

# Human rights guidance for police authorities

Monitoring compliance with the Human Rights Act 1998

Guidance from the  
Association of Police Authorities





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# Foreword

**The Police and Justice Act 2006 (and subsequent statutory instrument 2008 No. 82) states that 'Police authorities shall monitor the performance of the police force maintained for its area in complying with the duties imposed on that force by the Human Rights Act 1998.'**

Following significant input from Keir Starmer QC (to whom the APA is extremely grateful) this APA human rights guide has been developed to assist police authorities by providing the human rights legal framework set against the context of policing, alongside a toolkit (included in this guide at **Annex C**) to assist authorities in meeting this monitoring function.

Doing nothing is not an option. However, this new duty should not be seen as an excessive burden, and it need not be a catalyst for introducing unnecessary bureaucratic systems. Essentially this duty and the APA toolkit in this guide should be viewed as being relevant in a proportionate way, applicable to local practice and needs.

For many authorities, it would seem logical for the human rights monitoring duty to be joined up with existing equalities and diversity monitoring practices as far as possible. However, this is no excuse for neglecting aspects of human rights monitoring that do not relate to the equalities duties. Conversely, the monitoring of human rights will not in itself fulfil the equalities duties.

Simply put, local policing circumstances will determine the relative weight the police authority places upon their human rights monitoring duty. At the same time, it is important that authorities do not use this as an excuse to fail to meet their human rights responsibilities, as meeting this duty effectively should have a significant impact on improving the confidence of local communities in their police force. Human rights are fundamental, and authorities will want to ensure that their force upholds its virtues in delivering local policing services. I commend this guide to you.



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# 1 Introduction

**1** Since 14 March 2008, police authorities have been required to monitor the compliance of their police force in relation to the duties imposed on the force by the Human Rights Act 1998 (HRA) ('the new duty'). This duty is additional to the general duty on every police authority to maintain an efficient and effective police force for its area.

**2** The new duty is mandatory. It is therefore not open to a police authority to choose not to comply with this duty. However, each police authority can choose how it carries out monitoring in its particular police area.

**3** Some police authorities may choose to determine objectives, issue plans and reports that specifically relate to the performance of its police force in complying with the duties imposed on that force by the HRA.

**4** Although the new duty on every police authority is additional to the general duty to maintain an efficient and effective police force for its area, the two duties complement each other. In addition, the duties imposed on the police by the HRA complement their duties and obligations under other legislation. So, as a general rule, acts of the police in complying with legislation such as the Police and Criminal Evidence Act 1984, the Regulation of Investigatory Powers Act 2000 (and the associated codes of practice under each) and anti-discrimination and equality legislation will be compatible with the HRA. Equally the work which police authorities undertake in monitoring their force's compliance with equalities and diversity legislation will complement and inform the new duty.

## General approach

**5** There are two stages to measuring compliance with the HRA. First, the development of meaningful standards against which the performance of the police can be monitored. Second, the actual process of monitoring the performance of the police against those standards. Both are dealt with later in this guidance.

**6** The new duty should be informed by three broad principles:

- it is the performance of the police as a whole that has to be monitored – i.e. success as well as failure;
- a positive dialogue between the police authority and the police in which problems are recognised and addressed as they arise is by far the preferred model; and
- the process of monitoring should not be retrospective – it is how the police are complying with their obligations under the HRA now that has to be monitored, not how well they may or may not have complied with those obligations in the past.

**7** In monitoring its force's performance in complying with the HRA every police authority should have regard to the fact that other statutory bodies have been established to deal with certain aspects of policing. These bodies will include: the Independent Police Complaints Commission (IPCC), the Equality and Human Rights Commission (EHRC), Her Majesty's Inspectors of Constabulary (HMIC), the Investigatory Powers Tribunal (IPT), the National Policing Improvement Agency (NPIA), and might also include local partners, such as crime and disorder reduction partnerships (CDRPs) and local authorities. It is not necessary or desirable to replicate this work and police authorities should co-ordinate their activities with those of other bodies and co-operate with them. It may be enough to obtain and review the reports, research and recommendations issued by these other bodies and, where they touch on issues of

compliance with the HRA, to assess the response of the police to them.

**8** Authorities should be aware that the Equality and Human Rights Commission are planning to publish a report on human rights in 2009, which will have relevance, learning and potential recommendations for policing.

**9** The Northern Ireland Policing Board (NIPB) has been under a duty to monitor the performance of the Police Service of Northern Ireland in complying with the HRA for some years. It has issued a number of annual reports on human rights compliance and two special reports into particular events or activities. These may provide useful guidance on the scope and extent of the duty to monitor compliance with the HRA and are available on the NIPB website at:

**[www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk)**

or from:

**The Northern Ireland Policing Board  
Waterside Tower  
31 Clarendon Road  
Clarendon Dock  
Belfast BT1 3BG**

## 2 The Human Rights Act 1998

**10** The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is an international treaty of the Council of Europe. It was adopted in 1950, ratified by the UK in 1951 and entered into force in 1953. The unusual feature of the ECHR, as an international human rights instrument, is that it provides a mechanism for individuals to enforce their ECHR rights against state parties. It is administered by the European Court of Human Rights, which sits in Strasbourg, and the Committee of Ministers of the Council of Europe.

**11** The HRA came into force on 2 October 2000. It is intended to give people in the UK the opportunity to enforce their ECHR rights in British courts rather than having to incur the cost and delay of taking a case to the ECHR in Strasbourg.

**12** The HRA requires all legislation (primary and secondary) to be interpreted so as to be compatible with 'Convention rights' (see **paragraph 14**) if possible. Although this applies to all legislation affecting the police, questions of statutory interpretation are primarily for the courts. Much more important for the police is the duty that the HRA places on all public authorities, including the police and police authorities, to act in a way which is compatible with 'Convention rights'. Police staff are also covered whenever they perform public functions. There are special exemptions, but very few (if any) of these exemptions apply to policing.

**13** The HRA also allows individuals who believe that their 'Convention rights' have been infringed to bring legal proceedings, including a claim for damages.

### 'Convention rights' defined

**14** The rights protected by the HRA are called 'Convention rights'. They are set out in Schedule 1 to the HRA. The subject matter of these rights is as follows:

**Article 2** The right to life

**Article 3** Prohibition on torture

**Article 4** Prohibition on slavery and forced labour

**Article 5** Right to liberty and security

**Article 6** Right to a fair trial

**Article 7** No punishment without law

**Article 8** Right to respect for private and family life

**Article 9** Freedom of thought, conscience and religion

**Article 10** Freedom of expression

**Article 11** Freedom of assembly and association

**Article 12** Right to marry

**Article 14** Prohibition on discrimination

**Article 1, Protocol 1** Protection of property

**Article 2, Protocol 1** Right to education

**Article 3, Protocol 1** Right to free elections

**Article 1, Protocol 6** Abolition of the death penalty

**Article 2, Protocol 6** Death penalty in times of war

These rights are to be read with Article 16 (restrictions on political activities of aliens), Article 17 (prohibition on abuse of rights) and Article 18 (limitation on use of restrictions on rights) (s. 1(1)).

The full text of these Articles is important and is set out in **Annex A**.

**15** Convention rights are not all of equal status. The protection afforded under the ECHR and the HRA varies from right to right. Broadly speaking, the ECHR recognises three categories of Convention rights:

- absolute rights;
- special rights; and
- qualified rights.

Each of these categories is briefly summarised here.

### **Absolute rights**

**16** Absolute rights are those rights that are strongly protected and that cannot be restricted even in times of war or other public emergency:

- **Article 2** The right to life;
- **Article 3** Prohibition on torture;
- **Article 4(1)** Prohibition on slavery; and
- **Article 7** No punishment without law.

Although there are special provisions dealing with death caused by the use of force (see **Annex A, paras 1-2** and **Annex B, paras 10-19**), in all other respects the public interest cannot justify any interference with absolute rights.

### **Special rights**

**17** Special rights are those rights that are less strongly protected than absolute rights. They can be restricted in times of war or other public emergency:

- **Article 4(2) and (3)** Prohibition on forced labour;
- **Article 5** Right to liberty and security;
- **Article 6** Fair trial; and
- **Article 9(1)** Freedom of thought, conscience and religion – but not freedom to manifest religion or belief, which is a qualified right.
- **Article 12** Right to marry;
- **Article 2, Protocol 1** Right to education;
- **Article 3, Protocol 1** Right to free elections; and
- **Article 1, Protocol 6** Abolition of the death penalty.

**18** The practical difference between special rights and absolute rights is that special rights can be restricted in the public interest. But the public interest can only be justified on certain specific grounds expressly provided for within the text of the relevant Article: e.g., the first sentence of

Article 5(1) provides for the right to liberty and security of person; the second sentence then lists (exhaustively) all the circumstances in which that right can be restricted. Unless a restriction is expressly provided for in the text of the provision, the public interest cannot justify any interference with special rights.

### **Qualified rights**

**19** Qualified rights are those rights that are to be balanced against the public interest and which can be restricted in times of war or other public emergency:

- **Article 8** Right to respect for private and family life;
- **Article 9** Right to manifest religion or belief;
- **Article 10** Freedom of expression;
- **Article 11** Freedom of assembly and association;
- **Article 14** Prohibition on discrimination; and
- **Article 1, Protocol 1** Protection of property.

**20** These rights are set out in positive form, but can be restricted where it can be shown that a restriction is:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

Each of these requirements is briefly summarised here.

### **Prescribed by law**

**21** Any restriction on a qualified right must be 'prescribed by law'. That will only be the case if:

- there is an established legal basis in law for the restriction — e.g. where it is provided for by legislation or delegated legislation;
- the restriction in question is 'accessible' – i.e. those likely to be affected by it can find out what it is; and
- the restriction in question is 'foreseeable' – i.e. it is formulated with sufficient clarity to enable those



likely to be affected by it to understand it and to regulate their conduct accordingly.

**22** As a general rule, any action taken by the police that is provided for, or permitted, by legislation (primary or secondary) or by the common law, will be ‘prescribed by law’. However, it is good practice to make as many policies available to the public as possible, but it is legitimate not to publish sensitive policies (in full or in part).

### **Legitimate**

**23** Any restriction on qualified rights must be legitimate. That will only be the case if the restriction genuinely pursues one of the aims set out in the Articles themselves – e.g. for reasons of national security, public safety, the prevention of disorder or crime or the protection of the rights and freedoms of others.

**24** Most police action should be easily justifiable as serving one of those purposes.

### **Necessary and proportionate**

**25** Any restriction on qualified rights must be necessary and proportionate. Necessary implies that there is a pressing need for the restriction; it is not enough that it is reasonable. A restriction will be proportionate only if:

- the objective justifies the restriction;
- there is a rational connection between the objective and the restriction in question; and
- the means employed are not more than is necessary to achieve the objective.

**26** In order to demonstrate that any action taken by the police is necessary and proportionate, good record-keeping is essential. Where there is clear decision-making, with recorded reasons that address the necessity and proportionality of any action, the police will normally be afforded a measure of discretion in their choice of action. Clear decision-making, with recorded reasons that address the necessity and proportionality, should

also result in confident decision-making by police officers.

### **Non-discrimination**

**27** There is a general principle of non-discrimination under the HRA, but it is limited to non-discrimination in the enjoyment of Convention rights. That does not mean that all situations have to be dealt with in exactly the same way. What the principle of non-discrimination really prohibits is a difference in treatment between two similar groups that has no objective and reasonable justification. As a general rule, differences in treatment based on race, gender or disability, for example, will be very hard to justify.

### **Positive obligations**

**28** Generally speaking, the HRA only imposes *negative* obligations: e.g. an obligation not to subject individuals to ill-treatment and an obligation not to interfere with privacy (save where that interference can be justified). Sometimes, however, *positive* obligations are imposed, requiring certain action to be taken (e.g. protecting one detainee from another). These can be very important for policing.

**29** The most important positive obligation so far as the police are concerned is the obligation to take reasonable measures to preserve life. As a general rule, the police are obliged to do all that could reasonably be expected of them to avoid a ‘real and immediate’ risk to life which they knew or ought to have known about. This is dealt with in some detail in **Annex B**.

# 3 Human rights standards applicable to policing

**30** As noted previously, the first stage to measuring compliance with the HRA is the development of meaningful standards against which the performance of the police can be monitored. Since the HRA protects 'Convention rights', these standards must be based on the ECHR. That means they must be based on the rights in the ECHR themselves, as interpreted by the ECHR or by our courts.

**31** A set of detailed standards derived from the rights in the ECHR themselves, as interpreted by the ECHR or by our courts, has been devised and is set out in **Annex B**. It covers:

- protecting the public;
- the prohibition on ill-treatment;
- the use of force;
- investigation and follow-up in cases of death and serious injury;
- public order;
- criminal investigations;
- surveillance;
- informers and undercover officers;
- search and seizure;
- arrest and detention;
- reasons;
- access to a lawyer;
- questioning;
- the right to be brought promptly before a court;
- bail;
- children; and
- victims and vulnerable witnesses.

**32** The detailed standards set out in **Annex B** should be used in any assessment of the performance of the police in complying with the HRA. In addition the overarching principles set out here may provide a useful starting point.

## Overarching principles

**33** In the performance of their duties, police officers should respect and protect human dignity and maintain and uphold the human rights of all persons.

**34** Police officers should not discriminate (or aid or incite others to discriminate) on any grounds including race, colour, sex, language, religion, disability, age, sexual orientation, marital or family status, political or other opinion, national or social origin, property, birth or other status. Any difference in treatment shall be required to be justified and proportionate.

**35** The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights.

**36** Police officers have a duty:

- to protect life and property;
- to preserve order;
- to prevent the commission of offences; and
- where an offence has been committed, to take measures to bring the offender to justice.

**37** When carrying out these duties, police officers should obey and uphold the law, protect human dignity and uphold the human rights and fundamental freedoms of all persons as enshrined in the HRA, the European Convention on Human Rights and other relevant international human rights instruments.

**38** Police officers should, as far as is practicable, carry out their functions in co-operation with, and with the aim of securing the support of, the local community.

**39** Police officers should act with fairness, self-control, tolerance and impartiality when carrying out their duties. They should use appropriate language and behaviour in their dealings with members of the public, groups from within the

public and their colleagues. They should give equal respect to all individuals and their traditions, beliefs and lifestyles provided that such are compatible with the rule of law.

**40** Police officers should act with integrity towards members of the public and their colleagues so that confidence in the police is secured and maintained. They should avoid all forms of behaviour that may reasonably be perceived to be abuse, harassment, bullying or victimisation.

# 4 The process of monitoring

**41** The process of monitoring will vary depending on the priorities in any given police area. However, as noted previously, it is the performance of the police as a whole that has to be monitored for compliance with the HRA and a number of common areas inevitably emerge. These include:

- training;
- policy;
- complaints, discipline and civil actions against the police;
- human rights awareness; and
- information or reports from partner organisations.

A more detailed checklist is set out at **Annex C**.

The annex shows both a minimum standard and an enhanced standard that might be regarded as good practice. It is for authorities to decide which standard is most applicable or which aspects of the suggested standards should be adopted in particular situations. Authorities should be able to demonstrate a clear reason for their choice but, for instance, if there is evidence, whether from partners' or the authority's own monitoring, that human rights compliance might be problematic within their force or in a particular area of its business, it may be appropriate for the authority to adopt a more robust approach to monitoring human rights compliance in one or more aspects. Equally, in areas where there are wider community concerns about social cohesion and related issues, it might also be appropriate to consider applying at least some of the good practice standards. Each of the areas which the police authority should monitor is briefly considered here.

## Training

**42** Effective training in human rights principles and practice is fundamental to any organisation committed to compliance with the HRA. Training is one of the keys to instilling a human rights based approach to policing in new recruits and experienced police officers. In some police areas,

human rights specific training is delivered. In other areas, human rights principles have been integrated into other training. But, whichever model is adopted, it is important to ensure that:

- regular and up-to-date human rights training is provided in each police area;
- course materials are of a high quality and regularly updated; and
- training is delivered in a way likely to ensure that human rights principles are easily accessible, understood and capable of practical application.

## Policy

**43** It is fundamental that all police policies should set a framework for police decision-making and conduct that requires, and seeks to ensure, human rights compatibility in all areas of police work. As a minimum, that requires:

- clear identification of all policies adopted in any given police area;
- an audit to ensure that all policies are compatible with the HRA (such an audit might take the form of a review of human rights impact assessments that have been undertaken on policies, if sufficiently comprehensive);
- an effective system for ensuring that all policies are regularly updated;
- an effective means of ensuring that policy changes are brought to the attention of those concerned with implementing them; and
- making policies as accessible as possible, both to police officers in the police area in question and also to the public.

## Complaints, discipline and civil actions against the police

**44** Complaints, discipline and civil actions against the police provide an important means of monitoring the performance of the police in complying with the HRA. That is because they each subject the behaviour of individual police officers

to scrutiny – either external or internal. Police authorities have very limited jurisdiction to investigate individual complaints against police officers, other than Association of Chief Police Officers (ACPO) rank officers, themselves and should avoid duplicating the work carried out by other statutory bodies. However, they should already have arrangements in place to review the general trends and patterns of complaints and, in particular, monitor how the police in their area respond to adverse findings and/or recommendations.

**45** Police authorities should be aware that, in certain employment-related disputes, police officers may be limited in the extent to which they can claim the protection of Article 6 (the right to a fair trial). This is a result of a ECHR ruling (see *Pellegrin v France* [2001] 31 EHRR 26). However, more recent case law (see *Vilho Eskelinen and others v Finland* [2007] No. 63235/00) has altered this position. Authorities are therefore advised to seek detailed legal advice in these situations, but be aware that this case law does not affect the ability of a police authority to monitor discipline, grievance and/or complaints procedures in order to gather evidence about wider human rights compliance by their force.

### **Human rights awareness**

**46** The promotion of human rights awareness is vital not only to facilitate the development of a tangible human rights culture within the police, but also to demonstrate the commitment of the police to human rights in their dealing with others. The assessment of human rights awareness is not easy, but could include some sort of assessment (perhaps assisted by specific questions in force staff surveys) of the effectiveness of training, knowledge of policies and/or assessing human rights awareness in appraisal and promotion decision-making.

### **Information and reports from partner organisations**

**47** Information and reports from other partners about police activity are an important way of monitoring human rights compliance in a proportionate manner, although a critical approach should be taken in assessing the accuracy and completeness of such reports as an aid to fulfilment of a police authority's monitoring obligations. Particularly relevant to the new duty will be reports from custody visitors and the IPCC, which will also link to **paragraph 44**. Other information might come from HMIC, Office of the Surveillance Commissioner, the IPT, NPIA or the EHRC. Local partners might also be a source of relevant information, particularly local criminal justice boards (LCJBs), CDRPs, and local authorities. Again, more information about this is set out in **Annex C**.

# Annex A Convention rights protected by the Human Rights Act 1998

## Article 2 Right to life

- 1** Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2** Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - a** in defence of any person from unlawful violence;
  - b** in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c** in action lawfully taken for the purpose of quelling a riot or insurrection.

## Article 3 Prohibition of torture

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

## Article 4 Prohibition of slavery and forced labour

- 1** No one shall be held in slavery or servitude.
- 2** No one shall be required to perform forced or compulsory labour.
- 3** For the purpose of this Article the term 'forced or compulsory labour' shall not include:
  - a** any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b** any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c** any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

- d** any work or service which forms part of normal civic obligations.

## Article 5 Right to liberty and security

- 1** Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a** the lawful detention of a person after conviction by a competent court;
  - b** the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - c** the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d** the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - e** the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - f** the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2** Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3** Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall

be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

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

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
  - a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b to have adequate time and facilities for the preparation of his defence;

- c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### **Article 7 No punishment without law**

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### **Article 8 Right to respect for private and family life**

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### **Article 9 Freedom of thought, conscience and religion**

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

### **Article 10 Freedom of expression**

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

### **Article 12 Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

### **Article 14 Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **Article 16 Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

### **Article 17 Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

### **Article 18 Limitation on use of restrictions on rights**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.



## **Part II The First Protocol**

### **Article 1 Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### **Article 2 Right to education**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

### **Article 3 Right to free elections**

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

## **Part III The Sixth Protocol**

### **Article 1 Abolition of the death penalty**

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

### **Article 2 Death penalty in time of war**

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

# Annex B Human rights standards applicable to policing

**These standards should be read together with the overarching principles set out in the Guidance.**

## Protecting the public

**1** In certain well-defined circumstances, the police are under an obligation to take preventative operational measures to protect individuals whose lives are at risk from the criminal acts of others.

**2** Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices, which must be made in terms of priorities and resources, such an obligation must be interpreted in a way, which does not impose an impossible or disproportionate burden on the police.

**3** What is required of the police is that they take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known.

**4** This obligation can also arise where the risk to life does not come from the criminal acts of others: for, example, it can extend to an obligation to take reasonable steps to prevent self-imposed risks to life (e.g. suicide).

**5** Failing to pass on important information concerning a risk to an individual's life to the appropriate person or body can breach this obligation.

## The prohibition on ill-treatment

**6** Under Article 3 ECHR, torture and cruel, inhuman and/or degrading treatment and/or punishment are prohibited absolutely.

**7** Torture includes deliberate inhuman treatment causing very serious and cruel suffering, which has a purpose, such as the obtaining of information or confession, or the infliction of punishment.

**8** Treatment/punishment will be inhuman if it 'causes intense physical or mental suffering'. It is less severe than torture but can include threats of torture and the infliction of psychological harm.

**9** Treatment/punishment will be degrading if it arouses in the victim a feeling of fear, anguish and inferiority capable of debasing him or her and breaking his or her physical or moral resistance, but only if it reaches a particular level of severity.

## The use of force

**10** Article 2 ECHR applies to the use of lethal force and requires that such force be no more than is 'absolutely necessary' to defend any person from unlawful violence, to make an arrest or to stop a riot. But it is unlikely to be 'absolutely necessary' to use lethal force to make an arrest or to stop a riot except where an identified individual is using violence that poses a threat to life or limb.

**11** Article 2 ECHR can also apply where potentially lethal force is used.

**12** The test of 'absolute necessity' under Article 2 ECHR is very strict. Lethal force must be 'strictly proportionate' to the danger posed. It will be difficult to justify the use of firearms as 'absolutely necessary' where less life-threatening equipment is available and could have been used.

**13** Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which the European Court of Human Rights has used in interpreting Article 2 ECHR:

'law enforcement officers shall not use firearms against persons except in self-defence or the defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve those objectives. In any event, the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.'

**14** It is the genuine, honest and reasonable belief of the officer using force that is important. So long

as he or she genuinely, honestly and reasonably believes that lethal or potentially lethal force is **'absolutely necessary'** for one of the permitted reasons, Article 2 ECHR will be satisfied, even if that belief subsequently turns out to be mistaken.

**15** Before firearms are employed, police officers should identify themselves and give clear warning of their intent to use firearms, affording sufficient time for the warning to be observed, unless to do so would place the law enforcement officer at risk or create a risk of death or serious harm to other persons.

**16** Whenever the use of firearms is unavoidable, police officers should:

- exercise restraint in such use, acting in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- minimise damage and injury and respect and preserve human life;
- render assistance and medical aid to any injured or affected persons at the earliest opportunity; and
- notify relatives or close friends of injured or affected persons at the earliest opportunity.

**17** Police officers should be provided with effective training on the use of force **'with the objective of complying with international standards for human rights and policing'**. The police should also receive **'clear and precise instructions as to the manner and circumstances in which they should make use of firearms'**. A police force should have an adequate internal mechanism for auditing uses of force across the whole force, to identify any trends which may cause concern and ensure any necessary remedial action is taken. Although an electronic recording mechanism may be very useful, on its own it is unlikely to be sufficient.

**18** Article 2 ECHR also requires the relevant authorities to plan and control operations in which lethal or potentially lethal force might be used **'so as to minimise, to the greatest extent possible, recourse to lethal force'**.

**19** Police officers should not use force against persons in custody or detention except where strictly necessary for the maintenance of security and order within the institution or when personal safety is threatened.

### **Investigation and follow up in cases of death or serious injury**

**20** Effective reporting and review procedures should be put in place regarding injuries and/or deaths resulting from the use of force and firearms by police officers. In cases of death and serious injury, a detailed report should be sent to the competent authorities.

**21** In addition, an effective official investigation is required whenever an individual is killed as a result of force being used by an agent of the state and/or when it is arguable that there has been a breach of Article 2 or Article 3 of the ECHR.

**22** The investigation must be prompt, thorough, impartial and careful so as to ensure accountability and responsibility.

**23** The investigation must involve an assessment of the organisation and planning of the operation during which lethal force was used. The training, instructions and communications of those who used lethal force and those who lay behind the operation are relevant to that determination.

**24** An effective official investigation requires the appropriate authorities to secure all the relevant evidence concerning the incident causing death and to analyse the cause of death. It also requires a degree of public and independent scrutiny and the involvement of the family of the deceased in the procedure to the extent necessary to safeguard their legitimate interests.

### **Public order**

**25** Everyone has the right to freedom of peaceful assembly and of association.

**26** These are qualified rights – they can be restricted, but only where a restriction is:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

**27** The right to peaceful assembly is not confined to static meetings; it also covers marches and processions.

**28** The purpose of an assembly, march, protest or demonstration is largely irrelevant, so long as it is peaceful and the mere fact that it may annoy or offend others is not enough to justify a restriction.

**29** Where there is a threat of disruption or disorder from others, the police may be under a duty to take appropriate steps to protect those who want to exercise their right of peaceful assembly, march, protest or demonstration.

**30** But there is no absolute duty to protect those who want to exercise their right of peaceful assembly, march, protest or demonstration. The obligation on the police is to take 'reasonable and appropriate measures' and they have a fairly wide discretion in deciding how to police a peaceful assembly, march, protest or demonstration.

**31** A requirement of prior notice or authorisation for a peaceful assembly, march, protest or demonstration is not necessarily a breach of Article 11 ECHR, so long as the purpose behind the procedure is not to frustrate the event in question.

**32** Orders banning peaceful assemblies, marches, protests or demonstrations altogether will only be justified in extreme circumstances, where there is a real danger of disorder that cannot be prevented by other less extreme measures.

### **Criminal investigations**

**33** Most criminal investigations will interfere with privacy. Therefore, as a basic rule, they must be:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

**34** Criminal investigations should also be objective and fair; and they should be sensitive and adaptable to the needs of vulnerable persons.

**35** The retention of information, data and samples will usually amount to an interference with privacy. Therefore it must also be:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

### **Surveillance**

**36** All covert investigations must comply with the Regulation of Investigatory Powers Act 2000 and associated codes of practice.

**37** Matters of a confidential nature in the possession of police officers shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

**38** The use of CCTV cameras, even in public places, and the retention of data, can raise privacy issues under Article 8 ECHR and therefore must be prescribed by law, legitimate, necessary and proportionate.

**39** There must be proper methods of accountability regarding both the authorisation and the use of police surveillance and other information-gathering activities.

**40** Investigations into allegations that an individual's privacy has been breached by surveillance must be independent. Generally speaking, such investigations are carried out by the body or tribunal specifically charged with such responsibility under statute: e.g. the IPT established under the Regulation of Investigatory Powers Act 2000.

### **Informers and undercover officers**

**41** It is legitimate for the police to use informers and undercover officers in the investigation of crime.

**42** But informers and undercover officers should not incite an individual to commit a crime he or she would not otherwise commit.

**43** As a general rule, if an individual freely takes advantage of an opportunity to break the law given to him or her by a police officer, the police officer is not to be regarded as being guilty of 'entrapment'.

### **Search and seizure**

**44** Search and seizure interfere with privacy and therefore must be:

- prescribed by law;
- legitimate; and
- necessary and proportionate.

**45** The right to privacy can extend to business or work premises.

**46** Consent to search and seizure will not be valid unless it is genuine and informed.

### **Arrest and detention**

**47** Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or detention. Arrest and detention should be carried out strictly in accordance with the law.

**48** In ordinary criminal cases, there must be a reasonable suspicion that an individual has committed a criminal offence before an arrest is made. That presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.

**49** All persons under any form of detention or imprisonment should be treated in a humane manner and with respect for the inherent dignity of the human person.

**50** Those detained have a right to a medical examination on admission, their health should be fully protected and medical attention should be provided when required.

**51** Any unnecessary force used against those detained is likely to be classified as inhuman.

**52** All money, valuables, clothing and other property belonging to a detainee which he or she is not allowed to retain should be placed in safe custody.

### **Reasons**

**53** Everyone arrested should be informed, in a language he or she understands, of the reasons for his/her arrest.

**54** Notification should be at the time of arrest or as soon as practicable thereafter.

**55** Sufficient details should be given to enable the person arrested to know the basis upon which he or she is being held.

**56** Detained persons should also be provided with information on, and an explanation of, their rights and how to avail themselves of their rights.

**57** The reasons for arrest, the time of the arrest, the identity of the police officers concerned and the place of custody of the detained person should be recorded.

**58** Those detained (particularly vulnerable individuals such as children) are entitled to notify or to require the police to notify members of their family or other appropriate persons of their choice of their arrest, detention or imprisonment.

### **Access to a lawyer.**

**59** Everybody detained by the police should be informed of the right to be assisted by a lawyer upon arrest. This is fundamental and should not be delayed.

**60** Communications between a suspect and his/her lawyer should be confidential unless there are highly exceptional circumstances, such as evidence that the lawyer is engaged in crime.

### **Questioning**

**61** Resort to violence, threats or methods of questioning that impair a suspect's capacity to make decisions or judgments is prohibited.

**62** In addition, all suspects have the right to remain silent during questioning, although, within limits, adverse inferences can be drawn from silence in certain circumstances.

**63** The time and place of all questioning should be recorded.

### **The right to be brought promptly before a court**

**64** Everyone arrested for a criminal offence has the right to be brought promptly before a court.

**65** Ordinarily the period of detention before a person is brought before a court should not be longer than about four days.

**66** The court before which a person is brought must have power to order release.

### **Bail**

**67** The general presumption is that those awaiting trial should not be detained, but released on bail.

**68** But bail may be refused if it is necessary and for a good reason, such as a fear of absconding, interference with the course of justice and protection of others. The reasons for refusing bail must be both relevant and sufficient.

**69** Bail may be conditional.

### **Children**

**70** Where children are concerned, the best interests of the child should always prevail.

**71** Arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.

**72** In principle, no information that may lead to the identification of a child offender should be published.

**73** Records of child offenders should be kept strictly confidential and closed to third parties.

**74** While in custody, children should receive care, protection and all necessary individual assistance (social, educational, vocational, psychological,

medical and physical) that they require in view of their age, sex and personality.

**75** A child's parents or guardian should be immediately notified of the apprehension of their child and a judge or other competent official or body should without delay consider the issue of release.

**76** Adaptations to the criminal justice system are needed where children are on trial and all procedures should take account of the child's age and the need to promote their rehabilitation.

### **Victims**

**77** Victims should always be treated with compassion and respect for their dignity.

**78** Victims are entitled to access the mechanisms of justice and to be treated without discrimination.

**79** Victims should be informed of the timing and progress of the investigation of their cases and subsequent proceedings.

# Annex C Police authority action checklist

<b>A Internal capability and compliance of police authority</b>			
	<b>Minimum standard</b>	<b>Good practice</b>	<b>Outcome</b>
<b>1</b>	The police authority has a human rights policy	The police authority has a human rights policy which it reviews annually and has a SMART (specific, measurable, attainable, results-oriented and time-based), resourced action plan informed by human rights impact assessments	Compliance with legislation
<b>2</b>	The police authority has a member and officer who lead on human rights for the police authority	Agree with the force that the authority's lead member(s) and officer(s), and/or any external HRA adviser(s) it appoints, shall have the fullest access (subject to vetting where appropriate) to force personnel and records for the purpose of HRA monitoring	A demonstrable and effective commitment to fulfilment of human rights duties
<b>3</b>	The police authority has a committee structure which regularly considers human rights, and all committees have human rights written into their terms of reference as a core area of consideration	A committee exists which co-ordinates the police authority's response to human rights and involves key lead members including human resources, professional standards, counter terrorism, performance and diversity, thereby ensuring that regularly and effective scrutiny of the force is undertaken across all key areas of business, and all appropriate authority committees are fully meeting their duty	Co-ordinated, consistent and progressive approach to the delivery of the human rights duty and functions including effective scrutiny of the force
<b>4</b>	The police authority publishes articles on HRA compliance, on at least an annual basis	Relevant information about force compliance, progress, specific incidents and any action taken is published annually. Where appropriate, in local circumstances, this may include a separate annual report	Co-ordinated, consistent and progressive approach to the delivery of the human rights duty and functions including effective scrutiny of the force
<b>5</b>	All members, officers and volunteers of the police authority receive appropriate and ongoing human rights training which is regularly reviewed	All members, officers and volunteers of the police authority with human rights responsibilities receive appropriate role specific training. The police authority has processes in place – e.g. through standards committees, etc – to ensure members and staff uphold the principles of human rights. Where appropriate, this may include regular assessment through performance development reviews (PDRs)	The police authority can be assured that all of those involved with its business are aware of their responsibilities

## B External focus for police authorities

	Minimum standard	Good practice	Outcome
<b>1</b>	Police authorities ensure that effective training is in place and that appropriate questions are asked on custody visits. Custody visitors are aware of their crucial role in monitoring the rights and entitlements of detainees in custody centres, feed back to the police authority immediate concerns and provide regular reports which the authority monitors	A member and an officer be designated to have link responsibilities with the authority's independent custody visitors as part of assessing force HRA compliance in the treatment of detained suspects. The police authority has an effective custody visiting process, in which there is three way communication between the police, the visitors and the authority; it reassures the community about custody; it has transparent accountability in respect of action taken as a result of custody visit recommendations; it has a comprehensive training and development programme for custody visitors; and is able to show how the process of custody visiting is adopted within the strategy of the authority	The police authority and local community can be assured that, within their force area, all custody centres are managed to the highest standard of human rights compliance
<b>2</b>	If the authority chooses to make use of the work of other organisations in discharging its HRA monitoring duties, it establishes partnerships with those organisations, including perhaps local authorities, LCJBs, the IPCC and local voluntary groups with human rights interests	Stronger partnership working with additional and wider interested stakeholders and partners e.g. local voluntary and community groups which provide an opportunity for regular dialogue between the police and stakeholders on human rights issues. This may include events to enable dialogue between the police and interest groups and an opportunity to discuss human rights issues and to raise any concerns	The police authority can monitor human rights compliance efficiently and effectively using information from partners, interested stakeholders and the public where appropriate
<b>3</b>	The police authority has a communication strategy which demonstrates how the authority will meet its human rights duties	The police authority has a community engagement and communication strategy which is developed in partnership with key local partners in order to join up local human rights practice	The police authority is effectively meeting its obligations to engage and inform all members of the community in relation to human rights



## C Internal force capability and compliance of chief officer

	Minimum standard	Good practice	Outcome
1	<p>As part of the police authority's regular monitoring and challenge of force reports on force data, ensure that human rights compliance is tested against relevant areas, including:</p> <ul style="list-style-type: none"> <li>• training;</li> <li>• discipline;</li> <li>• grievance; and</li> <li>• complaints</li> </ul>	<p>The police authority ensures that the force produces update reports on relevant internal force data in relation to human rights on a frequent basis, and ensures the quality of the data by:</p> <ul style="list-style-type: none"> <li>• regularly engaging in the dip sampling of data;</li> <li>• observing relevant training;</li> <li>• taking up membership of internal force monitoring meetings; and</li> <li>• devising a process with force professional standards department (PSD) to enable analysis of the causes of any increase in the total number of complaints against officers</li> </ul>	<p>The police authority is proactive and regularly engaged in ensuring that human rights issues are effectively adhered to and promoted effectively with in their force; and the chief officer is aware of the police authority's commitment to ensuring the improvement of force performance in relation to human rights compliance</p>
2	<p>The police authority should monitor force staff awareness of human rights and assess the effectiveness of human rights training which might include utilising force staff/cultural surveys and monitoring changes in attitudes over time</p>	<p>The police authority is involved at all stages of the development and analysis of force staff/ cultural surveys, including the planning and question setting, the evaluation of results, the setting and the ongoing monitoring and challenge of force implementation of any subsequent recommendations</p>	<p>The police authority is fully aware of staff attitudes to human rights, and where appropriate can recommend interventions and monitor progress</p>
3	<p>The police authority should consider, where relevant and based on local circumstances, whether it is appropriate to include targets in relation to human rights in each chief officer's PDR objectives</p>	<p>The police authority ensures that the force introduces an appropriate human rights objective for all relevant officers and staff PDRs. The results of these PDRs should be regularly scrutinised by the authority in order to assess force awareness and compliance with human rights, as well as to monitor force implementation of any subsequent recommendations</p>	<p>The police authority is fully aware of staff compliance with human rights, and where appropriate can recommend interventions and monitor progress</p>
4	<p>The police authority has audited force policies for human rights compliance, or has monitored force impact assessment processes on relevant policies to ensure that human rights issues are effectively considered</p>	<p>The police authority is involved in the force impact assessment monitoring process, including sitting on internal force equality and human rights impact assessment meetings, and undertakes regular dip sampling of force impact assessments</p>	<p>The police authority is able to endorse a public facing impact assessment annual report demonstrating that human rights have been considered in the developing of all force policies</p>
5	<p>The police authority monitors force data management and retention policies and practices which cover IT and forensics including CCTV, forensics, surveillance and intelligence, etc</p>	<p>The police authority ensures that force IT and forensics policies and procedures are compliant with human rights by receiving quarterly reports and by:</p> <ul style="list-style-type: none"> <li>• regularly engaging in the dip sampling of data;</li> <li>• observing relevant training; and</li> <li>• taking up membership of internal force monitoring meetings</li> </ul>	<p>The police authority is satisfied that force IT and forensics policies/ practices are compliant with the HRA</p>

## D Operational force compliance

	Minimum standard	Good practice	Outcome
<b>1</b>	<p>The police authority (using information from external bodies [see <b>para 47</b>, p13] where appropriate) receives, monitors and challenges regular reports on relevant external force activity, including:</p> <ul style="list-style-type: none"> <li>• public order – e.g. number of charges/convictions per arrest, use of horses and dogs, etc;</li> <li>• use of force – e.g. firearms, pepper spray and tasers, etc;</li> <li>• covert policing – e.g. surveillance, interception of communications and use of informants, etc; and</li> <li>• search and seizure – e.g. requests for search warrants and use of stop and search</li> </ul>	<p>The police authority ensures that the force produces frequent update reports on all relevant operational force activity and ensures the quality of the data by:</p> <ul style="list-style-type: none"> <li>• regularly engaging in the dip sampling of data;</li> <li>• observing relevant training;</li> <li>• attending relevant internal force meetings;</li> <li>• reviewing all intelligence policies, procedures and protocols; and</li> <li>• developing a strategic police authority policy on the management of intelligence</li> </ul>	<p>The police authority is proactive and regularly engaged in ensuring that human rights compliance is effectively delivered within communities</p>
<b>2</b>	<p>The police authority monitors force and, where relevant, key partner data in relation to victim, witness, suspect and perpetrator survey data, in order to ensure that the authority is satisfied that force practice is compliant with human rights</p>	<p>The police authority develops a specific engagement strategy with the aim of gauging the experience of victims, witnesses, suspects and perpetrators. This could include surveys, focus groups and one-to-one interviews, and should be developed in partnership with LCB partners, victim support and the National Association for the Care and Resettlement of Offenders (NACRO)</p>	<p>The police authority is satisfied that those who come into contact with the police, for whatever reason, receive a fair and equitable service which is compliant with the HRA</p>
<b>3</b>	<p>The police authority monitors force compliance with human rights in relation to public order incidents, and oversees implementation of appropriate recommendations</p>	<p>The police authority receives regular reports on public incidents and where appropriate makes and then monitors the implementation of recommendations. Following the experience of NIPB, consideration should be given to appointing a suitably-qualified human rights assessor. He or she would be able to observe and report on force HRA compliance during operations and public order incidents, and could also be involved in the preparation of an annual human rights report. Such an observer could be recruited as part of a regional collaboration</p>	<p>Increased community trust and confidence following independent assessment of force operational practice</p>



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