



HUMAN RIGHTS INFORMATION BOOKLET FOR PRISONERS

The work of the Prison Reform Trust is aimed at creating a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government, and officials towards reform.

The Prison Reform Trust is grateful to the Hadley Trust for supporting the work the Prison Reform Trust's advice and information service.

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This booklet covers:

- your rights as a prisoner under the Human Rights Act
- information about cases which are important in a prison context
- information about prison rules and guidance
- where you can go for help and advice if you feel that you have not been able to access your rights.

Getting Advice

If you feel that you have not been able to access your rights, or that the prison or probation service has done something which is against these rights, you should contact a solicitor.

PRT can send you details of solicitors who give advice on human rights if you need them.

There is a list of other organisations that can give you advice on your rights on pages 25 to 28.

INTRODUCTION

The Human Rights Act was included in UK law in October 2000.

It allows people to bring legal claims about their human rights in the courts in England, Scotland and Wales.

Before the Human Rights Act, people had to take their human rights claims to the European Court of Human Rights. This was often a much longer and more expensive process.

There are 16 key rights under the Human Rights Act, which come from the European Convention on Human Rights. Each right is referred to as an **article**. Not all of these rights are treated by the courts in the same way.

The rights come under three main groups. These are:

- **Absolute rights**

These are rights that the state cannot take away.

These are:

- Article 2 - the right to life
- Article 3 - freedom from torture and inhuman or degrading treatment
- Article 4(1) - freedom from slavery
- Article 7 - protection from retrospective legislation.

- **Limited rights**

These are rights which can be limited but only very rarely.

The limited rights are:

- Article 4(2) - the right to be free from forced labour
- Article 5 - the right to liberty
- Article 2 of Protocol 1 - the right to education
- Article 3 of Protocol 1 - the right to free and fair elections.

- **Qualified rights**

These are rights which can be limited or withheld more often.

Articles of the Human Rights Act which are qualified rights include:

- Article 8 - respect for your private and family life
- Article 9 - freedom of thought, belief and religion
- Article 10 - freedom of expression
- Article 11 - freedom of assembly and association
- Article 12 - the right to marry and found a family
- Article 1 of Protocol 1 – the right to peaceful enjoyment of your property.

THE ARTICLES

The articles of the Human Rights Act explain your rights.

We have explained the 16 rights below. If you would like a copy of the articles as they appear in the Human Rights Act, the Prison Reform Trust can send this to you.

- **Article 2 - Right to life**

This means that you have the right to have your life protected by law.

In the UK, if someone is responsible for taking another person's life, they can be charged with a criminal offence.

For more information on Article 2 please see **page 12**.

- **Article 3 - Freedom from torture and inhuman or degrading treatment**

This means that you should not be tortured or be treated in a way which is very unfair or bad.

Treatment might be considered 'inhuman' if it is deliberately cruel or if it causes you physical or mental suffering.

Treatment might be considered degrading if it causes you unnecessary shame or embarrassment.

How the treatment you have received will be considered depends on lots of individual factors about you and the circumstances of your treatment. It can be very difficult to show that the treatment you have suffered is bad enough to be considered inhuman or degrading by the courts.

If treatment is against your human rights this is referred to as a **breach**.

Claims brought by prisoners under this article are discussed on **pages 12 to 14**.

- **Article 4 - Freedom from slavery and forced labour**

This means that you should not be made to work or be threatened with punishment if you refuse to.

However, the law says that this right does not include work in prison or as part of a community sentence. The prison service is not breaching Article 4 by making you work. There is more information about being made to work in prison on **page 14**.

- **Article 5 - Right to liberty and security**

Under this article, you have the right not to be imprisoned **unlawfully**. However, there are **lawful** reasons for someone to be imprisoned.

These reasons include, but are not limited to:

- If you have been convicted of a criminal offence by the courts
- To make sure you attend court if you are suspected of committing a criminal offence
- To make you do something which the court has ordered
- To prevent you from entering or, staying in the UK when you are not allowed to do so
- If you have a mental health problem and you are a risk to yourself or others.

- **Article 6 - Right to a fair trial**

This means that your trial should be a fair hearing, held in public before an “independent and impartial tribunal” (a judge and maybe a jury) within a reasonable time of you being charged.

Article 6 sets out standards for the way that court hearings should be run. Although you may feel that you have not had a fair trial if you lose your case, there will only be a breach of Article 6 if these standards have not been met.

The time it takes for your case to come to trial will depend on a number of things. Each case may take a different amount of time to come to trial and there is no specific time limit on how long it might take.

Article 6 does not give you a definite right to be granted legal aid during your trial or to be granted an appeal if you are found guilty. You do have a right to apply for both of these things and your solicitor should be able to give you advice about this.

Article 6 can also apply to prison discipline and adjudications and we explain this a bit more on **pages 17 and 18**.

- **Article 7 - No punishment without law**

This means that you cannot be found guilty of something if it was not illegal when it was alleged to have taken place.

You should not be given a higher sentence than you could have been given when the alleged offence was committed.

Article 7 says that the law should be clear so that people know whether what they are doing or not doing is against the law.

- **Article 8 - Respect for your private and family life**

Article 8 covers a number of things, including:

- your private life
- your family life
- your home
- personal information
- correspondence.

Your private life includes your sexuality and the way you look and dress. It includes protection from interference with your body.

This means things like being forcibly restrained or having medical treatment you do not agree to have, unless you are not well enough to agree to the treatment.

Prison staff can restrain you sometimes. This is called 'control and restraint' and is meant to be used as a last resort to try and control someone who is being violent or refusing to follow the rules.

If prison staff use control and restraint the force used must be:

- reasonable
- proportionate
- necessary
- no more force than is necessary in the circumstances.

There is more guidance on control and restraint in **PSO 1600: 'Use of Force'**.

Your family life includes the relationships you have with your partner, parents and children and will depend on the nature of these relationships.

It is important to point out that Article 8 is a qualified right. This means it can sometimes be lawful for the state or a public authority not to allow you this right. The state must show that denying you this right is 'reasonable and necessary'.

Reasons that could be considered 'reasonable and necessary' include:

- if there is a clear legal reason
- if doing so would prevent crime or disorder
- to protect the public and the rights of others.

There is more information about your rights under Article 8 on **pages 19 to 21**.

- **Article 9 - Freedom of thought, belief and religion**

You have the right to hold whatever personal and religious beliefs you choose, and the state can never stop you from having those thoughts and beliefs. You have a right to change your religion or beliefs.

The state is allowed to stop you from putting these views across if there is a legal reason for them doing so, for example if it would prevent crime or if it would protect people.

There is information about how prison staff should support you in practising your chosen religion, and what you are entitled to in **PSI 51/2011: 'Faith and Pastoral Care for Prisoners'**.

- **Article 10 - Freedom of expression**

This gives you the right to hold opinions and to share information about them.

You can express your beliefs in different ways, including:

- speaking about your opinions out loud
- writing an article for a newspaper or magazine
- speaking on television or on the radio
- writing a book
- making a piece of art.

This right can be limited or stopped, or the information you want to express can be censored, but it has to be necessary to do so.

Examples of when it would be necessary to do this include but are not limited to:

- if it is in the interests of national security or public safety
- preventing crime or disorder
- protecting the rights or reputation of other people
- if the information was confidential.

Prison staff are also allowed to limit your contact with the media and what you are allowed to say to them. The rules on this are in **PSI 37/2010: 'Prisoners' Access to the Media'**.

- **Article 11 - Freedom of assembly and association**

This does not refer to association time in prisons.

This means that you have the right to form or join a political party or trade union or to join with other people to have a peaceful protest or form a representative group. This right also means you cannot be forced to do these things if you do not want to.

If a protest is not peaceful it may be **unlawful**.

Your rights under this article can be limited. Prison staff are allowed to prevent you from becoming involved in any group for a number of reasons, including if they think it is in the interests of the Good Order and Discipline (GOAD) of the prison.

PSO 4480: 'Prisoners' Representative Associations' explains in some more detail how this right can be limited and what restrictions prison staff could put on this right.

- **Article 12 - Right to marry**

Under this article, men and women have the right to get married to each other and have a family.

Since the introduction of the Human Rights Act, it is lawful for gay people to have civil partnerships or marriages in England and Wales. The state is allowed to make laws about marriage and families, but they cannot stop this right in general.

The rules on getting married if you are in prison are explained in detail in **PSO 4450: 'Marriage of Prisoners'** and the rules on civil partnerships are in **PSO 4445: 'Civil Partnerships'**.

Article 12 also applies to post-operative transsexual people.

- **Article 14 - Protection from discrimination in respect of these rights and freedoms**

This right means that everybody must have the same access to the rights under the Human Rights Act.

This right only applies to the Human Rights Act and is not the same as discrimination laws in other contexts.

To show that Article 14 has been breached you would need to show that you have been treated differently to someone in a similar situation because of your **status** (race, age, gender, sexuality or disability etc).

This different treatment must be in relation to one of your rights under the Human Rights Act, such as your right to privacy (Article 8). For example, people of different sexes, races and religions must all have the same access to the rights under the Human Rights Act as each other.

There is more information about how prison staff should treat people equally in **PSI 32/2011: 'Ensuring Equality'**.

- **Article 1 of Protocol 1 - Right to peaceful enjoyment of your property**

This right does not mean that the prison service or prison staff cannot put restrictions on the property you are allowed to store and the property you can keep in your possession. This is because the property restrictions in prisons are to maintain security and good order.

There is more information about what items you are allowed in **PSI 30/2013: 'Incentives and Earned Privileges'** and information about how prison staff should handle your property is in **PSI 11/2011: 'Prisoners' Property'**.

- **Article 2 of Protocol 1 - Right to education**

The right to education is limited and does not mean that the government has to provide funding for you to learn whatever you want. There is more information on this on **page 22**.

- **Article 3 of Protocol 1 - Right to participate in free elections**

Article 3 of Protocol 1 gives people the right to vote in political elections.

This right only applies to people who are not excluded under the laws of their own country.

Remand prisoners do have the right to vote and there is more information in **PSO 4650: 'Prisoners' Voting Rights'**.

Convicted prisoners in England and Wales are not allowed to vote by law.

The ban on all convicted prisoners voting has been found to be a breach of the European Convention on Human Rights, and the government has been told they must review this.

We do not know what the outcome of this review will be but the government has said that they do not want to allow all convicted prisoners to vote.

There is more information on voting on **page 22**.

- **Article 1 of Protocol 13 - Abolition of the death penalty**

This Article abolishes the death penalty in Europe in all circumstances.

HUMAN RIGHTS AND PRISONERS

Many of the rights under the Human Rights Act are limited or removed when you are sent to prison. Some examples are the right to liberty, freedom from forced labour and the right to vote (for some prisoners).

These rights do not apply in the same way to people in prison as they do to people in the community. Many claims have been brought by prisoners under the Human Rights Act but it can be very hard to show that your human rights have been breached.

There is more information below about some of the rights which most commonly affect prisoners and examples of claims involving people in prison which have been successful or unsuccessful.

ARTICLE 2 – RIGHT TO LIFE

Duty of care and assaults

Article 2 is an **absolute right**.

The prison service and staff have a **duty of care** towards the prisoners it holds and should take reasonable measures to keep you safe. However, it is not always possible to bring legal action if someone is assaulted whilst they are in prison.

If a prisoner is assaulted by another prisoner, the Ministry of Justice (or the company responsible for the running of a private prison) may sometimes be found to be responsible for not stopping the assault from happening.

For example, if prison staff were aware of the threat or risk of assault from one prisoner to another and they did not take reasonable steps to stop the assault from taking place. The legal term for not taking these reasonable steps is **negligence**.

It is often very difficult to prove that the prison service or staff have been negligent in relation to prisoner on prisoner assault and it will depend on the facts and circumstances in each case. If you have been assaulted you should contact a solicitor to discuss the possibility of taking legal action.

You have a right to report any incident like this to the Police Liaison Officer (PLO) in your prison. The PLO should then report it to the police force in the community who should consider whether to investigate.

ARTICLE 3 – FREEDOM FROM TORTURE AND INHUMAN OR DEGRADING TREATMENT

Although Article 3 is an **absolute right** the European Court of Human Rights has made it clear that it is very difficult to show that the treatment you are challenging is 'inhuman or degrading' under the Human Rights Act.

Slopping-out

Slopping-out may happen when prisons do not have in-cell toilets and prisoners are unable to access to the toilets on the wings whilst they are locked up.

When this happens, prison staff should provide something for you to use when you cannot be let out to go to the wing toilet. Often this is a commode or a bucket. People should then be given time in the morning to empty and clean the commode.

Slopping-out was officially stopped in prisons in England and Wales in 1996.

However, as many of the prisons in England and Wales were built without in-cell toilets and are too old to rebuild, there are still some prisons in the UK where slopping out happens.

In the case of ***Napier, Re Petition for Judicial Review [2001]*** a group of prisoners in Scotland went to court about the conditions in HMP Barlinnie, which they said were so bad that it was against their human rights.

Part of the reason these prisoners felt this way was because on one wing at HMP Barlinnie people were required to slop-out. This was something that had to be done at all times because there were no other toilet facilities available on the wing.

Many of the prisoners in C Hall at HMP Barlinnie were held in double cells with levels of light, ventilation and space being below the required standards.

Although HMP Barlinnie was found to have breached the prisoners' human rights, the court said that if the case had only been about the slopping-out, they would not have been successful.

As a result of the *Napier* case, a claim was brought in the English courts by prisoners at HMP Albany who were also required to slop-out. The case is ***Grant & Anor v The Ministry of Justice [2011]***. When deciding about the claim in *Grant*, the court ruled that the conditions at HMP Albany did not amount to inhuman or degrading treatment.

There were a number of differences between the conditions at HMP Barlinnie and HMP Albany. In HMP Albany, the prisoners were only required to slop-out during the time that they were locked in their cells, and had access to toilets when they were unlocked. The prisoners in question also had some access to toilets during the night.

The cells at HMP Albany where slopping out was required were single cells, which was another difference to the cells in HMP Barlinnie.

Whole life tariffs

Recently, the European Court of Human Rights heard a case brought by some UK prisoners who are serving a whole life tariff.

A whole life tariff is a sentence which can only be imposed in certain circumstances. This is a life sentence, without a minimum term or the possibility of parole.

The prisoners bringing the claim said that it was a breach of their human rights not to give them a chance to have their imprisonment reviewed. They said that this was inhuman and degrading treatment.

The Court of Appeal originally found that whole life terms were not in breach of Article 3. However, when the case went to the European Court of Human Rights it said that giving someone a sentence where there was no review of their imprisonment was not **compatible** with the Human Rights Act and that there should be a review process.

The Court of Appeal considered the matter again in the case of *R v. McLoughlin and Another [2014]*. The court considered whether a whole life tariff was against the rights in Article 3. They also looked at whether the UK currently had any way for these sentences to be reviewed or reduced.

The Court of Appeal decided that whole life tariffs did not breach Article 3. This is because it is possible for someone serving this sentence to apply to the Secretary of State in exceptional circumstances. This is explained further in Chapter 12 of **PSO 4700: 'The Indeterminate Sentence Manual'**.

The court made it clear that when considering someone's release on compassionate grounds they should not only consider PSO 4700 but also the individual facts of each case.

ARTICLE 4 – FREEDOM FROM SLAVERY AND FORCED LABOUR

The right to be free from slavery is an **absolute right**. This means you should never be treated as a slave. The right to be free from forced labour is a **limited right**. This means you can sometimes be made to work against your will.

The right to be free from forced labour does not apply to prisoners or people who are working as part of a community sentence. The law specifically says that working as part of a prison or community sentence is not counted as 'forced labour', even if you do not want to do it. This means that prison staff can make you work if you are able to and there is a job available. The maximum working day is 10 hours, but there is no minimum.

If there are jobs available in your prison, and you refuse to work **PSO 4460** says that the prison service must not pay you. **PSO 4460** explains the minimum rates of pay in prison.

ARTICLE 5 – RIGHT TO LIBERTY AND SECURITY

Article 5 is a **limited right**. This means that this right can be lawfully taken away or limited.

For example, it is lawful to take away someone's liberty if they are suspected of, charged with or convicted of a criminal offence. Article 5 does not relate to prison conditions.

Article 5 claims have been made by a number of prisoners whose release must be decided by the Parole Board and who are experiencing difficulties in making progress with their sentence.

IPP prisoners and access to offending behaviour courses

The IPP sentence was abolished by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO Act). However, this change in the law does not affect people already serving IPP sentences as there is no sentence conversion.

IPP sentenced prisoners are required to show the Parole Board that they have reduced their risk of serious harm to the public before they can be released.

Often, IPP prisoners are required to complete offending behaviour courses in order to show that they have done this. Many prisoners have experienced problems in accessing these courses before their tariff expiry date.

The case of ***James, Wells and Lee v. UK [2012]*** is the most recent ruling on this issue.

Following an unsuccessful claim in the House of Lords, the three post-tariff IPP prisoners took their claims to the European Court of Human Rights and were successful in showing that the lack of access to courses was in breach of their right to liberty.

This is because the courses they were required to complete in order to reduce their risk were not available. They were being refused release or a move to open conditions as a result of not completing the course(s) in question. The people who brought these claims were awarded compensation.

This matter is still ongoing and it is not yet clear whether the courts in England and Wales will follow the decision in the European Court of Human Rights.

The case of ***R (on the application of Gill) v. Secretary of State for Justice [2010]*** is also relevant to indeterminate sentenced prisoners.

Mr Gill was required to complete Offending Behaviour courses in order to show the Parole Board that he had reduced his risk and could be considered for open conditions and release. Mr Gill was not able to complete the courses on his sentence plan because of his low IQ and learning difficulties.

The court said that the government had discriminated against Mr. Gill because of his disability by not taking reasonable steps to give him alternative ways of reducing his risk.

If you are experiencing difficulties in accessing courses, interventions or targets on your sentence plan there is more information about having this reviewed in **PSI 41/2012: 'Sentence Planning'**. The Prison Reform Trust has also produced an information sheet about sentence planning which you can request by contacting our advice and information service.

Parole

Claims alleging breaches of Article 5 have been brought in relation to the parole process.

The Supreme Court has recently ruled on this matter in the case of

Osborn v The Parole Board; Booth v The Parole Board; In the matter of an application of James Clyde Reilly for Judicial Review [2013].

This claim involved one recalled determinate sentenced prisoner and two indeterminate sentenced prisoners who were post-tariff. All three prisoners had their release or transfer to open conditions refused by a single-member panel of the Parole Board at a paper review.

A paper review is when the Parole Board makes its decision based on reading the parole dossier alone. The board will look at the paperwork and make their decision without meeting you.

At an oral hearing you, and your solicitor if you have one, will have a meeting with the board who will talk to you and ask you questions. They will also talk to members of prison and probation staff.

The three prisoners, Mr Osborn, Mr Booth and Mr Reilly, all brought judicial review proceedings to challenge the decision not to refer their cases to a full oral hearing with a three-member panel. They said that it was a breach of Article 5(4) not to allow them to have a full oral hearing. Only one of the prisoners was originally successful, although the other two did win an appeal.

They then took their claims to the Supreme Court. The court decided that there had been a breach of Article 5.

The court said that refusing someone an oral hearing because it was unlikely that they would be released or be recommended for open conditions was not a good enough reason to only hold a paper review.

The court ruled that an oral hearing should take place when considering release or a transfer to open conditions if it was necessary in order to maintain fairness to the prisoner.

This does not mean that everyone who is being considered for release or a move to open conditions will get an oral hearing. There is not a list of who will or will not be entitled to an oral hearing, and it will be a decision that is made on a case by case basis.

Article 5 says that anyone who loses their liberty has the right to have this reviewed without unnecessary delays. For some people in prison, this review happens when the Parole Board considers their case.

For people serving indeterminate sentences, this should first happen just before, or at the time that their tariff expires and then no more than every 2 years after that.

There have been a number of cases recently where people said that their human rights had been breached because their parole hearing did not happen 'speedily'.

Two of these cases which went to the Supreme Court were:

R (on the application of Sturnham) v The Parole Board of England and Wales and another [2013]

R (on the application of Faulkner) v The Secretary of State for Justice and another [2013]

These prisoners said that the delays to their parole hearings meant that they were kept in prison longer than they should have been. They said the Parole Board could have released them if the hearing had taken place when it had been planned. They said that this was a breach of their human rights under Article 5.

The court agreed that the delays did breach their human rights, and both Mr. Faulkner and Mr. Sturnham were awarded some money to compensate them for the stress this caused them.

This money is referred to as **damages**. The damages were awarded in Mr. Sturnham's case, even though the delays to his hearing did not prevent him from being released.

The Parole Board has produced information leaflets which explain the parole process. The Prison Reform Trust can send this information to you or you can contact the Parole Board directly for this.

ARTICLE 6 – RIGHT TO A FAIR TRIAL

Adjudications

Article 6 is an **absolute right**.

Both UK and European courts have ruled that adjudication hearings in prison come under Article 6 but this is normally only when the charge is serious enough to mean you might have extra days added to your sentence.

If there is a chance that you might be given extra days as a punishment, the hearing should be heard by an Independent Adjudicator and not a Governor of the prison you are in.

Sometimes prison staff might decide that the matter is serious enough to tell the police about. If the police investigate, and you are charged with a criminal offence, you cannot also be adjudicated against.

If the police decide to take no further action, or they do not investigate, then the adjudication can continue and you could still be punished if you are found guilty.

Article 6 says that people should have their trial or hearing within a 'reasonable' time of being charged. Although there is no definition of what might be a reasonable time, there are some specific rules about the timing of adjudications.

You should be given the charge or 'nicking' sheet within 48 hours of the discovery of the offence. This might be 48 hours after it is alleged to have taken place, or 48 hours after prison staff found out about it. The first hearing should take place the next working day after you were given the charge sheet.

After that, the hearing might get put back to another day. This is called an adjournment and it can happen for lots of reasons, including if you need legal advice. If the charge is adjourned for more than 6 weeks the Governor or Independent Adjudicator has to consider if it is fair to continue. They are allowed to carry on with the adjudication after 6 weeks if they explain why they think it is fair to do so.

There is more information about prison discipline procedures in **PSI 47/2011: 'Prisoner Discipline Procedures'**.

Access to Justice

Some people bring legal claims or appeals without the help of a solicitor. Doing this can take a lot of time and can be very difficult when you are in prison with restrictions on your access to information. If you are bringing a legal claim, you may be entitled to an Access to Justice (A2J) laptop. This is to help you complete the preparation for your case.

The guidance does say that laptops should be given to people who could not prepare for their case properly without it, but should not be given if it would just make things more convenient. You might be entitled to an A2J laptop even if you do have a solicitor representing you, but you may be less likely to get one in these circumstances.

In the case of ***R (on the application of Ponting) v Governor of HM Prisons Whitemoor and Another [2002]***, the Court of Appeal decided that if a prison did not give all prisoners who were representing themselves a laptop it would still be possible for that person to have a fair trial under Article 6.

The court said that prison staff are also allowed to make someone sign a compact before they might be allowed an A2J laptop. This compact will restrict when you are allowed the computer in your possession and what you are and aren't allowed to do when you are using prison service equipment.

There is some information in **PSI 75/2011: 'Residential Services'** about A2J and computer use. There is also further guidance from NOMS about A2J applications that The Prison Reform Trust can send to you if you need it.

ARTICLE 7 – NO PUNISHMENT WITHOUT LAW

This means that you cannot receive a punishment that did not exist at the time that the suspected offence was committed. Article 7 is an **absolute right**.

There have been some arguments that people convicted of historic sexual offences should not be made to sign the sex offenders register because it did not exist before 1997.

The European Court of Human Rights has decided that being made to sign the sex offenders register does not breach Article 7, even if the offence you are convicted of happened before 1997. This is because the sex offenders register is in place to prevent crime and protect others, and is not considered to be a separate penalty or punishment.

ARTICLE 8 – RIGHT TO A PRIVATE LIFE

Article 8 covers your family life, your private life, your home and your correspondence.

It is a **qualified right**, which means that it can be limited or taken away if it is decided that it is necessary to do so.

Some examples of when this might be considered necessary if it is in the interests of:

- national security
- public safety
- crime prevention.

Transfers

The law says that someone can be held in any suitable prison. However, prison staff should consider a prisoner's circumstances so that people are encouraged to maintain family ties, where possible.

Moving to a prison near your home area can sometimes be very difficult as many of the prisons in England and Wales are overcrowded.

Prison staff will also need to make sure that the prison you want to move to is the correct security category, and this can often mean that it is hard to be located near your family. For example, in London, there is only one women's prison, one open prison and one high security prison.

Being in a prison far from your family is not a breach of your human rights under Article 8.

Family contact

In prison, you have the right to keep contact with your friends and family members. This could be during visits, on the telephone, or by letter. The prison staff can stop you from having contact with some people if they think it is in the interests of security, if it would protect other people or if it would prevent a crime.

Prison staff can also listen to some calls or read some letters if they have concerns about security. Some prisons will also randomly monitor calls and mail on a regular basis. There is more information about this in **PSI 49/2011: 'Prisoner Communication Services'**.

There is also a specific type of Release on Temporary Licence (ROTL) so that parents can spend time with their children. This is called Childcare Resettlement Leave (CRL). CRL is available for someone who has the sole caring responsibility for a child who is under 16.

Although being allowed CRL may depend on the outcome of a risk assessment, in the case of ***R (on the application of MP) v Secretary of State for Home Department [2012]*** the courts ruled that the Governor must take into account prisoners' rights under Article 8. They also said that the best interests of the children must be the most important factor in making a decision about whether to grant CRL.

There is more information about ROTL in **PSO 6300: 'Release on Temporary Licence'**.

Searches

Prison officers are allowed to search you, your cell and any other areas of the prison.

There are rules about how this is done and it has to be fair. When you might be searched can depend on your security category. For example, Category D prisoners are not searched as often as Category A prisoners. This is not discrimination but is based on security.

The courts have heard a number of cases about cell searches and human rights.

In the case of ***R (Daly) v Secretary of State for the Home Department [2001]*** it was decided that policies of searching legal mail without the prisoner being present was a breach of Article 8 because it interfered with Mr. Daly's right to privacy more than was necessary.

Prison staff can still search someone's cell, and this will not normally be a breach of Article 8. If the prison officers searching your cell also need to check your legal documents they should do so whilst you are there unless you decide you do not want to be there.

The guidance on searching is available in the following documents:

- **PSI 67/2011: 'Searching the Person'**
- **PSI 68/2011: 'Cell, area and vehicle searches'**.

Licence conditions

If you are released on licence you will be given certain conditions to your release.

There are some standard licence conditions, these include to be of good behaviour and to keep in touch with your probation officer.

It is also possible for you to have additional licence conditions, depending on your own individual circumstances. These could include a requirement that you do not enter a particular area, or that you do not have contact with specific people. This can sometimes be seen to impact on your right to private and family life.

As explained above, Article 8 is a qualified right and can be restricted in certain circumstances. When deciding your licence conditions, prison staff involved in the process must think about what is fair, necessary and proportionate.

If you think that a condition of your licence is not fair or necessary you are entitled to challenge it. If you wish to do this you should first speak to your Offender Supervisor or Offender Manager. If you are not able to resolve this with them, you can make a complaint to the Prisons and Probation Ombudsman.

There is more information on licence conditions in **PSI 18/2014: 'Licences, licence conditions and polygraph examinations'**.

The Prison Reform Trust has also produced a booklet for people on licence for a sex offence which we can send out to people who request it.

Immigration

There are some foreign national people who have finished their criminal sentences but who are kept in prison because the government has decided to deport them. They are called immigration detainees and are entitled to additional rights.

The Prison Reform Trust has published a booklet about the rights of immigration detainees which we can send to people who request it.

The government can consider deporting someone who is not a British citizen, even if they have leave to remain in the UK.

Many people who are not British citizens have lived in England for a long time and have families here. In some circumstances deporting these people would breach their human rights.

In *Kugathas v Immigration Appeal Tribunal [2003]* the court said that if someone was to be allowed to stay in the UK because of the Article 8 right to family life they needed to show that their family genuinely depended on them and needed them to stay.

This does not mean that the court will take the same approach in all cases, and it can depend on lots of different things, including how long someone has lived in the UK for example.

The court does not always agree that deportation would be a breach of Article 8, especially if the person being deported could return to their country of origin with their family. However, this situation is different if someone can show that they would be harmed if they went back to their country of origin.

It is important to get legal advice.

ARTICLE 2 OF PROTOCOL 1 – RIGHT TO EDUCATION

This right allows people access to education and is a **limited right**.

In prisons, it means that everyone who would otherwise be going to school (children and young people under 16) should have at least 15 hours of education every week.

You should not be removed from education as a punishment if you are under 16, but prison staff can decide to stop you from going if it is for safety or security reasons.

For people aged 16 and over NOMS has a general duty to provide educational services. There is not much guidance on what should be provided, or who should be allowed access, but there should be some education available in every prison.

You can also apply to do a distance learning course. There is more guidance on distance learning in **PSI 32/2012: 'Open University'**.

ARTICLE 3 OF PROTOCOL 1 – RIGHT TO PARTICIPATE IN FREE ELECTIONS

Article 3 of Protocol 1 is a **limited right**. In the UK, if you are convicted of an offence and given a custodial sentence, you are not eligible to vote in elections whilst you are serving your sentence.

Although each Member state is allowed to choose how they apply the voting restrictions placed on prisoners, the European Court of Human Rights ruled in the case of ***Hirst v United Kingdom (No.2)*[2005]** that the UK's ban on all convicted prisoners was a breach of the Human Rights Act.

The government was given 6 months to come up with a new system for allowing some prisoners to vote. They have not done this, and have made it clear that they do not intend to allow any convicted prisoners to vote, regardless of the court ruling.

Recently, two prisoners brought claims in the Supreme Court in relation to voting after the Court of Appeal decided against their earlier case.

These cases are ***R (on the application of Chester) v Secretary of State for Justice* [2013]** and ***McGeoch v The Lord President of the Council and another* [2013]**.

Both Mr McGeogh and Mr Chester are serving life sentences. They said that their human rights were being breached because they were not allowed to vote. The two prisoners argued that even though they are not allowed to vote under English law, they should be allowed because of European law.

The Supreme Court did not agree. The Judge's said that the decision about how to apply the voting ban was the decision of each EU state. That means the government in each European country can decide how to apply the ban.

Although the Supreme Court agreed that the UK banning all convicted prisoners from voting was a breach of the Human Rights Act, they did not say that the two prisoners bringing the claim should be allowed to vote. They also said that they would not be telling the government how to change their voting policies or when to bring these changes in.

FURTHER INFORMATION

If you are in prison and would like any of the documents referred to in this booklet or any additional information or advice please contact the Prison Reform Trust.

The Prison Reform Trust has also produced a number of other information booklets and factsheets on other subjects that affect people in prison.

These include:

- Prisoners' Information Book
- Information book for prisoners with a disability.

We are not solicitors and we cannot give you legal advice.

You can write to us at:

Prison Reform Trust
FREEPOST ND 6125
London
EC1B 1PN
(no stamp needed).

Alternatively, you can call our free information line which is open on Mondays between 3.30 and 7.30 pm and on Tuesdays and Thursdays between 3.30 and 5.30 pm.

The number is 0808 802 0060 and you do not need to have the number added to your PIN.

OTHER ORGANISATIONS THAT CAN GIVE INFORMATION AND ADVICE ON YOUR HUMAN RIGHTS

Age UK

Tavis House
1-6 Tavistock Square
London
WC1H 9NA
Helpline: 0800 169 6565 (open 365 days a year from 8am to 7pm)

Age UK provide information and advice via their helpline on matters from health to housing that older people may need assistance with.

They also publish impartial and informative factsheets and advice guides.

The AIRE (Advice on Individual Rights in Europe) Centre

Third Floor
17 Red Lion Square
London
WC1R 4QH
Tel: 020 7831 3850
Advice line: 020 7924 0927 (open from 2pm to 5pm, Tuesday to Thursday)

The AIRE Centre is a specialist charity whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights.

They do this by taking cases to the European Court of Human Rights, providing legal advice to other lawyers and advisers in the voluntary sector, providing legal advice to individuals directly, carrying out training and drafting reports and other publications.

Citizens Advice Bureau

Tel: 08444 111 444 (England)
Tel: 08444 77 20 20 (Wales)

Citizens Advice self-help website adviceguide.org.uk has practical, reliable information to help you solve your problems. Adviceguide also includes frequently asked questions in other languages.

CAB aim to provide the advice people need for the problems they face and improve the policies and practices that affect people's lives.

They provide free, independent, confidential and impartial advice to everyone on their rights and responsibilities. There are different CAB offices in each area. If you would like to contact your local CAB for advice, The Prison Reform Trust can provide you with the address.

Disability Rights UK

12 City Forum
250 City Road
London
EC1V 8AF

Disability Rights UK produce information developed by and for disabled people.

Equality Advisory and Support Service (EASS)

FREEPOST Equality Advisory Support Service FPN4431

Tel: 0808 800 0082 (9am to 8pm Monday to Friday, 10am to 2pm Saturday)

The Equality Advisory Support Service (EASS) is an independent service and available to give free advice, information and guidance to individuals on equality, discrimination and human rights issues.

The Gender Identity Research & Education Society

Melverley

The Warren

Ashtead

Surrey

KT21 2SP

Tel: 01372 801554

The Gender Identity Research & Education Society combines the expertise of a largely voluntary team of trans and non trans people, which provides a wide range of support for trans people and those who care for them,

Howard League for Penal Reform

1 Ardleigh Road

London

N1 4HS

Tel: 020 7249 7373

Free advice line: 0808 801 0308 (Monday to Friday 9am to 5pm and Thursday 9am to 7pm)

The Howard League for Penal Reform is a national charity working for less crime, safer communities and fewer people in prison.

The Howard League legal team provide free, independent and confidential advice, assistance and representation on a wide range of issues to young people under 21 who are in prisons or secure children's homes and centres.

JUSTICE

59 Carter Lane

London

EC4V 6AQ

Tel: 020 7329 5100

JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system.

They carry out research and analysis to generate, develop and evaluate ideas for law reform. In doing so, they draw on evidence, experience and expertise from the United Kingdom and across the world.

They do not take on individual cases or provide legal advice.

Liberty

21 Tabard Street
London
SE1 4LA

General Enquiries: 020 7403 3888

Advice line: 020 7378 8659 (open on Mondays and Thursdays 6pm to 8pm and on Wednesday lunchtimes)

Liberty campaigns to protect basic rights and freedoms through the courts, in Parliament and in the wider community.

They do this through a combination of public campaigning, test case litigation, parliamentary work, policy analysis and the provision of free advice and information.

Maternity Action

52-54 Featherstone Street
London
EC1Y 8RT
Tel: 020 7253 2288
Advice Line: 0845 600 8533

Maternity Action offer free advice for mums and dads worried about their rights at work and rights to benefits and healthcare.

Their Advice Line also offers confidential telephone support.

Rights of Women

Family Law Advice Line: 020 7251 6577 (open from Monday to Thursday from 7pm to 9pm and on Fridays from 12pm to 2pm).

Criminal Law Advice Line: 020 7251 8887 (open on Tuesday from 11am to 1pm).

Immigration and Asylum Law Advice Line: 020 7490 7689 (open on Thursdays between 10am and 12pm and 2pm and 4pm).

Rights of Women offers free confidential legal advice to women on their advice line.

They offer specialist advice in family law, divorce and relationship breakdown, children and contact issues, domestic violence, rape and sexual assault, discrimination and lesbian parenting.

They aim to empower women to access their legal rights.

Stonewall

Tower Building
York Road
London SE1 7NX
Freephone Info Line: 08000 50 20 20 (open Monday to Friday from 9.30am to 5.30pm).

Stonewall's free information service can answer your questions about gay rights.

Stonewall can't give legal advice or help you to pursue a case or complaint, but their trained volunteers and staff aim to put you in touch with the people that can. They can point people towards gay-friendly solicitors and local lesbian, gay and bisexual support groups and services.

GLOSSARY

Article

Each of the rights under the Human Rights Act comes under an Article number. This is how the different rights are referred to. For example, Article 2 is the Right to Life.

Breach

A breach happens when a rule is not followed. When something happens which is against your rights, it is said that your rights have been breached.

Compatible

If something is said to be compatible with the Human Rights Act this means that it meets the standards you are entitled to under that Act.

Damages

Damages is the money that can be given by the courts. It is similar to compensation.

Duty of care

The prison service has a duty of care towards the people they look after. This means that they have to try and make sure that prisoners do not experience unreasonable harm or loss.

ECHR

European Convention on Human Rights.

ECtHR

European Court of Human Rights.

HRA

Human Rights Act.

Incompatible

If something is incompatible with the Human Rights Act this means that it does not meet the standards you are entitled to under that Act.

Lawful

If something is lawful this means that it is allowed, and not against the law.

Negligence

Negligence is when someone does not take reasonable steps to make sure they meet the standards of their duty of care.

Threshold

A threshold is a limit that must be reached in order for your rights to be breached.

Unlawful

If something is unlawful it is not allowed or against the law.

Feedback

We would be interested in any feedback you would like to give us on any of the subjects raised in this information booklet. We would be particularly interested to know of any other subjects relating to your human rights that it would be helpful to have more information about.

Last updated 22.07.2014.