Bonavero REPORTS

Examining 10 reasons to stay in the European Convention on Human Rights

Informing public debate in the UK

Victoria Adelmant, Başak Çalı, Alice Donald, Joelle Grogan, Philip Leach

BONAVERO REPORT 5/2025
10 DECEMBER 2025

UNIVERSITY OF OXFORD
FACULTY OF LAW
Bonavero Institute of Human Rights

EXAMINING 10 REASONS TO STAY IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS: INFORMING PUBLIC DEBATE IN THE UK

Bonavero Institute of Human Rights

The **Bonavero Institute of Human Rights** is a research institute within the Faculty of Law at the University of Oxford. It is dedicated to fostering world-class research and scholarship on human rights law, actors and institutions in public, constitutional and international law from comparative, critical, inter-disciplinary and practice-oriented perspectives, and to promoting public engagement in and understanding of human rights issues by building valuable conversations and collaborations between human rights scholars and human rights practitioners.

The Bonavero Reports Series presents cutting-edge research in a straightforward and policy-ready manner, and aims to be a valuable source of information for scholars, practitioners, judges, and policymakers on pressing topics of the current human rights agenda. Previous reports in this Series are available on the Institute's Website.

Authors

Victoria Adelmant, Doctoral Researcher in Law, University of Oxford, and Resident at the Bonavero Institute of Human Rights, University of Oxford

Başak Çalı, Head of Research at the Bonavero Institute of Human Rights and Professor of International Law, University of Oxford

Alice Donald, Professor of Human Rights Law, Middlesex University

Joelle Grogan, Senior Visiting Research Fellow, UCD Sutherland School of Law; and Co-Academic Director, Rule of Law Clinic, CEU Democracy Institute

Philip Leach, Professor of Human Rights Law, Middlesex University

Acknowledgements

With thanks to Dr Ed Bates, Dr Joseph Finnerty, Dr Andrew Forde, Jane Gordon, Dr Marija Jovanovic, Professor Francesca Klug, Konrad Ksiazek, Professor Rachel Murray, Enver Solomon, and Martha Spurrier, for their comments on earlier drafts.

How to cite this publication: Victoria Adelmant, Başak Çalı, Alice Donald, Joelle Grogan, and Philip Leach, Examining 10 Reasons to Stay in the European Convention on Human Rights: Informing the Public Debate in the UK, Bonavero Report 5/2025, 10 December 2025

Executive **Summary**

2025 marks two significant anniversaries: the 75th year of the European Convention on Human Rights (ECHR) and 25 years since the Human Rights Act (HRA) gave legal effect to the Convention in the UK. This year has also seen proposals made by Reform UK and the Conservative Party to take the UK out of the ECHR, a step no democracy has ever taken. The pro-withdrawal narrative has been amplified in media reporting which, analysis reveals, is overwhelmingly negative about the ECHR and HRA and dominated by often inaccurate or misleading reporting of the purported impact of the ECHR on immigration control.

Opinion polls show that more people in the UK support staying in the ECHR than leaving, with 48% in favour and 26% against. There is stronger support for the Convention in the devolved nations than in England; for example, 61% of people in Scotland favour staying in, and only 11% in Northern Ireland prefer to leave. 78% of people across the UK agree that rights should be permanent, not something the government of the day can reduce. However, there is also evidence that many people lack a basic understanding of how the Convention works. Only 5% of Britons claim to know a great deal about the ECHR and almost half say they do not know very much.

The UK has now reached a position in which a future government could withdraw from the ECHR, based on inaccurate or false premises and without an informed public debate about the benefits of the ECHR and the consequences of withdrawal.

It is through evidence-based debate that human rights law and policy evolve in democratic societies, as they have always evolved with the changing times, and as they must continue to develop in response to the challenging landscape the UK faces at home and internationally. Yet reasons for the UK to remain in the Convention are largely missing from media reporting and political discussion. This report identifies and examines 10 reasons why the UK should stay in the ECHR, and addresses the counterarguments, based on a comprehensive review of evidence derived from a wide range of sources. These include the everyday practice of public authorities, UK law and constitutional arrangements, case law of UK courts and the European Court of Human Rights, UK and Council of Europe institutional arrangements, UK domestic and foreign policy, international treaties including the Belfast/Good Friday Agreement as well as post-Brexit agreements, and academic and other expert literature.

Examining 10 reasons to stay in the European Convention on Human Rights: Informing public debate in the UK

1. The ECHR **safeguards everyone's basic rights every day** from the courtroom to the care home, from the workplace to the hospital ward, and from local councils to media newsrooms.
2. The ECHR **calls upon the state to actively protect** people when they are at their most vulnerable including children, victims of domestic violence, crime, modern slavery, and people in care.
3. The ECHR **protects people's privacy against intrusion** in an age of mass surveillance and data harvesting, and in the face of heavy-handed policing.
4. The ECHR **holds those in power accountable** when people lose their lives in state failures like the Hillsborough disaster and calls upon the state to learn lessons so that such tragedies do not happen again.
5. The ECHR **protects free speech and democracy**, and **respects parliamentary sovereignty**.
6. The **common law does not provide equal or equivalent protection** to that offered by the ECHR and the European Court of Human Rights.
7. The ECHR was written to **stand the test of time** and ensures that human rights keep up with new threats and changing social attitudes.
8. The ECHR **ensures peace and stability in Northern Ireland** as a cornerstone of the Belfast/Good Friday Agreement and the Windsor Framework.
9. The ECHR **enables international cooperation** on issues such as border control, security, data transfer, and combatting crime which rely on common standards of rights protection.
10. The ECHR and membership of the Council of Europe **increase the UK's influence and credibility on the international stage**.

CONTENTS

TABLE OF CONTENTS

Glossary

ECHR European Convention on Human Rights
ECtHR European Court of Human Rights
EU European Union
HRA Human Rights Act
ICCPR International Covenant on Civil and Political Rights
JCHR Joint Committee on Human Rights
UDHR Universal Declaration of Human Rights

Introduction

2025 has marked two significant anniversaries: the 75th year of the European Convention on Human Rights (ECHR) and 25 years since the Human Rights Act (HRA) gave legal effect to the Convention in the UK. These landmarks are a cause to reflect on the impact of the ECHR in protecting fundamental rights and freedoms for everyone in the UK and across Europe.

This year also saw proposals to withdraw the UK from the ECHR enter mainstream political debate. Reform UK[1] and the Conservative Party[2] have said they would, after repealing the HRA, pull the UK out of the Convention. This is a step no democracy has ever taken.[3] It also makes the Conservative Party an outlier among centre-right parties in Europe, where a policy commitment to withdraw from the ECHR has been made only by certain far right parties.[4]

The most recent UK-wide opinion poll in November 2025 found that more people support staying in the ECHR than leaving, with 48% in favour and 26% against (the rest being 'don't know').[5] 78% of people agreed that rights should be permanent, not something the government of the day can reduce.[6] Support for staying in the ECHR is stronger in the devolved nations than in England. In Scotland, 61% supported remaining in the ECHR and 22% favoured withdrawal, while in Northern Ireland, 51% favoured remaining and only 11% supported withdrawal. In Wales, 47% supported staying in the ECHR – in line with England – but only 20% favoured withdrawal. Analysis of more than a dozen polls since 2013 shows that public opinion in the UK has increasingly favoured staying in the ECHR.[7] Research also shows that the more people know about human rights, the more they support them.[8]

However, there is also evidence that many people lack a basic understanding of how the Convention works: for example, more than 40% believe that the European Court of Human Rights (ECtHR) has the power to annul national laws,[9] which it does not. Only 5% of Britons claim to know a great deal about the ECHR and almost half say they do not know very much.[10]

1 Reform UK, *Operation Restoring Justice: our plan to deport all illegal migrants in the UK, and secure our borders*, August 2025.

2 Conservatives, *Conservatives Announce ECHR Exit Policy*, 4 October 2025. See also advice to the leader of Conservative Party regarding the ECHR by the Shadow Attorney General, Lord Wolfson of Tredegar (the Wolfson Report).

3 The Greek military dictatorship withdrew from the ECHR and the Council of Europe before it was going to be expelled in 1970 and rejoined once democracy was restored in 1974. Russia was expelled after it waged a war of aggression in Ukraine in 2022.

4 Alice Donald, A Badge of Dishonour: Will the UK Conservatives Follow the Far-Right Towards ECHR Withdrawal? *Verfassungsblog*, 29 September 2025.

5 Savanta poll for Amnesty International, 3 November 2025; Amnesty International, 'Never Again' still matters – public backs ECHR 2:1 as politicians threaten exit, 3 November 2025. See also Matthew Smith, What do Britons really think about leaving the ECHR? (YouGov, 8 October 2025), where the figures were 46% in favour of staying in the ECHR and 29% against.

6 Savanta poll for Amnesty International (n 5).

7 Jacques Hartmann, Edzia Carvalho and Samuel White, Do British people want to leave the ECHR? What a decade of polls reveals, *The Conversation,* 9 October 2025.

8 Hartmann, Carvalho and White, Do British people want to leave the ECHR? (n 7).

9 Smith, What do Britons really think about leaving the ECHR? (n 5)

10 Smith, What do Britons really think about leaving the ECHR? (n 5).

The pro-withdrawal narrative has been amplified in media reporting which, analysis reveals, is overwhelmingly negative about the ECHR and HRA and dominated by often inaccurate or misleading reporting of the purported impact of the ECHR on immigration control.[11] Pro-leave arguments have also been fuelled by think tank reports that have gained significant media and political attention, despite criticism of their legal accuracy[12] and the fact that a majority of legal and professional opinion has, in previous consultation exercises on the HRA, been strongly in favour of the HRA and of maintaining the current relationship between the UK and the ECHR system.[13] According to experts, the UK has a well-functioning relationship with the ECHR system:[14] the ECtHR very rarely finds that UK authorities have breached human rights – with just one violation being found in 2023 and one in 2024 – and the UK has a generally strong record of complying with the few judgments that do find a violation.[15]

Despite this evidence, the UK has now reached a position in which a future government could withdraw from the ECHR, based on inaccurate or false premises and without an informed public debate about the benefits of the ECHR and the consequences of withdrawal.[16]

It is through evidence-based debate that human rights law and policy evolve in democratic societies, as they have always evolved with the changing times, and as they must continue to develop in response to the challenging landscape the UK faces at home and internationally. Yet debate about reasons for the UK to remain a party to the ECHR have been largely missing from media reporting and political discussion. This report sets out to inform the public debate about the reasons to stay in the ECHR. It fills the gaps in evidence and understanding about the HRA and the UK's relationship with the ECHR system. The report identifies and examines 10 reasons as to why the UK should stay in the ECHR, and addresses the counter-arguments, based on evidence derived from a wide range of sources. These include the everyday practice of public authorities, UK law and constitutional arrangements, case law of UK courts and the European Court of Human Rights, UK and Council of Europe institutional arrangements, UK domestic and foreign policy, international treaties including the Belfast/Good Friday Agreement as well as post-Brexit agreements, and academic and other expert literature.

---

11 Victoria Adelmant, Alice Donald and Başak Çalı, *The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate*, Bonavero Report 3/2025, 4 September 2025; Tasneem Ghazi, 'Fact and Fiction: the European Convention on Human Rights' The Constitution Society, 5 November 2025.

12 See, for example, Conor Casey, Richard Ekins KC (Hon), Sir Stephen Laws KCB, KC (Hon), *The ECHR and the Belfast (Good Friday) Agreement* (Policy Exchange, 2025) and, in response, Colin Murray and Aoife O'Donoghue, *The Belfast/Good Friday Agreement 1998 & European Convention on Human Rights: Explainer* (Committee on the Administration of Justice, September 2025). See also Section 8.

13 In the 2022 government consultation on replacing the HRA with a Bill of Rights, which elicited 12,873 responses, between 70-90% of responses that addressed specific proposals to weaken protection rejected those proposals; see Ministry of Justice, *Human Rights Act Reform: A Modern Bill of Rights, Consultation response*, July 2022. Separately, an independent review of the Human Rights Act in 2021 noted that, 'The vast majority of submissions received … spoke strongly in support of the HRA'; see *The Independent Human Rights Act Review* (December 2021), para 46.

14 See, e.g. Merris Amos, 'The Value of the European Court of Human Rights to the United Kingdom,' European Journal of International Law 28(3) 763 (2017); Colm O'Cinneide, *Human rights and the UK constitution* (British Academy Policy Centre, 2012).

15 Alice Donald and Joelle Grogan, Compliance with the European Convention on Human Rights: the UK and Europe, UK in a Changing Europe, 12 February 2025.

16 Adelmant, Donald and Çalı (n 11).

1. The ECHR **safeguards everyone's basic rights every day** from the courtroom to the care home, from the workplace to the hospital ward, and from local councils to media newsrooms.

2. The ECHR **calls upon the state to actively protect** people when they are at their most vulnerable including children, victims of domestic violence, crime, modern slavery, and people in care.

3. The ECHR **protects people's privacy against intrusion** in an age of mass surveillance and data harvesting, and in the face of heavy-handed policing.

4. The ECHR **holds those in power accountable** when people lose their lives in state failures like the Hillsborough disaster and calls upon the state to learn lessons so that such tragedies do not happen again.

5. The ECHR **protects free speech and democracy**, and **respects parliamentary sovereignty**.

6. The **common law does not provide equal or equivalent protection** to that offered by the ECHR and the European Court of Human Rights.

7. The ECHR was written to **stand the test of time** and ensures that human rights keep up with new threats and changing social attitudes.

8. The ECHR **ensures peace and stability in Northern Ireland** as a cornerstone of the Belfast/Good Friday Agreement and the Windsor Framework.

9. The ECHR **enables international cooperation** on issues such as border control, security, data transfer, and combatting crime which rely on common standards of rights protection.

10. The ECHR and membership of the Council of Europe **increase the UK's influence and credibility on the international stage**.

The ECHR and HRA in brief

HOW THE UK HELPED TO SHAPE THE ECHR

The ECHR was created in 1950 in the aftermath of the Holocaust and the Second World War. One of the Convention's founding aims was that member states should take 'the first steps' towards the 'collective enforcement' of the Universal Declaration of Human Rights adopted by the United Nations in 1948.

Historical evidence reveals that the drafters of the ECHR were inspired by the British common law legal tradition stretching back to Magna Carta of 1215, the Bill of Rights of 1689, and habeas corpus (protection against unlawful detention).[17]

Winston Churchill played a critical role in founding the Council of Europe – the international organisation underpinning the ECHR – in 1949 through the Treaty of London. He had called in 1948 for a 'Charter of Human Rights, guarded by freedom and sustained by law'.[18]

The UK was the first state to ratify the Convention in 1951 and British lawyers and politicians were influential in drafting it. Among them were Conservative politicians Sir David Maxwell Fyfe, Sir Samuel Hoare, and Harold Macmillan, Liberal politician Lord Layton, and Labour Foreign Secretary Ernest Bevin.[19]

The ECtHR, established by the Convention, was the first international court to enable individuals to bring cases against states for alleged violations of their rights and freedoms.[20] The UK accepted the then optional jurisdiction of the ECtHR to hear individual cases in 1966 and Parliament periodically renewed its consent until 1998, when the jurisdiction of the Court became compulsory for all states. The judge elected in respect of the UK sits on nearly all cases concerning the UK.

17 Ed Bates, The Evolution of the European Convention on Human Rights: From Its Inception to the Creation of a Permanent Court of Human Rights (Oxford Univrsity Press, 2010); O'Cinneide, *Human rights and the UK constitution* (n 14); Francesca Klug, *A Magna Carta for All Humanity: Homing In on Human Rights* (Routledge 2015); Marko Milanovic, 'Britain's Contributions to Human Rights Law,' *British Yearbook of International Law* (2023).

18 Marco Duranti, The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention (Oxford University Press, 2017); Marko Milanovic, 'Britain's Contributions to Human Rights Law,' (n 17); see also Lord Alton and Baroness Chapman's comments in House of Lords Debate, 'European Convention on Human Rights: 75th Anniversary, Volume 844,' 20 March 2025. A Policy Exchange report and several opinion pieces published in 2025 have argued that British lawyers' and politicians' influence in founding the ECHR system is overstated, see: Peter Lilley, 'Debunking the myths about the ECHR' The Spectator, 15 March 2025; Conor Casey and Yuan Yi Zhu, *Revisiting the British Origins of the European Convention on Human Rights* (Policy Exchange, 2025); Richard Ekins, 'The ECHR is not Churchill's court,' The Spectator, 25 May 2025.

19 O'Cinneide, *Human rights and the UK constitution* (n 14); Natasha Holcroft-Emmes, 'How British is the European Convention on Human Rights?' Each Other, 20 June 2022.

20 The ECtHR was instituted in 1959, nine years after the ECHR opened for signature.

BALANCING INDIVIDUAL RIGHTS WITH OTHER PUBLIC AND NATIONAL INTERESTS: THREE DIFFERENT TYPES OF RIGHTS IN THE ECHR

The ECHR works in a way that ensures protection of people's fundamental rights whilst also recognising that certain rights require a balance to be struck between the rights of the individual and the public interest. These different imperatives are reflected in the three different types of rights and freedoms in the ECHR: absolute, limited and qualified.

Absolute rights can never be restricted or suspended, even in a time of emergency. One example is the prohibition of torture and inhuman or degrading treatment or punishment.

Most rights and freedoms are not absolute, which means that states may restrict them in certain circumstances. The right to life is a **limited** right. This recognises that states may need to use lethal force, for example to protect someone from unlawful violence, as long as the force used is no more than absolutely necessary in the circumstances. A person's right to life cannot, however, be balanced against the rights of others or the public interest.

Such a balancing exercise is possible for the **qualified** rights: the rights to private and family life, and freedom of religion and belief, expression and assembly. The Convention allows governments to restrict a person's qualified rights if the restriction is provided for by national law and if there is a pressing social need to do so, for example to protect public order, national security or the rights of others. Any restriction must be proportionate in the particular circumstances; in other words, the state must not use heavy-handed measures when less intrusive means would suffice — it must not use a sledgehammer to crack a nut.

ECHR rights given legal effect through the HRA

- **Article 2:** Right to life
- **Article 3:** Freedom from torture and inhuman or degrading treatment
- **Article 4:** Freedom from 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:** Respect for private and family life, home and correspondence
- **Article 9:** Freedom of thought, belief and religion
- **Article 10:** Freedom of expression
- **Article 11:** Freedom of assembly and association
- **Article 12:** Right to marry and start a family
- **Article 14:** Protection from discrimination in respect of these rights and freedoms

Additional Protocols to the ECHR ratified by the UK

- **Protocol 1, Article 1:** Right to peaceful enjoyment of property
- **Protocol 1, Article 2:** Right to education
- **Protocol 1, Article 3:** Right to participate in free elections
- **Protocol 13, Article 1:** Abolition of the death penalty

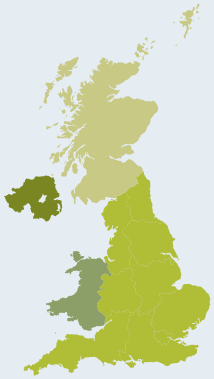
How the UK's relationship with the ECHR system works

What is the Human Rights Act?

Parliament passed the HRA in 1998 to incorporate ECHR rights into UK law. This enables people in the UK to directly claim their rights in UK courts. Before the HRA came into effect in 2000, anyone in the UK who wanted a court to review whether their human rights had been violated had to go to the ECtHR in Strasbourg, France. Today, people in the UK can *only* apply to the ECtHR if they have taken their case as far as they can in UK courts.

How does the HRA apply in different parts of the UK?

The HRA applies across the UK. It has a stronger effect in the devolved nations of Scotland, Wales and Northern Ireland than it does in the Westminster Parliament. The Scotland Act 1998, the Wales Act 1998 and the Northern Ireland Act 1998 each prevent the devolved assemblies from passing legislation that is incompatible with Convention rights. As a result, acts of the devolved legislatures or executives can be quashed by courts for non-compliance with the ECHR, unlike laws passed by Parliament.[21]



How does the HRA affect public services?

Under the HRA, public authorities and other bodies carrying out public functions must uphold human rights in all their day-to-day decisions and actions. It is unlawful for a public authority to act in a way which is incompatible with a Convention right unless, because of a law passed by Parliament, they could not have acted differently.

How does the HRA affect courts?

UK courts are required under the HRA to 'take into account' the case law of the ECtHR when considering a human rights issue, but they are free to depart from this case law and sometimes do.[22] The HRA does not enable UK courts to strike down Acts of Parliament. Rather, it directs courts to seek to interpret legislation in a way that is compatible with ECHR rights and, if this is not possible, higher courts can (but rarely do[23]) issue declarations of incompatibility. Such declarations do not invalidate the law, but signal to Parliament that the law should be reconsidered. It is for the government, and ultimately for Parliament, to decide whether or how to do so.

How does the HRA affect Parliament?

The HRA was designed to maintain parliamentary supremacy. The HRA is an ordinary statute: Parliament can decide whether to revise or repeal it. As noted above, courts cannot strike down primary legislation which is incompatible with Convention rights. When ministers introduce a Bill, they must tell Parliament whether or not they consider it compatible with human rights. Ministers can decide that, even though the law risks being incompatible with human rights, they want to introduce it anyway. Parliament can then choose whether or not to pass the law.

What happens when an applicant from the UK takes a case to the ECtHR?

Each year, most applications to the ECtHR made against the UK are found to be inadmissible. This means they are not accepted by the Court; for example, because the applicant has not used all reasonable routes to a remedy in the UK courts or because they have taken too long to apply, or their case is not well-founded. Only a tiny proportion of UK applications result in the finding of a violation.

21 House of Lords European Union Committee, The UK, the EU and a British Bill of Rights, 2015-16 HL 139.

22 Aileen Kavanagh, *Constitutional Review under the UK Human Rights Act* (Cambridge University Press, 2009) 164; Lord Irvine of Lairg, 'A British Interpretation of Convention Rights?' *Lecture at the University College London Judicial Institute*, 14 December 2011.

23 See Section 5.

What is the 'Human Rights Act effect'?

The 'Human Rights Act effect'[24] describes the downward trend in the number of cases where the ECtHR finds that UK authorities have breached someone's rights. There are three reasons to explain the HRA effect:

- The HRA creates an obligation for public bodies to uphold rights, meaning that people's rights are less likely to be breached in the first place.
- UK courts are now the first port of call for anyone who believes their rights have been violated, and UK judges consider human rights more explicitly than they could before the HRA. This means that fewer cases find their way to the ECtHR.
- When cases do reach the ECtHR, it is more likely to follow the reasoning and conclusions of UK courts and the decisions of public authorities where they are informed by human rights considerations, as the HRA requires.

What happens if the ECtHR finds that the UK has violated someone's rights?

The Convention requires national authorities to put right violations found by the Court and ensure they do not happen again. But the Court rarely says how this should happen.[25] If the Court finds that a UK law breaches the ECHR, this does not have the effect of annulling the law. Instead, responsibility for deciding on the remedy rests with national authorities. Governments, through the Committee of Ministers of the Council of Europe, monitor each other's implementation of ECtHR judgments.

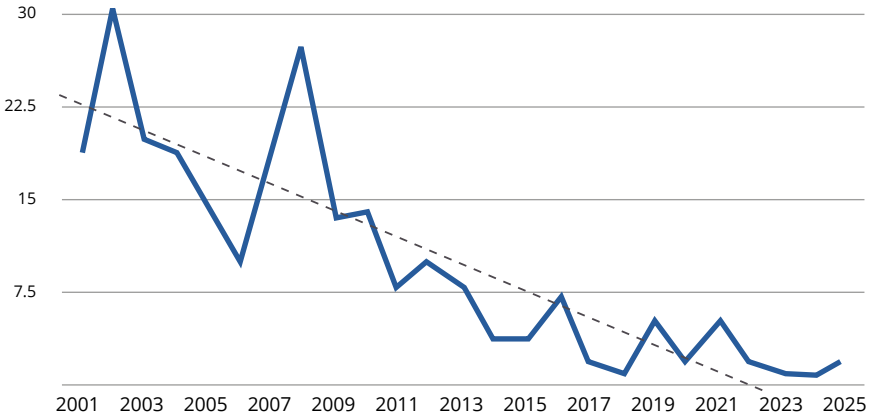
The UK at the ECtHR in 2024

The UK has one of the strongest human rights records among the 46 member states of the Council of Europe. In 2024:[26]

- **332** applications concerning the UK were processed by the Court
- **328** were declared inadmissible or struck out
- **1** violation was found
- **1** judgment found no violation
- **The UK had the 3rd lowest** number of applications per capita out of 46 states

Judgments against the UK have declined since the Human Rights Act

European Court of Human Rights judgments against the UK, 1 January 2001 to 30 November 2025



Source: Council of Europe, European Court of Human Rights, Annual Statistics up to 30 November 2025

24 Alice Donald, 'Earning Deference from Strasbourg: Has the UK Got the Message?', *U.K. Constitutional Law Blog* (6th December 2022).

25 Alice Donald and Anne-Katrin Speck, 'The European Court of Human Rights' Remedial Practice and its Impact on the Execution of Judgments' *Human Rights Law Review 19(1) 83* (2019).

26 ECtHR, Analysis of Statistics 2024 p. 14; Annual Report 2024, p. 37.

1 The ECHR safeguards everyone's basic rights every day

Under the ECHR, the rights of everyone in the jurisdiction of each member state are protected. This means that everyone, citizens and non-nationals alike, is entitled to the protection that human rights provide in situations of everyday life. Human rights protect all individuals and non-government organisations.[42] In a recent opinion poll, 87% of people agreed that 'rights and laws must apply equally to everyone'.[43] It is legally and factually inaccurate to suggest, as much media reporting does, that human rights are primarily claimed by foreign national offenders, people convicted of criminal offences, and terror suspects.[27] In practice, evidence points to the wide range of people and organisations who rely on ECHR rights in day-to-day interactions with public services, before UK courts or at the ECtHR.

The variety of individuals and groups who have claimed their rights in recent years include Associated Newspapers (publishers of the *Daily Mail* and *Mail on Sunday*), which sought to uphold free expression of the media;[28] and the NGO Big Brother Watch, which successfully argued that the UK's secret surveillance regime violates everyone's privacy rights.[29] They include cases brought by perpetrators of crime seeking the right to a fair trial,[30] as well as victims of crime, such as women attacked by the 'black cab rapist' John Worboys whom the police failed to protect due to a botched investigation.[31] They include victims and survivors of domestic violence[32] and child trafficking,[33] older people[34] and disabled people.[35]

Evidence also indicates that the way in which Parliament chose to incorporate the ECHR when it passed the HRA has enabled the embedding of human rights standards in the design and day-to-day delivery of public services, including in the NHS, care homes, schools and local authorities. This happens by means of section 6 of the HRA, which requires public authorities and other bodies carrying out public functions to uphold human rights in all their decisions and actions.[36] For example, police services in Northern

27 Adelmant, Donald and Çalı (n 11); Adam Wagner, 'The Monstering of Human Rights' *UK Human Rights Blog*, 22 September 2014. In 2013, following the publication by the Daily Mail of an article suggesting that all UK applicants to the ECtHR were criminals, the ECtHR itself took the unprecedented step of making a statement condemning the inaccurate claim, noting that it was 'seriously misleading' and 'simply not true' and providing many examples of a varied range of applicants whose claims at the ECtHR had been successful, including for instance *victims* of crime. Quoted in Human Rights Joint Committee – Seventh Report: Human Rights Judgments, 4 March 2015.

28 *Associated Newspapers Limited v United Kingdom*, No. 37398/21, 12 November 2024.

29 *Big Brother Watch and Others v United Kingdom*, Nos. 58170/13, 62322/14 and 24960/15, 25 May 2021.

30 *Ezeoke v United Kingdom*, No. 61280/21, 25 February 2025.

31 *DSD v Commissioner of Police of the Metropolis* [2018] UKSC 11.

32 *J.D. and A v United Kingdom,* Nos. 32949/17 and 34614/17, 24 October 2019.

33 *V.C.L. and A.N. v United Kingdom*, Nos. 77587/12 and 74603/12, 16 February 2021.

34 See Written evidence from Age UK to the Joint Committee on Human Rights inquiry in 2018 on Twenty Years of the Human Right Act.

35 *R (TMX) v London Borough of Croydon & Anor* [2024] EWHC 129.

36 Section 6 of the HRA makes it unlawful for a public authority to act in a way which is incompatible with a Convention right unless, under a law passed by Parliament, they could not have acted otherwise.

Ireland and Scotland have used the ECHR as the basis for their codes of ethics,[37] and bodies that inspect the police have embedded ECHR rights in their scrutiny and guidance, such as on the use of force,[38] and the policing of protest.[39] Other independent watchdog bodies, such as ombudspersons and bodies that inspect and regulate public services, also serve to protect human rights in everyday life in the UK in ways that are often invisible to most people.[40]

"[H]UMAN RIGHTS ARE AN INTEGRAL PART OF THE RELATIONSHIP BETWEEN CITIZEN AND STATE AND ARE THEREFORE NECESSARILY WITHIN OUR REMIT. WE CURRENTLY TREAT HUMAN RIGHTS FAILINGS AS PART OF OUR CONSIDERATION OF MALADMINISTRATION."

– PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN[41]

While it cannot be exhaustive, this section highlights the wide array of individuals and groups who have relied on ECHR rights across the UK and provides examples of how people have used the Convention and HRA, both inside and outside the courtroom, to uphold their rights.

37 See, e.g. Northern Ireland Policing Board, Police Service of Northern Ireland Code of Ethics (2008), which is provided for under section 52 of the Policing (Northern Ireland) Act 1998; Code of Ethics for Policing in Scotland which is required by statute (Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025, s.36A(4)(f)) to reflect the ECHR and other international human rights instruments.

38 Her Majesty's Inspectorate of Constabulary (HMIC), *The rules of engagement: A review of the August 2011 disorders* (2011); see especially 'Ten key principles governing the use of force by the Police Service' which reflect Articles 2, 3 and 8 of the ECHR (p. 79).

39 HMIC, Adapting to protest (2009), on the lessons learned from the policing of the anti-globalisation protest at the G20 summit in London on 1 April 2009.

40 Lee Marsons, 'The greenshoots of a human rights ombudsprudence in the Local Government and Social Care Ombudsman (LGSCO)', *Journal of Social Welfare and Family Law* 46(1) 104 (2024).

41 Written evidence from the Parliamentary and Health Service Ombudsman to the Joint Committee on Human Rights, 23 June 2022.

42 Under Article 34 of the ECHR.

43 Savanta poll for Amnesty International (n 5).

44 *R (on the application of A) v Secretary of State for Work and Pensions* [2016] UKSC 58.

45 *J.D. and A v United Kingdom* (n 34).

46 The Domestic Abuse Support (Relevant Accommodation and Housing Benefit and Universal Credit Sanctuary Schemes) (Amendment) Regulations 2021.

47 See Written evidence from Age UK to the Joint Committee on Human Rights inquiry in 2018 on Twenty Years of the Human Right Act.

48 Lucy Matthews, Sonya Sceats, Sanchita Hosali and Jean Candler, The Human Rights Act: Changing Lives, 2nd edition, British Institute of Human Rights (2008).

49 Valeska David, ECtHR condemns the punishment of women living in poverty and the 'rescuing' of their children, Strasbourg Observers, 17 March 2016.

50 *McLaughlin, Re Judicial Review (Northern Ireland) (Rev 1)* [2018] UKSC 48 (30 August 2018). The requirement in Section 39A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 for a marriage/civil partnership as a qualifying condition of Widowed Parents Allowance was incompatible with Article 14 (prohibition of discrimination), read with Article 8 (right to private and family life).

51 *Jackson & Ors v SSWP* [2020] EWHC 183 (Admin).

Victims and survivors of domestic violence

A woman at risk of domestic violence faced eviction from her home, which had been fitted with a panic room under a Sanctuary Scheme because her ex-partner had raped and stalked her. In 2012, her benefits were cut because of the 'bedroom tax', which reduced housing benefit to those who had more bedrooms than they needed. The woman took legal action, but lost her case in the Supreme Court, which found no unlawful discrimination.[44] She went to the ECtHR, which ruled that the government had discriminated against her based on her gender, as she was the victim of domestic violence, which overwhelmingly affects women.[45] The government changed the law to exempt domestic violence survivors within the Sanctuary Scheme from cuts to housing benefits.[46]

Older people

A man with dementia, who was unable to make decisions about his care, lived at home with his partner and her son. After a stay in hospital, a dispute emerged between health authorities who believed he should be admitted to a care home, and his partner who wanted him to return home. A judge ruled that forcing the man to be sent to a care home would deprive him of his right to family life with his partner. The judge noted that there is more to human life than physical needs, and that serving the man's best interests meant taking his emotional needs into account. The man could therefore go home to his family.[47]

Children

A woman who had left her partner after she discovered he was abusing their children was living in poverty with her children and struggling to get them to school. Social workers sought to separate the children from her. Using the HRA, with support from an advocate and without going to court, the woman invoked her children's right to respect for family life and right to education to challenge the decision, and the family was given stable housing.[48] The ECtHR has repeatedly said that poverty can never be the sole ground for removing children from their family.[49]

Unmarried couples

The HRA has been used to ensure that unmarried couples and their children are not discriminated against when one parent dies. In 2018, the Supreme Court declared that it was discriminatory to deny Widowed Parents' Allowance to a widow in Northern Ireland, Siobhan McLaughlin, because she had not been married or in a civil partnership with her partner with whom she had lived for 23 years and had four children.[50] The court relied upon ECtHR case law on discrimination, and stated that children should not suffer disadvantage because their parents chose not to marry. In 2020, the High Court made a similar ruling in respect of higher-rate Bereavement Support Payment.[51] In response to the courts' declarations of incompatibility, the government extended bereavement benefits to surviving cohabitees with children.[52] More than 8,000 backdated claims had been made as of July 2025.[53]

Disabled people

Jan Sutton was severely disabled due to multiple sclerosis. In 2011, she took Norfolk County Council to court using the HRA after the care she was receiving from social services was cut, leaving her stuck in bed and unable to use the toilet, and forcing her to go into debt paying private care agencies. She called the situation at the time 'utterly degrading and dehumanising'.[54] Jan later received the support that she needed and became an awarded-winning disability rights campaigner before her death in 2017.[55]

Workers

In 2024, the Supreme Court found that UK law breached the right to freedom of association under Article 11 of the ECHR because it failed to protect workers who are disciplined for taking part in lawful strike action.[56] The case was brought by Fiona Mercer, a support worker for a care services provider, who had been disciplined and suspended while participating in a lawful strike. UK law protects workers participating in lawful strike action from dismissal, but not suspension. Having taken into account the ECtHR's case law regarding Article 11, the Supreme Court issued a declaration of incompatibility. The government has acted to close this gap through the Employment Rights Bill, meaning that in future, employees will be protected against both dismissal and disciplinary action when taking part in lawful strike action.[57]

Parents whose children are in hospital

When David Glass, a child with severe disabilities, went into hospital, his mother, Carol Glass, objected to the doctors' decision to give him morphine and put in place a 'do not resuscitate' order. David's condition worsened and at a moment of crisis, Carol resuscitated David herself. David survived and went home the same day. Carol and David applied to the ECtHR, which found that the doctors' decision to impose treatment on David in defiance of his mother's objections breached his right to physical integrity under Article 8 of the ECHR.[58] The Department of Health later updated its guidance, reaffirming the need for parental consent before administering medical treatment to a child.[59]

People wishing to express their religion or belief

The ECtHR increased protection for people wishing to express their religion or belief in their workplace when it decided that British Airways had not struck a fair balance when it prevented a Christian employee, Nadia Eweida, from wearing a cross on a necklace over her uniform due to its corporate dress code.[60] The Court found a breach of Article 9 of the ECHR (freedom of thought, conscience and religion). It referred to the foundational role of freedom of religion and belief in democratic societies, and the value to people who have made religion or belief a central tenet of their life to be able to communicate that belief to others.[61]

52 Bereavement Benefits (Remedial) Order 2023.

53 Department for Work and Pensions, Uptake of backdated Bereavement Support Payment and Widowed Parent's Allowance under the Bereavement Benefits (Remedial) Order 2023, 14 July 2025.

LGBTQ+ people

Until the year 2000, it was illegal to be openly gay in the British Armed Forces.[62] This ban was only lifted after judgments of the ECtHR in 1999.[63] Joe Ousalice used the HRA to gain back medals that had been stripped because of his sexuality. Mr Ousalice served as a radio operator in the Navy for nearly 18 years in the Falklands War, Northern Ireland and the Middle East. Yet he had been discharged in 1993 on the grounds that his conduct was 'prejudicial to good order and naval discipline'. The Ministry of Defence issued a formal apology for the hurt caused and introduced a policy to restore medals to all LGBTQ+ veterans affected by the ban.

Newspaper publishers

Journalists and newspaper publishers in the UK have relied on rights under the ECHR, notably the protection for freedom of expression. In a recent case against the UK at the ECtHR, the Court ruled that the right to freedom of expression of the publisher of the *Daily Mail* and *Mail on Sunday* had been violated.[64] The 'success fees' the publisher had to pay to lawyers who had been hired on a 'no win no fee' basis were, the Court held, excessive and thereby violated Article 10 of the ECHR.

"[O]UR HUMAN RIGHTS PROTECTIONS ... EMPOWER ORDINARY PEOPLE ACROSS THE UK. [THE ECHR] IS AN IMPORTANT PART OF OUR COUNTRY'S SAFETY NET, NOT AN INCONVENIENCE WHICH MUST BE TOLERATED. ITS RIGHTS ARE COMMON-SENSE, PRAGMATIC PROTECTIONS WHICH IMPROVE SERVICES AT HOME, AS WELL AS INCREASE THE UK'S INTERNATIONAL COOPERATION ABROAD."

– 292 CHARITIES AND NGOS IN THE UK, NOVEMBER 2025[65]

54 Amnesty International, Jan's story: 'I began to feel like a human being again, 30 April 2015.

55 Jan Sutton, Striving: a right, a responsibility and a risk (Authors of Our Lives, 19 February 2014).

56 *Secretary of State for Business and Trade v Mercer* [2024] UKSC 12.

57 Employment Rights Bill, European Convention on Human Rights Memorandum for the Bill as introduced in the House of Commons, paras 133(iii) and 141.

58 *Glass v United Kingdom*, No. 61827/00, 9 March 2004.

59 Department of Health, Reference guide to consent for examination or treatment, second edition (July 2009).

60 *Eweida and Others v United Kingdom,* Nos. 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013.

61 *Eweida and Others v United Kingdom* (n 60), para 94.

62 Help for Heroes, LGBT+ rights in the armed forces.

63 *Smith and Grady v United Kingdom,* Nos. 33985/96 and 33986/96, 27 September 1999; *Lustig-Prean and Beckett v United Kingdom,* Nos. 31417/96 and 32377/96, 27 September 1999. These judgments are further discussed below, in section 7.

64 *Associated Newspapers Limited v United Kingdom* (n 28).

65 'Almost 300 organisations express support for ECHR on 75th anniversary,' Liberty, 3 November 2025.

2 The ECHR calls upon the state to actively protect people when they are at their most vulnerable

The ECHR and HRA ensure protection both *from* and *by* the state. Public bodies, such as the police and NHS, must not only refrain from directly harming individuals, but they must also take steps to protect at-risk individuals and actively prevent harm. In such cases, it is the state's failure to act, rather than its actions, that might breach a person's rights. The obligation on states to act protectively or preventively, known as a 'positive obligation', is especially significant in relation to people who are in vulnerable circumstances and those who are under the care or control of the state. Evidence shows that these obligations have served to raise the standard of how public bodies act, as examples in this section show. Their preventive function also reduces the likelihood that people in the UK would need to go to court to protect their rights.

Efforts by the previous Conservative government to amend how the ECHR operates in the UK sought to remove positive obligations on public authorities. The 2022 Bill of Rights Bill (which was intended to replace the HRA) included a clause that would have prevented UK judges from interpreting ECHR rights in ways that would create positive obligations, in order to '[reduce] burdens on public authorities' and remove the 'constant threat of having to defend against expensive human rights claims'.[66] An alternative perspective ventured by scholars[67] and senior judicial figures[68] is that positive obligations are a means of preventing harm from occurring, especially to people in vulnerable circumstances, and of ensuring that breaches of fundamental rights are investigated and perpetrators brought to justice.

> "[O]UR BETTER UNDERSTANDING OF THE HRA ENABLES US … TO BE MORE EFFECTIVE AT IDENTIFYING AND RESPONDING TO … INCIDENTS WHERE THE THREAT IS THE GREATEST AND WHERE WE NEED TO PERFORM OUR CORE ROLE—TO PROTECT LIFE. THE HRA ACTS AS A MORAL COMPASS AND HELPS US TO STEER OUR WAY THROUGH BOTH FAST-TIME SITUATIONS WHERE THERE IS A THREAT TO LIFE AND SLOWER-TIME INVESTIGATIVE OR PUBLIC ORDER DILEMMAS, WHERE THERE IS NO OBVIOUS RIGHT OR WRONG."
>
> — SARAH POOLMAN (DEPUTY CHIEF CONSTABLE OF SOUTH YORKSHIRE) ET AL[69]

66 See Ministry of Justice, Bill of Rights Bill (2022); Dominic Raab, Strasbourg in the Dock: Prisoner Voting, Human Rights and the Case for Democracy (Civitas: Institute for the Study of Civil Society, 2011), p. 12-13.

67 See, e.g., Corina Heri, Responsive Human Rights: Vulnerability, Ill-treatment and the ECtHR (Bloomsbury, 2021).

68 Remarks by Baroness Hale, former President of the UK Supreme Court, delivered on her behalf at a hearing of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE) in Paris, 22 March 2023.

HOW POSITIVE OBLIGATIONS WORK IN PRACTICE

Article 1 of the ECHR says that states 'shall secure' to everyone in their jurisdiction the rights and freedoms in the Convention. This means that states have committed themselves to taking action to protect rights, and not only to refrain from directly breaching them. Rulings by the ECtHR and UK courts guide public authorities as to ***how*** to fulfil this obligation, i.e. the circumstances under which they should take proactive steps to prevent harm.

All rights and freedoms in the Convention can give rise to positive obligations and examples are presented elsewhere in this section. Fundamental rights under Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment) and Article 4 (prohibition of slavery, servitude and forced labour) involve the most extensive obligations, which fall into three main types. We can take, as an example, the positive obligations that arise under the right to life.

First, states have an overarching obligation to put in place **laws and regulations** to deter and sanction criminal offences that pose a threat to life and to provide redress to victims.[70]

Secondly, states must sometimes act to **safeguard the life of a person or a group of people** in particular circumstances. This obligation is triggered when public authorities, like the police, knew or ought to have known at the time of a fatal incident of a real and immediate risk to a person's life from another person or another type of threat,[71] and when the authorities failed to take steps within their powers which could reasonably have been expected to avoid that risk.[72] At the same time, the ECtHR recognises that public authorities cannot protect people in every life-threatening situation, because human behaviour is unpredictable and resources finite; hence, this duty must be interpreted in a way which does not impose an 'impossible or disproportionate burden' on public authorities.[73]

Thirdly, states have a duty to **effectively investigate** deaths that occur under suspicious circumstances or when there has been a potential state failure to protect life in order to establish what happened, identify and punish any perpetrators, and learn lessons to prevent future deaths.[74]

"WHEN RIGHTS ARE PROPERLY PROTECTED BY PUBLIC OFFICIALS, WE DON'T HEAR ABOUT THEM – IT JUST HAPPENS. EVERY TIME A CHILD IS PROTECTED FROM HARM BY A SOCIAL WORKER OR A TEACHER; EVERY TIME A WOMAN FLEEING DOMESTIC VIOLENCE IS OFFERED SECURE ACCOMMODATION BY THE STATE; EVERY TIME A CARE WORKER PROTECTS AN OLDER PERSON WITH DEMENTIA FROM FRAUD ... THESE ARE THE MOMENTS WHEN PUBLIC OFFICIALS ARE MEETING THEIR POSITIVE OBLIGATIONS UNDER OUR HUMAN RIGHTS ACT."

– BRITISH INSTITUTE OF HUMAN RIGHTS[75]

69 Sarah Poolman, Richard Wilshaw and Jamie Grace, Human rights in policing - the past, present and future, *The Political Quarterly,* 2019. Sarah Poolman is now Deputy Chief Constable of South Yorkshire.

70 *L.C.B. v United Kingdom*, No. 23413/94, 9 June 1998.

HOW PUBLIC AUTHORITIES USE THE HRA TO FIND BALANCED SOLUTIONS

There is abundant evidence about how ECHR rights, given effect through the HRA, provide decision makers with a framework to manage risk and find balanced and proportionate solutions to complex problems.[76] This may involve balancing the rights of different individuals or groups, or balancing different rights for the same person or group of people.

THE RIGHT OF PEOPLE IN CARE SETTINGS TO MAINTAIN CONTACT WITH LOVED ONES

The rights of people in care homes, hospitals and hospices to maintain contact with their loved ones came into sharp focus during the COVID-19 pandemic. Blanket visiting restrictions were imposed to protect the right to life, both of people receiving and providing care, yet the resulting isolation caused rapid declines in many people's physical and mental health due to prolonged isolation from their families.[77] Groups representing carers and people in care have used the right to private and family life (Article 8 of the ECHR) to argue for people in care to be given a legal right to visitors, even under difficult circumstances like the pandemic.[78] The Joint Committee on Human Rights has urged the government to legislate in order to achieve the correct balance between the different rights at stake,[79] and a government consultation of users and providers of services in care homes, hospitals and hospices is now under way.[80]

71 For example, in the context of self-harm, industrial or environmental disasters, or accidents; see European Court of Human Rights, Guide on Article 2 of the European Convention on Human Rights, updated in August 2025.

72 This test was first set out in *Osman v United Kingdom*, No. 23452/94, 28 October 1998, para 116. This case concerned a teacher who became violently obsessed with a pupil and killed three people including the boy's father. UK police forces now issue Threat to Life warnings (previously known as 'Osman warnings') to individuals where they believe there is a real and immediate threat to the person's life.

73 *Osman v United Kingdom* (n 72).

74 See, e.g., *R (Middleton) v West Somerset Coroner* [2004] UKHL 10. See also Section 4 of this report.

75 British Institute of Human Rights, The duty to protect our human rights (positive obligations). What will change under the Rights Removal Bill and what does this mean in real life? (September 2022).

76 See, e.g. Joint Committee on Human Rights, Protecting human rights in care settings, HC216 2022–23, 13 July 2022.

77 Joint Committee on Human Rights, Care homes: Visiting restrictions during the Covid-19 pandemic, HC1375 2019-21, 5 May 2021, p. 9.

78 See, e.g. Rights for Residents, Care Rights UK and John's Campaign.

79 Joint Committee on Human Rights, Protecting human rights in care settings (n 76) paras 83-84.

80 Department of Health and Social Care, Review of CQC Regulation 9A: visiting and accompanying in care homes, hospitals and hospices, 28 May 2025.

PROTECTING PEOPLE WHO ARE NOT ABLE TO MAKE DECISIONS FOR THEMSELVES

People who are unable to make decisions for themselves are especially vulnerable to their rights being breached through practices such as chemical and physical restraint and seclusion, sometimes applied over very long periods.[81] This can happen to people with **dementia or severe autism or learning disabilities.** Cases at the ECtHR have raised the standard of protection that must be provided for people who are **deprived of their liberty in order to enable their care or treatment.** In a key judgment, the ECtHR found that detaining a man with severe autism in a hospital as an 'informal patient' without any legal safeguards amounted to unlawful detention in violation of Article 5 ECHR, the right to liberty.[82]

In response, the government introduced Deprivation of Liberty Safeguards (DoLS), which provide protection to adults who are unable to consent to care or treatment and ensure that any restriction of their liberty is in their best interests and the least restrictive way to keep them safe. In 2023-24, more than 332,000 applications for DoLS were made by hospitals and care providers in England.[83]

PREVENTING HARM IN THE CONTEXT OF VIOLENCE AGAINST WOMEN AND GIRLS

Before the HRA, victims and survivors of gender-based and domestic violence had no access to remedies in UK courts for breaches of their ECHR rights, because in the common law there is no liability in negligence where victims of crime are failed by the criminal justice system.[84] Positive obligations give rights to women and girls which can now be enforced in UK courts or at the ECtHR, including against the police when they fail to use their powers effectively.

The standards established in case law by UK courts and the ECtHR are embedded in official guidance to all police forces.[85] In assessing the immediacy of the risk to life (Article

81 Joint Committee on Human Rights, Protecting human rights in care settings (n 76) paras 39-41.

82 *H.L. v United Kingdom*, No. 45508/99, 5 October 2004.

83 NHS England, Mental Capacity Act 2005, Deprivation of Liberty Safeguards, 2023-24: Official statistics, 22 August 2024. DoLS are now known as Liberty Protection Safeguards and have been expanded to apply to people over 16, not only in residential care homes and hospitals, but also in supported accommodation and a person's own home; see Social Care Institute for Excellence, What are Liberty Protection Safeguards?, October 2022.

84 See *Hill v Chief Constable of West Yorkshire* [1989] AC 53, a case brought by the mother of the last victim of the 'Yorkshire Ripper', Jacqueline Hill. The House of Lords ruled that the police do not owe a general duty of care to individual members of the public in the investigation of crime. The police were not liable for the murder, even though mistakes were made, because imposing a duty of care on the police was not considered 'fair, just, and reasonable.' The police needed to be able to perform their duties without the fear of lawsuits.

85 College of Policing, Domestic abuse: leadership, strategic oversight and management, states that 'The requirement for positive action in domestic abuse cases incurs obligations at every stage of the police response. These obligations extend from initial deployment to first response, through the whole process of investigation, and the protection and care of victims and children'.

2 ECHR) in domestic violence cases, the ECtHR takes into account evidence about the common trajectory of escalation in such cases, so that the positive obligation can be triggered in any situation of domestic violence in which harm is imminent or has already materialised and is likely to happen again.[86] Further specific positive obligations include the duty to assess in each concrete situation the nature and level of risk to a person,[87] and to use appropriate preventive measures such as restraining orders.[88]

Article 3 ECHR applies where a victim of gender-based or domestic violence is exposed to ill-treatment so severe that it amounts to inhuman or degrading treatment.[89] When that threshold is not met, Article 8 (the right to respect for private life) obliges states to prevent and punish grave acts affecting a person's physical or psychological integrity, with children and other vulnerable individuals being especially entitled to effective protection.[90]

Alleged breaches of Article 2 and/or Article 3 of the ECHR can trigger a further obligation to investigate cases of domestic violence and sexual violence.[91]

REQUIRING POLICE TO CONDUCT EFFECTIVE CRIMINAL INVESTIGATIONS: THE CASE OF THE 'BLACK CAB RAPIST'

Between 2002 and 2008, John Worboys, the 'black cab rapist', used 'date-rape' drugs to sexually assault more than 100 women.[92] Two women attacked by Worboys in 2003 and 2007 had reported to the Metropolitan Police their belief that they had been raped, but they were not taken seriously and the investigation into their complaints was marred by both systemic failures to provide adequate resources and training to officers and operational failures such as failing to interview witnesses, gather CCTV and connect the multiple reported attacks.[93] As a consequence, Worboys continued to attack women until he was arrested in 2008.

The two women, known as DSD and NBV, brought actions against the Metropolitan Police under the HRA arguing that it had violated Article 3 of the ECHR by failing to effectively investigate their allegations, thereby exposing them to inhuman and degrading treatment. The Supreme Court found that Article 3 created an investigative duty on the state authorities, the breach of which could involve both systemic and operational failings.

86 *Kurt v Austria*, No 62903/15, 15 June 2021, para 175. See also Vladislava Stoyanova, 'Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete,' *Human Rights Law Review* (2023) 23(3).

87 *Kurt v Austria* (n 86) para 168.

88 See *Opuz v Turkey*, No 33401/02, 9 June 2009.

89 Several ECtHR cases have determined that applicants had their Article 3 rights violated when subjected to rape, see e.g. *Aydin v Turkey*, No. 57/1996/676/866, 25 September 1997; *M.C. v Bulgaria,* No. 39272/98, 4 December 2003.

90 *M.C. v Bulgaria* (n 89).

91 *Volodina v Russia*, No 41261/17; *B.V. v Belgium,* No. 61030/08, 2 May 2017; *MC v Bulgaria* (n 89).

92 Stephen Clark, DSD and the Article 3 investigative duty: the long road to justice, Garden Court Chambers, 26 February 2018.

> The case does not mean that the police will be liable for every investigation in which there are errors.[94] It does mean, however, that people can hold the police to account where they are a victim of a crime which amounts to torture or inhuman or degrading treatment, such as rape, sexual assault and other serious assaults, both physical and psychological, where the police have made substantial failures within an investigation.

"[T]HOSE WHO WANT TO REPEAL [THE HUMAN RIGHTS ACT] OR WITHDRAW FROM THE EUROPEAN CONVENTION ON HUMAN RIGHTS … SOMETIMES IMPLY IT UNREASONABLY PROTECTS RAPISTS AND CHILD ABUSERS, FAILING TO UNDERSTAND HOW THE ACT HAS CRITICALLY EXTENDED VICTIMS' RIGHTS."[95]

– HARRIET WISTRICH, LAWYER FOR THE CLAIMANTS IN DSD AND NBV V METROPOLITAN POLICE

PROTECTION FOR VICTIMS OF MODERN SLAVERY

Modern slavery is a term used to describe cases of severe exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power or vulnerability.[96] Examples include sexual or labour exploitation and exploitation through criminal activity.[97] In 2024, 19,125 potential victims of modern slavery in the UK were referred to the Home Office, almost a quarter of whom (and the largest group by nationality) were British.[98] Police data suggests there could be at least 100,000 victims in the UK,[99] although numbers are hard to verify.[100]

Perpetrators of modern slavery, including human trafficking, are criminals, but the ECtHR has identified that states have a positive obligation to prevent and punish such exploitation, protect those who fall prey to it, investigate it, and cooperate with other states where necessary.[101] These obligations arise from Article 4 of the ECHR, which prohibits slavery, servitude and forced labour, including human trafficking.[102]

---

93 *The Commissioner of Police of the Metropolis v DSD & Another* [2018] UKSC 11, para 51.

94 *The Commissioner of Police of the Metropolis v DSD & Another* (n 93), para 53.

95 Harriet Wistrich, Desert island judgments: *DSD and NBV v Met Police,* Legal Action Group, 13 October 2025. See also Centre for Women's Justice, Response to consultation on Human Rights Act reform, 8 March 2022.

96 UK Government, Frequently asked questions on modern slavery.

97 Centre for Social Justice and Justice in Care, It still happens here: fighting UK slavery in the 2020s, July 2020; House of Commons, Home Affairs Committee, *Human Trafficking*, First Report of Session 2023-24, HC124; Written evidence submitted by the Modern Slavery and Human Rights Policy and Evidence Centre to the Home Affairs Committee, March 2023.

98 Home Office, Modern slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2024, 6 March 2025.

99 Centre for Social Justice and Justice in Care, It still happens here: fighting UK slavery in the 2020s, July 2020, p. 6.

100 Written evidence submitted by the Modern Slavery and Human Rights Policy and Evidence Centre (n 97).

101 *Rantsev v Cyprus and Russia,* No. 25965/04, 7 January 2010.

102 *Rantsev v Cyprus and Russia* (n 101) para 277.

THE ECHR PROTECTS CHILD TRAFFICKING VICTIMS WHO WERE WRONGLY PROSECUTED

In 2021, the ECtHR held that the UK had breached the rights of two boys who had been trafficked from Vietnam to work on cannabis farms.[103] Aged 15 and 17 at the time, one was found alone in a house and the other locked in a disused factory. Both were prosecuted for drug offences and imprisoned, having lost their cases at the Court of Appeal. It took more than a decade for their cases to reach the ECtHR. When they did, the Court found that**, in certain circumstances, prosecutions of victims or potential victims of trafficking may be at odds with the state's duty to protect them, when the authorities know or ought to know of circumstances giving rise to a credible suspicion that an individual has been trafficked.[104] It also held that the boys had not had a fair trial under Article 6 of the ECHR.**

Experts note that in the context of county lines drug-trafficking – where children and young people are moved from county to county to act as drug-runners – this ECtHR judgment has been 'invaluable' in persuading authorities to recognise in particular young Black boys, who are significantly more at risk of exploitation, as victims rather than criminals.[105]

The case does not, however, mean that trafficking victims can never be prosecuted, depending on the extent of the coercion they were under to commit crime and the public interest in prosecution.[106]

In 2009, a judgment of the ECtHR against France concerning a young Togolese woman who had been kept in slavery-like conditions by her employers[107] prompted Parliament to proactively change the law to protect victims of similar exploitation in the UK. It did so by creating a specific criminal offence of slavery, servitude and forced labour, which did not exist before.[108] In 2015, Parliament passed the Modern Slavery Act, which consolidated offences related to modern slavery and provided law enforcement authorities with tools to prosecute offenders and protect victims.[109] The Act, commended as the first legislation of its kind in Europe,[110] was significantly influenced by rulings of the ECtHR and UK courts.[111]

103 *V.C.L. and A.N. v United Kingdom* (n 35).

104 *V.C.L. and A.N. v United Kingdom,* (n 35) paras 158-60.

105 Audrey Cherryl Mogan, Desert island judgments: *VCL and AN v UK,* Legal Aid Group, 29 October 2024.

106 *G.S. v United Kingdom* (dec.) No. 7604/19, 23 November 2021. In this case, the ECtHR said the Court of Appeal had been justified in rejecting the appeal of an adult trafficking victim who had imported cocaine. This was because the extent to which she was compelled to commit the crime did not outweigh her culpability; thus, it was in the public interest to prosecute her.

107 *Siliadin v France,* No. 73316/01, 26 July 2005.

108 Section 71 of the Coroners and Justice Act 2009.

109 Modern Slavery Act 2015

110 House of Commons, Home Affairs Committee, *Human Trafficking* (n 97) p. 4.

111 Home Office, Draft Modern Slavery Bill, European Convention on Human Rights memorandum, December 2013.

"THE NUMBER OF CHILD VICTIMS OF HUMAN TRAFFICKING ... IS INCREASING AT AN ALARMING RATE AND IT IS PRIMARILY UK NATIONALS BEING CRIMINALLY EXPLOITED."

– HOUSE OF COMMONS, HOME AFFAIRS COMMITTEE[118]

In recent years, however, Parliament has passed legislation that sought to limit protections for victims of modern slavery.[112] In the context of immigration control, both Reform UK[113] and the Conservative Party have called into question the UK's future adherence to international treaties on human trafficking.[114] The Home Affairs Committee concluded in respect of the last government that human trafficking had been deprioritised in favour of attention on irregular migration. It said the emphasis on irregular migration 'fails to reflect that UK nationals, particularly children, are consistently one of the most common nationalities referred to the National Referral Mechanism', the identification and support system for potential victims of modern slavery.[115]

PREVENTING HARM TO CHILDREN

Given the particular vulnerability of children—and their lack of voice in decisions made by public authorities about them—public bodies have positive obligations to protect them in certain circumstances. Where public authorities know or ought to know that children are being seriously harmed and fail to protect them from this harm, they may be breaching human rights law. In the UK, the HRA has been used to challenge public authorities who failed to protect children against abuse in foster care.[116]

"THE DUTY ON PUBLIC AUTHORITIES NOT TO ACT IN A WAY THAT IS INCOMPATIBLE WITH THE CONVENTION ... HAS TRANSFORMED THE DEVELOPMENT OF POLICY AND THE DELIVERY OF PUBLIC SERVICES, SECURING POSITIVE CHANGES FOR PEOPLE WITHOUT RECOURSE TO THE COURT."

– JUST FAIR[119]

The ECtHR has also recognised public bodies' positive obligations to protect children who are at risk of severe abuse and harm in their family. In one case, four siblings had been referred to social services following reports that they were not being washed, were stealing food, and were locked out of the house for most of the day. Multiple reports were made about bruising, unsanitary living conditions including soiled mattresses, and poor health – but the authorities did not act to place the children in alternative care for five years. The ECtHR held that once the local authority had become aware of the children's living conditions and the severe neglect, it had a positive obligation to protect them.[117]

112 Nationality and Borders Act 2022, Part 5; Illegal Migration Act 2023, sections 22-29; Rwanda (Asylum and Immigration) Act 2024. The Rwanda (Asylum and Immigration) Act 2024 and parts of the Illegal Migration Act 2023 and Nationality and Borders Act 2022, are set to be repealed under the Border Security, Immigration and Asylum Bill.

113 Reform UK, *Operation Restoring Justice* (n 1).

114 Conservative Party, Kemi Badenoch exposes the laws and treaties holding Britain back, 6 June 2025.

115 House of Commons, Home Affairs Committee, *Human Trafficking* (n 97) p. 4.

116 *A and S (Children) v Lancashire CC* [2012] EWHC 1689 (Fam).

117 *Z and others v United Kingdom*, No. 29392/95, 10 May 2001.

118 House of Commons, Home Affairs Committee, *Human Trafficking* (n 97) p. 4.

119 Written evidence from Just Fair to the Joint Committee on Human Rights inquiry in 2018 on Twenty Years of the Human Right Act.

3 The ECHR protects people's privacy against intrusion

The ECHR and HRA protect everyone's freedoms and private lives from intrusion by states and private corporations, including in the context of technology-powered surveillance systems. Rulings by the ECtHR and UK courts have safeguarded freedoms in the context of both targeted and mass surveillance and police powers, including 'stop and search' and the retention and use of personal information held by the police. As a consequence, domestic laws have been tightened up to ensure that such powers are adequately regulated. These reforms made as a consequence of human rights judgments are generally uncontroversial.[120]

> "HUMAN RIGHTS LAW DOES ONE THING ABOVE ALL ELSE – IT PUTS PEOPLE FIRST. IT PROTECTS US FROM THE POWER OF THE STATE. WITHOUT THE BACKSTOP OF THE ECHR, GOVERNMENTS OF WHATEVER PARTY WILL BE ABLE TO ERODE OUR RIGHTS WITH NO COME-BACK."
>
> – RICHARD ATKINSON, FORMER PRESIDENT OF THE LAW SOCIETY OF ENGLAND AND WALES[121]

In an increasingly connected, globalised, digitised world, there is a significantly increased risk of unjustifiable intrusions into people's lives, by the state or by private corporations. Revelations about racism and sexism in the Metropolitan police,[122] abuses committed during undercover policing,[123] and the Police Service of Northern Ireland and Metropolitan Police spying on journalists,[124] underscore the need for protections from police forces and individual officers abusing their powers.

As it was drafted in broad terms, the ECHR has been applied by the ECtHR and UK courts to new and changing situations, such as technological advances in surveillance techniques.[125] It can be justifiable in some circumstances for certain people, such as criminal suspects, to be subject to surveillance, but, if so, the ECHR requires that such

120 For example, the judgment in *S and Marper v United Kingdom,* Nos. 30562/04 and 30566/04, 4 December 2008 was 'widely applauded in British political and legal circles' and generally reported uncritically by the media; see Alice Donald, 'The Implementation of European Court of Human Rights Judgments Against the UK: Unravelling the Paradox' in Katja S Ziegler, Elizabeth Wicks and Loveday Hodson (eds) *The UK and European Human Rights: A Strained Relationship?* (Bloomsbury, 2015).

121 Law Society, 'Stay in the ECHR to put public good above the political interest' 4 October 2025.

122 See, for example: Sima Kotecha and Myranda Mowafi, '300 people tell BBC of police misogyny and racism' *BBC News*, 22 October 2025. See also: Baroness Casey Review - Final Report - An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service, Baroness Casey of Blackstock DBE CB, March 2023.

123 See the work of the Undercover Policing Inquiry.

124 See, for example, Julian Fowler, The Police Service of Northern Ireland (PSNI) and Metropolitan Police acted illegally by spying on two Belfast journalists' to identify their sources', *BBC News NI*, 17 December 2024. See further: *The McCullough Review - An independent review into conduct by the Police Service of Northern Ireland arising from concerns raised in relation to surveillance of journalists and other groups*, 24 September 2025.

125 See also Section 7.

powers are properly regulated by law and only applied in ways that are proportionate. Thus, human rights standards require there to be adequate safeguards against their arbitrary use by the police and others.

STATE SURVEILLANCE: PROTECTING LIBERTY AND NATIONAL SECURITY

Until the mid-1980s, the various means of surveillance used by the police and other state agencies in the UK, such as telephone tapping or intercepting post or emails, were not regulated by law. This was changed following a succession of ECtHR judgments[126] which led to a significant tightening of the laws, for example, through the Interception of Communications Act 1985 and, later, the Police Act 1997, the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016. In 2020, the Court of Appeal found that the use of automated facial recognition technology by South Wales Police did not comply with the ECHR, because it was not sufficiently regulated by the law (the Data Protection Act 2018).[127] The use of covert surveillance by a local council on a family in relation to a dispute over school catchment areas was also found to be disproportionate and therefore in breach of the ECHR,[128] as was the disclosure to the media by a local authority of CCTV footage of a distressed man trying to commit suicide in a public place, without his knowledge or consent.[129]

> "THE PARLIAMENTARY AND JUDICIAL ACCOUNTABILITY THAT IS DEMANDED BY THE EUROPEAN CONVENTION BOTH PROTECTS OUR LIBERTIES AND HELPS BUILD BROADER PUBLIC TRUST IN THE GUARDIANS OF OUR NATIONAL SECURITY. THE APPLICATION OF HUMAN RIGHTS HAS DONE LITTLE TO HAMPER THE FIGHT AGAINST TERRORISM, AND MUCH TO SECURE ITS LEGITIMACY."
>
> – LORD DAVID ANDERSON, FORMER INDEPENDENT REVIEWER OF TERRORISM LEGISLATION[131]

In addition to these forms of targeted surveillance, governments are now capable of operating mass surveillance through bulk interception systems, but these have also been reined in by courts applying human rights standards. In the case of *Big Brother Watch*, a group of individuals and civil liberties groups challenged the scope and magnitude of the electronic surveillance programmes operated by the UK Government, through GCHQ.[130] In its judgment, the ECtHR found a number of 'fundamental deficiencies' in the UK's bulk interception regime, including insufficient protections for confidential journalistic material. The upshot of the decision was still to permit states to carry out

126 These include *Malone v United Kingdom*, No. 8691/79, 26 April 1985, *Halford v United Kingdom*, No. 20605/92, 25 June 1997, *Khan v United Kingdom*, No. 25394/97, 12 May 2000, *Copland v United Kingdom* No. 62617/00, 3 April 2007 and *Liberty and Others v United Kingdom*, No. 58243/00, 1 October 2008.

127 *The Queen (on the application of Edward Bridges) v The Chief Constable of South Wales Police* & others [2020] EWCA Civ 1058.

128 *Jenny Paton and others v Poole Borough Council*, IPT/09/01, 6 November 2009.

129 *Peck v United Kingdom*, No. 44647/98, 28 January 2003.

130 *Big Brother Watch and Others v United Kingdom* (n 31).

bulk surveillance in order to identify new threats to national security, but to apply more rigorous legal standards—primarily through amendments to the Investigatory Powers Act 2016,[132] such as the introduction of a 'double lock', which requires prior approval by a minister and senior judge.

The ECHR also requires that national authorities adequately regulate and scrutinise surveillance and other forms of intrusion which may be carried out by private corporations, including employers and 'big tech' companies.[133]

"GOVERNMENTS HAVE A DUTY TO PROTECT THE SAFETY OF THEIR CITIZENS. WHILE WE CAN ALL ACCEPT A LEVEL OF INTELLIGENCE GATHERING SHOULD EXIST FOR THAT REASON, APPROPRIATE SAFEGUARDS MUST BE IN PLACE TO PROTECT OUR PRIVACY AND FREEDOM OF EXPRESSION. AS DIGITAL FOOTPRINTS GROW AND TECHNOLOGIES THAT ENABLE MASS INTERCEPTION OF PERSONAL DATA DEVELOP, OUR LAWS AND SAFEGUARDS SHOULD CONTINUE TO ADAPT AT THE SAME PACE."

– ALASTAIR PRINGLE, INTERIM CHIEF EXECUTIVE AT THE UK'S EQUALITY AND HUMAN RIGHTS COMMISSION[134]

CURBING INTRUSIVE POLICE POWERS

Another issue which has been subject to close scrutiny is how the police, and other state agencies, store and handle private information on individuals, using systems such as the National DNA Database, which can impact on innocent people.

BLANKET RETENTION OF INNOCENT PEOPLE'S DNA BREACHED PRIVACY RIGHTS

A boy known as S, who had been arrested at the age of 11 for attempted robbery but acquitted, found that his fingerprints, cellular samples and DNA profile could be held indefinitely on the National DNA Database for England and Wales. At the time, the database contained around five million profiles, making it the largest in the world, both per capita and in absolute terms.[135] Around one million profiles belonged to people who had never been charged with or convicted of a criminal offence.

131 David Anderson, National Security and Human Rights, *European Convention Human Rights Law Review 2* (2025).

132 See the Investigatory Powers Act 2016 (Remedial) Order 2024 and the Data Retention and Acquisition Regulations 2018.

133 See, for example, *Bărbulescu v Romania*, No. 61496/08, 5 September 2017.

134 UK Equality and Human Rights Commission, 'Legal Action: Challenging mass surveillance and protecting people's right to privacy', 7 November 2017

135 Eric Metcalfe, *Freedom from Suspicion: Surveillance Reform for a Digital Age* (JUSTICE, 2011), p. 9.

S sought to have his personal data erased, as did Michael Marper, who had been arrested for a criminal offence but not charged. The ECtHR criticised the 'blanket and indiscriminate' powers of retention of innocent people's personal data, which took no account of the nature or gravity of the offence a person was arrested for, or their age.[136] It found the policy was disproportionate and failed to strike a fair balance between competing public and private interests. As a result of this and other cases,[137] tighter regulations were introduced by the Protection of Freedoms Act 2012 and the Data Protection Act 2018, which regulate the retention, review and deletion of biometric data and photographs.

Furthermore, police powers of stop and search have been constrained by courts on human rights grounds. For example, a peaceful demonstrator, Kevin Gillan, and a journalist, Pennie Quinton, took their cases to the ECtHR after they had been stopped and searched by police in the vicinity of an arms fair in London under anti-terror legislation without reasonable suspicion.[138] The Court found that the law did not have sufficient safeguards to curb the wide police powers of stop and search. As a result of this decision, the Protection of Freedoms Act 2012 introduced more tightly circumscribed powers.[139] Relatedly, concerns about ethnic or racial profiling by police in the UK are longstanding[140] and, in several cases, the ECtHR has emphasised that police identity checks carried out on the basis of racial profiling may fall foul of the prohibition of discrimination.[141]

136 *S and Marper v United Kingdom* (n 120).

137 See, for example, *Catt v United Kingdom*, No. 43514/15, 24 January 2019 and *Gaughran v United Kingdom*, No. 45245/15, 13 February 2020.

138 *Gillan and Quinton v United Kingdom,* No. 4158/05, 12 January 2010.

139 Section 60 and Schedule 5 to the 2012 Protection of Freedoms Act.

140 See, for example: Kjartan Páll Sveinsson (ed.), Ethnic Profiling - The Use of "Race" in UK Law Enforcement (Runnymede, 2010).

141 See, for example, *Basu v Germany*, No. 215/19, 18 October 2022 and *Wa Baile v Switzerland*, Nos. 43868/18 and 25883/21, 20 February 2024.

4 The ECHR holds those in power accountable

Bringing the ECHR into UK law through the HRA has enabled bereaved families and survivors of disasters such as the Hillsborough stadium crush to seek truth and justice as a matter of right. Evidence demonstrates that the ECHR provides families and survivors with a mechanism they can use when the state has failed them, embedding accountability into the legal system and leading to significant changes in how fatal or near fatal incidents that implicate public authorities must be investigated and how lessons must be learned to prevent future deaths. The common law does not offer the same protection to victims of crime who have been failed by state investigations and who the state has failed to protect from harm.[142] In a recent UK-wide opinion poll, 85% of people agreed that 'we need a legal safety net to hold the Government accountable in cases like the infected blood scandal and Grenfell'.[143]

HOW THE ECHR AND HRA SET THE STANDARD FOR EFFECTIVE INVESTIGATIONS INTO DEATHS WHERE PUBLIC BODIES ARE IMPLICATED

States have a duty to conduct effective investigations into incidents where life-threatening injuries have been sustained or lives have been lost in suspicious circumstances, particularly where public authorities appear to bear some responsibility.[144] That obligation derives from the right to life, protected under Article 2 of the ECHR, and is made enforceable in UK courts through the HRA.[145]

The standards for such effective investigations have been developed through the case law of the ECtHR and UK courts.[146] 'Article 2' investigations must ensure, as far as possible, that the full facts are brought to light, that those responsible are identified and brought to account, that dangerous practices are identified and rectified, and that lessons are learned that may save the lives of others.

142 See also Section 6.

143 Amnesty International, 'Never Again' still matters - public backs ECHR 2:1 as politicians threaten exit (n 5).

144 Courts and Tribunals Judiciary, Guidance: Chapter 20: The Article 2 Inquest, 30 July 2025.

145 The same obligation to investigate state action or inaction arises in the context of potential breaches of two other fundamental rights, Article 3 ECHR (prohibition of torture and inhuman or degrading treatment or punishment) and Article 4 ECHR (prohibition of slavery, servitude and forced labour, which also covers human trafficking).

146 See, e.g., *Jordan v United Kingdom,* No. 24746/94, 4 May 2001; *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51.

Investigations must also be independent, transparent and reasonably prompt. Victims and bereaved families must be involved in the investigation so as to safeguard their interests. There is no right enshrined in common law to a prompt investigation enabling meaningful participation of survivors and families of the bereaved into serious failings and other violations by state actors, and thus the ECHR and HRA provide stronger protection than was available under the common law.

The duty to conduct an effective investigation into deaths for which the state may bear responsibility has helped victims and bereaved relatives to achieve accountability after major disasters like Hillsborough and Grenfell,[148] and in many other circumstances. These include violent deaths in detention, whether at the hands of another person[149] or by suicide.[150] The obligation can also be triggered by a failure on the part of health bodies to recognise and act on a risk of suicide by a person detained under the Mental Health Act,[151] or a voluntary patient in a psychiatric hospital.[152] It was the HRA that helped to secure an independent public inquiry into the appalling standards of care and hundreds of premature deaths at Mid-Staffordshire NHS Foundation Trust.[153]

"AT THE MOST CRITICAL MOMENT, WHEN A PERSON'S LIFE HAS BEEN LOST, YOU CAN NOW SAY YOU HAVE THE RIGHT TO KNOW WHAT HAPPENED, WHO CAUSED IT, AND HOW TO PREVENT IT."

– IMRAN KHAN KC, WHO REPRESENTED THE FAMILY OF STEPHEN LAWRENCE DURING THE PRIVATE PROSECUTION, INQUEST AND PUBLIC INQUIRY INTO HIS RACIST MURDER[147]

Article 2 investigations have also been held into deaths involving state actions, such as police shootings,[154] and following terrorist attacks. After the Westminster Bridge attack in 2017, the widow of PC Keith Palmer used Article 2 to press for an inquest that revealed how security failures had enabled the attacker, Khalid Masood, to stab him to death while he guarded a main entrance to the Palace of Westminster alone and unarmed.[155]

147 British Institute of Human Rights, *The ECHR 75th Anniversary Zine*, November 2025, p. 12.

148 Douglas Maxwell, Grenfell, the right to life, and the investigative duty, *Housing after Grenfell blog*, University of Oxford, 27 November 2018.

149 *R. on the application of Amin v the Secretary of State for the Home Department* [2001] High Court, Administrative Court (England and Wales) 719, 5 October 2001; *Paul and Audrey Edwards v United Kingdom*, No. 46477/99, 14 March 2002.

150 *R v HM Coroner for the Western District of Somerset ex parte Middleton* [2004] AC 182. See also *Keenan v United Kingdom*, No. 27229/95, 3 April 2001, where the ECtHR found a violation of Article 3 in relation to the death of Mark Keenan, who killed himself while suffering mental distress after disciplinary punishment in prison.

151 *Savage v South Essex Partnership NHS Trust* [2009] AC 681.

152 *Rabone v Pennine Care NHS Trust* [2012] UKSC 2.

153 Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry. See also Leigh Day, Judicial reviews and the Mid Staffordshire inquiries, 12 May 2010.

154 See, e.g., The Anthony Grainger Inquiry, Report into the Death of Anthony Grainger, chaired by Judge Teague QC, 11 July 2019.

155 Lizzie Dearden, Westminster attack: PC Keith Palmer could have been saved if Met put armed police on Parliament gates, coroner finds, *The Independent*, 3 October 2018; Chief Coroner, Inquest arising from the deaths in the Westminster Terror Attack of 22 March 2017, Regulation 28 Report on action to prevent future deaths.

SECURING ACCOUNTABILITY FOR THE HILLSBOROUGH DISASTER

On 15 April 1989, a crush developed at the Hillsborough stadium in Sheffield resulting in the deaths of 97 Liverpool fans attending the club's FA Cup semi-final against Nottingham Forest. Since then, families and survivors have campaigned to discover how and why they died and prevent such disasters from occurring again.

The original inquest from 1991 controversially recorded verdicts of accidental death and ruled out evidence relating to fans' deaths beyond 3:15 p.m., based on flawed advice that all victims were either dead or had suffered irreversible brain damage by that point. The High Court quashed these verdicts[156] following a damning report by the Hillsborough Independent Panel in 2012, which included evidence that some of those who died may have been alive at or after 3:15 p.m.[157] The High Court noted that, 'Throughout there has been a profound, almost palpable, belief that justice has not been done and that it cannot be done ... until the full truth is revealed.'[158]

More than 25 years after the disaster, in 2016, fresh inquests concluded that those who died were unlawfully killed.[159] The jurors agreed that, contrary to false accounts given by the police, fans played no part in causing the disaster. Instead, the jurors blamed police failures, defective stadium design, and a delayed response by the ambulance service.

What is rarely reported is that the inquests which finally uncovered the cause and time of death of each individual victim were made possible by the ECHR and the HRA. It was because these inquests were required to comply with the Article 2 investigative duty that they were able to analyse the broader causative circumstances of the disaster, and not only the immediate cause of each death. This meant that jurors could consider issues such as the design of the stadium, failures in planning the match to ensure public safety, and the emergency medical and police response.[160]

156 *HM Attorney General v HM Coroner of South Yorkshire and HM Coroner of West Yorkshire* [2012] EWHC 3783.

157 The Report of the Hillsborough Independent Panel, HC (2012–13) 581.

158 *HM Attorney General v HM Coroner of South Yorkshire and HM Coroner of West Yorkshire* (n 156), para 7.

159 Theresa May, Oral statement to Parliament: Determinations and findings of the Hillsborough inquests, 27 April 2016.

160 See Coroners and Justice Act 2009 s5(2), which reflects *R (Middleton) v West Somerset Coroner* [2004] UKHL 10. Under so-called 'Middleton' inquests, the question of 'how' a person died must be given a broader interpretation when Article 2 obligations are applicable, and as a consequence, is now understood to mean 'by what means and in what circumstances'.

The obligation under the ECHR to ensure that victims and next-of-kin are involved meant that the families were finally able to see the hundreds of thousands of pages of evidence that the coroner disclosed and instruct their legal team to ask probing questions of witnesses on their behalf.[161]

After the verdicts were announced, Anna Morris KC who represented some of the families said, *"The families and justice demanded this level of investigation and these detailed conclusions. The Human Rights Act helped the families to make it possible."* [162]

More than 35 years after the disaster, Parliament is debating a 'Hillsborough Law' Bill that would:

- create a statutory duty of candour for all public authorities;
- guarantee funding for legal representation at inquests and inquiries for bereaved families; and
- establish an independent public advocate to support and give voice to those affected by disasters.[163]

In campaigning for legislative change, the Hillsborough families have joined forces with groups seeking truth and justice for other fatal events including the Grenfell fire, the contaminated blood scandal, and the COVID-19 pandemic.[164]

ACCOUNTABILITY FOR MEMBERS OF THE ARMED FORCES, VETERANS AND THEIR FAMILIES

The HRA has been used by members of the UK armed forces, veterans and their families, to seek accountability for institutional failures and to bring about improvements in the treatment of service personnel. Inquests held in line with the investigative obligation under Article 2 have helped bereaved military families to discover the wider circumstances in which their loved ones came to die, whether during the course of overseas deployments or as a consequence of failures within their units at home.

Some politicians, former military commanders and commentators have called for the ECHR and the HRA not to apply to troops' actions while on active service, claiming that it compromises military effectiveness and national security.[165] Experts acknowledge that determining the appropriate scope of a state's human rights obligations during military

161 Anna Morris, The Human Rights Act: securing justice for the Hillsborough families, *British Institute of Human Rights*, 31 May 2016.

162 Morris, The Human Rights Act: securing justice for the Hillsborough families (n 161).

163 Public Office (Accountability) Bill.

164 Hillsborough Law Now campaign - partners. See also Joint Committee on Human Rights, Human rights and the proposal for a" Hillsborough Law", HC-180, 15 May 2024, para 68.

165 Wolfson Report (n 2) Part II; Human rights laws shouldn't apply to soldiers on duty, say former military chiefs, *The Telegraph*, 11 November 2025; Richard Ekins and John Larkin, 'Human Rights Law Reform: How and Why to Amend the Human Rights Act 1998' (Policy Exchange, 2021) p. 32.

"SERVICE PEOPLE BENEFIT FROM [THE ECHR] EVERY DAY... CONVENTION LAW PROTECTS OUR FORCES FIGHTING OVERSEAS AND AT HOME. IT REQUIRES THAT THEY BE GIVEN REASONABLY SAFE EQUIPMENT, INVESTIGATIONS TO BE CONDUCTED INTO ALLEGED ABUSE, AND IT ALLOWS BEREAVED MILITARY FAMILIES TO GET ANSWERS WHEN THEIR LOVED ONES DIE DURING THEIR SERVICE."

– BRIGADIER (RETIRED) JOHN DONNELLY CBE AND EMMA NORTON, CENTRE FOR MILITARY JUSTICE[174]

operations is challenging.[166] However, their analysis of cases at the ECtHR and in UK courts indicates that the application of the ECHR and HRA has concerned protection of British soldiers overseas or in UK facilities (discussed below), as well as protections against arbitrary detention for people captured by British forces,[167] and cases in which it is alleged that the UK has not properly investigated claims that its soldiers committed murder and acts of torture.[168] No cases have involved 'second-guessing' a commanding officer's decisions on the battlefield.[169]

In respect of overseas operations, the HRA has enabled families to claim damages for the deaths of three soldiers aged between 21 and 23, Private Phillip Hewett, Private Lee Ellis, and Lance Corporal Kirk Redpath, who were killed by roadside bombs in Iraq while driving lightly armoured Snatch Land Rovers – known as 'mobile coffins' – that had not been fitted with equipment to detect roadside bombs.[170] In deciding the families' case under the HRA, the Supreme Court ruled that Article 2 (the right to life) could apply to deaths or injuries in combat that result from the conduct of operations by the armed forces.[171] The court said that it was necessary to avoid placing unrealistic or disproportionate obligations on states by, for example, questioning high-level procurement decisions or operational decisions while in direct contact with the enemy. However, there was a middle ground between these two extremes where Article 2 would apply. This meant the Ministry of Defence had an obligation to protect soldiers deployed during overseas military operations.[172]

The HRA has also been relied on to secure inquests into suspicious deaths of soldiers on UK soil.[173] The family of Cpl Anne-Marie Ellement invoked the HRA (Article 3 ECHR) to secure a second inquest after she hanged herself at Bulford barracks in Wiltshire.

---

166 Stuart Wallace, 'Military Operations and Withdrawal From the European Convention on Human Rights' *European Convention on Human Rights Law Review*, *5*(1), 151-166 (2024).

167 *Hassan v United Kingdom*, No. 29750/09, 16 September 2014.

168 See, e.g., William Gage, *The Baha Mousa Public Inquiry Report* (The Stationery Office 2011).

169 Centre for Military Justice, Submission to the Independent Human Rights Act Review, 3 March 2021. The Overseas Operations (Service Personnel and Veterans) Act 2021 introduced a presumption against prosecution of current or former armed forces personnel for alleged offences committed in the course of duty outside the UK more than five years ago. The presumption excludes some offences, such as torture and genocide, but can apply to murder, manslaughter, the infliction of grievous bodily harm, and arbitrary detention.

170 BBC, Iraq damages cases: Supreme Court rules families can sue, 19 June 2013.

171 *Smith v Ministry of Defence* [2013] UKSC 41, [2014] AC 52, para 58.

172 *Smith v Ministry of Defence* (n 171), para 76.

173 For example, the deaths between 1995 and 2002 of four trainee soldiers aged between 17 and 21 at the Deepcut barracks in Surrey. See Des James (father of Cheryl James) and Tracy Lewis (sister of Sean Benton), *Deepcut, How the families used the Human Rights Act to get access to the State's evidence and exposed abuse & ill treatment of vulnerable young trainees in the Army*, Centre for Military Justice, 27 October 2021.

Her suicide followed the failure to investigate her complaint that she had been raped by two colleagues from the Royal Military Police at a base in Germany. Unlike the first inquest, the second 'Article 3' inquest was empowered to investigate the wider circumstances of her death and revealed how she had been mistreated in the context of a highly sexualised and bullying culture. The verdict led to the creation of the first Service Complaints Ombudsman for the Armed Forces.[175]

"ACCOUNTABILITY. JUSTICE. REFORM. THESE THINGS DO NOT HAPPEN OVERNIGHT. THEY ARE THE PRODUCT OF YEARS OF HARD WORK BY THE DEVASTATED VICTIMS OF STATE ABUSE – OR, WHERE THE VICTIM HAS NOT SURVIVED, THEIR LOVED ONES. AND THE HRA ENABLED US TO DO IT. WITHOUT IT, WE WOULD HAVE ACHIEVED ABSOLUTELY NOTHING."

– SHARON HARDY, SISTER OF THE LATE CPL ANNE-MARIE ELLEMENT[176]

174 Brig (ret'd) John Donnelly CBE, (Chair of Trustees) and Emma Norton (Director), Centre for Military Justice) 'Stoking the fears of elderly veterans: These retired generals are doing the armed forces no favours, *Letter to The Times*, 13 November 2025.

175 Sharon Hardy, *Human Rights Stories No.1 – Cpl Anne-Marie Ellement*, Centre for Military Justice, 19 October 2021. For the work of the Ombudsman, see here.

176 Hardy, *Human Rights Stories No.1 – Cpl Anne-Marie Ellement* (n 175).

5 The ECHR protects free speech and democracy, and respects parliamentary sovereignty

Historical accounts of the ECHR show that preserving democracy is a central purpose of the Convention. The centrality of democracy is reflected in the rights protected by the ECHR, including freedom of expression and assembly, as well as the right to participate in free elections. Experts highlight the fact that the ECHR system, both at international and UK levels, is designed to give deference to democratic decision making: neither the ECtHR nor UK courts have the power to annul laws made by Parliament. If a violation of a right is found by the ECtHR, it is for national authorities – parliaments, governments and the courts – to determine how to remedy it. Experts also underline that the way in which national authorities interact with the ECtHR and other Council of Europe bodies is more responsive to the democratic concerns of states than some critical accounts allow.[177]

DEMOCRACY AS CENTRAL WITHIN THE ECHR

The text of the Convention reflects the centrality of democracy. The ECHR was originally created to safeguard domestic democratic regimes against their gradual erosion.[178] All the qualified rights, such as the right to respect for private and family life, freedom of religion and belief, and freedom of expression, assembly and association, require that any restrictions of these rights must not only be prescribed by law, but must also be 'necessary in a democratic society'. The Court has underlined that a key purpose of the ECHR is to 'promote the ideals and values of a democratic society'.[179] As the Court has stated, 'Democracy … appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it.'[180]

THE ECHR PROTECTS FREE SPEECH AND PROTEST RIGHTS WHICH ARE ESSENTIAL TO DEMOCRACY

In addition to recognising democracy as the only compatible political system for the protection of human rights, the ECtHR has repeatedly emphasised the importance

177 Richard Bellamy, The Democratic Legitimacy of International Human Rights Conventions: Political Constitutionalism and the European Convention on Human Rights, *European Journal of International Law* 25(4) 1019 (2015); Başak Çalı, Anne Koch and Nicola Bruch, The Legitimacy of Human Rights Courts: A Grounded Interpretivist Analysis of the European Court of Human Rights, *Human Rights Quarterly 35(4)* 955 (2013); Alice Donald and Philip Leach, *Parliaments and the European Court of Human Rights* (Oxford University Press, 2016); Murray Hunt, Hayley Hooper and Paul Yowell (eds.) *Parliaments and Human Rights: Redressing the Democratic Deficit* (Bloomsbury, 2015).

178 Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights, vol. 1 (1975), at p. 292.

179 Jeremy McBride, The Doctrines and Methodology of Interpretation of the European Convention on Human Rights by the European Court of Human Rights (Council of Europe, 2021).

180 *United Communist Party of Turkey and Others v Turkey* (133/1996/752/951), 30 January 1998, para 45.

of pluralism, state accountability, and the substantive and procedural dimensions of democratic self-governance.[181] Scholars and civil society organisations observe that by protecting democratic rights, and encouraging the institutionalisation of guardrails into domestic law, the ECHR and HRA help the UK to become a more resilient democracy.[182]

The right to free expression (Article 10 of the ECHR) protects the right to hold opinions and to receive and impart information and ideas. After police detained journalist David Miranda at Heathrow airport and seized encrypted data derived from material acquired by whistleblower Edward Snowden on surveillance by the US National Security Agency, the Court of Appeal applied the HRA to find that UK law did not sufficiently protect free expression. Specifically, the stop power under Schedule 7 to the Terrorism Act 2000 was incompatible with Article 10 ECHR in relation to journalistic material as it lacked sufficient legal safeguards against its arbitrary use by police and security agencies.[183]

The ECtHR has several times ruled in UK cases in favour of journalists and publications such as the *Daily Mail* (on excessive success fees for lawyers),[184] the *Sunday Times* (for its exposure of the thalidomide scandal),[185] and the *Observer* and *Guardian* (concerning a gagging order against the book *Spycatcher*, which revealed undemocratic and unlawful activities by MI5 agents).[186] The Court has also accorded a broad scope of protection to whistleblowers who report illegal conduct and wrongdoing at their place of work,[187] and the role of the media as a public watchdog, including with regard to confidentiality of journalistic sources.[188]

PROTECTING THE ROLE OF THE MEDIA AS A PUBLIC WATCHDOG

A journalist on an engineering magazine, Bill Goodwin, had published leaked information about a company that was misleading shareholders about its financial troubles, and the company wanted to sue the source of the leak. When Mr Goodwin refused to reveal his source's identity, the UK courts fined him £5,000 for contempt of court. Mr Goodwin went to the ECtHR, which found a violation of his freedom of expression under Article

181 ECtHR, Judges preserving democracy through the protection of human rights, 22 November 2022.

182 Human Rights Act Reform: The Implications for Freedom of Expression, Joint Submission by English PEN, ARTICLE 19 and Index on Censorship to the Ministry of Justice's Consultation on Human Rights Act Reform: A Modern Bill of Rights (undated); Amos, 'The Value of the European Court of Human Rights to the United Kingdom,' (n 14). See also Johan Karlsson Schaffer, 'Why Incorporate the ECHR? The Domestic Incentives of Human Rights Commitment' *International Studies Quarterly 68(2)* (2024).

183 *R (Miranda) v Secretary of State for the Home Department* [2016] EWCA Civ 6, para 119.

184 *Associated Newspapers Limited v the United Kingdom* (n 28); see also Section 1.

185 *Sunday Times v United Kingdom (No 1),* No. 6538/74, 26 April 1979; see also Section 6.

186 *Observer and Guardian v United Kingdom*, No 3585/88, 26 November 1991.

187 ECtHR, Whistleblowers and freedom to impart and to receive information, September 2024.

188 ECtHR, Protection of journalistic sources, January 2024.

10.[189] The Court said that the protection of media sources is one of the basic conditions for press freedom and journalists should only be made to reveal their sources when there is an overriding public interest. The ECtHR's strong protection of journalists' sources has been considered by the UK courts in similar cases, to ensure a fair balance is struck between protecting confidentiality and the public interest.[190]

The ECHR (under Article 11) also protects freedom of assembly and association, which includes the right to organise and take part in peaceful meetings, marches and demonstrations, as well as the right to be part of (or choose not to be part of) 'associations' such as clubs, societies, political parties, religious organisations and trade unions.[191]

PROTEST RIGHTS UPHELD THROUGH JUDICIAL REVIEW

In June 2025, legislation introduced in 2023 by then Home Secretary Suella Braverman, which made it easier for police to shut down protests, was ruled unlawful by the Court of Appeal.[192] The legislation amended the Public Order Act 1986 to lower the threshold for police intervention in public protest, by defining 'serious disruption' as anything 'more than minor'. Parliament had previously rejected the redefinition during the passage of the Public Order Act 2023, considering it too broad. One legal specialist estimated that the redefinition could have increased police interventions in protests by up to 50 per cent.[193]

The non-government organisation, Liberty, used judicial review to challenge the redefinition, arguing that it had been introduced via 'Henry VIII' powers (clauses in a bill that enable ministers to amend or repeal an Act of Parliament without having to go through the full process that an Act of Parliament would normally require). The government decided not to take the case any further and the restrictive law has been quashed.[194]

189 *Goodwin v United Kingdom,* No. 17488/90, 27 March 1996.

190 See, e.g., In the matter of an application by D/Inspector Justyn Galloway, PSNI, under paragraph 5 Schedule 5 of the Terrorism Act 2000 and Suzanne Breen [2009] NICty 4; *Ashworth Hospital Authority v MGN Ltd* [2002] UKHL 29.

191 See, e.g., ECtHR factsheets on Trade union rights, Political parties and associations, and Use of force in the policing of demonstrations.

192 *Liberty v Secretary of State for the Home Department* [2025] EWCA Civ 571.

193 Ruth Green, Freedom of expression: UK Court ruling protecting right to protest 'a huge victory for democracy' (International Bar Association, 18 June 2025).

194 Liberty, Anti-protest law now void as government drops appeal against Liberty victory, 17 June 2025.

RESPECT FOR THE DECISION-MAKING OF NATIONAL AUTHORITIES BY THE ECtHR

The ECHR is intended to be enforced primarily at the national level, not at international level by the ECtHR.[195] According to the ECtHR,

> the task of ensuring respect for the rights enshrined in the Convention lies first and foremost with the [national] authorities … rather than with the Court. The Court can and should intervene only where the domestic authorities fail in that task.[196]

This is the principle of subsidiarity: that human rights should be protected and remedies sought first at the national level.

The text of the Convention also affirms that national authorities have a degree of discretion about how they apply rights in their own jurisdiction, known as the 'margin of appreciation'.[197] This recognises that governments, parliaments and courts best understand their own national context and should have a certain latitude in deciding from a range of possible ways of giving effect to the Convention rights and freedoms, especially where there is no European consensus on a particular issue.[198]

Evidence confirms that, by applying these principles, the ECtHR often defers to national parliaments and the laws they pass.[199] The Court gives particular recognition to legislation which has been developed in a way that has carefully considered the human rights implications of a proposed law for the people it affects. Experts observe that in this way the Court not only affords space for democratic decision-making and deliberation, but also seeks to incentivise informed deliberation on human rights issues.[200]

WHEN THE ECtHR DEFERS TO PARLIAMENT'S DECISION MAKING: THE BAN ON POLITICAL ADVERTISING ON BROADCAST MEDIA

In 2003, Parliament passed a law which banned political advertising on television and radio in order to prevent the distortion of public debate by wealthy or powerful interests. An animal rights charity challenged the ban

195 Eirik Bjorge, *Domestic application of the ECHR: courts as faithful trustees* (Oxford University Press, 2015).

196 ECtHR, *Interlaken Follow Up, Principle of Subsidiarity*, June 2010.

197 Following the adoption of Protocol 15 amending the ECHR. For the UK's influence on Protocol 15, see Alice Donald, Who's afraid of Protocol 15? Not the Joint Committee on Human Rights, *UK Human Rights blog*, 4 December 2014.

198 For example, the issue of assisted suicide; see also Section 7.

199 Donald and Leach, *Parliaments and the European Court of Human Rights* (n 177); Matthew Saul, 'Structuring evaluations of parliamentary processes by the European Court of Human Rights' *The International Journal of Human Rights*, *20(8)* (2016) 1077-1096; Robert Spano, 'The democratic virtues of human rights law - a response to Lord Sumption's Reith Lectures', *European Human Rights Law Review 2* (2020), p. 132-139.

200 Robert Spano, 'The Future of the European Court of Human Rights—Subsidiarity, Process-Based Review and the Rule of Law', *Human Rights Law Review* (2018); see also Başak Çalı, 'Coping with Crisis: Whither the Variable Geometry in the Jurisprudence of the European Court of Human Rights' *Wisconsin International Law Journal 35(2)* (2018); Donald, 'Earning Deference from Strasbourg (n 24).

because it wanted to run a TV advertising campaign called 'My mate's a primate'. The House of Lords upheld the legislative ban on political advertising.[201] In so doing, it declined to follow an earlier judgment of the ECtHR[202] based on the right to free expression that would have required the UK to abandon its strict rules on media neutrality.

When the case was taken to the ECtHR, it departed from its own case law and upheld the UK's ban on political advertising on broadcast media as a justifiable restriction on free expression.[203] The Court gave weight to the fact that the ban had been enacted with cross-party support and was 'the culmination of an exceptional examination by parliamentary bodies of the cultural, political and legal aspects of the prohibition'.[204] It referred among other things to the careful scrutiny of the legislative ban by the UK parliamentary Joint Committee on Human Rights.[205] In its judgment, the Court deferred to the UK authorities and found no violation of the ECHR. The ban on political advertising on broadcast media in the UK remains in place.

Analysis of case law reveals that the ECtHR is deferential not only to Parliament, but also to UK courts. The ECtHR is generally seen as 'supplementary and subsidiary to the protection of rights and freedoms under national legal systems' and the Court's approach is that independent and impartial national courts are better acquainted with the democratic society of their country and therefore best placed to make the assessment.[206] Generally, the Court 'will require strong reasons' before it decides to 'substitute its judgment for the one adopted by the national authorities'.[207] In relation to the UK, specifically, the ECtHR has frequently praised UK courts and tribunals for their interpretation of the Convention[208] and has in several cases refused to substitute its own judgment because the UK's courts have carefully examined the facts, applied human rights standards consistently with the ECHR and relevant case law, and conducted an appropriate balancing exercise.[209]

201 *R (Animal Defenders) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15.

202 *VgT Verein Gegen Tierfabriken v Switzerland,* No. 24699/94, 28 June 2001.

203 *Animal Defenders International v United Kingdom,* No. 48876/08, 22 April 2013.

204 *Animal Defenders v United Kingdom* (n 203), para 114.

205 *Animal Defenders v United Kingdom* (n 203), paras 43-46.

206 Yutaka Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR* (2002).

207 See The Independent Human Rights Act Review (n 12) at section 3; Robert Spano (former president of the ECHR), 'Over-reaching or under-achieving? The trajectory of the case-law of the European Court of Human Rights', University of Leuven, 12 March 2022.

208 The Independent Human Rights Act Review (n 12) at section 3.

209 Paul Mahoney, 'The Relationship Between the Strasbourg Court and the National Courts,' *Law Quarterly Review,* 2014. See e.g. *Ndidi v United Kingdom*, No. 41215/14, 14 September 2017; *Austin and Others v United Kingdom*, Nos. 39692/09, 40713/09 and 41008/09, 15 March 2012, para 61; *Tamiz v United Kingdom*, No. 3877/14, 12 October 2017; *Friend and Countryside Alliance and Others v United Kingdom*, Nos. 16072/06 and 27809/08, 24 November 2009, relating to the challenge to the statutory ban on fox-hunting which stated: '[T]he domestic courts have given the greatest possible scrutiny to the applicants' complaints under the Convention ...Serious reasons would be required for this Court to depart from the clear findings of those courts.'

Where the ECtHR declares that a UK law, policy or judicial decision breaches human rights, its judgments do not have the effect of overriding that law, policy or decision, and nor does the Court tend to specify what the remedy should be.[210] Rather, considerable discretion is conferred on national authorities to determine the specific steps by which they remedy a violation of human rights, in a process overseen by the 46 governments in the Council of Europe. This gives parliamentarians and other decision makers the opportunity to interpret the meaning of human rights and devise remedies in their own national context.

RESPECT FOR PARLIAMENTARY SOVEREIGNTY AT NATIONAL LEVEL THROUGH THE HRA

Experts observe that respect for parliamentary supremacy is also part of the design and operation of the HRA.[211] The HRA states that when higher UK courts find a law to be incompatible with a Convention right, they may make a declaration of incompatibility. Such a declaration does not invalidate the law, but sends a signal to Parliament that the law should be reconsidered.[212] The legislation is not struck down, but remains valid and continues to operate unless and until the government or Parliament decide otherwise.

> "A DECLARATION OF INCOMPATIBILITY DOES NOT AFFECT THE CONTINUING OPERATION OR ENFORCEMENT OF THE LEGISLATION IN QUESTION, NOR DOES IT BIND THE PARTIES TO THE PROCEEDINGS IN WHICH IT IS MADE. THIS RESPECTS THE SUPREMACY OF PARLIAMENT IN THE MAKING OF THE LAW."
>
> – MINISTRY OF JUSTICE[215]

Some critical accounts venture that declarations of incompatibility are nevertheless an unwarranted extension of judicial power because they encourage judges to 'advance their policy preferences' by way of HRA litigation and place the executive and Parliament under 'improper pressure' to amend a law following a declaration.[213] This claim can be evaluated by examining how many declarations of incompatibility have been issued and how the elected branches have responded to them. Statistics show that declarations of incompatibility are rare. From 2000 to July 2024, there were 58 declarations, or an average of just over two per year.[214] In 38 of the cases, Parliament remedied (or had already remedied) the violation or, in some recent cases,

210 Donald and Speck, The European Court of Human Rights' Remedial Practice and its Impact on the Execution of Judgments (n 24).

211 Jeff King, 'Parliament's Role following Declarations of Incompatibility under the Human Rights Act', in M Hunt, H Hooper and P Yowell (eds.) *Parliaments and Human Rights* (n 177), p. 165-192.

212 Conall Mallory and Hélène Tyrrell, Discretionary space and declarations of incompatibility, *King's Law Journal 32(3)* 46 (2021) .

213 Richard Ekins and Graham Gee, Submission to the Joint Committee on Human Rights - 20 years of the Human Rights Act, *Judicial Power Project*,18 September 2018, p. 8.

214 Ministry of Justice, Responding to human rights judgments: Report to the Joint Committee on Human Rights on the Government's response to human rights judgments 2023–2024, Annex A.

215 Ministry of Justice, Responding to human rights judgments: 2023 to 2024, 28 November 2024.

ministers have signalled their intention to lay remedial measures before Parliament. Of the remaining 20 cases, 12 were overturned on appeal and eight are either still open to appeal or under consideration.

These figures show that, except where declarations have been overturned on appeal, ministers and Parliament have generally responded to them by amending laws to ensure compliance with Convention rights, even though they could choose not to.[216] Constitutional law experts observe that this tendency of Parliament to respond to judicial declarations of incompatibility does not signal a fundamental shift of power away from the elected branches towards the judiciary, because:

> it is important to recognise that this [power] was given to the courts by Parliament and that courts have exercised these powers in a manner that is respectful of the relative constitutional roles of Parliament and the courts. In particular, courts are mindful not to make policy choices that are best left to the legislature.[217]

A MATTER FOR THE DEMOCRATICALLY ELECTED LEGISLATURE: THE ISSUE OF ASSISTED SUICIDE

The widow of Tony Nicklinson sought to use the HRA to have the law prohibiting assisted suicide in England and Wales declared incompatible with the right to private life.[218] The case had been started by Tony Nicklinson, who was paralysed by a stroke and wished to have assistance to end his life. The Supreme Court recognised that the ECtHR had given states a wide margin of discretion on the issue of assisted suicide, deferring to national authorities on this sensitive matter on which there is no European consensus.

Conscious of the sensitivity and contentiousness of the issue of assisted suicide, and the fact that Parliament was set to consider the matter, a majority of the Supreme Court exhibited deference to Parliament, either by declining to conclude that UK legislation breached the ECHR or by declining to issue a remedy in the form of a declaration of incompatibility under the HRA. Lord Kerr said: 'What the courts do in making a declaration of incompatibility is to remit the issue to Parliament for a political decision, informed by the court's view of the law. The remission of the issue to Parliament does not involve the court's making a moral choice which is properly within the province of the democratically elected legislature.'[219]

216 Aileen Kavanagh, *The Collaborative Constitution* (Cambridge University Press, 2023), chapter 12: 'Declarations, Obligations, Collaborations', at p. 363.

217 Written evidence from the Faculty of Law, University of Cambridge to the Joint Committee on Human Rights, 18 February 2021. See also Mallory and Tyrrell, Discretionary space and declarations of incompatibility (n 212), p. 495.

218 *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38.

219 *Nicklinson* (n 218), para 344.

HOW DECLARATIONS OF INCOMPATIBILITY UNDER THE HRA LED TO CHANGES IN THE LAW

NAMING A DECEASED FATHER ON A BIRTH CERTIFICATE

Dianne Blood successfully challenged the law which prevented her from registering her deceased husband as the father of her two children conceived by IVF on the children's birth certificates.[220] The provision was declared to be incompatible with the right to respect for private and family life (Article 8) and discriminatory. The law was changed to allow a deceased father to be named on his child's birth certificate.[221]

THE RIGHT OF A COUPLE TO MARRY WHERE THEY WANT TO

Izabela Trzcinska, a Polish Catholic, and Mahmoud Baiai, an Algerian Muslim, wanted to marry, but the Home Office refused permission because of a scheme which required individuals subject to immigration control to have permission to marry from the Secretary of State – unless it was in an Anglican ceremony. The scheme was said to be necessary to prevent marriages of convenience but imposed a blanket prohibition on the right to marry based on immigration status, irrespective of whether the proposed marriage was fake or not. The couple used the HRA to challenge the scheme and the House of Lords found that it breached the right to marry under Article 12 of the ECHR and was discriminatory.[222] The scheme was later abolished.[223]

220 *Blood and Tarbuck v Secretary of State for Health* (unreported; 28 February 2003), which challenged the Human Fertilisation and Embryology Act 1990.

221 Human Fertilisation and Embryology (Deceased Fathers) Act 2003.

222 *R (Baiai) v Secretary of State for the Home Department* [2008] UKHL 53.

223 Asylum and Immigration (Treatment of Claimants) Act 2004 (Remedial) Order 2011.

DEMOCRATIC OVERSIGHT WITHIN THE CONVENTION SYSTEM

The ECtHR has sometimes been depicted as a 'foreign'[224] or 'unelected'[225] Court, and the argument made that the ECHR system undermines democracy at the national level.[226] Evidence suggests, however, that in its institutions and procedures, the ECHR system (understood as the Court and the two statutory organs of the Council of Europe, the Committee of Ministers and Parliamentary Assembly) is more accommodating of the democratic concerns of states than critical accounts suggest.[227]

In academic and policy discussions, the Court is generally referred to as an 'international' not a foreign court,[228] being made up of 46 judges, one from each state,[229] and as having democratic legitimacy conferred by the election of judges by the Parliamentary Assembly of the Council of Europe.[230] The Parliamentary Assembly is made up of 306 national parliamentarians from all Council of Europe member states, including 18 from the UK Parliament (and another 18 substitutes).[231] When a judicial vacancy arises, candidates are first scrutinised at national level (which can, if the state so chooses, involve parliamentary scrutiny),[232] and then by government representatives in the Committee of Ministers and by a committee of the Parliamentary Assembly,[233] before election by secret ballot in the whole Assembly. Judges are elected for a single, non-renewable nine-year term,[234] and are required to meet exacting standards for integrity and experience.[235] They do not represent the interests of the states they come from and are required to be independent and impartial while carrying out their judicial functions.

---

224 House of Commons, Parliamentary Debate, 10 February 2011; *The Conservative and Unionist Party Manifesto 2024*; Aletha Adu and Kiran Stacey, 'Rishi Sunak "won't allow foreign court to block" Rwanda plan,' *The Guardian*, 1 December 2023, Pablo Castillo-Ortiz, "A Foreign Court": ECHR-scepticism in Comparative Perspective, *U.K. Constitutional Law Blog*, 25 June 2024; Dimitrios Giannoulopoulos, quoted in 'Fact Check: Is the ECHR Really Blocking the UK From Deporting Migrants?' *Euronews* 2024; Kanstantsin Dzehtsiarou, 'What is Law for the European Court of Human Rights?' *49 Georgetown Journal of International Law 89* (2018).

225 Thomas Fazi, Will we ever escape the ECHR? Rule by judges protects elite interests, Unherd, 4 November 2025.

226 Martin Howe KC, Time to leave the ECHR. The Strasbourg court is neither legal, nor democratic, Politeia, 12 April 2024.

227 See sources at footnote 177.

228 See, e.g. Joana Dawson and Dora Robertson, Research briefing: The European Convention on Human Rights and the Human Rights Act 1998 (House of Commons Library, 6 February 2024), p. 5.

229 European Court of Human Rights, Composition of the Court. See also UK in a Changing Europe, Who are the judges of the European Court of Human Rights, 23 February 2024.

230 Armin von Bogdandy and Christoph Krenn, 'On the Democratic Legitimacy of Europe's Judges: A Principled and Comparative Reconstruction of the Selection Procedures' in Michal Bobek (ed.), *Selecting Europe's Judges: A Critical Review of the Appointment Procedures to the European Courts* (Oxford University Press, 2015).

231 See here for the current composition of the UK delegation to the Parliamentary Assembly.

232 The UK selection process for selecting a judge to the ECtHR is managed by the Judicial Appointments Commission, which also selects candidates for judicial office in England and Wales.

233 See Committee on the Election of Judges to the European Court of Human Rights.

234 For more information on the election of the judges of the ECtHR, see here.

235 Council of Europe, The Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights: A short guide on the Panel's role and the minimum qualifications required of a candidate (2020).

Members of the UK delegation to the Parliamentary Assembly can exert influence in other areas, including electing the Council of Europe's Secretary General and the Commissioner for Human Rights and proposing new treaties.[236] Analysis of the modus operandi of the Committee of Ministers suggests that it, too, is responsive to states' sovereignty concerns; for example, when monitoring each other's progress in implementing judgments of the ECtHR, government representatives meet privately on a peer-to-peer basis.[237] Evidence indicates that all three bodies discussed in this section – the Court,[238] the Committee of Ministers[239] and the Parliamentary Assembly[240] – explicitly operate by means of dialogue with national authorities and with civil society organisations in the 46 states, rather than existing in a hierarchical relationship. Ultimately, it is member states themselves that have collective responsibility for the ECHR system.[241]

236 See Parliamentary Assembly of the Council of Europe, The powers of the Assembly.

237 Başak Çali and Anne Koch, 'Foxes Guarding the Foxes? The Peer Review of Human Rights Judgments by the Committee of Ministers of the Council of Europe', *Human Rights Law Review* 14(2) 301 (2014).

238 Merris Amos, 'The Dialogue between United Kingdom Courts and the European Court of Human Rights,' *International and Comparative Law Quarterly* 61(3) 557 (2012); see also the ECtHR Superior Courts Network.

239 See Committee of Ministers, Voice of the governments.

240 Parliamentary Assembly of the Council of Europe, The powers of the Assembly.

241 Alice Donald, Dousing the fire in the democratic forest: Lessons for the Council of Europe from Russia, *EJIL: Talk*, 3 September 2025; Andrew Forde, 'Understanding the Council of Europe System and Territorial 'Grey Zones' in *European Human Rights Grey Zones: The Council of Europe and Areas of Conflict* (Cambridge University Press, 2024).

6 The common law does not provide equal or equivalent protection to that offered by the ECHR and the European Court of Human Rights

Prior to Parliament passing the HRA in 1998, the primary source of rights protection within the UK was the common law, or judge-made decisions recognising certain basic rights and liberties, including personal security and private property. With the incorporation of the ECHR into UK law, the breadth and scope of human rights protections for people in the UK were strengthened, both in terms of *what* rights are protected and also *how* they are protected by courts, public authorities, devolved administrations and the UK Parliament.[242]

The ECHR is rooted in the British common law legal tradition,[243] and the common law has, in turn, been shaped by 25 years of direct influence of the ECHR.[244] Thus, experts note that the Convention is not external or foreign to the common law, but they form 'distinct, overlapping and complementary systems for protecting human rights'.[245] Within the current debate on the UK's relationship with the ECHR system, critics argue for a 'return' to the common law: Reform UK leader Nigel Farage, in proposing a Bill to withdraw the UK from the ECHR, advocated for the UK to 'bring back common law'.[246] A repeated claim is that 'returning' to the common law would not significantly reduce or harm rights protections in the UK.[247]

Legal analysis, however, indicates that this is not an accurate claim. While some notable human rights cases have relied on the common law (for example, on the prohibition of evidence obtained by torture[248]) other basic rights, such as the rights to life, to a fair trial, to freedom of expression and to privacy, are afforded higher protection – and in some cases are *only* given protection – under the HRA through its incorporation of the ECHR. Moreover, as discussed below, compared to the common law, the HRA

242 Mark Elliott, The common law and the European Convention on Human Rights: Do we need both? *Public Law for Everyone,* 11 February 2022. See also Klug, *A Magna Carta for All Humanity* (n 17), Chapter 3: 'The Human Rights Act: Origins and Intentions'.

243 See Home Office, Rights Brought Home: The Human Rights Bill, 24 October 1997 and see sources cited at footnote 17. The ECHR was inspired by the UDHR, which was also rooted in the common law legal tradition.

244 Lord Briggs of Westbourne, Protecting human rights: the common law as the starting point, JUSTICE Annual Conference, 7 November 2025.

245 Elliott, The common law and the European Convention on Human Rights: Do we need both? (n 242). Lord Neuberger describes these as 'two strands of law': 'common law rights and Convention rights, which can overlap, but each of which also has its own different area of exclusivity.': Lord Neuberger, 'The role of judges in human rights jurisprudence: a comparison of the Australian and UK experience,' *Speech at the Supreme Court of Victoria, Melbourne*, 8 August 2014.

246 Nigel Farage, speaking in House of Commons debate, European Convention on Human Rights (Withdrawal), Vol 774, 29 October 2025.

247 Richard Ekins, *Human Rights and the Rule of Law* (Policy Exchange, 2024).

248 *A (FC) and others v Secretary of State for the Home Department* [2004] UKHL 56.

provides stronger *mechanisms* by which human rights are embedded in law making and decision making and enforced through the courts. Leading scholars observe that weakening or removing judicial guardrails on the exercise of political power creates the risk of a future diminution of human rights protection.[249]

> "[T]HE RULE OF LAW IS NOT GUARANTEED AND ... WE MUST BE VIGILANT AND ACTIVELY PROTECT IT TO AVOID EROSION... PROTECTING IT, ESPECIALLY IN THE CONTEXT OF DOMESTIC AND INTERNATIONAL CHALLENGES AND THE RISE OF POPULIST POLITICS, IS OF UTMOST IMPORTANCE AND A COLLECTIVE RESPONSIBILITY OF ALL OF US."
>
> – THE HOUSE OF LORDS CONSTITUTION COMMITTEE [250]

THE ECHR HAS SIGNIFICANTLY INFLUENCED COMMON LAW'S PROTECTION OF HUMAN RIGHTS

Some of those who propose that the UK should withdraw from the ECHR argue that UK courts are well-placed to uphold fundamental rights protections, and that there is therefore no need for the ECHR or the ECtHR, an assertion based on the prior existence of rights recognised by the common law and protection afforded in laws passed by Parliament. Kemi Badenoch, in announcing the Conservative policy of withdrawal from the ECHR, ventured that: 'Human Rights in the United Kingdom did not start in 1998 with the Human Rights Act and will not end with it.'[251]

Whilst Parliament has historically legislated to protect certain limited rights and freedoms, evidence points to the fact that many freedoms either lacked legislative protection, or were curtailed by regressive legislation, such as that which prevented the media from exposing abuses of power.[252] Parliament is also able to override common law rights if it so chooses, as happened when it legislated to allow the internment without trial of suspected terrorists during the Troubles in Northern Ireland.[253] In addition, though UK courts also recognised and developed 'common law rights' prior to the passage of the HRA, evidence indicates that they did so 'in a somewhat haphazard and leisurely way' and left gaps in protection as compared with the ECHR.[254]

---

249 Mark Elliott, 'The 'othering' of human rights and the agenda underlying calls for ECHR withdrawal,' *Public Law for Everyone*, 7 November 2025. See also Conor Gearty, 'Unwelcome Remnant – Erasing the Human Rights Act,' *London Review of Books Vol. 47 No. 18*, 9 October 2025.

250 House of Lords Select Committee on the Constitution, The rule of law: holding the line against tyranny and anarchy, 2024–26 HL 211, p. 3. The Committee notes at para 16 that the definition of the rule of law used by the Venice Commission of the Council of Europe includes respect for human rights.

251 Conservatives, 'Kemi Speaks at Conference Day 1', 5 October 2025. See also Wolfson Report (n 2) Part IX.

252 See, e.g., *Sunday Times v United Kingdom (No 1)* (n 185). See Lord Bingham of Cornhill,'The Human Rights Act: View from the Bench' *European Human Rights Law Review*, 6: 568-75 (2010).

253 Northern Ireland (Emergency Provisions) Act 1973.

Evidence also highlights how contemporary laws protecting human rights in the UK have been shaped by the ECHR.[255] As stated by the UK Supreme Court, 'the protection of human rights is not a distinct area of the law, based on the case law of the European Court of Human Rights, but permeates our legal system'.[256] Judges have also recognised new rights as part of the common law itself, to 'secure rights in English law' as required by the Convention: for instance, a cause of action protecting rights relating to privacy is now recognised as part of the common law.[257]

Since the HRA came into force in 2000, enabling people in the UK to directly claim their rights in UK courts, rights and concepts from ECtHR jurisprudence have been accepted as part of the common law in the UK.[258] UK courts now apply Convention rights directly in UK cases, 'taking into account' the ECtHR's case law in doing so, although in keeping pace with it they are not required to follow it inflexibly.[259] As a result, most human rights protections in the UK today arise from UK courts interpreting UK law in relation to the ECHR. This is how the Convention is intended to function, applied primarily in national contexts by national courts, in ways that work with the grain of the domestic context.[260]

PROTECTIONS ONLY OFFERED THROUGH THE HRA, AND NOT THE COMMON LAW

In assessing whether the common law could offer equal or equivalent protection of rights to the rights protected by the ECHR, experts also highlight the additional mechanisms for human rights protections that have been brought into UK law through the HRA.[261]

---

254 Lord Neuberger, 'The role of judges in human rights jurisprudence: a comparison of the Australian and UK experience (n 245). See also Francesca Klug, Keir Starmer and Stuart Weir, *The Three Pillars of Liberty: Political Rights and Freedoms in the UK* (Routledge, 1996) for a systematic analysis of the gaps in protections afforded by the common law as compared with the ECHR. See also Home Office, Rights Brought Home: The Human Rights Bill (n 243): in some cases in which the ECtHR found that the UK government violated the ECHR, 'there has simply been no framework within which the compatibility with the Convention rights of an executive act or decision can be tested in the British courts: these courts can of course review the exercise of executive discretion, but they can do so only on the basis of what is lawful or unlawful according to the law in the United Kingdom as it stands. It is plainly unsatisfactory that someone should be the victim of a breach of the Convention standards by the State yet cannot bring any case at all in the British courts, simply because British law does not recognise the right in the same terms as one contained in the Convention.'

255 This was an intended consequence of the HRA: 'It will also mean that the rights will be brought much more fully into the jurisprudence of the courts throughout the United Kingdom, and their interpretation will thus be far more subtly and powerfully woven into our law.' See Home Office, Rights Brought Home: The Human Rights Bill (n 243).

256 *Osborn v The Parole Board* [2013] UKSC 61 (9 October 2013), para 55.

257 *Abbasi and another v Newcastle upon Tyne Hospitals NHS Foundation Trust*; *Haastrup v King's College Hospital NHS Foundation Trust* [2025] UKSC 15.

258 *Pham v Secretary of State for the Home Department* [2015] UKSC 19; *R (Youssef) v Secretary of State for Foreign and Commonwealth Affairs* [2016] UKSC 3; *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30.

259 *R (Ullah) v Special Adjudicator* [2004] UK HL26; [2004] 2 AC 323, para 20. See also Lewis Graham, 'Taking Strasbourg Jurisprudence into Account' *European Human Rights Law Review 163* (2022); Francesca Klug and Helen Wildbore, 'Follow or lead?: the Human Rights Act and the European Court of Human Rights' *European Human Rights Law Review 6* (2010) p. 621-630.

260 Spano, 'Over-reaching or under-achieving? The trajectory of the case-law of the European Court of Human Rights' (n 207).

261 Elliott, The common law and the European Convention on Human Rights: Do we need both? (n 242).

The HRA offers several forms of protection that do not feature in the common law.[262] For instance, it requires courts, as far as possible, to interpret legislation consistently with the ECHR and allows higher UK courts to issue declarations of incompatibility when they find that a law cannot be interpreted in a way that makes it compatible with ECHR rights.[263] Such declarations signal to ministers and Parliament that the law should be reconsidered, but it is entirely Parliament's prerogative whether and how to do so. Declarations of incompatibility have never been issued at common law, and there is no such provision outside the HRA.

Further, the HRA creates a legally enforceable duty making it unlawful for a public authority to act in a way that is incompatible with Convention rights (unless primary legislation means it cannot act otherwise). This provision requires public authorities to respect and proactively protect Convention rights in their everyday actions and decisions. The common law, by contrast, operates through general principles such as the principle of legality and focuses more narrowly on the courts as the means by which rights can be protected on a case-by-case basis, rather than creating a direct, overarching obligation in all public functions.

In addition, the HRA alone, by giving effect to ECHR rights, entails positive obligations for public authorities in certain circumstances, and offers redress to victims of crime who have been failed by state investigations and who the state has failed to protect from harm.[264] The common law does not offer the same legal protection for those fundamental rights.[265]

THE ECtHR PROVIDES AN ADDITIONAL AND EXTERNAL SOURCE OF ACCOUNTABILITY FOR RIGHTS PROTECTION

Another significant difference between common law protection and that made through the incorporation of the ECHR is that the Convention provides an independent and international body, the ECtHR, that can scrutinise decisions and act as an additional check to provide accountability.

The design of the ECHR system, and the way in which it has been incorporated through the HRA, means that a case before the ECtHR will only arise in rare instances in which all other avenues at national level have failed. The ECtHR is not an appeal court; as an international court, it cannot overrule a decision of any UK court, nor can it invalidate or strike down any UK law. The Court can determine that a law, policy or practice is in

262 See Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* ,Volume 1 (2012), paragraphs 6.19-6.20. See also Roger Masterman, 'The Convention Rights in the Human Rights Act and under a Bill of Rights: Domestic, European or Both?', *U.K. Constitutional Law Blog* (23rd November 2022): 'While the common law remains a vehicle through which rights might be protected in domestic law – as evidenced in *Osborn*, *A v BBC*, and so on – it cannot be said to have developed to the extent that common law rights can be said to match the range of the Convention rights given effect by the HRA, or the remedial capacity found in the HRA's provisions.'

263 See also Section 5.

264 See also Sections 2 and 4.

265 See, e.g., *Michael and others (FC) v The Chief Constable of South Wales Police and another* [2015] UKSC 2.

violation of rights, which creates an obligation to remedy the violation, but leaves the means of doing so largely up to the state.

Sole reliance on the common law would remove the role of the ECtHR as an external and additional source of scrutiny. This was not the intention of the drafters of the ECHR, who deliberately set out to create an international element of rights protection, in which an external and independent court would provide a check on states' actions, and the states within the community would keep each other accountable through this shared system. In this way, experts highlight that the Court provides a backstop of last resort in circumstances where a person's or organisation's rights have been violated, but only in situations where they have not been able to obtain redress from national courts.[266]

THE ECtHR RULES IN CASES WHERE UK AUTHORITIES HAVE FAILED TO PROTECT BASIC RIGHTS

Evidence shows that the ECtHR is not overly intrusive, with few judgments finding violations against the UK in the years since the HRA came into effect. As a snapshot, in 2024, 332 applications concerning the UK were processed by the Court, 328 were declared inadmissible or struck out and one violation was found.[267] Yet the small number of recent judgments demonstrates the value of having the possibility of external review of UK laws and judicial decisions. Several prominent cases underline that certain situations involving the violation of basic rights – such as modern slavery[268] and the infringement of privacy through bulk surveillance[269] – were only tackled through the exercise of ECHR rights at the ECtHR.

> "OVER THE LAST 70 YEARS THE CONVENTION HAS REPEATEDLY STEPPED IN WHEN DOMESTIC COURTS WERE UNABLE TO PROVIDE THE PROTECTION WE NOW TAKE FOR GRANTED AND CHERISH."
>
> – TIM EICKE KC, FORMER BRITISH JUDGE AT THE ECtHR[276]

In the years before the HRA came into force in 2000, when domestic rights protection relied on the common law, the value of the ECtHR as a court of last resort was even more evident.[270] Judgments of the ECtHR upheld rights — where UK courts had not — in cases concerning, for example, the criminalisation of homosexuality,[271] the ban on LGBTQ+ people in the armed forces,[272] corporal punishment in schools,[273] the inhuman and degrading treatment of internees,[274] and long periods of detention without trial.[275]

---

266 Alice Donald, Jane Gordon and Philip Leach, *The UK and the European Court of Human Rights* (Equality and Human Rights Commission, 2012).

267 ECtHR, Analysis of Statistics 2024 p. 14; Annual Report 2024, p. 37.

268 *C.N. v the United Kingdom*, No. 4239/08, 13 November 2012; *V.C.L. and A.N. v United Kingdom* (n 35).

269 *Big Brother Watch and others v United Kingdom* (n 31).

270 Conor Gearty, On Fantasy Island: British politics, English judges and the European Convention on Human Rights, *U.K. Constitutional Law Blog*, 13 November 2014.

271 *Dudgeon v United Kingdom,* No. 7525/76, 22 October 1981.

272 *Smith and Grady v United Kingdom* (n 64).

273 *Campbell and Cosans v United Kingdom,* Nos. 7511/76; 7743/76, 25 February 1982.

EXPOSING THE THALIDOMIDE SCANDAL THROUGH PROTECTION OF MEDIA FREEDOM

A judgment of the ECtHR ensured that one of the UK's most serious public health scandals came to light. Many pregnant women with morning sickness were prescribed a sedative, thalidomide, from 1958 to 1961, resulting in some 2,000 babies being born with defects to their limbs and organs. Families engaged in lengthy legal battles with the manufacturer, Distillers, and many settled out of court, preventing details from becoming public. When the *Sunday Times* uncovered evidence that the company had known more about the risks of thalidomide than it had admitted, the UK government obtained an injunction preventing publication on the basis that it constituted contempt of court amid ongoing litigation. The House of Lords upheld the injunction. The *Sunday Times* went to the ECtHR, which held that the injunction breached the journalists' freedom of expression under Article 10 ECHR and gave insufficient weight to the public interest in open discussion of the scandal.[277] This not only helped to achieve accountability for the families, but also strengthened protection for media freedom in the UK.

"[N]ATIONAL COURTS HAVE NOT ONLY BEEN EXEMPLARY IN BRINGING CONVENTION RIGHTS HOME UNDER THE HUMAN RIGHTS ACT BUT HAVE MOULDED AND DEVELOPED THEM TO MAKE THEM MORE RELEVANT TO OUR COMMUNITY AND AN INTEGRAL PART OF OUR NATIONAL HERITAGE."

– SIR NICHOLAS BRATZA, FORMER UK JUDGE ON THE ECtHR[278]

WITHDRAWAL FROM THE ECHR WOULD NOT ALIGN THE UK WITH AUSTRALIA, CANADA, NEW ZEALAND OR THE UNITED STATES

Recent calls for the UK to withdraw from the ECHR have pointed to Australia, Canada, New Zealand, and the United States to suggest that these 'modern democracies with strong domestic protections of their citizens' rights' demonstrate that the ECHR is 'not needed' to protect rights.[279] Pointing especially to Canada, some advocates of withdrawal

274 *Ireland v United Kingdom*, No. 5310/71, 18 January 1978.

275 *Brogan and Others v United Kingdom*, Nos. 11209/84; 11234/84; 11266/84; 11386/85, 29 November 1988.

276 Tim Eicke KC (former British judge on the ECtHR), quoted in John Hyde, 'ECtHR 'more necessary and relevant' now, says outgoing UK judge,' *Law Gazette,* 13 October 2025.

277 *Sunday Times v United Kingdom (No 1)* (n 185).

278 Quoted in British Institute of Human Rights, *The ECHR 75th Anniversary Zine* (n 147).

279 See Nigel Farage in House of Commons debate, European Convention on Human Rights (Withdrawal), 29 October 2025; Kevin Foster, 'Take a leaf out of America's book – we don't need a foreign court to protect our rights,' *GB News*, 15 October 2024; Wolfson Report (n 2) para 329.

venture that national authorities can protect rights through a domestic bill of rights without being a part of a regional human rights system and without being subject to the jurisdiction of a supranational court such as the ECtHR.[280] It is not possible to evaluate a hypothetical alternative Bill of Rights as to whether it would provide equal or equivalent protection of rights to the HRA. However, to assess the validity of the argument as a whole it is necessary to examine the relationship of these states to the relevant regional and international human rights frameworks, their constitutional similarities or differences to the UK, and the different geopolitical space they occupy compared to the UK.

The UK is part of the European regional human rights system. There is no regional human rights system for Australasia. Regional systems, other than the ECHR, are the African Charter on Human and Peoples' Rights and the American Convention on Human Rights (ACHR). Neither Canada nor the US have ratified the ACHR and therefore are not part of the jurisdiction of the Inter-American Court of Human Rights. However, Canada and the United States are members of the Organization of American States (OAS) and have recognised their international obligation to respect human rights as provided for in the Charter of the OAS and in the 1948 American Declaration of the Rights and Duties of Man (the foundational document for the Inter-American human rights system), as well as the functions of the Inter-American Commission on Human Rights.[281]

All these four states are part of the United Nations human rights treaty system and therefore have many of the same obligations as the UK. All four have, like the UK, ratified the International Covenant on Civil and Political Rights (ICCPR), which contains a similar catalogue of rights to the ECHR; the Convention against Torture; and the Convention on the Elimination of All Forms of Racial Discrimination. In addition, Australia, Canada and New Zealand have, like the UK, ratified the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

Thus, in respect of the UN human rights system, Australia, Canada and New Zealand have made the same commitments to be bound by international human rights standards as the UK; indeed, they have made additional commitments, having opted into the individual complaints mechanism of the ICCPR,[282] which the UK has not. The UN treaty system is not overseen by an international court like the ECtHR, but rather by committees of independent experts, whose decisions and recommendations have less 'bite' than those of courts that issue legally-binding judgments. However, it is mistaken to suggest that Australia, Canada and New Zealand – and to a lesser extent, the United States – stand

280 Reform UK, *Operation Restoring Justice* (n 1). Nigel Farage has said that his planned British Bill of Rights would not mention human rights but would include 'the freedom to do everything, unless there's a law that says you can't': see: Alix Culbertson, 'Nigel Farage has a new 'leave' campaign - here's how it could work and how it might impact you' *Sky News*, 27 August 2025. See also Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* (n 262); Conor Casey, 'Disagreeing over Human Rights Law' *The New Digest*, 26 June 2025.

281 The IACHR, an autonomous body of the OAS, monitors human rights in the Americas and receives petitions from individuals or groups alleging human rights violations in member countries like Canada. See Bernard Duhaime, Ten Reasons Why Canada Should Join the American Convention on Human Rights, *Revue générale de droit, 49*, 187 (2019).

282 ICCPR Optional Protocol 1 allows individuals to make complaints to the UN Human Rights Committee if the state concerned has signed up to the optional protocol.

aloof from international human rights treaties or that international human rights law plays no part in how their governments, parliaments and courts decide on human rights issues.[283]

CONSTITUTIONAL DIFFERENCES BETWEEN THE UK, UNITED STATES, AUSTRALIA, CANADA AND NEW ZEALAND

Experts suggest that the argument that the UK could follow the models of Australia, Canada, New Zealand or the United States if it left the ECHR is also doubtful because it fails to acknowledge the constitutional differences between them. For its part, Australia is a federal state with a written constitution that protects some rights, while some states have developed their own human rights charters, which are largely based on the UK's HRA.[284] New Zealand's model is more similar to the UK in that it has a statutory Bill of Rights Act (BORA) 1990, which focuses on a strong interpretative obligation for all legislation and judicial review of public authority actions. Canada and the United States have constitutionally entrenched rights with stronger forms of judicial review of human rights than the UK has; for example, Canada's Charter of Rights and Freedoms, adopted in 1982 and modelled in part on the ECHR, entails greater powers for the judiciary and more curtailment of parliamentary sovereignty than do the ECHR and Human Rights Act. In Canada, courts can strike down legislation which they deem to violate Charter rights, whereas UK courts cannot strike down legislation even if it clearly violates the ECHR.[285]

A further significant distinction between the UK and the four states discussed above is the geopolitical space they occupy. The four non-European states are relatively isolated geographically and have few or no land borders or close neighbours. By contrast, Europe has many states in close proximity, meaning that cross-border cooperation is essential on issues such as trade, defence, border control, law enforcement, environmental protection and the movement of each state's citizens beyond its borders.[286] The Council of Europe, a multilateral treaty-based organisation with both inter-parliamentary and executive bodies, enables European states to work together to address common concerns — and being a party to the ECHR is a prerequisite for Council of Europe membership.[287] Being a signatory to the ECHR has added importance for the UK since it underpins the Belfast/Good Friday Agreement between the UK and Ireland and the post-Brexit UK-EU Trade and Cooperation Agreement.[288]

283 See, for example, the Canadian government's Reports on United Nations human rights treaties.

284 In the Australian Capital Territory, Victoria and Queensland. See Kate O'Regan, Rosalind Dixon and Joshua Aird, *The UK Human Rights Act: A successful innovation: A submission to the United Kingdom Independent Human Rights Act Review Panel,* Bonavero Report 2/2021, 24 June 2021.

285 Aileen Kavanagh, 'Underuse of the Override' *Canadian Journal of Law & Jurisprudence*: 1–40 (2025).

286 Adrian Berry, 'The ECHR and United Kingdom international relations,' *Cosmopolis,* 11 September 2025.

287 Alice Donald and Andrew Forde, 'Reinforce, Reform or Rupture? The Future of the European Convention on Human Rights' EJIL Talk, 29 October 2025. See also Section 9.

288 See also Sections 8 and 9.

7 The ECHR was written to stand the test of time

The UK, like the rest of Europe, was a very different place when the ECHR was written in 1950 compared to today. Engaging in homosexual activity was a criminal offence but physical punishment of children was not. The death penalty was still used. The Internet, social media and artificial intelligence did not exist. Scientific knowledge about the impact of human activity on the world's climate was not available. Domestic violence and marital rape were viewed as private matters. As social attitudes and technology have evolved, the ECtHR and UK courts have interpreted the Convention to evolve in line with these transformations. This evolutive approach is also used by British courts to interpret laws and case law.

ENSURING THAT RIGHTS AND FREEDOMS REMAIN RELEVANT

The rights and freedoms in the ECHR are expressed in generic terms as the drafters knew[289] that they needed to remain applicable to the different circumstances and traditions of each country that signed up to it. Experts argue that this means that the Convention has been able to stand the test of time and remain relevant over the decades.[290] The open-ended expression of the rights and freedoms has allowed them to be interpreted in a way that evolves over time in the light of changing legal, social, scientific and technological developments that could not have been foreseen by the drafters of the ECHR in 1950.

For example, the Convention protects the right to private life but it does not define what private life means. This means that the right has kept pace both with new or previously unrecognised threats to privacy and changing social attitudes to what it means to live a personal life with dignity and autonomy. This occurs through 'evolutive interpretation' of the ECHR—interpreting the Convention in light of evolving standards and conditions—both at the ECtHR and, since the HRA, in UK courts.

THE EVOLUTION OF COMMON LAW AND INTERPRETATION OF LAWS IN THE UK

The idea of interpreting law in a way that evolves over time is far from unique to the ECtHR or to the sphere of human rights.[291] Judges in the UK are used to applying an evolutive approach in order to respond to new problems and new factual situations.[292] They do so when interpreting both legislation and case law.

289 Eirik Bjorge, 'The Convention as a Living Instrument: Rooted in the Past, Looking to the Future' *Human Rights Law Journal* 36 (7-12), 243 (2017).

290 Stefan Theil, 'Is the 'Living Instrument' Approach of the European Court of Human Rights Compatible with the ECHR and International Law?' *European Public Law 23(3)* 587 (2017).

When it comes to interpreting laws passed by Parliament, the specific words used must be made to apply to situations which were not contemplated when they were enacted.[293] For example, the UK Supreme Court had to consider the meaning of the word 'violence' within the definition of 'domestic violence' to decide whether, under the Housing Act 1996, a woman had made herself and her children intentionally homeless when she fled from her husband's threatening behaviour.[294] The Supreme Court decided that violence should be interpreted to mean not only physical force but also emotional, psychological or financial abuse, in line with developing understanding of domestic violence nationally and internationally.[295]

The common law in England and Wales, too, evolves over time to adapt to modern society. For example, rape within marriage was historically exempt from common law, based on a notional consent deemed to have been given by the wife on marriage. This exemption was maintained for centuries but eventually overturned in the UK in 1991 by the House of Lords, which ruled that a marital rape exemption did not exist, effectively making rape within marriage a crime.[296] The ECtHR later confirmed that this evolution of the criminal law was reasonably foreseeable and observed that the common law is capable of evolving in the light of changing social, economic and cultural developments.[297]

CRITIQUES OF EVOLUTIVE INTERPRETATION

Despite the fact that the common law is no stranger to evolutive interpretation, the same approach when applied by the ECtHR has been criticised by some commentators in the UK. They say that the ECtHR's approach has expanded existing rights 'out of recognition'and created new rights that the drafters of the Convention did not envisage, 'extending far beyond the prevention of tyranny, and into nearly every aspect of human life'.[298] Some argue that the evolutive approach to interpretation is

291 Lord Bingham, emphasising the centrality of evolutionary interpretation in the interpretation of statute, for instance, noted that: 'If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now.'; see *R v Secretary of State for Health, ex parte Quintavalle (on behalf of Pro-Life Alliance)* [2003] 2 AC 687, para 9. See also generally Eirik Bjorge, Evolutionary Interpretation and the Intention of the Parties, University of Oslo Faculty of Law Legal Studies Research Paper Series No. 2012-33.

292 Baroness Hale, Dialogue between judges: 'What are the limits to the evolutive interpretation of the Convention?' (Council of Europe, 2011). There is an 'affinity which exists between the evolutionary interpretations adopted by international tribunals and the interpretations adopted in a number of cases by common law courts'; evolutionary interpretation comes 'naturally' to common lawyers: Bjorge, Evolutionary Interpretation and the Intention of the Parties (n 291), p. 68.

293 Hale, Dialogue between judges (n 292), p. 12.

294 *Yemshaw v Hounslow London Borough Council* [2011] UKSC 3.

295 *Yemshaw v Hounslow London Borough Council* (n 294), para 28.

296 *R v R* [1991] 2 All England Law Reports 257 CA.

297 *C.R. v United Kingdom*, No. 20190/92, 22 November 1995.

298 See, e.g., Lord Sumption, Only leaving the ECHR can bring rights back home to Britain, *The Telegraph*, 6 November 2025; Lord Sumption, 'The Limits of Law,' 27th Sultan Azlan Shah Lecture, Kuala Lumpur, 20 November 2013, p. 7. See also Ekins, 'Human Rights and the Rule of Law' (n 242); Policy Exchange, 'Keynote Speech by Rt Hon Kemi Badenoch MP' 25 February 2025. See also generally NW Barber, Richard Ekins, and Paul Yowell (eds.), *Lord Sumption and the Limits of the Law* (Hart Publishing, 2016) and Tom Campbell, Keith Ewing, and Adam Tomkins (eds), *Sceptical Essays on Human Rights* (Oxford, 2001).

inherently illegitimate.[299] It is inevitable that there will be differing views about how the Convention is applied in particular cases – and it is essential that the decisions of the ECtHR, and of any court, are subject to rigorous scrutiny. It is to be expected that the ECtHR's decisions may be subject to criticism in particular where the law is evolving. Indeed, there is a healthy tradition of ECtHR judges themselves producing dissenting opinions where they disagree with the majority of the Court.[300] There have, too, been instances in which the UK Supreme Court has disagreed with the ECtHR's interpretation and has refused to follow its case law—engaging in 'judicial dialogue' by explaining why the ECtHR's approach was wrong.[301] On several occasions within such dialogue, the ECtHR has changed its position to follow UK judges' interpretations.[302]

JUDICIAL AND POLITICAL DISSENSION OVER PRISONERS' VOTING RIGHTS

A high-profile example of disagreement about a judgment of the ECtHR relates to the right of prisoners to vote. Parliament had passed a blanket ban on all serving prisoners voting in any elections, irrespective of the length of their sentence. The ECtHR in 2005 found that the ban violated the ECHR, because it was so indiscriminate as to disproportionately interfere with the right to free elections (Article 3 of Protocol 1 ECHR), and because Parliament had not considered the human rights implications when imposing the ban.[303] Five judges of the ECtHR dissented.

This judgment was opposed by some politicians[304] and subject to extensive academic debate.[305] Some commentators saw it as evidence of overreach by the ECtHR.[306] Successive governments declined to change the law, even

299 Raab, *Strasbourg in the Dock - Prisoner Voting, Human Rights & the Case for Democracy* (n 66).

300 See e.g. *Savickis and Others v Latvia*, No. 49270/11, 9 June 2022; *S.A.S. v France*, No. 43835/11, 1 July 2014; *Hirst v United Kingdom (No. 2)*, No. 74025/01, 6 October 2005.

301 Former Supreme Court President Lord Neuberger writes: 'On occasion, we have already taken the view that a decision of the Strasbourg court adverse to the UK was wrong and should be reconsidered... In such a case, we have engaged in dialogue, in the form of giving a detailed judgment not following the Strasbourg jurisprudence, and explaining why.' Lord Neuberger, 'The role of judges in human rights jurisprudence: a comparison of the Australian and UK experience' (n 245). See also Amos, 'The Dialogue between United Kingdom Courts and the European Court of Human Rights,' (n 238).

302 Gearty, 'On Fantasy Island: British politics, English judges and the European Convention on Human Rights (n 271).

303 *Hirst v United Kingdom (No. 2)* (n 300).

304 David Davis and Jack Straw, 'We must defy Strasbourg on prisoner votes' *The Telegraph*, 24 May 2012; Dominic Raab, 'What happens if we defy Europe? Nothing', *The Telegraph*, 3 February 2011.

305 Kanstantsin Dzehtsiarou, 'Prisoner Voting Saga: Reasons for Challenges' in Brice Dickson and Helen Hardman (eds) *Electoral Rights in Europe: Advances and Challenges* (Routledge, 2017); Ed Bates, 'Analysing the Prisoner Voting Saga and the British Challenge to Strasbourg,' *Human Rights Law Review* 14(3) 503–540 (2014).

306 Sir Noel Malcolm, Human Rights and Political Wrongs (Policy Exchange, 2017); Raab, *Strasbourg in the Dock - Prisoner Voting, Human Rights & the Case for Democracy* (n 66); David Davis, 'Britain must Defy the European Court of Human Rights on Prisoner Voting as Strasbourg is Exceeding its Authority', in Spyridon Flogaitis, Tom Zwart, and Julie Fraser, *The European Court of Human Rights and its Discontents: Turning Criticism into Strength* (Edward Elgar, 2013).

after a Joint Committee formed to review it recommended in 2013 that all prisoners serving sentences of 12 months or less should be allowed to vote.[307]

In 2018, the government updated guidance such that offenders who are no longer in prison but are released on licence are allowed to vote—an administrative amendment rather than legislative change.[308] The Council of Europe welcomed the move as an acceptable compromise to address the ECtHR ruling.[309] The Scottish parliament has since gone further by extending the franchise for certain elections to those serving a sentence of 12 months or less.[310] In a case brought by a prisoner banned from voting in the UK, in September 2025 the ECtHR ruled that the remaining (near-total) ban on prisoner voting was not in violation of the ECHR.[311]

HOW GOVERNMENTS CHOSE TO CREATE A 'LIVING TREATY'

In response to the critique that the idea of the ECtHR interpreting rights in line with modern conditions is inherently illegitimate, experts note that the choice to make the ECHR a living text was made by the governments of Europe.[312] While the historical record of the drafting of the ECHR contains little of substance about how the drafters intended the rights and freedoms to be interpreted, evidence points towards a broad mandate for the ECtHR.[313] The governments drafted the rights and freedoms in an open-ended way, created the ECtHR with the explicit authority to interpret and apply those rights and freedoms,[314] made the judgments of the Court binding on states,[315] and committed themselves in the Preamble of the Convention itself to the 'further realisation' of the rights and freedoms provided by it.

307 Joint Committee on the Draft Voting Eligibility (Prisoners) Bill, 'Draft Voting Eligibility (Prisoners) Bill: Report', Session 2013-14, HL Paper 103, 16 December 2013.

308 See, for a helpful overview, Neil Johnston, Prisoners' voting rights, *House of Commons Library Research Briefing*, 9 August 2023.

309 Johnston, Prisoners' voting rights, (n 308).

310 The Scottish Elections (Franchise and Representation) Act 2020.

311 *Hora v United Kingdom*, No. 1048/20, 23 September 2025.

312 Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights, vol. 2 (Brill 1975), p. 178-180; Eirik Bjorge, 'The Convention as a Living Instrument: Rooted in the Past, Looking to the Future' (n 289).

313 Theil, 'Is the 'Living Instrument' Approach of the European Court of Human Rights Compatible with the ECHR and International Law?' (n 290).

314 Article 32 of the ECHR states that 'The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention'.

315 Article 46(1) of the ECHR commits states to "abide by the final judgment of the Court in any case to which they are parties".

> "THE IDEA WAS NEVER TO CREATE A STATIC, FIXED, SET OF PRINCIPLES, IN REALITY A 'DEAD CONVENTION' THAT WOULD SOON BECOME OBSOLETE AND DEVOID OF ANY MEANINGFUL RATIONAL RELATIONSHIP WITH THE LIVES WE ACTUALLY LIVE."
>
> – ROBERT SPANO, FORMER PRESIDENT OF THE ECtHR [316]

In interpreting the ECHR in line with modern-day developments, judges follow rules that govern all international treaties.[317] These rules require, for example, that the ECtHR interpret the ECHR in good faith in line with its 'object and purpose' as a treaty for the effective protection of individual human rights, and in line with the 'subsequent practice' of member states.[318] An originalist interpretation of the ECHR, based upon the intention of the drafters in 1950, would not fulfil these requirements.

ADDRESSING NEW OR PREVIOUSLY UNRECOGNISED THREATS TO RIGHTS

As a result of the way the Court has interpreted rights in line with contemporary developments, ECHR rights have been used by LGBTQ+ people challenging discrimination,[319] and by groups seeking to protect everyone's privacy from increasingly intrusive mass surveillance.[320] They have been invoked in novel ways in the context of human trafficking and modern slavery[321] and domestic violence.[322] This dynamic approach to interpretation of rights has also enabled the ECtHR to take account of changing societal attitudes in the UK towards, for example, the physical punishment of children,[323] the status of children born to unmarried parents,[324] and the rights of transgender people.[325] It has kept pace, too, with scientific and medical developments, such as in the field of IVF (in-vitro fertilisation) treatment[326] and decisions concerning life-sustaining treatment.[327]

316 Spano, Over-reaching or under-achieving? The trajectory of the case-law of the European Court of Human Rights (n 207).

317 Vienna Convention on the Law of Treaties 1969.

318 Vienna Convention on the Law of Treaties (n 317) Article 31.

319 *Ghaidan v Godin-Mendoza* [2004] UKHL 30, concerning the right of a surviving same-sex partner of a deceased tenant to inherit a statutory tenancy as the "surviving spouse". See also Section 1, and see discussion of Dudgeon v UK.

320 *Big Brother Watch and Others v United Kingdom* (n 31).

321 *C.N. v the United Kingdom* (n 268).

322 *J.D. and A v United Kingdom* (n 34).

323 *Costello-Roberts v the United Kingdom*, No. 13134/87, 25 March 1993; *A v United Kingdom,* No. 25599/94, 23 September 1998.

324 *Marckx v Belgium*, No. 6833/74, 13 June 1979.

325 *Christine Goodwin v United Kingdom, No. 28957/95*, 11 July 2002.

326 *Evans v United Kingdom, No. 6339/05,* 10 April 2007 (Grand Chamber).

327 *Gard and Others v United Kingdom* (dec.) No. 39793/17, 27 June 2017.

Critics of the Court's approach contest the application of the ECHR to certain new situations. Lord Sumption has, in particular, criticised the ECtHR's decision on the inadequacy of Switzerland's climate mitigation laws on Article 8 grounds as a 'bold intrusion'.[328] Yet, domestic and international courts around the world have been reviewing the impacts of inadequate laws to address climate change on the human rights of communities for the past two decades.[329] In addition, it may be noted that the ECtHR ruling in the Swiss climate change case does not dictate to parliaments what climate laws they should pass, or specify greenhouse gas emission targets, but invites them to act responsibly in the light of their respective capabilities.[330]

The ECtHR's ruling on the use of physical punishment by parents on their children has also been criticised as overly intrusive. Former Conservative politician Dominic Raab, for example, stated that the ECtHR should not 'dictate' to parents about the use of physical punishment on their children, with reference to a judgment of the ECtHR in 1998 that required the UK to abolish the defence of 'reasonable chastisement'.[331] This defence had secured the acquittal of a man who had repeatedly beat his stepson with a cane. Yet it could be considered inappropriate if the Court had *not* interpreted the ECHR so as to find the UK authorities responsible for failing to deter inhuman and degrading treatment of a child, and had instead referred to the social norms of 1950 when physical punishment of children was common in families and schools.[332] By the time the Court issued the judgment, the UK government had already signalled its intention to change the law and finally did so in 2004.[333]

CHANGING ATTITUDES TOWARDS PHYSICAL PUNISHMENT OF CHILDREN

In an early case against the UK, the ECtHR had to decide whether sentencing a 15-year-old boy, Anthony Tyrer, to corporal punishment which involved his bare skin being whipped with sticks in a police station amounted to degrading punishment.[334] The Court decided that it did. In so doing, it introduced the principle that the ECHR is a 'living instrument', which must be interpreted in light of present-day conditions, not as things were when it was drafted in 1950, when corporal punishment was regarded as a normal sanction.[335]

328 Lord Sumption, 'ECHR's climate judgment is its boldest intrusion yet,' *The Times*, 14 April 2024.

329 Marcelo Lozada Gomez and Başak Çalı, *From Litigation to Implementation: Framing Smart Remedies in Rights-based Climate Litigation*, Bonavero Report 4/2025, 11 November 2025.

330 Margaretha Wewerinke-Singh 'Climate Protection Obligations under the European Convention on Human Rights: The KlimaSeniorinnen Judgment', *European Constitutional Law Review* 21(2) (2025).

331 Raab, *Strasbourg in the Dock - Prisoner Voting, Human Rights & the Case for Democracy* (n 66) p. 10. See the case of *A v United Kingdom* (n 323).

332 Relatedly: when two mothers went to the ECtHR with a complaint about the continuing practice of corporal punishment in state schools in Scotland, the Court found that this violated their right to have their children educated in line with their own convictions. Soon afterwards, the UK abolished the use of corporal punishment in state schools: *Campbell and Cosans v UK* (n 274).

333 See Children Act 2004, section 58(5), which imposed additional constraints on the 'reasonable punishment' defence but stopped short of full prohibition of corporal punishment.

334 *Tyrer v United Kingdom*, No. 5856/72, 25 April 1978.

The ECtHR said that punishment of this kind was degrading because it was an 'institutionalised assault on a person's dignity and physical integrity'.[336] It added that the Isle of Man, where Anthony Tyrer's punishment had taken place in 1972, was out of step with laws passed in the rest of the UK and Europe. Judicial corporal punishment of adults and juveniles had already been abolished in England, Wales and Scotland in 1948 and in Northern Ireland in 1968. It was finally abolished in the Isle of Man in 1993, although no birchings took place after the *Tyrer* judgment.[337]

KEEPING PACE WITH CHANGING SOCIETAL ATTITUDES: DECRIMINALISING HOMOSEXUALITY IN NORTHERN IRELAND

In 1976, a shipping clerk from Belfast, Jeffrey Dudgeon, took a case to the European Commission and Court of Human Rights to challenge the continuing criminalisation of private, consensual, adult homosexuality in Northern Ireland under laws that dated back to the 19th century. After a search of his house and the seizure of personal correspondence, he had been questioned by police about his sexual life and threatened with prosecution.

Mr Dudgeon argued that the laws in Northern Ireland violated his right to respect for his private life. In its judgment in 1981, the ECtHR agreed.[338] By then, most Council of Europe states had already decriminalised homosexual relationships and the Court was thus reflecting the fact that Northern Ireland lagged behind an emerging European consensus on this issue. This consensus included the rest of the UK: homosexuality had been partially decriminalised in England and Wales in 1967 and in Scotland in 1980, allowing private sexual acts between men over the age of 21.

In 1982, in response to the judgment, Parliament changed the law in Northern Ireland, decriminalising private homosexual acts between two consenting adults over 21.[339] It was another 20 years before the age of consent was equalised for same-sex and opposite-sex couples – and again this was due to a ruling of the ECtHR.[340] This led in turn to the gradual equalisation of the age of consent across Europe.[341]

335 *Tyrer v United Kingdom* (n 334); see Bates, *Evolution of the European Convention* (n 17).

336 *Tyrer v United Kingdom* (n 334), para 33.

337 C. Farrell, Judicial corporal punishment: Birching in the Isle of Man 1945 to 1976 (World Corporate Punishment Research, undated).

338 *Dudgeon v United Kingdom* (n 272).

339 Homosexual Offences (Northern Ireland) Order 1982.

340 *Sutherland v United Kingdom*, No. 25186/94, 27 March 2001.

341 Larry Helfer and Erik Voeten, International Courts as Agents of Legal Change: Evidence from LGBT Rights in Europe, *International Organization* 68(1): 77 (2014).

THE LIMITS OF EVOLUTIVE INTERPRETATION

At the same time, there are limits to interpreting ECHR rights in light of changing modern day conditions. The ECtHR has frequently stated that the importance of legal certainty means that it should not depart, without good reason, from its established case law.[342] Baroness Hale, former President of the UK Supreme Court, underlines the importance of ensuring that rights develop predictably, in line with standards in other international treaties and in a way that reflects a 'common European understanding' of the issue at stake.[343] In other words, the development of human rights protection is – and should be – a matter of evolution, not revolution. Experts observe that when the ECtHR addresses a new or potentially sensitive issue, it acts in a 'cautious, incremental and circumscribed manner', developing its case law in line with changes already made by a majority of national parliaments in the member states.[344]

HOW THE ECtHR INTERPRETS RIGHTS IN LINE WITH CHANGES IN LAW AND ATTITUDES WITHIN STATES

For many years, the ECtHR offered no protection under the right to freedom of thought, conscience and religion (Article 9 of the ECHR) to those who objected in principle to military service. This was because the text of the Convention excluded military service from the concept of 'forced labour' under Article 4 (prohibition of slavery, servitude and forced or compulsory labour), and hence the Court took the cautious view that Article 9, too, was irrelevant to the question of conscientious objection. A turning point came in 2011, when the Court responded to the widespread consensus that had seen numerous European states, including the UK, legislate to permit forms of conscientious objection across Europe.[345] In line with this consensus, the Court said conscientious objectors *could* gain protection under Article 9 where it is motivated by genuine beliefs which are 'in serious and insurmountable conflict with the obligation to perform military service'.[346]

342 See *Cossey v United Kingdom*, No. 10843/84, 27 September 1990; *Chapman v United Kingdom*, No. 27238/95, 18 January 2001, para. 70: 'it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases.'

343 Baroness Hale, 'Common Law and Convention Law: The Limits to Interpretation', *European Human Rights Law Review 5: 534* (2011) p. 543.

344 Janneke Gerards, 'Margin of Appreciation, Incrementalism and the European Court of Human Rights' *Human Rights Law Review 18(3)* 495 (2018) p. 507.

345 *Bayatyan v Armenia,* No. 23459/03, 7 July 2011, paras 47, 102-103, 108.

346 *Bayatyan v Armenia* (345).

> By contrast, where there is no consensus, such as on sensitive matters like assisted suicide, the ECtHR continues to afford states very wide discretion in cases that challenge national laws.[347] As of November 2025, many states, including the UK, prohibit assisted suicide, while others like Belgium and the Netherlands allow the practice of actively assisting patients to end their lives for different types of suffering. The ECtHR has made clear that national authorities are best placed to decide whether to allow or forbid assisted suicide in their own national context, the only requirement being a clear legal and regulatory framework to protect the rights of the person wishing to end their life and the rights of others.[348]

Looking ahead, public bodies, academics and civil society groups suggest that the evolutive approach of courts in the UK and the ECtHR will continue to be needed to ensure the Convention system is equipped to deal with the challenges of the future. These include threats to rights and freedoms from artificial intelligence,[349] neurotechnology,[350] online hate speech,[351] and deepfakes and other forms of disinformation,[352] facial recognition technologies,[353] the environmental crisis,[354] and health crises like the COVID-19 pandemic.[355]

Governments can, if there is consensus across the 46 states, create new rights in the form of additional Protocols to the ECHR (which are optional for states). The UK ratified some previous additional protocols, for example on the right to free elections, the right to education and the abolition of the death penalty. Debates are under way between governments of the UK and the other 45 states in the Council of Europe about a new Protocol on the right to a clean, healthy and sustainable environment.[356]

347 ECtHR, End of life and the European Convention on Human Rights.

348 Sien Loos, 'Assisted dying before the ECtHR: General rules for national regulations', *Medical Law International 22(2)* (2022) 93.

349 European Network of Human Rights Institutions, Key human rights challenges of AI.

350 Susie Alegre, Protecting Freedom of Thought in the Digital Age (Digital Freedom Fund, 23 March 2020).

351 International Institute for Democracy and Electoral Assistance, When words become weapons: How hate speech threatens democracy, 25 September 2025.

352 University of Essex research project on Human Rights, Big Data and Technology.

353 Pete Fussey and Daragh Murray, Independent report on the London Metropolitan Police Service's trial of live facial recognition technology, (University of Essex, July 2019).

354 Bhargabi Bharadwaj, A new European Court of Human Rights ruling has established a vital new precedent (Chatham House, 18 April 2024), commenting on *Verein Klimaseniorinnen Schweiz and Others v Switzerland*, No. 53600/20, 9 April 2024.

355 Joelle Grogan and Alice Donald, Policy Paper on the Implications of COVID-19: Insights into State Governance and the Rule of Law, Human Rights and Good Governance during the COVID-19 Pandemic (Reconnect, 28 January 2022).

356 Steering Committee for Human Rights (CDDH), CDDH study on the need for and feasibility of a further instrument or instruments in the field of human rights and the environment, CDDH(2024)R101 Addendum 2 29 November 2024.

8 The ECHR ensures peace and stability in Northern Ireland

The Belfast/Good Friday Agreement[358] is widely viewed as the foundation of peace and stability in Northern Ireland – and the ECHR as being at the heart of the Belfast/Good Friday Agreement, an international treaty binding in international law on the UK and Irish governments.[359] There is consensus both in the political sphere and among legal scholars that the Convention is not only embedded throughout the Agreement as a legally binding commitment on the UK and Irish governments,[360] but that it was also 'integral to the rebuilding of trust in public institutions in Northern Ireland after the Troubles'.[361] Evidence shows that there was, and remains, agreement across all communities in Northern Ireland on the need for a set of legally enforceable, internationally agreed human rights standards to apply under the supervision of an international court – the ECtHR – which is separate from the British state.[362] A poll in November 2025 found that only 11% of people in Northern Ireland supported withdrawing from the ECHR, a lower proportion than anywhere else in the UK.[363]

Therefore, the weight of evidence points to the conclusion that for the UK to withdraw from the ECHR would not only breach the Belfast/Good Friday Agreement, in violation of international law, it would also risk destabilising what is recognised as 'one of the most successful peace processes in modern history'.[364]

> **INCORPORATING THE ECHR INTO LAW IN NORTHERN IRELAND "WAS ONE OF THE MOST SIGNIFICANT CONFIDENCE-BUILDING MEASURES OF THE ENTIRE PROCESS. THIS WASN'T SYMBOLIC. IT WAS A DIRECT RESPONSE TO THE FEARS HELD BY BOTH COMMUNITIES."**
>
> – KEVIN HANRATTY, DIRECTOR OF THE HUMAN RIGHTS CONSORTIUM IN NORTHERN IRELAND[357]

357 Kevin Hanratty, The Quiet Architecture of Peace: 75 Years of the ECHR in Northern Ireland in British Institute of Human Rights, *The ECHR 75th Anniversary Zine* (n 147) p. 8.

358 The text of the Belfast/Good Friday Agreement is available here.

359 Paul Mageean and Martin O'Brien, 'From the Margins to the Mainstream: Human Rights and the Good Friday Agreement' 22 *Fordham International Law Journal* 1499 (1998).

360 Colin Murray and Aoife O'Donoghue, *The Belfast/ Good Friday Agreement 1998 & European Convention on Human Rights: Explainer* (Committee on the Administration of Justice, September 2025).

361 Northern Ireland Affairs Committee, 'Committee writes to NI Secretary on potential implications for Northern Ireland of leaving the ECHR' 24 May 2024; The Legacy of the Troubles: A Joint Framework between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland, September 2025, p. 5. See also Colin Murray, Aoife O'Donoghue and Ben Warwick, The implications of the Good Friday Agreement for UK human rights reform in F. de Londras and S. Mullally (eds), *Bliainiris Éireannach an dlí idirnáisiúnta / The Irish Yearbook of International Law, Vol. 11-12* (Hart Publishing, 2018), pp. 71-96; Tánaiste's remarks at the British Irish Association Conference in Oxford, 5 September 2025.

362 See sources cited immediately above.

363 Savanta poll for Amnesty International (n 5).

364 Human Rights Consortium, A Dangerous Game: Why Attacks on the ECHR Threaten Peace in Northern Ireland, 7 September 2025.

THE ECHR IS AT THE HEART OF THE BELFAST/GOOD FRIDAY AGREEMENT

The Belfast/Good Friday Agreement of 1998 brought to an end 30 years of civil strife and sectarian conflict between Irish nationalists and Ulster unionists in Northern Ireland, in which more than 3,500 people died.[365] Endorsed overwhelmingly by people on both sides of the Irish border,[366] it established power-sharing in Northern Ireland, ensuring that both nationalist and unionist communities are fairly and equally represented in political institutions.

The Agreement comprises two parts: an international treaty between the UK and Irish governments and, annexed to it, a Multi-Party Agreement between the two governments and eight political parties or groups in Northern Ireland. The ECHR is integral to both parts, as is evident both from the text of the Agreement and the years of negotiation that led up to it, in which human rights were 'centre stage'.[367]

Among multiple references to the ECHR within the Multi-Party Agreement, there is a headline commitment that: 'The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights ..., with direct access to the courts, and remedies for breach of the Convention.'[368] This was achieved for Northern Ireland and the rest of the UK via the HRA. As additional layers of protection, it was provided that neither the Northern Ireland Assembly nor public bodies[369] can infringe people's ECHR rights and courts have the power to strike down Assembly legislation if it breaches the Convention. The Northern Ireland Act 1998, the law that establishes the framework for devolved government, establishes the ECHR as a minimum floor, rather than a ceiling, of human rights protection in Northern Ireland.[370]

'THE ECHR'S GUARANTEES CANNOT BE NEGOTIATED AWAY'

In 2025, three reports published by the Prosperity Institute,[371] Policy Exchange,[372] and the Shadow Attorney General Lord Wolfson,[373] have sought to deny the legally binding nature of the Belfast/Good Friday Agreement and the foundational importance of the ECHR to Northern Ireland as a post-conflict society.

365 See the CAIN (Conflict and Politics in Northern Ireland) archive.

366 See the results of the referendums here.

367 Mageean and O'Brien (n 358) p. 1500.

368 See the chapter within the Multi-Party Agreement on Rights, Safeguards and Equality of Opportunity, para 2.

369 The reference to 'public bodies' means UK-level bodies with functions applicable to Northern Ireland, as well as devolved institutions; see Murray and O'Donoghue (n 351), p. 4.

370 Northern Ireland Act 1998, Section 6.

371 Rt Hon Suella Braverman KC MP and Guy Dampier, *Why and How to Leave the European Convention on Human Rights* (Prosperity Institute, 2025).

372 Conor Casey, Richard Ekins KC (Hon), Sir Stephen Laws KCB, KC (Hon), *The ECHR and the Belfast (Good Friday) Agreement* (Policy Exchange, 2025).

373 Wolfson Report (n 2).

> "THE ECHR IS A FUNDAMENTAL SAFEGUARD IN THE GOOD FRIDAY AGREEMENT. IT IS A CORE PART OF THE DELICATE BALANCES IN THAT AGREEMENT... THE ECHR'S GUARANTEES CANNOT BE NEGOTIATED AWAY, DESPITE WHAT SOME POLITICIANS MIGHT CLAIM."
>
> – IRISH TÁNAISTE (DEPUTY PRIME MINISTER), SIMON HARRIS[384]

The Policy Exchange report argues that the Multi-Party Agreement is 'not itself a treaty',[374] but a political agreement which is not binding in international law[375] and 'may be expected to develop over time'.[376] The assertion that the annexed provisions in the Multi-Party Agreement are not legally binding is a misunderstanding of international law, under which this type of annex to a treaty is binding.[377] In addition, the UK-Irish treaty (Article 2) expressly commits both governments to implement the annexed provisions of the Multi-Party Agreement.

While the Prosperity Institute report proposes renegotiating the Belfast/Good Friday Agreement,[378] Policy Exchange goes further by arguing that the UK could withdraw from the ECHR without breaching the Agreement.[379] It suggests that the UK could maintain the assurance given by the Agreement by replacing references to ECHR rights with similarly worded provisions.[380] Experts say that this argument lacks legal credibility, since it denies not only the plain language of the Agreement, but also the enduring political significance of the ECHR as the bedrock of commitments that brought peace to Northern Ireland.[381] As Murray and O'Donoghue venture, the references to the ECHR in the Agreement underline that it is the Convention itself which the UK is committed to making operative in Northern Ireland, not 'an alternative set of rights commitments that are removed from the ECHR's judicial structures'.[382]

ADDRESSING THE LEGACY OF CONFLICT NOW AND IN THE FUTURE

Peace in Northern Ireland is not a secure outcome but a continuous process, and evidence indicates that the ECHR continues to play a central role in addressing the legacy of the conflict in Northern Ireland.[383]

---

374 Casey, Ekins and Laws (n 372) p. 26; Wolfson Report (n 2) para 243.

375 Casey, Ekins and Laws (n 372) p. 16; see also Braverman and Dampier (n 371) p. 25-26; Wolfson Report (n 2) para 243.

376 Casey, Ekins and Laws (n 372) p. 16; Wolfson Report (n 2) paras 243-245.

377 Under Article 31(2) of the Vienna Convention on the Law of Treaties 1969, which sets the rules for treaties between states, an annex to a treaty is binding under international law if it is part of the treaty's context and the parties intended to be bound by it, as is clearly the case with the Belfast/Good Friday Agreement.

378 Braverman and Dampier (n 371) p. 26.

379 Casey, Ekins and Laws (n 372) p. 40.

380 Casey, Ekins and Laws (n 372) p. 41; see also Braverman and Dampier (n 371) p. 26 and Wolfson Report (n 2) para 261.

381 George Fergusson, Scrapping ECHR threatens Good Friday Agreement, *Irish Legal News*, 8 October 2025; Mageean and O'Brien (n 350). See also sources cited at footnote 359.

382 Murray and O'Donoghue (n 351) p. 4.

383 See, e.g., Brice Dickson, 'The HRA and Legacy Issues in Northern Ireland', *U.K. Constitutional Law Blog*, 10 November 2022.

"[T]HE BASIC PRINCIPLE OF POLICING IS PROTECTING HUMAN RIGHTS; AND HUMAN RIGHTS ARE AN ENABLER OF EFFECTIVE POLICING. I HAVE NO DOUBT THAT PSNI AND THE COMMUNITY WE SERVE HAVE BENEFITTED TREMENDOUSLY AS A RESULT OF THE EMBODIMENT OF HUMAN RIGHTS WITHIN POLICING."

– FORMER CHIEF CONSTABLE OF THE PSNI, GEORGE HAMILTON[394]

Over many years, human rights violations have been uncovered in cases both in UK courts and at the ECtHR. These include the Court's judgment in 1978 that the interrogation methods used on individuals detained without trial by British security forces in the 1970s amounted to inhuman and degrading treatment.[385] Judgments of the ECtHR have also led to more stringent standards for the investigation of deaths at the hands of, or with the collusion of, UK security forces in Northern Ireland in the 1980s and 1990s.[386] Some of these cases are still awaiting full implementation and are being monitored by the Committee of Ministers of the Council of Europe.[387]

The ECHR was an essential component of the reformed policing framework in Northern Ireland following the Belfast/Good Friday Agreement. This was recommended by the Independent Commission on Policing for Northern Ireland chaired by Lord Patten in 1999, of which a 'central proposition' was that 'the fundamental purpose of policing should be, in the words of the [Belfast/Good Friday] Agreement, the protection and vindication of the human rights of all'.[388] ECHR rights and freedoms have since become central to the institutional and operational ethos of the Police Service of Northern Ireland (PSNI).[389] The PSNI Code of Ethics is expressly designed around the framework of the ECHR as provided for by the HRA.[390]

In September 2025, the UK and Irish governments jointly observed that 'the legacy of violence of the Troubles continues to cast a shadow over these islands'.[391] Recalling the – as yet unrealised – commitment in the Belfast/Good Friday Agreement to 'acknowledge and address the suffering of victims and survivors of the Troubles',[392] the two governments agreed a joint framework for a 'fair and transparent system that enables families of victims, including those who never came home from service in Northern Ireland, to seek answers'.[393]

---

384 Tánaiste's remarks at the British Irish Association Conference in Oxford, 5 September 2025.

385 *Ireland v United Kingdom* (n 275).

386 See, e.g., *McKerr v United Kingdom*, No. 28883/95, 4 May 20021.

387 For documents relating to the supervision by the Committee of Ministers of the implementation of the McKerr group of cases, see HUDOC-EXEC.

388 A New Beginning for Policing in Northern Ireland: A Report of the Independent Commission on Policing for Northern Ireland (the Patten Commission) (1999), para 41.

389 Written evidence from the Human Rights Consortium to the Joint Committee on Human Rights, 28 September 2018.

390 Northern Ireland Policing Board, Police Service of Northern Ireland Code of Ethics (n 39).

391 The Legacy of the Troubles (n 360).

392 The Legacy of the Troubles (n 360) p. 5.

393 Northern Ireland Office, Northern Ireland Troubles Bill to repeal and replace Legacy Act, 14 October 2025.

394 Written evidence from the Human Rights Consortium (n 389).

395 Northern Ireland Troubles Bill.

Based on the joint framework, in October 2025, the UK government introduced the Northern Ireland Troubles Bill[395] to replace a 2023 law known as the 'Legacy Act'.[396] Courts in Northern Ireland found the Legacy Act to be incompatible with the ECHR, mainly because of provisions for conditional immunity from prosecution for Troubles-related offences, whether committed by members of the armed forces or by paramilitary groups.[397] Critics of the Northern Ireland Troubles Bill say it will not achieve reconciliation and could lead to vexatious prosecutions of veterans.[398] Alternative analyses refer to the fact that the Legacy Act was opposed by victims groups and all of Northern Ireland's political parties,[399] and that at least 225 investigations into deaths of soldiers and veterans could now be reopened.[400] The Bill provides safeguards for veterans, including protection from repeated investigations, a right to anonymity, protection in old age, and a right for veterans' voices to be heard.[401]

THE ECHR IS INTEGRAL TO POST-BREXIT COOPERATION AND TRADE WITH NORTHERN IRELAND

The post-Brexit treaties between the UK and EU reinforce the UK's duty to maintain rights protections in Northern Ireland as set out in the Belfast/Good Friday Agreement. Most notably, under the Windsor Framework, the UK committed to 'no diminution of rights, safeguards or equality of opportunity' in Northern Ireland.[402] The Northern Ireland Affairs Committee in Parliament notes that withdrawal could have negative consequences for relations between the EU and the UK.[403] UK withdrawal from the ECHR could potentially undermine the mutual assurances made under the Windsor Framework, which was designed to make trade between Northern Ireland and the rest of the UK easier.[404]

396 The Northern Ireland Troubles (Legacy and Reconciliation) Act 2023.

397 See Northern Ireland Office, A proposal for a Remedial Order to amend the Northern Ireland Troubles (Legacy and Reconciliation Act) 2023, 4 December 2024. Ireland has lodged a case against the UK at the ECtHR over the Legacy Act 2023; see ECtHR New inter-State application brought by Ireland against the United Kingdom, 19 January 2024.

398 See, e.g., UK Defence Journal, Sir David Davis warns NI legacy plan risks lawfare fallout, 17 November 2025.

399 Anurag Deb and Colin Murray, An Unfortunate Legacy: Fixing the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, *U.K. Constitutional Law Blog,* 29 July 2024.

400 RTE, New Troubles legislation will address 'unfinished business' - NI Secretary, 18 November 2025.

401 Northern Ireland Office, Northern Ireland Troubles Bill to repeal and replace Legacy Act (n 394).

402 Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community2019/C 384 I/01, Document 12019W/TXT(02), Article 2.

403 Northern Ireland Affairs Committee, 'Committee writes to NI Secretary on potential implications for Northern Ireland of leaving the ECHR' (n 360).

404 John Curtis, The Northern Ireland Protocol and Windsor Framework, House of Commons Library Research Briefing, 1 February 2024.

9 The ECHR enables international cooperation on issues such as border control, security, data transfer, and combatting crime

The ECHR, and the developments in UK law that have resulted from UK membership of the Council of Europe, have been considered an important element, and in one case an 'essential element',[405] in cross-border cooperation with other countries around the world. Within Europe, the ECHR is a core common international standard that the UK shares with European states and the EU. It features as part of the UK's post Brexit agreements with the EU, enabling cooperation in areas including law enforcement and judicial cooperation on criminal matters,[406] and the return of individuals to France.[407] Developments in UK law that were prompted by ECtHR cases were also critical for securing data access agreements with the EU and the United States.[408]

THE ECHR IS AN 'ESSENTIAL ELEMENT' IN THE UK'S RELATIONSHIP WITH THE EU

Experts underline that the UK's membership of the ECHR is fundamental to its post-Brexit relationship with the EU. Following withdrawal from the EU and the disapplication of the EU Charter of Fundamental Rights, the ECHR is now the only common European standard of human rights protection which is equally applicable both in the UK and in the EU member states. It has, as a consequence, been brought into the post-Brexit agreements. This means that the implications of the UK leaving the ECHR, as advocated by Reform UK and the Conservatives, need to be carefully considered.

Crucially, withdrawal would impact the UK-EU Trade and Cooperation Agreement (TCA).[409] The TCA commits both the UK and EU explicitly to the ECHR, particularly in law enforcement and judicial cooperation, and notes that the UK and EU's shared commitment to human rights treaties is an 'essential element of the partnership'.[410] Leaving the ECHR could therefore be considered a breach of an 'essential element'

405 Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part (2020).

406 Trade and Cooperation Agreement (n 405).

407 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic on the Prevention of Dangerous Journeys, France No. 2 (2025).

408 Anderson, 'National Security and Human Rights' (n 130).

409 Trade and Cooperation Agreement (n 405)

410 Trade and Cooperation Agreement (n 405), Articles 763(1) and 777.

of the TCA,[411] and would enable the EU 'to terminate or suspend the operation of this Agreement … in whole or in part'.[412] Withdrawal from the ECHR would certainly give the EU a legal basis to terminate or suspend Part Three of the TCA, which governs criminal law cooperation, data exchange, extradition of criminal suspects and mutual legal assistance, as Lord Wolfson acknowledges in his advice to the Conservative party on the matter of ECHR withdrawal.[413] The House of Lords Justice and Home Affairs Committee has warned that termination or suspension of Part Three of the TCA would have 'extremely serious consequences for UK-EU security cooperation, curtailing our ability to combat cross-border criminal activity'.[414]

> "UNDER CERTAIN SCENARIOS, INCLUDING THE UK DENOUNCING THE EUROPEAN CONVENTION ON HUMAN RIGHTS OR BEING DEFICIENT IN THE DOMESTIC PROTECTION OF THE RIGHTS IT CONTAINS, PART THREE OF THE TCA CAN BE TERMINATED IMMEDIATELY AND/OR SUSPENDED… [WHICH WOULD HAVE] EXTREMELY SERIOUS CONSEQUENCES FOR UK-EU SECURITY COOPERATION, CURTAILING OUR ABILITY TO COMBAT CROSS-BORDER CRIMINAL ACTIVITY."
>
> – HOUSE OF LORDS JUSTICE AND HOME AFFAIRS COMMITTEE[415]

COOPERATION WITH THE EU ON BORDER CONTROL AND LAW ENFORCEMENT

The possibility of Part Three of the TCA being terminated or suspended would undermine cooperation between the UK and the EU for the purposes of border control and law enforcement processes. In addition, the ECHR is a part of the agreement that allows for cooperation with France concerning the relocation or return of failed asylum seekers, as well as cooperation in dealing with smuggling gangs and dangerous crossings, that came into force on 6 August 2025.[416]

When the UK was in the EU, it was a signatory to the Dublin Convention, which allowed signatory governments to return asylum-seekers to the first EU member state in which they arrived without considering their asylum claim. Without this agreement in place, the UK government now considers all asylum claims from individuals that arrive in the UK. The government's 2025 agreement with France enables bilateral returns. But this agreement may also be jeopardised if the UK withdraws from the ECHR. Withdrawal from the ECHR would also be likely to compromise the government's ability to cooperate with other European countries on migration control and its ability to return asylum-seekers and deport foreign national offenders to France or other European states.

411 Under Article 763 of the TCA, the UK and EU 'reaffirm their respect for the Universal Declaration of Human Rights and the international human rights treaties to which they are parties'.

412 Article 772 of the TCA.

413 Wolfson Report (n 2) para 273.

414 House of Lords Justice and Home Affairs Committee, Correspondence with Home Secretary Suella Braverman, 25 July 2023.

415 House of Lords Justice and Home Affairs Committee (n 414).

416 UK/France: Agreement on the Prevention of Dangerous Journeys [CS France No.2/2025]

DATA-SHARING ARRANGEMENTS WITH THE EU AND THE UNITED STATES

UK membership of the ECHR also underpins data sharing with the EU. Currently, there is a free flow of data between the EU and the UK for law enforcement purposes and general data-sharing. This flow of data is also fundamental to the UK's trade with the EU. The EU's data adequacy decision for the UK explicitly states that the UK's being a party to the ECHR, its acceptance of the ECtHR's jurisdiction, and adherence to the Council of Europe's Convention 108 on data protection, play a key role in the adequacy finding.[417] If the UK withdrew from the ECHR, the European Commission might opt not to renew its data adequacy decision facilitating data transfers between the UK and EU, as it is based in part on the UK's adherence to ECHR standards as providing equivalent protection to those under EU law.[418]

There is evidence that the loss of the free flow of personal data from the EU to the UK would increase administrative costs for trade and some estimates suggest this would cost UK business up to £1.6 billion.[419] The House of Lords European Affairs Committee warned that this would make the UK a less attractive place for investment, hamper digital growth, and would likely create difficulties in operating international payments systems.[420]

Having a common standard on privacy through the ECHR enables cooperation with the EU on matters related to extradition and mutual assistance, exchanges of DNA information and criminal records, and transfer of passenger name records.[421] Data exchange on these issues supports the UK and EU jointly tackling transnational crime, as well as the extradition of criminal suspects. Non-renewal of the data adequacy decision would also impair UK law enforcement processes and efforts against money-laundering and cybercrime.[422]

Similarly, the UK's legal regime relating to national security, privacy and data protection, which was crafted in response to ECtHR rulings requiring legal safeguards, was an important factor in securing the Data Access Agreement with the United States, which enables UK law enforcement to access data held in the US.[423]

---

417 See Recital 19, Commission Implementing Regulation (EU) 2021/1772 of 28 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, which refers to the ECHR, Convention 108, and the UK's submission to the jurisdiction of the ECtHR and states that 'these obligations arising from legally binding international instruments, concerning notably the protection of personal data, are therefore a particular important element of the legal framework assessed in this Decision jurisdiction of the European Court of Human Rights as key to the adequacy finding'.

418 'Adequate protection of personal data by the United Kingdom' (n 408), recitals 19 and 149.

419 New Economics Foundation and UCL European Institute, *The Cost of Data Adequacy: The Economic Impacts of the UK Failing to Secure an EU Data Adequacy Decision* (November 2020).

420 House of Lords European Affairs Committee, Correspondence with Secretary of State for Science, Innovation and Technology Peter Kyle, 22 October 2024.

421 House of Lords Justice and Home Affairs Committee, Correspondence with Home Secretary Suella Braverman (n 414).

422 Zach Meyers and Camino Mortera-Martinez, 'The Three Deaths of EU-UK Data Adequacy', Centre for European Reform, 15 November 2021; House of Lords European Affairs Committee, Correspondence with Secretary of State for Science, Innovation and Technology Peter Kyle (n 420).

ENABLING CROSS-BORDER COOPERATION WITHIN THE COUNCIL OF EUROPE

Withdrawing from the ECHR would be likely to lead to the UK leaving the Council of Europe, whether voluntarily or through expulsion.[424] The House of Lords Justice and Home Affairs Committee notes that this would undermine cooperation with the 45 other Council of Europe countries on areas relevant to human rights standards, including security and judicial cooperation on matters of criminal prosecution. Referring to the 1957 Council of Europe Extradition Convention, the Committee cites evidence that 'If the UK left the Council of Europe … there would be a loss of all the conventions on extradition and on mutual legal assistance'.[425]

No longer being a member of the Council of Europe would also mean that the UK would relinquish its seat at the table in a major multilateral forum and lose its voice in the development of standards across areas such as the combating of crime, terrorism, corruption, cybercrime, money laundering, child sexual exploitation and migrant smuggling, which have been promulgated in Council of Europe treaties.[426] Beyond the law enforcement and security context, evidence also indicates that the Council of Europe has also been an important forum for the development of new standards in areas such as artificial intelligence, biomedicine, adoption, animal experimentation, and mutual recognition of higher education qualifications.[427]

> "[I]T IS NO EXAGGERATION TO SAY THAT [IF IT WITHDREW FROM THE ECHR] THE UK'S MULTILATERAL LAW ENFORCEMENT AND CRIMINAL COOPERATION CAPABILITIES WOULD BE SET BACK THIRTY YEARS TO THE TIME OF THE FALL OF THE BERLIN WALL."
>
> THE BAR COUNCIL FOR ENGLAND AND WALES[428]

423 See Anderson, 'National Security and Human Rights' (n 130).

424 House of Lords Justice and Home Affairs Committee, Correspondence with Home Secretary Suella Braverman (n 414) para 118; Donald and Forde, 'Reinforce, Reform or Rupture? The Future of the European Convention on Human Rights' (n 287). If the UK does not choose to leave the Council of Europe, 'the Committee of Ministers may request that the UK withdraw' and 'it may be expelled' (just as Russia was expelled): Berry, 'The ECHR and United Kingdom international relations,' (n 286).

425 House of Lords Justice and Home Affairs Committee, Correspondence with Home Secretary Suella Braverman (n 414) para 108.

426 For the full list of Council of Europe treaties, see https://www.coe.int/en/web/conventions/full-list.

427 Donald and Forde, 'Reinforce, Reform or Rupture? The Future of the European Convention on Human Rights' (n 287).

428 Cited in House of Lords Justice and Home Affairs Committee, Correspondence with Home Secretary Suella Braverman (n 414) para 107.

THE UK HELPS DEVELOP GLOBAL STANDARDS FOR ARTIFICIAL INTELLIGENCE

British representatives were instrumental in the negotiations which led in 2024 to the Council of Europe Framework Convention on Artificial Intelligence, the first-ever international legally binding treaty in this field.[429] The Convention commits states that sign up to it to collective action to manage AI products and protect the public from potential misuse. The government says that once the treaty is brought into effect in the UK, laws governing AI will be strengthened.[430] The Convention permits states to ban certain uses of AI, which might include, for example, systems that use facial recognition databases scraped from CCTV or the internet.[431]

429 Ministry of Justice, UK signs first international treaty addressing risks of artificial intelligence, 5 September 2024. See membership of the Committee on Artificial Intelligence which oversaw negotiations.

430 Ministry of Justice (n 429).

431 Privacy International, Toward Regulation: Addressing the Legal Void in Facial Recognition Technology, 1 October 2025.

10 The ECHR and membership of the Council of Europe increase the UK's influence and credibility on the international stage

The UK Government stated in 2021 that its foreign policy is based on a commitment to universal human rights, the rule of law, free speech, fairness, and equality'.[432] This position was updated in 2023 in the aftermath of Russia's war of aggression in Ukraine. The updated foreign policy emphasises the importance of cooperation with European neighbours and with the EU. Being an integral part of the ECHR can thus be considered to align with the UK's stated foreign policy objectives.

UK INFLUENCE THROUGH ECHR MEMBERSHIP IN EUROPE

Being a state party to the ECHR lends credibility to the UK's position as a human rights actor in Europe. As a member of the Council of Europe, the UK has the right to present its views on human rights law and policy not only in cases that concern itself, but also in cases against 45 other countries in Europe as a third party intervenor in cases at the ECtHR and so be influential on the direction of human rights within Europe. The UK, for example, intervened in the case of *Ukraine v the Russian Federation*,[433] setting out its own views about the interpretation of the Convention in a third-party intervention before the Court.[434] Indeed, the UK government very often sets out its own views about human rights cases before the ECtHR: it has been found to be the most active third-party intervener of all Council of Europe member states.[435]

The UK, by virtue of its membership of the Council of Europe, is also a member of the Committee of Ministers, the intergovernmental body through which states engage in peer-to-peer monitoring of each other's implementation of the judgments of the ECtHR, amongst others. This mechanism gives the UK a role in facilitating the introduction of human rights-respecting laws and policies across Europe, in fields ranging from the

---

432 Claire Mills and Louisa Brooke-Holland, Integrated Review 2021: Summary, House of Commons Library Research Briefing, 17 March 2021. See also UK Foreign, Commonwealth & Development Office, *Transparency data: Human Rights and the Rules-Based International System: objectives 2020 to 2021* (updated 24 June 2021).

433 *Ukraine and the Netherlands v Russia,* Nos. 8019/16, 43800/14, 28525/20 and 11055/22, 9 July 2025.

434 See Marko Milanovic, 'The Mariupol Test: Analysing the Briefs of Third States Intervening in Ukraine and the Netherlands v. Russia' *EJIL Talk!* 9 January 2024.

435 A search on the ECtHR's HUDOC database shows that the UK intervened in at least 18 cases against other states from January 2016 to October 2025. See also Kanstantsin Dzehtsiarou, 'Conversations with Friends: "Friends of the Court" Interventions of the State Parties to the European Convention on Human Rights' *Legal Studies* 43(3): 381–401 (2023).

protection of human rights defenders, victims of domestic violence, children, rights of disabled people, to victims of forced labour and individuals persecuted due to their sexual orientation or religious beliefs.[436]

Being a state party to the ECHR further provides the UK with a key multilateral venue to actively shape the future of human rights law and policy in Europe. To illustrate, during the accession negotiations of the EU into the ECHR, the UK was able to participate as a state party to the ECHR and thereby influence the human rights accountability framework of the EU, despite the UK no longer being in the EU.[437]

The ECtHR and the Council of Europe play an important role in advancing the accountability efforts of Ukrainian citizens and the state of Ukraine following the full-scale invasion of Ukraine by the Russian Federation. The Council of Europe is the institutional home of two important initiatives with respect to the war in Ukraine: the Register for Damage in Ukraine[438] and the Special Tribunal for the Crime of Aggression against Ukraine.[439] UK delegates to the Parliamentary Assembly have been instrumental in the creation of these institutions, which align with the UK's foreign policy goals.[440]

ECHR WITHDRAWAL SIGNALS REDUCED COMMITMENT TO HUMAN RIGHTS, AT A TIME WHEN RIGHTS STANDARDS ARE DIMINISHING GLOBALLY

UK parliamentary committees,[441] international institutions and NGOs have tracked, both in Europe[442] and globally,[443] a diminution of human rights, rule of law and democratic standards. NGOs have also raised alarm about the so-called 'Trump effect', referencing a rejection of multilateralism as a forum for resolving international conflicts and challenges, as well as accelerating a damaging shift in attitudes towards international law and human rights.[444] Experts argue that, in the context of erosion of the post-Second World War order of internationally agreed standards for the protection of human rights, UK withdrawal from the ECHR would risk sending a signal of reduced commitment to the rules-based international legal order.[445]

436 See, e.g. Committee of Ministers, Annual Report 2024 (March 2025).

437 Vassilis Tzevelekos, 'The EU's Accession to the ECHR: The Future of the Revised Draft Accession Agreement and a Call to End the Bosphorus Doctrine', *European Convention on Human Rights Law Review* 6(1) (2025): 1.

438 Council of Europe, Register of Damage for Ukraine.

439 Council of Europe, Frequently Asked Questions - Special Tribunal for the Crime of Aggression against Ukraine.

440 UK support to Ukraine: factsheet, 7 November 2025. Conservative peer and Shadow Justice Minister Lord Keen of Elie was instrumental in the Draft Convention establishing an international claims commission for Ukraine.

441 House of Lords Select Committee on the Constitution, The rule of law: holding the line against tyranny and anarchy, 2024–26 HL 211, paras 4-7.

442 UN Fundamental Rights Agency, Fundamental Rights Report 2024.

443 Human Rights Watch, World Report 2025.

444 Amnesty International, Amnesty International warns of global human rights crisis as 'Trump effect' accelerates destructive trends, 29 April 2025.

445 Rashmin Sagoo, The UK must not sleepwalk into leaving the ECHR (Chatham House, 21 April 2023).

> "TREATIES HELP A STATE NOT SIMPLY TO SUPPLY RULES BETWEEN AND AMONG STATES BUT TO ENABLE THAT STATE TO ADVANCE ITS POLITICAL GOALS BEYOND ITS BORDERS WHERE IT LACKS JURISDICTION AND POWERS, AS WELL AS TO PROTECT AND REGULATE ITS EXPOSURE TO THE POWER OF OTHER STATES. TREATIES CAN FUNCTION AS A POWER-MULTIPLIER, TO SECURE GOALS THAT WOULD OTHERWISE BE UNACHIEVABLE. THE ECHR IS ONE SUCH TREATY."
>
> – ADRIAN BERRY KC[446]

Some commentators contend that the UK could pursue its foreign policy objectives without being part of the ECHR and point to other countries that embrace a human rights foreign policy without being a member of a human rights court, such as Canada or New Zealand.[447] However, it should be noted that the case law of the ECtHR is influential outside Europe and has been considered and applied by the US Supreme Court,[448] the Supreme Court of Canada,[449] and the High Court of New Zealand,[450] amongst others. Further, it is widely accepted in academic debate that membership of human rights treaties provides legitimacy and credibility to a state when it makes recommendations to other states in pursuit of its foreign policy goals. Multilateral approaches to human rights standards are a characteristic of UK foreign policy: the UK routinely recommends ratification and implementation of human rights conventions as part of recommendations before the United Nations and other non-European fora.[451] Experts underline that the UK's participation in the ECHR system, accepting the jurisdiction of the ECtHR, lends credibility to its advocacy for other states to similarly ratify and engage with multilateral human rights fora.[452]

446 Berry, 'The ECHR and United Kingdom international relations' (n 286).

447 See also Section 6.

448 Lawrence, 539 U.S. 558 (2003), citing *Dudgeon v United Kingdom* (n 272) para 52.

449 Lech Garlicki, The European Court of Human Rights and the Canadian Case Law in: R Albert and DR Cameron (eds.) *Canada in the World: Comparative Perspectives on the Canadian Constitution* (Comparative Constitutional Law and Policy, Cambridge University Press, 2017) p. 324-347.

450 *Browne v Canwest TV Works Ltd HC Wellington CIV 2006-485-1611* [2007] NZHC 1956; [2008] 1 NZLR 654; (2007) 8 HRNZ 499 (31 July 2007).

451 UK Foreign, Commonwealth & Development Office, The United Kingdom will not waver in its defence of human rights: UK Statement at the UN Third Committee, by Eleanor Sanders, Ambassador for Human Rights and Deputy Permanent Representative to the United Nations at the General Debate of the UN Third Committee, 10 October 2025.

452 Amos, 'The Value of the European Court of Human Rights to the United Kingdom (n 14).

Conclusion

The report has examined 10 reasons as to why the UK should stay in the ECHR. It concludes that the way in which the UK incorporated Convention rights through the HRA safeguards everyone's rights every day. The ECHR and HRA call upon the state to actively protect people when they are at their most vulnerable, and to protect people's privacy against intrusion. The ECHR and HRA hold those in power accountable, and protect free speech and democracy while respecting parliamentary sovereignty. The common law cannot be said to provide equal or equivalent protection to the ECtHR and ECHR. The manner in which the ECHR was drafted and has been interpreted by UK courts and the ECtHR enables it to adapt to changing social realities and technological changes posing new threats to rights. Membership of the ECHR enables peace and stability in Northern Ireland, as well as international cooperation, and increases the UK's international influence and credibility.

However, this conclusion does not suggest that there should be no debate about the ECHR, the case law of the ECtHR, or the application of the HRA within the UK. Engaging in informed public and political debate is a core feature of the UK and the Council of Europe systems, and of the way in which human rights law and policy evolves in democratic societies. This debate must, however, be well-informed and evidence-based.

Arguments for withdrawal have been bolstered by inaccurate or misleading portrayals of what the ECHR and HRA safeguard and how they do so, with reference to particular highly-publicised cases.[453] This has culminated in political commitments by Reform UK and the Conservative party to withdraw the UK from the Convention, and hence also from the Council of Europe. This is a step that no democracy in Europe has ever taken. This current moment calls for informed debate about the consequences of withdrawal for the protection of the rights and freedoms of people in the UK, peace and stability in Northern Ireland, post-Brexit cooperation with the EU, and the UK's influence and reputation internationally.

453 Adelmant, Donald and Çalı (n 11).

Bonavero Institute of Human Rights

The Bonavero Institute is dedicated to fostering world-class research and scholarship in human rights law, to promoting public engagement in and understanding of human rights issues, and to building valuable conversations and collaborations between human rights scholars and human rights practitioners.

www.law.ox.ac.uk/bonavero-institute-of-human-rights