



**REPORT TO: EQUALITY AND DIVERSITY CORPORATE ADVISORY
FORUM , 22 NOVEMBER 2013**

SUBJECT: INFORMATION REPORT: HUMAN RIGHTS

BY:

1. REASON FOR REPORT

1.1 The report is written to inform the Equality and Diversity Corporate Advisory Forum on Human Rights legislation.

2. BACKGROUND

2.1 This year marks the 60th anniversary of the European Convention on Human Rights (ECHR). British lawyers and civil servants were heavily involved in drafting the convention and the UK was one of the first countries to sign up to the convention in 1951. Contrary to common belief it has nothing to do with the European Union. Instead it was created by the Council of Europe. It currently has 47 member states, with Belarus the only European Country not to be a member.

2.2 The ECHR is enforced by the European Court of Human Rights (ECtHR) created by the Council of Europe in 1959 and based in Strasbourg. Its judgements are legally binding. There are 47 judges on the Court, one for each country. The judges are elected by the Parliamentary Assembly of the Council of Europe from lists of three candidates proposed by each country. They hear cases as individuals and not as representatives of their country. The independence of judges is a fundamental human rights principle.

2.3 The Human Rights Act 1998 (HRA) came into force in the UK in October 2000. It codifies the protections in the ECHR into UK law. This mean that individuals can take human rights cases in domestic courts and no longer have to take their cases to Strasbourg.

2.4 There are 16 rights under the HRA, also known as Convention rights. The rights are divided into three categories: absolute rights, limited rights and qualified rights.

2.5 Absolute rights cannot be fringed under any circumstances. These rights are right to life(art. 2), the right to protection from torture and inhuman or degrading treatment (art. 3), the right not to be treated as a slave or to be required to perform forced or compulsory labour (art. 4), the right not to be

punished for actions which were not against the law at the time they were committed (art. 7).

- 2.6 Limited rights are similar to absolute rights in that they cannot be "balanced" against the rights of other individuals or the public interest. But governments are entitled under the Convention to derogate from their application in times of war or national emergency. The right to liberty (art. 5) and the right to a fair trial (art 6) are examples of limited rights.
- 2.7 Qualified rights are are rights which can be restricted not only in times of war or emergency but also in order to protect the rights of another or the wider public interest. In general, qualified rights are structured so that the first part of the Article sets out the right, while the second part establishes the grounds on which a public authority can legitimately interfere with that right in order to protect the wider public interest. Examples are the right to respect for private and family life (art. 8), right to freedom of thought, conscience and religion (art. 9), freedom of expression (art. 10) and freedom of assembly and association (art. 11).
- 2.8 Public authorities have an obligation to act in accordance with the Convention rights. They also have an active duty to intervene if it knows of the existence of a real and immediate risk to someone's life, if someone is subjected to torture or inhuman and degrading treatment, if someone is subjected to slavery.
- 2.9 When it comes to decision making the rights of one person often have to be balanced against the rights of others or against the needs of the broader community. Any restriction that will be imposed in these circumstances needs to be objectively justified, that is it must serve a legitimate aim and the restriction must be no greater than is needed to achieve the aim.
- 2.10 In 2012 there were 3.308 cases brought to the European Court of Human Rights by individuals against the UK. Of these, only 21 were declared admissible and in only 10 did the Court rule that there had been a violation of human rights. The 21 cases represented 2% of all cases heard by the ECtHR.
- 2.11 A handbook for public authorities on human rights was published by the Ministry of Justice in 2006 and can be found online on <http://www.justice.gov.uk/downloads/human-rights/human-rights-handbook-for-public-authorities.pdf>.
- 2.12 The Equality and Human Rights Commission has published guidance on human rights by public sector area. These can be found on <http://www.equalityhumanrights.com/human-rights/human-rights-practical-guidance/guidance-by-public-sector-area/>.
- 2.13 More detailed discussions of human rights issues can be found on the UK Human Rights Blog <http://ukhumanrightsblog.com/>.
- 2.14 The human rights are:

Article 2: Right to life
Article 3: Prohibition of torture
Article 4: Prohibition of slavery and forced labour
Article 5: Right to liberty and security
Article 6: Right to a fair trial
Article 7: No punishment without law
Article 8: Right to respect for private and family life
Article 9: Freedom of thought, conscience and religion
Article 10: Freedom of expression
Article 11: Freedom of assembly and association
Article 12: Right to marry
Article 13: Right to redress (not included in HRA)
Article 14: Prohibition of discrimination (in relation to the Convention rights)
Article 1 of Protocol 1: Protection of property
Article 2 of Protocol 1: Right to education
Article 3 of Protocol 1: Right to free elections by secret ballot
Article 1 of Protocol 13: Abolition of the death penalty.

3. SUMMARY OF IMPLICATIONS

(a) Council / Community Planning Priorities

(b) Policy and Legal

Public authorities have an obligation to act in accordance with the Convention rights. The Scottish Government cannot pass legislation which is not in accordance with the Convention rights. In relation to UK Acts of Parliament, judges can make a declaration of incompatibility if an act is deemed to contravene the Convention rights. It is then up to parliament to decide what action to take. Such declaration was made in January 2009 in relation to the scheme using a list of people considered unsuitable to work with vulnerable adults.

(c) Financial implications

None from this report. Decisions which can be deemed to be in breach of the Convention rights can result in lengthy and costly legal proceedings.

(d) Risk Implications

None from this report. Decisions which can be deemed to be in breach of the Convention rights can result in lengthy and costly legal proceedings and can damage the reputation of the Moray Council.

(e) Staffing Implications

Human rights considerations will need to be taken into account in all relevant decisions as a matter of course.

(f) Property

None

(g) Equalities

Human rights are complementary to equal opportunities.

(h) Consultations

Legal services have been consulted in preparing this report.

5. CONCLUSION

5.1 The report is written to inform the Equality and Diversity Corporate Advisory Forum on Human Rights legislation.

Author of Report: Equal Opportunities Officer

Background Papers:

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Signature: _____ Date : _____

Designation: _____ Name: _____