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Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Disclaimer

This guide is for informational purposes only and does not constitute legal advice. It should in no way be taken as a replacement for referring to the Constitution itself or for obtaining proper legal advice.

*The Bill of Rights, Freedoms, and Responsibilities:
Implications for Public Officials*

Message from the Human Rights Commission (HRC)

Human rights are the essential rights and freedoms that belong to all individuals regardless of their nationality and citizenship, age, gender, or social status. These rights are considered central to maintaining a fair and just society. Fundamentally, human rights are about the balance of rights, freedoms, and responsibilities; treating individuals fairly, with dignity and respect – while still safeguarding the rights of the wider community.

All across the world, many countries are learning to 'take human rights home' by introducing constitutions or human rights laws and commissions to safeguard the rights of their citizens. The Cayman Islands has sought to do this by the inclusion of Part 1 in the Cayman Islands Constitution Order 2009 – the Bill of Rights, Freedoms and Responsibilities (BoRFR).

The BoRFR is the cornerstone of democracy for the Cayman Islands. It embeds protection for fundamental rights, tailors to local needs and values, includes extra rights in other treaties like the International Covenant on Civil and Political Rights as well as the Universal Declaration on Human Rights; details standards in service, and promotes a culture for the respect of rights.

The HRC was established under section 116 of the 2009 Constitution as an independent body responsible for promoting understanding and observance of human rights in the Cayman Islands. This booklet is one way in which the Commission seeks to do this. It has been published to assist public officials in understanding the responsibilities placed on them in their official capacity by our Bill of Rights, Freedoms and Responsibilities. We hope it will be helpful as you go about your duties [or fulfill your responsibilities] as a public official.

How are human rights applied in the Cayman Islands?

Human rights in the Cayman Islands only apply vertically which means that a person's rights are enforced against the Government only and not against private individuals. It should be noted however, the Government will have to take account of the human rights set out in the Constitution when passing local laws. This means that the Government should not pass laws which allow one private individual to violate another private individual's rights even though you could not take the human rights case to court.

Who is the 'Government'

In the Bill of Rights, "government" shall include public officials (as defined in section 28) and the Legislature, but shall not include the courts (except in respect of sections 5, 7, 19 and 23 to 27 inclusive).

Definition of "public official"

"public official"—

- includes a public or governmental body, including any statutory body or company or association in which the Cayman Islands has an interest and which performs a public function or duty;
- includes any organisation or person carrying out a public function or duty, including the Governor, except where the nature of their act is private;
- unless otherwise stated, excludes private schools (whether or not in receipt of government funding, subsidy or other assistance), churches, the Legislature and the courts.

What are the types of rights contained in our Bill of Rights, Freedoms and Responsibilities?

There are three types of rights contained in our Bill of Rights, Freedoms and Responsibilities. Each section of the Bill of Rights may contain a single type of right or a combination of two or more types of right. The three types are:

Limited

- Limited rights are rights where the specific circumstances in which this right can be lawfully restricted or interfered with are set out in full in the definition of the right itself.

Qualified

- Qualified rights are rights that can lawfully be restricted or taken away by the government in certain broadly defined circumstances. Usually, the right is set out and followed by a list of criteria which explain the general circumstances when it will be lawful for the state to interfere with or restrict the right, balancing those rights against the rights and interests of others.

Absolute

- Absolute rights cannot be restricted in any way or under any circumstances by the government.

What do I do if my rights have been breached or infringed?

The Commission will receive 1) all complaints of breaches or infringements of any section of the Bill of Rights, Freedoms and Responsibilities committed by a public official; 2) all complaints of breaches or infringements of common law and statutory human rights and freedoms committed by public officials; and 3) all complaints that any international human rights treaty extended to the Cayman Island has been breached or infringed by the actions of public officials or by legislation to which the treaty applies.

It is important to note that the Commission will only accept complaints of alleged breaches of the Bill of Rights, Freedoms and Responsibilities which have occurred after 6 November, 2012. This may be a one off event that has occurred after 6 November, 2012 or may be a continuing infringement of a right. In all cases, unless there is clear evidence that the alleged infringement is continuing, the Commission will not accept a complaint in relation to an alleged infringement that has taken place more than one (1) year prior to the date of the complaint.

For more information on filing a complaint with the HRC please visit our website at www.humanrightscommission.ky.

Guarantee of Rights, Freedoms, and Responsibilities – Part 1, Section 1

The Bill of Rights—

- recognises the distinct history, culture, Christian values and socio-economic frame-work of the Cayman Islands and it affirms the rule of law and the democratic values of human dignity, equality and freedom;
- confirms or creates certain responsibilities of the government and corresponding rights of every person against the government; and
- does not affect, directly or indirectly, rights against anyone other than the government except as expressly stated.

It is unlawful for government to act contrary to the Bill of Rights' principles. If it's alleged that government has acted unlawfully, cases could be brought in the Grand Court.

Life – Part 1, Section 2

What does this right mean in simple terms?

Everyone's right to life shall be protected by law.

No person shall intentionally be deprived of his or her life.

A person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is absolutely necessary—

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or if he or she dies as a result of a lawful act of war.

Is Section 2 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Medical insurance
- Mental Health Services – Counsellors / Psychologists
- All Government Health Services plus Regulators / Commissions
- Policy decisions that may affect someone's right to life
- Care for other people or protecting them from danger
- Investigation of deaths
- Arresting or detaining persons

A Few Examples

Under very limited circumstances is it acceptable and lawful to take a life. For example:

- A public official who uses force which is absolutely necessary while defending themselves or others from violence (Section 2(3)(a)).
- If police use justifiable force when arresting a person or preventing the escape of an arrested person and that person dies as a result of such force then their right to life has not been violated (Section 2(3)(b)).
- A life could be taken lawfully when police or other authorised armed forces use justifiable force when preserving the island's peace (Section 2(3)(c)).

Torture and Inhuman Treatment – Part 1, Section 3

What does this right mean in simple terms?

Protection against torture means you cannot be subjected to acts that intentionally inflict severe pain or suffering, whether physical or mental.

Protection against inhuman and degrading treatment or punishment means you cannot be subjected to acts that intentionally inflict mental or physical suffering, anguish, humiliation, fear or debasement (falling short of torture)

Refugees are people who leave where they live to seek safety in another country. They often do so because their government cannot keep them safe, has not protected their basic rights, or has treated them badly.

Government cannot not torture or degrade you; or allow anyone else to torture or degrade you, at any time – whether in times of war, or other public emergencies.

Key words and meanings

Torture – deliberate infliction of severe pain or suffering, whether to punish or intimidate, or to obtain information.

Inhuman treatment – treatment which is less severe than torture but still causes serious physical and/or mental pain or suffering.

Degrading treatment – treatment arousing feelings of fear, anguish and inferiority capable of humiliating and debasing the victim.

Is Part 1, Section 3 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Reviewing prison “life sentences” and the legislative clause “at Her Majesty’s pleasure” in relation to H.M. Prisons
- Caring for other people
- Detaining people or looking after those in detention
- Removing, extraditing or deporting people from the Cayman Islands
- Working in a place where someone may be inadvertently placed in a humiliating position, for example in nursing homes, schools, or hospitals / clinics

A Few Examples

Torture, and inhuman or degrading treatment, could include—

- severe police violence
- poor detention conditions for arrested persons or prisoners
- subjecting prisoners to electric shocks as an interrogation technique
- failing to give medical treatment to a prisoner or taking it away from a prisoner with a serious illness.

Slavery, Forced or Compulsive Labour – Part 1, Section 4

What does this right mean in simple terms?

You have a right not to be held in slavery. Being a slave means someone owns you as property. This is an absolute right.

You also have the right not to be forced to perform labour. This is a limited right. There are examples listed at “A Few Examples” of cases where you can be forced to work without this being considered slavery or forced labour.

Key words and meanings

Slavery and servitude – are closely connected, but slavery involves being owned by another person – like a possession – whilst servitude usually involves a requirement to live on another’s property and with no possibility of changing the situation.

Forced or compulsory labour – arises when a person is made to work or perform a service against their will, and where the requirement to do the work is unjust or oppressive, or the work itself involves avoidable hardship. It can cover all kinds of work and services.

Is Section 4 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Have powers to make people work during a state of emergency
- Issue work permits or hear appeals relating to work permits or other issues

A Few Examples

While under no circumstances can you be made a slave or be in servitude there are instances where it is lawful for you to be made to work.

For example:

- you could be forced to work by an order or sentence of the court;
- if you belong to a disciplined force (i.e. police or prison officers);
- if you are a prisoner, and required to carry out specific tasks to ensure where you live is clean or maintained; or
- in cases of public emergency where labour is required.

Personal Liberty – Part 1, Section 5

What does this right mean in simple terms?

Everyone has the right to liberty and security of person. This amounts to a right not to be unlawfully arrested or detained.

This is a limited right. The Government may lawfully deprive a person of this right where the detention is based in a Cayman Islands law and falls within one or more of the circumstances listed in the section “A Few Examples”.

If a person is arrested or detained by the Government he or she has the right:

- to remain silent;
- to be promptly informed of the reasons for the arrest and any charge against him or her, in a language that he or she understands;
- at any stage and at his or her own expense, to retain and instruct without delay a legal practitioner of his or her own choice, and to hold private communication with him or her, and in the case of a minor he or she shall also be afforded a reasonable opportunity of communication with his or her parents or guardian
- to be brought promptly before a judge or judicial officer;
- to be tried for a criminal offence within a reasonable time;
- to have a court speedily examine and decide the lawfulness of the detention and be released if the detention is not lawful.

Persons are entitled to compensation if unlawfully arrested or detained.

Is Section 5 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- arresting or detaining people
- limiting or curtailing people's liberty
- reviewing the detention of mental health patients
- reviewing the detention of prisoners
- discipline procedures within a disciplined service

A judicial officer or an officer of a court or a police officer acting in pursuance of the order of a judicial officer shall not be personally liable to pay compensation under this subsection in respect of anything done by him or her in good faith in the discharge of the functions of his or her office, and any liability to pay any such compensation in respect of that thing shall be a liability of the Crown.

A Few Examples

A few examples of when this right can be limited by the Government include if you are—

- reasonably suspected to have committed a crime, be in the process of committing a crime or about to commit a crime;
- lawfully arrested;
- convicted of a crime by a court;
- detained for breaching a court order;
- suffering from a mental health illness which warrants limiting your movement to stop you from harming yourself or others;
- an illegal immigrant;
- carrying an infectious disease;
- of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her care or treatment or the protection of the community.

- in the case of a minor, under the order of a court or with the consent of his or her parent or guardian, for the purpose of his or her education or welfare;

Treatment of Prisoners – Part 1, Section 6

What does this right mean in simple terms?

Persons who are under arrest or detained have the right to be treated with humanity and dignity.

This means you must be treated properly by custodial staff; cells and the cell complex provide for humane treatment of prisoners; prisoners are given regular meals, and must have access to reasonable health care, to name a few.

Is Section 6 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- arresting or detaining people
- limiting or curtailing people's liberty
- interacting with detained persons
- reviewing the detention of mental health patients

A Few Examples

- unconvicted prisoners shall be segregated from convicted prisoners;
- juvenile prisoners shall be segregated from adult prisoners; and
- juveniles shall have any criminal proceedings against him or her pursued with the greatest possible expedition.

Right to a Fair Trial – Part 1, Section 7

What does this right mean in simple terms?

People charged with breaking the law have the right to a fair and public trial. A trial is when someone, such as a judge, listens to what happened before deciding whether or not you have done something wrong.

The trial must be conducted by an independent and impartial court within a reasonable time.

All decisions of the court shall be announced publicly.

Rights afforded to you under this section include that you -

- are not be compelled to give evidence at trial;
- cannot be re-tried for an offence unless ordered by a superior court in the course of appeal or review proceedings relating to the conviction or acquittal;
- be tried for a criminal offence after you have been legally pardoned for that criminal offence.

What does the right to a fair hearing mean?

This means, in essence, a person's right to present their case and evidence to the court (or the administrative authority who makes the decision) under conditions which do not place them at a substantial disadvantage when compared with the other party in the case. This includes a right to have access to material held by the other side, and – if there is a hearing – the ability to cross-examine witnesses on terms that are equal to the other side.

Where they are young or vulnerable or unrepresented individuals concerned, the court must do what it can to protect them and acknowledge their rights.

What does the right to a public hearing mean?

In principle, this right means that both the public at large and the press have access to any hearing under Section 7. However, the right to a public hearing can be subject to certain restrictions in the interests of morals, public order or national security or where the interests of those under the age of 18 or the privacy of the parties require an exclusion of the public and the press.

Even where the public have been excluded from the hearing, the outcome of the case must be publicly available, whether it is read out by the court or available in written form.

What does the right to an independent and impartial tribunal mean?

The court or other body that decides a case must be independent of the parties in that case. The way in which members of the court or body are appointed or the way they conduct a particular case can affect their independence. Similarly, members of the court or decision-making body must be impartial, and not show prejudice or bias or give any other grounds for legitimately doubting whether they are being impartial. Sometimes a judge or an administrative decision-maker will have had some earlier involvement with the case before deciding the case. Or they may have links with either party, or very strong views. Generally speaking, however, prior involvement will not necessarily mean that the judge or the administrative decision-maker is not impartial.

If there is no evidence of actual bias, then the test is whether there is an appearance of bias. For example, a judge or an administrative decision-maker who decides a case should not later be involved in the appeal against their own decision in the very same case because that would give the appearance of bias.

What does the right to a trial within a reasonable time mean?

People are entitled to have their case heard without excessive procedural delays. Whether or not a delay is excessive will very much depend on the circumstances of the case, including: the type and complexity of the case, the conduct and diligence in the case of both sides, and the conduct and diligence of the court.

Is Section 7 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Processing benefits, awards, permits, or licences or if you deal with appeals and decisions
- Decision-making procedures in the public sector, for example planning, child care, confiscation of property
- The work of courts and tribunals

A Few Examples

As a result of this right, you are afforded—

- adequate time and facilities to prepare a defence; access to legal representation;
- the right to examine witnesses; and
- the right to be assisted, at no cost to you, by a foreign-language interpreter.

No Punishment without Law – Part 1, Section 8

What does this right mean in simple terms?

This right means that you cannot be found guilty of a crime which was not against the law when you did it.

Under this right crimes and penalties can only be prescribed by law. Such law must be clear in its definition so that people know what acts or omissions are criminal in nature.

It is also against the law for the courts to give you a greater sentence than was prescribed by the law at the time you committed an offence.

Is Section 8 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- creating or amending criminal law
- prosecution of criminal offences
- disciplinary action that leads to punishment, where the offence falls within the concept of a criminal offence

A Few Examples

- An adult could not be found guilty and punished for consuming alcohol on a Sunday in his or her private home because it is not a criminal offence in the Cayman Islands.
- A person cannot be found guilty and punished for owning more than one vehicle because it is not a criminal offence in the Cayman Islands.

Private and Family Life – Part 1, Section 9

What does this right mean in simple terms?

Under this section, the Government must respect your private and family life, your home and correspondence.

“Correspondence” could include communication by letter, telephone, fax, and e-mail.

The concept of “private life” is broad. In general, it would mean you have the right to live your own life, with reasonable personal privacy in a democratic society, taking into account the rights and freedom of others.

Key words and meanings

Private life –The concept of ‘private life’ is broad by international standards. In general, the right to a private life means that a person has the right to live their own life with such personal privacy as is reasonable in a democratic society, taking into accounts the rights and freedoms of others.

Any interference with a person’s body or the way the person lives their life is likely to affect their right to respect for their private life under Part 1 Section, 9.

Part 1, Section 9 rights encompass matters of self-determination that may include, for example:

- Freedom to choose how one looks and dresses
- Freedom from intrusion by the media

The right to private life can also include:

- The right to have personal information, such as a person’s official records, photographs, letters, diaries and medical information,

kept private and confidential. Any disclosure of personal information about someone to another person or body is likely to affect a person's right to their private life under Part 1, Section 9, unless there is a very good reason, public authorities should not collect or use information like this; if they do, they need to make sure the information is accurate. Of course, they must also comply with data protection legislation.

Section 9 places limits on the extent to which a public official can do things which invade a person's privacy in relation to their body without their permission. This can include activities such as taking blood samples and performing body searches. In some circumstances, the Government should take positive steps to prevent intrusions into a person's private life by other people.

Family life – The right to respect for family life includes the right to have family relationships recognised by the law. It also includes the right for a family to live together and enjoy each other's company. The concept of 'family life' under Article 8 of the European Convention on Human Rights is broader than that defined as 'the nuclear family'. As such, European Convention on Human Rights case law indicates that 'family life' can include the relationship between an unmarried couple, an adopted child and the adoptive parent, or a foster parent and fostered child.

Home - Everyone has the right to enjoy living in their home without public authorities intruding or preventing them from entering it or living in it. People also have the right to enjoy their homes peacefully. This may mean that the state has to take positive action so that a person can peacefully enjoy their home, for example, to prevent serious environmental pollution. A person's 'home' may include their place of business. A person does not have to own their home to enjoy these rights.

Correspondence – The definition of 'correspondence' is broad, and can include communication by letter, telephone, mobile phone, fax, or email.

Balancing – Section 9 may require a public official to strike a balance between a person's rights and the needs of other people or society as a whole.

The right to respect for a person's private and family life, their home and their correspondence under Section 9 also raises issues in areas such as:

- searches of homes and the use of covert surveillance, such as listening devices
- family law disputes or asylum cases where there is a risk that a family will be separated
- certain aspects of the rights of prisoners
- employees' rights to privacy, including the monitoring of emails and telephone calls
- the imposition of unreasonable mandatory dress codes or drug testing at work
- the use of CCTV and exchange of data obtained from it
- the right to refuse medical treatment

Is Section 9 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Accessing, handling or disclosing personal information
- Providing or managing housing
- Surveillance, CCTV monitoring, or criminal investigations
- Dealing with families or children
- Immigration, asylum, work permits, employment and residency rights certificates

- Handling environmental issues, such as waste management or pollution
- Provision of medical treatment or social care

A Few Examples

If it can be shown as reasonably justifiable, the government could take this right away from you—

- for the purpose of protecting the rights and freedoms of other persons;
- conduct a lawful, court-ordered search;
- to regulate the right of persons to enter or remain in the Cayman Islands; or
- in the interests of defence, public safety, public order, public morality, public health, town and country planning, development to promote the public benefit.

Conscience and Religion – Part 1, Section 10

What does this right mean in simple terms?

You are free to hold particular beliefs, and to practice your religion.

No one can tell you what to think or believe about God or religion, unless your beliefs could harm others.

You have a choice. You should take the time to understand the differences among religions and respect the choices of other people.

This right protects you, and your children, from being forced to receive religious instruction that does not follow your, or their, personal beliefs.

Is Section 10 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- making decisions that may conflict with someone's religious beliefs
- detaining or accommodating a person
- situations where religious organisations provide a service to others

A Few Examples

- This right allows church schools to continue teaching their religious principles to willing children, regardless of whether or not the schools receive government funding.
- This right also allows schools and community educational institutions to impose requirements on employment, admission, or curriculum design, in order to maintain the schools' religious beliefs, subject to the laws in force.
- Under this right you cannot be forced to take an oath which is contrary to your religion or belief.

- Children cannot be forced to receive religious instruction or participate in religious ceremonies that relate to a religion other than their own.

Expression – Part 1, Section 11

What does this right mean in simple terms?

You have the right to voice opinions and express your views, either by yourself or in a group, unless doing so would breach the rights of other persons.

This right includes the freedom to receive information and ideas. Under this right, you have freedom from Government interference with your correspondence or other means of communication.

This right shall not prevent the Government from requiring the licensing of broadcasting, television, or cinema enterprises.

Key words and meanings

Expression – may cover holding views or opinions, speaking out loud, publishing articles or books or leaflets, television or radio broadcasting, producing works of art, communication through the internet, some forms of commercial information and many other activities. It can also cover the right to receive information from others, so you possess rights both as a speaker and as a member of an audience. You can express yourself in ways that other people will not like, or may even find offensive or shocking. However, offensive language insulting to particular racial or ethnic groups would be an example of where a lawful restriction on expression might be imposed.

Is Section 11 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- broadcasting, media and press work
- regulation of communications or the internet
- writing speeches or speaking in public

- decisions in relation to provision of information, for example to people in detention
- regulation or policing of political demonstrations

A Few Examples

You have the right to hold opinions and express your views, either as an individual or with others.

“Expression” includes—

- speaking aloud or producing works of art;
- publishing articles, books or leaflets;
- making television or radiobroadcasts.

Assembly and Association – Part 1, Section 12

What does this right mean in simple terms?

You have the right to assemble with others in a peaceful way. This would include the right to protest in public about something you feel strongly about.

This right would include the right to form associations, political parties, etc.

Key words and meanings

Freedom of assembly – This applies to:

- Static meetings
- Marches
- Demonstration
- Public service associations
- Public processions

Freedom of association – A person’s right to freedom of association includes:

- The right to form a political party (or non-political association such as a trade union or other voluntary group)
- The right not to join and not be a member of such an association or other voluntary group.

Is Section 12 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- making decisions regarding public protests, demonstrations or marches
- industrial relations
- policy making

A Few Examples

Freedom of assembly – This applies to:

- Home meetings;
- Marches;
- Public processions; and
- Demonstrations.

Movement – Part 1, Section 13

What does this right mean in simple terms?

This right allows people who are lawfully in the Cayman Islands to move freely throughout the country.

Under this right you are able to choose where to live within the Cayman Islands, and you are able to leave the country as well.

Is Section 13 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Working in Immigration enforcement or making decisions concerning work permits, permanent residency, residency with the right to work, status, or other similar decisions
- Administering urban planning

A Few Examples

Your freedom of movement may be lawfully restricted if—

- You are lawfully detained by authorities;
- You are restricted through bail conditions or sentence imposed by the courts;
- You are a public officer and leaving the island would prevent performance of a necessary duty; or
- You are removed from the Cayman Islands to be tried or punished in some other country for a criminal offence under the law of that country.

Marriage – Part 1, Section 14

What does this right mean in terms?

A consenting unmarried man, or consenting unmarried woman, has the right to marry a person of the opposite sex.

However, you cannot be forced to marry.

If you choose to get married, you will share equal rights and responsibilities in relation to your spouse and your children.

Sometimes a judge will help decide what is in best interests of your children if you no longer live with your spouse.

Is Section 14 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Registering marriages
- Officiating marriages

A Few Examples

The right to marry is subject to national laws regulating marriage, including laws that prohibit marriage between certain types of people (for example close relatives and persons of the same sex).

As long as laws are reasonably justifiable, legislation can regulate marriage—

- in the interests of public order, public morality or public health;
- in the public interest, the procedures and modalities of marriage;
or
- for protecting the rights and freedoms of others.

Property – Part 1, Section 15

What does this right mean?

You have a right to enjoy the things that you own.

The Government cannot take away property or place restrictions on your use of your property without very good reason.

Under this right, “property” is broadly defined. It includes businesses, and property that you can see and touch, such as land, a car or a boat; and invisible possessions, such as shares in a company, and court-ordered compensation.

If the Government plans to take your property there must be laws in place for such action. It must also have a procedure to check that a fair balance has been struck between the public interest in acquiring your property and your right to property.

Key words and meanings

‘Possessions’ and **‘property’** – have wide meanings, including land, houses, leases, money and personal property. It also covers intangible things such as shares, goodwill in a business, patents, and some forms of licences, including those which allow people to exercise a trade or profession. Entitlements to social security benefits, such as pension, are also generally classified as property.

A person has the right to use, develop, sell, destroy or deal with their property in any way they please. The right to protection of property means that public authorities cannot interfere with the way a person uses their property unless there is a proper legal basis for this interference and such interference is justified.

An interference with a person's peaceful enjoyment of their property may be necessary in the public interest; for example- a compulsory purchase of a person's property may be necessary, or a certain amount of noise from road traffic may intrude upon a person's home.

Is Part 1, Section 15 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Work in any area that can deprive people of their possessions or property
- Taking decisions about planning, licensing or allowing people to exercise a trade or profession
- Compulsory purchase

A Few Examples

There are very restricted circumstances in which government could interfere with the way you use your property.

Planning laws are a good example of this. Under this right, government could regulate development for public interest purposes, which would include ensuring that all landowners can peaceably enjoy their property.

Another restriction would be the compulsory purchase scheme, where it's in the public interest for government to purchase property – as in for building roads.

However, before your property could be taken by the government, it must satisfy the public interest test. In other words, this action must be necessary, and the landowner(s) must be compensated, unless government can justify otherwise.

Non-discrimination – Part 1, Section 16

What does this right mean in simple terms?

Discrimination means treating people differently, without justification, when they are in similar situations.

This right gives you protection from the government acting in a discriminatory manner in relation to all other Rights that the Bill of Rights guarantees.

“Discriminatory” means affording different and unjustifiable treatment to different persons on any of the protected grounds outlined under Section 16.

On what grounds is discrimination prohibited under the Bill of Rights?

Section 16 gives the following as examples of the grounds of discrimination that the section does not allow:

- Mental or physical disability
- Association with a nation minority
- Property
- Birth
- Other status
- Political or other opinion
- Sex
- Race
- Colour
- Language
- Religion
- Age
- National or social origin

How does Section 16 work?

Section 16 only works to protect people from different treatment in exercising their rights under the Bill of Rights. It does not give people a general right to protection from different treatment in all areas of their life.

Is differential treatment ever accepted?

Differential treatment may be acceptable in some circumstances. It is legitimate to treat people differently based on differences that have nothing to do with their personal status- for example, it is lawful to impose punishment only on people who have been found guilty of a criminal or disciplinary offence because committing an offence is not one of the protected grounds; it is not a personal status but a historical fact.

A public official is also entitled to treat people differently if there is a relevant difference in their situation other than a prohibited ground. For example, it may be legitimate to pay a woman more than a man if she has been employed longer or works in a more skilled or senior position. The difference here is not on the grounds of sex (which would be a prohibited ground) but on the ground of skill or seniority (which are not prohibited grounds).

Where the only difference between people is one of the prohibited grounds, a public official can still treat them differently in a way which is connected with their Bill of Rights if it can show that it is pursuing a legitimate aim and that the discriminatory treatment is proportionate to the aim. Only good reasons will suffice; this is known as justification.

Is Section 16 relevant to my work?

Section 16 will be relevant wherever any of the sections under the Bill of Rights are in play – even if there is no breach of the other right – particularly in any circumstances where different groups are treated in different ways.

Section 16 in practice

Positive discrimination – occurs when a disadvantaged group is treated more favourably in order to assist them in redressing an existing situation of inequality. Such treatment will still amount to a breach of Section 16, unless a legitimate aim can be demonstrated.

Indirect discrimination – occurs when a rule that applies equally to everyone results in a disproportionate disadvantage to a particular group, for example a requirement that a job holder must be over six feet tall would exclude more women than men, even though it might be possible for someone below six feet to do the job perfectly well.

A Few Examples

The Government may discriminate in some circumstances listed in the Bill of Rights, including—

- levying of fees for the grants of licences;
- for the application of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters; or
- laws that require a person to be a Caymanian in order to be eligible for appointment to an office in the public service or in a disciplined force.

Protection of Children – Part 1, Section 17

What does this right mean in simple terms?

Children are protected under the Bill of Rights just as adults. However, the Bill of Rights specifically outlines rights pertaining to children.

A “child” is defined as a young person under the age of eighteen years old.

When the Legislature undertakes to enact laws that provide every child with facilities as to aid in their growth and development, law-makers shall proceed on the basis that a child’s best interests are of paramount importance in every matter concerning the child.

Is Section 17 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Decision-making in the fields of child-related policy development
- Registration of child births
- Investigating child abuse, neglect, endangerment, etc.
- Labour law investigations
- Children and family services

A Few Examples

Protection of children is such a special and necessary right.

This right secures very important protections and basic needs for children, such as—

- a name from birth;
- family, parental or alternative care;
- basic nutrition, shelter basic health care and social services;
- protection from maltreatment or abuse;

- protection from exploitive labour practices; and
- ensures that the best interests of the child are the most important factor concerning situations with children.

Protection of the Environment – Part 1, Section 18

What does this right mean in simple terms?

The Cayman Islands has unique native animals and plants, and the country is bordered by beautiful beaches and surrounded by clear waters.

You enjoy these things and your children and grandchildren have the right to enjoy them too.

This rich heritage must be protected by means of laws and other actions by government.

Government shall, in all its decisions, have due regard to the need to foster and protect an environment that is not harmful to the health or well-being of present and future generations, while promoting justifiable economic and social development.

Is Section 18 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- Decision-making in the fields of urban development; energy; sustainable development; ecological or environmental policy development
- Planning Departments or planning appeals tribunals
- Environmental law enforcement; environmental conservation; environmental health

A Few Examples

This right places a positive obligation on the Government to factor in the environmental impacts that would result from a decision or action taken by a public authority.

The government should adopt reasonable legislative and other measures to protect the heritage and wildlife and the land and sea biodiversity of the Cayman Islands that—

- limit pollution and ecological degradation,
- promote conservation and biodiversity and
- secure ecologically sustainable development and use of natural resources.

Lawful Administrative Action – Part 1, Section 19

What does this right mean?

This right means that in your dealings with Government, you have a constitutional right to be treated fairly. This right extends to any decision government makes in relation to you.

If you are not satisfied with a decision that government made, you have the right to request and be given written reasons for that decision or act.

Public Officials are now required to keep written records of their decisions that are factually based and detail the reasons for acts / decisions / policies.

Is Section 19 relevant to my work?

Section 19 is one of the most important sections for a public official to be aware of. This section affects every public official as it relates to his or her duties.

A Few Examples

All decisions and acts of public officials must be—

- lawful,
- rational,
- proportionate and
- procedurally fair

Education – Part 1, Section 20

What does this right mean in simple terms?

Children have the right to go to school and learn so that they can work towards achieving all of the things they would like to when they are adults.

Parents would have the right to make sure that the teaching provided by public authorities respects their religious and philosophical beliefs.

If the subjects are usual for the school to teach, parents could not stop the subjects from being taught.

This right does not automatically guarantee free primary and secondary education.

Is Section 20 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- teaching or administration in public schools
- providing public non-school-based education
- education policy development
- providing funding for public schools or other forms of public education

A Few Examples

This right obliges government to make an effort to provide free primary and secondary education in the future, within its future economic means.

Under this right government cannot impose restrictions on the operations of private schools at a higher level than what is the standard for public schools.

Public Emergencies – Part 1, Section 21

What does this right mean in simple terms?

A period of public emergency may be declared by the Governor, when—

- a. the well-being or security of the Cayman Islands is threatened by war, invasion, general insurrection, public disorder, natural disaster or other public emergency; and
- b. the declaration is considered necessary by the Governor to maintain or restore peace and order.

The initial public emergency declaration by the Governor lasts for 14 days unless revoked sooner. However, the Legislative Assembly may approve a continuation for a further period not exceeding 3 months.

Information on the public emergency must be provided to the public through publishing details in a Government Notice or in a newspaper published in the Cayman Islands, or postings in prominent public places or announcements on the radio.

Is Section 21 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- The Governor of the Cayman Islands
- The Acting Governor of the Cayman Islands
- Hazard Management or Meteorological Service
- Emergency services / essential personnel such as Fire & Rescue Service, Police Service, Prison Service

Protection of Persons Detained under Emergency Laws – Part 1, Section 22

What does this right mean in simple terms?

When a person is detained by virtue of any law in relation to a period of public emergency the following provisions shall apply—

- Information on persons detained must be published in a public place and in Government notice stating that he or she has been detained and giving the laws that authorise the detention;
- He or she must be given information, no more than 4 days after the detention, in a language that he or she understands, of the grounds on which he or she is detained and furnished with a written statement;
- his or her case shall, not more than 30 days after the commencement of his or her detention and thereafter during the detention at intervals of not more than three months, be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice;
- he or she shall be afforded reasonable opportunity to consult a legal practitioner of his or her own choice and to hold private communication with him or her; and
- he or she shall, at the hearing of his or her case by the tribunal appointed for its review, be permitted to appear in person or by a legal practitioner of his or her own choice.

Is Section 22 relevant to my work?

It may be relevant, especially if you are involved in any of the following:

- arresting or detaining people
- limiting or curtailing people's liberty
- reviewing the detention of persons

Declaration of Incompatibility – Part 1, Section 23

If in any legal proceedings primary legislation is found to be incompatible with the BoRFR, the court must make a declaration recording that the incompatibility of the legislation with the relevant section of the BoRFR. Once the court makes a declaration of incompatibility, the law will remain in force until the legislature decides how to remedy the incompatibility.

Duty of Public Officials – Part 1, Section 24

What does this right mean in simple terms?

It is unlawful for a public official to make a decision or to act in a way that is incompatible with the BoRFR unless the public official is required or authorised to do so by primary legislation. In other words, if the Immigration Law allows an Immigration Officer to make a decision that the BoRFR would not support then the Immigration Officer may still make that decision if he or she feels it is the most appropriate one to make. This is how a declaration of incompatibilities is identified.

Is Section 24 relevant to my work?

Section 24 is one of the most important sections for a public official to be aware of. This section affects every public official as it relates to his or her duties.

Interpretive Obligation – Part 1, Section 25

In any case where the compatibility of primary or subordinate legislation with the BoRFR is unclear or ambiguous, such legislation must, so far as it is possible to do so, be read and given effect in a way which is compatible with the rights set out in the BoRFR. In other words a public official should at all times seek to work within the BoRFR.

Enforcement of Rights and Freedoms – Part 1, Section 26

Any person may apply to the Grand Court to claim that government has breached or threatened his or her rights and freedoms under the BoRFR within one year of the alleged breach occurring. The Grand Court shall determine such an application fairly and within a reasonable time.

When we need help in understanding the BoRFR the case will be dealt with in the Grand Court in the first instance. As with other case appeals from the Grand Court shall take place with the Court of Appeal. Appeals of decisions made by the Court of Appeals shall rest with Her Majesty in Council (the Privy Council).

Remedies – Part 1, Section 27

If the court finds that a decision or act made by a public official is (or would be) unlawful, it can grant the person affected a relief or remedy that it considers to be just and appropriate after considering all of the circumstances in the case and any other relief or remedy already granted to the said person.

Interpretation of the Bill of Rights – Part 1, Section 28

This section defines words or terms used in the BoRFR such as “Caymanian” and “Public Official”.