

# Human rights framework for restraint:

principles for the lawful use of  
physical, chemical, mechanical  
and coercive restrictive  
interventions



# Introduction

This framework reflects the requirements of Article 3 (prohibition on torture, inhuman and degrading treatment, Article 8 (respect for autonomy, physical and psychological integrity) and Article 14 (non-discrimination) of the European Convention on Human Rights<sup>1</sup> as incorporated into domestic law by the Human Rights Act 1998.<sup>2</sup>

## Why has the Commission produced this human rights framework for restraint?

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To support our work to tackle the unlawful use of restraint in education, healthcare and detention settings, we have produced this human rights framework for restraint. The development of the framework has been informed by discussion with Government departments; regulators, inspectorates and ombudspersons; and the third sector.

## What does this framework do?

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This framework:

- sets out key principles of articles 3, 8 and 14 of the European Convention on Human Rights (ECHR), incorporated into domestic law by the Human Rights Act 1998, which govern the use of restraint across all settings, and
- provides examples from a range of settings to illustrate the principles.

## What this framework is not intended to do?

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This framework is not intended to:

- set out the specific legal frameworks which govern the use of restraint in different settings
- set out all of the regional and international human rights obligations and standards which relate to the use of restraint, or
- serve as a tool to guide frontline practice without supplementary guidance.

## How should the framework be used?

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This framework is intended to be used as:

- a basis for building consensus and consistency on the use of restraint within and between all sectors in which restraint is used, including criminal justice, health, adult and social care and education sectors
- a starting point for developing more comprehensive sector-specific guidance and training on restraint, and
- a checklist which can be used to help evaluate compliance of law, policy and practice on restraint with articles 3, 8 and 14 ECHR.

# Human rights framework for restraint

An act of restraint must comply with the basic legal principles below when carried out by a person performing a public function or providing a public service, whether they are employed by the state or private contractors. This includes restraint by teachers, police, prison and immigration detention officers, NHS and social care professionals.

The principles in this framework serve to protect and respect the safety and dignity of people being restrained, as well as those around them, including staff or members of the public.

## A | What is 'restraint'?

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In some settings 'restraint' only means use of force. This framework covers all forms of restraint covered by the following definition:

**'Restraint' is an act carried out with the purpose of restricting an individual's movement, liberty and/or freedom to act independently.<sup>3</sup>**

Restraint includes chemical, mechanical and physical forms of control, coercion and enforced isolation, which may also be called 'restrictive interventions'.

Example: A young person with learning disabilities is prescribed high doses of an anti-psychotic drug with sedative properties solely to help control their challenging behaviour. They do not have the underlying condition that the medication is designed to treat. This may be chemical restraint.

The key issue is the nature of the act, not how it is described. If an act or series of acts are intended to restrict a person's freedom to move or act then the human rights principles set out in this framework apply.

Example: Isolation may be enforced by locking a door or using a door the person cannot open themselves, or otherwise preventing them from leaving an area, for example, by the use or threat of force. Enforced isolation is therefore restraint, but it may be described as seclusion, segregation, separation, time out or solitary confinement.

Restraint does not require the use of physical force, or resistance by the person being restrained, and may include indirect acts of interference.

Example: A carer takes away a disabled person's walking frame so that they cannot get out of their chair and walk around. This is an act of restraint.

## B | Unlawful restraint

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It is **never** lawful to use:<sup>4</sup>

1. restraint with intent to torture, humiliate, distress or degrade someone<sup>5</sup>
2. a method of restraining someone that is inherently inhuman or degrading, or which amounts to torture
3. physical force as a means of punishment, or
4. restraint that unnecessarily humiliates or otherwise subjects a person to serious ill-treatment or conditions that are inhuman or degrading.

Example: Handcuffing a prisoner to a hospital bed, or during a medical examination, is humiliating and diminishes their dignity. It may be unlawful if the prisoner does not pose such a risk of harm to the public or escaping that the handcuffing is necessary.

Restraint is more likely to amount to inhuman and degrading treatment when it is used on groups who are at particular risk of harm or abuse, such as detainees, children and disabled people.<sup>6</sup>

Restraint that amounts to inhuman or degrading treatment can never be justified.

Subject to the absolute prohibitions in this section, the use of restraint may be lawful provided the legal framework, safeguards and its use in practice comply with the requirements set out below.<sup>7</sup>

## C | Legal framework

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There must be a legal framework governing the use of restraint that complies with the following principles:

1. The legal framework must include a legal power authorising the use of restraint:<sup>8</sup>
  - a) in the individual's circumstances, and
  - b) for the intended purpose of the restraint.

The legal power to restrain may be contained in primary or secondary legislation, or derived from the common law.

Examples: Section 6 of the Mental Capacity Act 2005 provides lawful authority for restraint to be used (a) on a person who lacks capacity, where (b) it is reasonably believed to be necessary and proportionate to protect them from harm.

1. The purpose of the legal power to restrain granted by the legal framework must be for a legitimate and sufficiently weighty purpose that falls within one of the following grounds:
  - a) the interests of national security, public safety or the economic well-being of the country
  - b) for the prevention of disorder or crime
  - c) for the protection of health or morals, or
  - d) for the protection of the rights and freedoms of others.<sup>9</sup>
2. The legal framework must:
  - a) be public and widely available
  - b) clearly define the circumstances in which restraint may be used and how it can be exercised, and
  - c) provide procedural safeguards, including sanctions for unlawful use of restraint.<sup>10</sup>
3. The rules and safeguards in the legal framework must be sufficient to guarantee against the risk of abuse, arbitrary interference with an individual's rights,<sup>11</sup> and prevent risks to health and well-being.<sup>12</sup>
4. The legal framework should comply as fully as possible with the UK's obligations under international law and be informed by international human rights standards, such as those listed in the Annex to this framework.<sup>13</sup>

5. The legal framework may include relevant statutory provisions, codes of practice, official guidance, policies and equality and human rights legislation.<sup>14</sup>

Example: The 'Mental Health Act 1983: Code of Practice' statutory guidance and Department of Health policy guidance, 'Positive and Proactive Care; reducing the need for restrictive interventions' both form part of the legal framework for restraint in psychiatric hospitals.

## D | The use of restraint

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Where restraint does not amount to inhuman and degrading treatment it may be lawful if used in accordance with the legal framework, ensuring that:<sup>15</sup>

1. the aim of the restraint meets the purpose of the power in the legal framework, and
2. there is a rational connection between the method of restraint used and the aim.<sup>16</sup>

The following principles must also be complied with:

1. the means of restraint and its duration must be necessary, and no more than necessary, to accomplish the aim. This requires consideration of whether there is a less intrusive measure that could reasonably achieve the aim, and
2. the end must justify the means. A fair balance has to be struck between the severity and consequences of the interference for the individual being restrained and the aim of the restraint.<sup>17</sup> This requires consideration of any reasons why an individual may be particularly vulnerable to harm, such as their age, experience of trauma, health conditions or disabilities.
3. Minor acts of physical interference such as a guiding hand may not breach rights, but the use of more significant physical force may only be used to restrain:
  - a) as a last resort, where there is no viable alternative<sup>18</sup>
  - b) where there is a genuine belief<sup>19</sup> that it is strictly necessary to prevent serious harm including the risk of injury to the person or others, or in limited cases, preventing a crime, disorder or damage to property,<sup>20</sup> and

- c) due to the level of control the state has over people in detention and therefore their vulnerability to abuse, force must only be used to restrain a detainee where they have made it strictly necessary by their own conduct.<sup>21</sup>

The 'use of force' principles above are likely to apply to other forms of restraint, such as chemical restraint, which carry a similarly high risk of harm and interference with human dignity.

## Children

When a decision is being made on whether and how to restrain a child:

1. Their best interests must be a primary consideration. This does not mean that the child's best interests automatically take precedence over competing considerations, such as other people's rights, but they must be given due weight in the decision to restrain.<sup>22</sup>
2. Children are developing physically and psychologically which makes them particularly vulnerable to harm. The potentially serious impact of restraint on them will require weighty justification.<sup>23</sup>
3. Techniques intended to inflict pain as a means of control must not be used.<sup>24</sup>

A person entrusted with the care of a young child may be required to restrict the child's action to ensure their welfare and safety. If the restraint is consistent with ordinary acceptable parental restrictions upon the movements of a child of that age and understanding this will generally be lawful.

Example: A teaching assistant takes hold of a five-year-old pupil's hand to restrain the child when they are walking near a busy road. This is lawful.

## E | Procedural safeguards

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Where restraint is used, protective steps must be taken to ensure legality and prevent harm.<sup>25</sup> The level of detail and scrutiny required by these procedural safeguards will increase in line with the gravity of the interference with the individual's rights and the risk of harm occurring.

The following are key procedural safeguards:



1. All persons using restraint must be adequately trained.
2. Any anticipated use of restraint must be planned and regularly reviewed. This must include active consideration of:
  - reasonable adjustments, or other measures that could be taken, to avoid or minimise the use of restraint and the risk of harm resulting for the individual or others in their situation,<sup>26</sup> and
  - the risks to the person's physical and mental well-being, taking into account matters such as disability and age.<sup>27</sup>
3. To the extent that urgency permits, a person must be consulted and involved in a decision to restrain them, or to continue restraint for a prolonged period.<sup>28</sup>
4. Use of restraint should be recorded in proportionate detail to enable the lawfulness of the restraint to be assessed.<sup>29</sup>

Example: A student in a residential special school with autism and learning disabilities is repeatedly physically restrained due to challenging behaviours. An expert assessment of their sensory needs is required so that their environment can be adjusted to avoid distress that may lead to the use of restraint, and to ensure that it is strictly necessary.

In addition, if restraint results in death, life threatening injury,<sup>30</sup> or may arguably amount to torture, inhuman or degrading treatment, an effective, independent investigation is required that complies with the legal principles outlined in our [human rights framework for adult deaths in detention](#).

## F | Discrimination

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1. The disproportionate use of restraint on an identifiable section of the population without justification is evidence that unnecessary and discriminatory restraint may be occurring.<sup>31</sup>

Example: A prison segregates black prisoners twice as often as white prisoners. This indicates that the segregation of a black prisoner may be due to discrimination rather than necessity, in which case it would be unlawful.

2. To know whether discrimination is occurring, public bodies should collect and analyse data on their use of restraint, to identify if restraint is being used disproportionately against people with particular protected characteristics under the Equality Act 2010, or who share other identifiable group characteristics, for example, women, ethnic minorities, or people with particular impairments such as learning disabilities.<sup>32</sup>

Example: A review of monitoring data at a mental health unit shows that ethnic minority women are more likely to be restrained than white women or men. The hospital is concerned that this might be a result of discriminatory attitudes and decides to investigate the cause of this disparity.

## **G | Rights must be effective**

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Appropriate assistance must be provided where necessary to ensure that the rights outlined in this framework are effective in practice.<sup>33</sup> This may include interpreters for people who require them, or independent advocacy support for people who face other communication barriers or difficulties asserting their legal rights, including those who lack capacity.

# Annex

## International legal obligations, standards, monitoring and complaints systems relating to restraint

### Introduction

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The UK Government has signed and ratified a number of UN human rights treaties which are relevant to the use of restraint. These treaties form part of its obligations under international law and inform the interpretation of rights under the European Convention on Human Rights.<sup>34</sup>

### Relevant UN human rights treaties

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The UK has ratified the following UN human rights treaties which are relevant to restraint:

[International Convention on the Elimination of All Forms of Racial Discrimination](#) (CERD) especially articles 1 (definition of racial discrimination), 2 (obligation to act against all racial discrimination), 5 (equality before the law) and 7 (obligation to combat prejudice and promote understanding).<sup>35</sup>

[International Covenant on Civil and Political Rights](#) (ICCPR) especially articles 3 (equal enjoyment of rights for men and women), 7 (prohibition of torture, inhuman or degrading treatment or punishment), 9 (right to liberty and security of the person), 10 (right to be treated with humanity and respect for dignity in detention), 16 (right to legal personhood), 17 (right to respect for privacy and family).<sup>36</sup>

[Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) especially articles 1 (definition of discrimination against women) and 2 (obligation to act to eliminate discrimination against women).<sup>37</sup>

[Convention against Torture](#) and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) especially articles 1 (definition of torture), 2, (obligation to prevent acts of torture), 4 (criminal sanctions for torture), 10 (training for personnel in law

enforcement and detention contexts), 11 (systematic review of rules of detention, etc.), 12 (obligation to investigate), 13 (right of complaint), 16 (application of articles 10–13 to cruel, inhuman or degrading treatment or punishment).<sup>38</sup>

[Convention on the Rights of the Child](#) (CRC) especially articles 3 (best interests of the child), 12 (right to be heard), 16 (right to privacy and family), 19 (protection from physical or mental violence and abuse), 23 (disabled children), 28 (school discipline), and 37 (protection from torture, cruel, inhuman or degrading treatment or punishment).<sup>39</sup>

[Convention on the Rights of Persons with Disabilities](#) (CRPD) especially articles 12 (equal recognition before the law), 14 (liberty and security of the person), 15 (freedom from torture, cruel, inhuman or degrading treatment or punishment) and 17 (protecting the integrity of the person).<sup>40</sup>

UN human rights treaty bodies produce general comments on the rights contained in the treaties.<sup>41</sup> General comments can be used to help understand these rights and what they require.

## Other international instruments

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In addition to the UN treaties, there are international standards that should underpin domestic standards. These include:

- [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.](#)
- [Standard Minimum Rules for the Treatment of Prisoners \('the Nelson Mandela Rules'\).](#)
- [United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \('the Bangkok Rules'\).](#)

## Concluding observations and recommendations

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The UK has agreed to undergo periodic examination by UN committees to assess its compliance with the treaties it has ratified. These examinations result in [concluding observations](#) and recommendations from the UN committee for each treaty. To date, these include concluding observations from the committees for CAT (2013), CERD (2016), CRC (2016) and CRPD (2017), which all highlighted serious concerns about the use of restraint.

## Monitoring obligations and complaint mechanisms under international law

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As required by the Optional Protocol for CAT (OPCAT), the UK Government has created a [National Preventive Mechanism](#) (NPM), the function of which is to inspect places of detention and report on ill-treatment. The NPM has a website, with useful studies and guidance on standards relevant to particular forms of restraint, such as segregation.<sup>42</sup>

The [CRPD](#) has a complaints procedure, which may be used by individuals if domestic remedies have been exhausted, to obtain redress from violation of CRPD rights. The CRPD committee also has a power to launch an inquiry into potential grave and systemic breaches of the CRPD. To date, the UK is the only nation in the world to have been subject to such an inquiry, on the impact of the UK's austerity programme on disabled people.

Under CEDAW, women can complain directly to the UN if their rights under this treaty have been violated and they cannot obtain redress in domestic law. As with CRPD, there is also an inquiry procedure.

As a member of the Council of Europe (CoE), and a party to the European Convention on Human Rights, the UK Government has agreed to submit to inspections from the CoE's Committee for the Prevention of Torture (CPT), which periodically [examines places of detention in the UK](#) and produces reports and recommendations.

**Public bodies should take the views of the UN treaty bodies and CPT into account when reviewing and developing policies and practices.**

# Notes

The notes below provide additional information about the principles in the framework, and case law examples that help to illustrate them.

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<sup>1</sup> Restraint is likely to raise issues under Article 8 as well as Article 3.

<sup>2</sup> Human Rights Act 1998 Schedule 1.

<sup>3</sup> Taken from the MHA Code of Practice definition of ‘restrictive intervention’. This is consistent with the Oxford English Dictionary which defines restraint, as ‘a restraining force or influence; a means of restraining a person from a course of action, or of keeping a person under control’.

<sup>4</sup> The prohibition in Article 3 ECHR against torture, or inhuman or degrading treatment is absolute and permits no justification for an interference with that right.

<sup>5</sup> Article 3 ECHR. See eg. *Uyan v Turkey* (App 7496/03) at [37].

<sup>6</sup> *Kalashnikov v Russia* (2003) 36 EHRR 34 at [95]: ‘... ill-treatment must attain a minimum level of severity if it is to fall within the scope of Art.3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim’; *Bouyid v Belgium* (2016) 62 EHRR 32 at [81].

<sup>7</sup> Article 3 contains a positive obligation on the state to have in place ‘effective measures’ to prevent breaches, including an appropriate legislative and administrative framework (see for example, *R (ota Howard League for Penal Reform) v SSHD v SSfH* [2002] EWHC 2497 (Admin) at [36], in particular at [62] and [66]-[68]; *R (ota FI) v SSHD* [2014] EWCA Civ 1272 at [36]; Article 8 has a similar positive obligation: *Howard League ibid* at [54]-[69], and requires any interference with that right to be ‘in accordance with the law’ (Art 8(2)).

<sup>8</sup> *Malone v United Kingdom* (1985) 7 EHRR 14 at [66] to [68].

<sup>9</sup> Article 8(2) ECHR.

<sup>10</sup> *A v United Kingdom* (1999) 27 EHRR 611 at [24] re Art 3 ECHR; *Öneryildiz v Turkey* (2005) 41 EHRR 20 at [91] to [92] re Art 2 ECHR. Art 3 breaches must be punishable by a criminal offence: *A v United Kingdom* (1998) 27 EHRR 611.

<sup>11</sup> *MM v UK* (App 24029/07) at [195]; *R (FI) v Secretary of State* [2014] HRLR 30 at [41].

<sup>12</sup> *Smith v Ministry of Defence* [2013] UKSC 41 at [68].

<sup>13</sup> ECHR rights must be construed in light of relevant international law: *Demir v Turkey* (2009) 48 EHRR 1272, in particular at [85]-[86]. The common law should also be developed and informed by obligations under international law: *A v SSHD (No. 2)* [2006] 2 AC 221 at [27], and *R (K) v. Parole Board* [2006] EWHC 2413 (Admin) at [30].

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- <sup>14</sup> *R (Roberts) v Commissioner of the Metropolis* [2016] 1 WLR 210 at [42]-[43].
- <sup>15</sup> Article 8(2) ECHR: use of restraint must be 'in accordance with the law'.
- <sup>16</sup> *Huang v Secretary of State* [2007] 2 AC 167 at [19].
- <sup>17</sup> *R (Lord Carlile) v SSHD* [2015] AC 945 at [19]; *Huang v SSHD* [2007] 2 AC 167 at [19].
- <sup>18</sup> *Kurnaz v Turkey* (Application no. 36672/97) at [56].
- <sup>19</sup> *De Silva v United Kingdom* (2016) 63 EHRR 12 at [248].
- <sup>20</sup> *Tali v Estonia* (Application no. 66393/10) at [59].
- <sup>21</sup> *Bouyid v Belgium* (2016) 62 EHRR 32 at [88].
- <sup>22</sup> *ZH (Tanzania) v Secretary of State* [2011] UKSC 4 at [23].
- <sup>23</sup> *R (C) v Secretary of State* [2009] QB 657 at [58].
- <sup>24</sup> *Ibid*, at [60] to [61]; UN CRC General Comment 8 at [15].
- <sup>25</sup> See *fn 6* above. The state is under a positive duty to take reasonable and appropriate measures to secure the applicant's rights under article 8: *Lopes-Ostra v Spain* (1994) 20 EHRR 277 at [51]; *R(ota Howard League)* (*ibid*) at [54] to [69].
- <sup>26</sup> *Y v UK* (1992) 17 EHRR 238 at [44] – [45]; *R (FI) v Secretary of State* [2014] HRLR 30 at [42]; *Kemal Bas v Turkey* (App 38291/07) at [30]; *Thlimmenos v Greece* (2001) 31 EHRR 15 at [44]; Equality Act 2010, in particular ss.20 and 149.
- <sup>27</sup> *R (C) v Secretary of State* [2009] QB 657 at [58].
- <sup>28</sup> *R (Bourgass) v SSJ* [2016] AC 384 at [98]; *Blčić v Croatia*, app 59532/00 at [68].
- <sup>29</sup> *R (Quila) v Secretary of State* [2012] 1 AC 621 at [44].
- <sup>30</sup> *R (Amin) v Secretary of State* [2004] 1 AC 653 at [31].
- <sup>31</sup> Discriminatory use can imply that restraint is not necessary, as required by Articles 3 and 8 ECHR: *A and Others v SSHD, X and Another v SSHD* [2004] UKHL 56 at [231] to [234]. The discriminatory use of restraint may also be unlawful under the provisions of the Equality Act 2010, and/or Article 14 in conjunction with Articles 3 and/or 8 ECHR.
- <sup>32</sup> The Public Sector Equality Duty (s.149 Equality Act 2010) includes a proactive duty of enquiry in order to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.
- <sup>33</sup> *Clift v UK* ECHR 13 Jul 2010 at [60], *McCann and Others v UK* (1996) 21 E.H.R.R. at [146].
- <sup>34</sup> *Neulinger v Switzerland* (2010) 28 BHRC 706 at [131].
- <sup>35</sup> [CERD \(1969\) \[ONLINE\] \(accessed 2 July 2018\)](#)
- <sup>36</sup> [ICCPR \(1976\) \[ONLINE\] \(accessed 2 July 2018\)](#)

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<sup>37</sup> [CEDAW \(1986\) \[ONLINE\] \(accessed 2 July 2018\)](#)

<sup>38</sup> [CAT \(1988\) \[ONLINE\] \(accessed 2 July 2018\)](#)

<sup>39</sup> [CRC \(1991\) \[ONLINE\] \(Accessed 2 July 2018\)](#)

<sup>40</sup> [CRPD \(2009\) \[ONLINE\] \(Accessed 13 March 2019\)](#)

<sup>41</sup> See: [Human Rights Treaty Bodies - General Comments.](#)

<sup>42</sup> See: [National Preventive Mechanism - Publications and Resources.](#)



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