROTOCOL 1 ARTICLE 2

##### ***No person shall be denied the right to education***

The right of access to education may be balanced against the resources available. This article is concerned primarily with school education. It will be of particular significance for young people in custody who are of compulsory school age.

#### PROTOCOL 1 ARTICLE 3

##### ***There shall be free elections at reasonable intervals by secret ballot, under conditions which ensure the free expression of the opinion of the people in the choice of the legislature***

Sentenced prisoners in the UK are disqualified from voting for the duration of their period of imprisonment. Although remand prisoners and civil prisoners can vote, in practice they find it difficult to remain on the electoral register.

There is virtually no relevant ECHR caselaw in this area. Sentenced prisoners can vote in many countries around the world, including in a majority of European countries. In 1999, the Constitutional Court of South Africa ruled that a ban on prisoners voting was unconstitutional and that "the universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood."

The electoral ban on sentenced prisoners may be challenged under Protocol 1 Article 3. Moreover, the Government may find it difficult to justify the ban, as it is neither a deterrent nor an effective punishment. Courts may decide that the disenfranchisement of prisoners is neither proportionate nor fair and therefore violates the rights guaranteed in the Human Rights Act.

---

## Conclusions

The Human Rights Act should be welcomed. It is a major constitutional reform that sets out the fundamental rights and freedoms that everyone is entitled to, prisoners included.

The Prison Service should only restrict prisoners' rights when strictly necessary and in accordance with the ECHR principles in the Human Rights Act. Although not written specifically with the rights of prisoners in mind, the Human Rights Act is likely to have significant implications for the work of the Prison Service and the treatment of prisoners. Many of the restrictions that are currently placed on prisoners are unnecessary and disproportionate, and may be unlawful.

The Government should consider introducing a new Prisons Act. This would establish in law the rights and responsibilities of prisoners and prison staff, recognising the changes that have occurred since the Prisons Act 1952 and the obligations placed on the Prison Service by the Human Rights Act. It would also make prison legislation less vulnerable to legal challenges.

The Prison Service should not wait for the courts to find violations of the Human Rights Act before introducing necessary reforms. Prisons should welcome the Human Rights Act as an opportunity to improve standards and to foster links between prisoners and the community. The Human Rights Act should serve as a tool against complacency.

---

## References

---

Council of Europe (2000), *Report to the United Kingdom Government on the visit to the United Kingdom and the Isle of Man carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 17 September 1997*, Strasbourg: Council of Europe.

Council of Europe (1991), *Report to the United Kingdom Government on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 June 1990 to 10 August 1990*, Strasbourg: Council of Europe.

HM Chief Inspector of Prisons (2000a), *HM Young Offender Institution Glen Parva, Report of an Unannounced Inspection, 6-10 December 1999*, London: Home Office.

HM Chief Inspector of Prisons (2000b), *HM Young Offender Institution Portland, Report of a Full Inspection, 24 October-3 November 1999*, London: Home Office.

HM Chief Inspector of Prisons (2000c), *HM Prison Dorchester, Report of a Full Inspection, 4-10 October 1999*, London: Home Office.

HM Chief Inspector of Prisons (2000d), *HM Young Offender Institution Onley, Report of a Full Inspection, 6-10 September 1999*, London: Home Office.

HM Chief Inspector of Prisons (2000e), *Inspection of Close Supervision Centres, A Thematic Inspection by HM Chief Inspector of Prisons, August-September 1999*, London: Home Office.

HM Magistrates' Courts Service Inspectorate (2000), *A Review of Custody Arrangements in Magistrates' Courts*, London: HM Magistrates' Courts Service Inspectorate.

HM Prison Service (2000a), *Caring for the Suicidal in Custody: Eliminating Strip Cells, Prison Service Instruction 27/2000*, London: HM Prison Service.

HM Prison Service (2000b), *The Human Rights Act and the Prison Service*, London: HM Prison Service.

HM Prison Service (1999), *HM Prison Service Framework Document*, London: The Stationery Office.

Home Office (2000), *Prison Statistics, England and Wales, 1999*, London: The Stationery Office.

---