**SOCIAL SERVICES AND WELL-BEING (WALES) ACT**

**HANDOUT**

**Human Rights and
Prison Rules**

# Human Rights

A key part of practitioners’ roles under the Social Services and Well-being (Wales) Act 2014 is to promote people’s human rights. Custodial settings are required to comply with the [Equality Duty](http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty/what-equality-duty), [Human Rights Act 1998](http://www.equalityhumanrights.com/your-rights/human-rights/what-are-human-rights/human-rights-act) and within the principles of the **European Convention of Human Rights** (ECHR). So people detained must
not be treated less favourably because of race, gender, disability, sexual orientation, religion or belief. Disabled prisoners, for instance, should have equal access to facilities including jobs, education, library services, exercise and accommodation.

The Human Rights Act 1998 is UK legislation and the rights contained in the ECHR are included at Schedule 1 of the Human Rights Act. For the purposes of the Human Rights Act they are known as ‘the Convention Rights’. There are 16 basic rights
in the Human Rights Act – all taken from the ECHR. They concern matters of life
and death, like freedom from torture, but they also cover rights in everyday life,
such as what a person can say and do, their beliefs, and many other similar basic entitlements. In certain circumstances, rights can be refused or restricted – in particular where there is a real and serious danger to public safety.

## The Convention Rights

Article 1 – is introductory and is not incorporated into the Human Rights Act

Article 2 – right to life; there are only certain very limited circumstances where it is acceptable for the state to take away someone’s life

Article 3 – prohibition of torture: a person has the absolute right not to be subjected to inhuman or degrading treatment

Article 4 – prohibition or slavery and forced labour; a person has the absolute right not to be treated as a slave

Article 5 – right to liberty and security: a person has the right not to be deprived
of their liberty – ‘arrested or detained’ – except where they are suspected or convicted of committing a crime and provided there is a proper legal basis in UK law

Article 6 – right to a fair trial: a person has the right to a fair and public hearing within a reasonable period of time. It is possible to exclude the public from the hearing though not the judgement

Article 7 – no punishment without law: a person normally has the right not to be found guilty of an offence arising out of actions which at the time they committed them were not criminal

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: national law will govern how and at what age

Article 13 – is not included in the Human Rights Act

Article 14 – prohibition of discrimination: everyone must have equal access to the Convention rights, whatever their status

Article 1 of Protocol 1 – protection of property: a person has the right to the peaceful enjoyment of their possessions

Article 2 of Protocol 1 – right to education: a person has the right not to be denied access to the education system

Article 3 of Protocol 1 – right to free elections: elections must be free and fair and take place by secret ballot. Some qualifications may be imposed on who is eligible to vote

Not all Convention rights carry the same weight. They can be can be grouped into three broad types: **absolute** rights, **limited** rights and **qualified** rights.

**Absolute** rights, such as the right to protection from torture and inhuman and degrading treatment (Article 3), mean rights that the state can never infringe.

**Limited** rights, such as the right to liberty (Article 5), are rights that may be limited under explicit and finite circumstances. A person has the right not to be deprived of their liberty – ‘arrested or detained’ – except where they are suspected or convicted of committing a crime and provided there is a proper legal basis in UK law.

**Qualified** rights are rights which require a balance between the rights of the individual, and the rights of the broader community or the state. These include:
the right to respect for private and family life (Article 8); the right to manifest one’s religion or beliefs (Article 9); freedom of expression (Article 10); freedom of assembly and association (Article 11); the right to peaceful enjoyment of property (Protocol 1, Article 1); and, to some extent, the right to education (Protocol 1, Article 2). Interference with qualified rights is permissible only if there is a clear legal basis
for the interference with the qualified right that people can find out about and understand, and the action/interference seeks to achieve a legitimate aim. For example, the interests of national security, protecting public health or safety, preventing crime or disorder and protecting the rights of others.

More detailed guidance can be found in the human rights handbook for public officials, [Human Rights: Human Lives](http://www.equalityhumanrights.com/publication/human-rights-human-lives-guide-human-rights-act-public-authorities), produced by the Ministry of Justice.

## United Nations Principles for Older Persons

A person exercising functions under this Act in relation to an adult **must have
due regard to the United Nations Principles for Older Persons.** There are
18 principles, which can be grouped under five themes: independence, participation, care, self-fulfilment and dignity.

### Independence

* Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help
* Older persons should have the opportunity to work or have access to other income-generating opportunities
* Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place
* Older persons should have access to appropriate educational and training programmes
* Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities
* Older persons should be able to reside at home for as long as possible

### Participation

* Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations
* Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities
* Older persons should be able to form movements or associations of older persons

### Care

* Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values
* Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness
* Older persons should have access to social and legal services to enhance their autonomy, protection and care
* Older persons should be able to utilise appropriate levels of institutional care providing protection, rehabilitation, and social and mental stimulation in a humane and secure environment
* Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including
full respect for their dignity, beliefs, needs and privacy, and for the right to make decisions about their care and the quality of their lives

### Self-fulfilment

* Older persons should be able to pursue opportunities for the full development of their potential
* Older persons should have access to the educational, cultural, spiritual and recreational resources of society

### Dignity

* Older persons should be able to live in dignity and security, and be free of exploitation and physical or mental abuse
* Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently
of their economic contribution

## United Nations Convention on the Rights of Disabled People

A person exercising functions under this Act in relation to disabled adults or children **must have due regard to the United Nations Convention on the Rights of Disabled People** (UNCRDP). There are 30 Articles in the Convention, including Article 3 which sets out some key principles that governments and public bodies must take into account when they are carrying out their work. Generally, public authorities should follow these principles. They should also identify what they can do to positively promote them. These principles are:

Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons. Every person is of equal worth and deserves to be treated with dignity and respect. Disabled people have the right to choose how to live their own lives and the freedom to make their own choices

Non-discrimination. Disabled people must never be treated worse than others, excluded from or denied access to services, education, work or social life on the basis of their disability

Full and effective participation and inclusion in society. Disabled people’s full and effective participation and inclusion in society must be supported

Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity

Equality of opportunity. Taking positive action to ensure barriers are removed

Accessibility. Ensuring disabled people can access buildings, housing, services, information, leisure (and other areas listed in the Convention) on an equal basis to non-disabled people

Equality between men and women

Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

# Prison Rules

The Human Rights Act requires that the rules that govern secure settings are compliant with them. The following rules are relevant to key care and support issues:

### Purpose of prison training and treatment (Rule 3)

* The purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life

### Outside contacts (Rule 4)

* Special attention shall be paid to the maintenance of such relationships between a prisoner and his / her family as are desirable in the best interests
of both
* A prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the governor, best promote the interests of his / her family, and his / her own social rehabilitation

### After care (Rule 5)

* From the beginning of a prisoner’s sentence, consideration shall be given, in consultation with the appropriate after-care organisation, to the prisoner’s future and the assistance to be given to him / her on and after release

### Maintenance of order and discipline (Rule 6)

* Order and discipline shall he maintained with firmness, but with no more restriction than is required for safe custody and well-ordered community life
* In the control of prisoners, officers shall seek to influence them through their own example and leadership, and to enlist their willing co-operation
* At all times, the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility, but a prisoner shall not be employed in any disciplinary capacity

### Women prisoners (Rule 12)

* Women prisoners shall normally be kept separate from male prisoners
* The Secretary of State may, subject to any conditions he thinks fit, permit
a woman prisoner to have her baby with her in prison, and everything necessary for the baby’s maintenance and care may be provided there