



Right to Peaceful Assembly and Freedom of Association (s.15)

Section 15 of the *Human Rights Act 2004* says that:

1. Everyone has the right of peaceful assembly.
2. Everyone has the right to freedom of association.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

This factsheet is not intended to be a substitute for legal advice.

Scope of the Right

The right to peaceful assembly

The right to peaceful assembly is the right of individuals to gather for a common purpose or to pursue common goals, such as protesting or meeting. The right to peaceful assembly includes gatherings in both public or in private, but does not include ‘assemblies’ of just one person.

Although the primary or original purpose of the right to peaceful assembly was the protection of peaceful demonstration and participation in democratic processes, it has been recognised that this right may extend to assemblies that are of a social, cultural, religious, charitable or professional nature. For example, in *Countryside Alliance v the UK* [2009] ECHR 2068, the European Court of Human Rights stated that to confine the right to peaceful assembly only to the political sphere would be an ‘unacceptably narrow interpretation’ of the right.

The right to peaceful assembly does not guarantee the use of a particular forum. For example, when considering a similar provision in *Appleby v United Kingdom* [2003] ECHR 222, the European Court of Human Rights found that not permitting an environmental group to petition in a privately owned shopping centre did not infringe on their right to peaceful assembly as they had the option of petitioning elsewhere. The Court stated that the right to peaceful assembly ‘does not bestow any freedom of forum for the exercise of that right’.

In addition, the need to apply for authorisation to assemble ‘does not normally encroach on the essence of the right’, especially if it allows authorities to ensure the peaceful nature of the meeting (*Rassemblement Jurassien and Unite Jurassienne v Switzerland* (1979) 17 Eur Comm HR 108 [3]). Any such restrictions, however, need to be proportionate. For example, in *Bukta v Hungary* [2007] ECHR 25691/04, the organisers were unable to comply with the three-day notice requirement because the demonstration was organised in response to the Prime Minister’s announcement that he would be attending a particular function the following day. The Court held that dispersing the peaceful assembly solely based on the inability to provide sufficient notice was a disproportionate restriction on the right to peaceful assembly.

The right to freedom of association

The right to freedom of association is the right to associate with others for the purpose of protecting common interests. These interests may be economic, professional, political, cultural or recreational.

The right to freedom of association also includes the right not to join an association. In *Young, James and Webster v The UK* [1981] ECHR 4, the European Court of Human Rights stated that the notion of ‘freedom’

implies the exercise of choice and that this 'negative freedom of association' was to protect individuals from being forced to associate with groups with whom she or he does not agree.

The right to freedom of association does not give the right to join any association. Associations have the right to administer their own affairs, to set their rules of membership, and to decide upon admission and expulsion from their association: *Cheall v United Kingdom* (1985) 42 Eur Comm HR 178.

In addition, not all organisations constitute 'associations' and the right to freedom of association will not be engaged where there is no 'association'. For example, professional organisations which require compulsory membership in order for an individual to practice within the profession are not considered 'associations'. In *Le Compte v Belgium* [1981] ECHR 3, the Court held that the *Ordre des médecins* (a body regulating the medical profession) was not an 'association' because it was founded by the legislature (and not individuals) and served a public function to safeguard the health of the population by keeping a register of all medical practitioners. The Court differentiated this body from several associations that had been formed to protect the interests of medical practitioners and to which the right to freedom of association did apply.

Example: Reasonable limitations – Victorian Electoral Commission (Anti-discrimination Exemption) [2009] VCAT 2191 (30 September 2009)

In this matter, the Victorian Electoral Commission (VEC) was granted an exemption from complying with the *Equal Opportunity Act 1995* (Vic). The purpose of the exemption was to enable the VEC to consider, amongst other things, information about political party or lobby group membership of potential employees.

Rights to equality; privacy; participation in public life; freedom of expression; freedom of association; freedom of thought, conscience, religion and belief were relevant to the application by the VEC. It was held that the exemption's purpose was an important public purpose, as it is vital to conducting elections in an impartial and unbiased manner. The exemption was granted as a reasonable limitation on these rights.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 15 could be engaged by activities that:

- Regulate membership of groups or associations;
- Limit the ability of a person or group of people to exercise their right to peacefully protest or to come together for a common purpose;
- Treat people differently on the basis of their membership of a group or association, for example, trade unions;
- Create disincentives or confers preferences for membership in a group or association (including a disclosure requirement);
- Prohibit membership in a group or association, for example a motorcycle gang;
- Regulations designed to ensure safety and security of prison facilities.



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