

## Guide: When human rights may be limited

**Is there law or regulation which allows you to limit a human right?**

Section 13(1) states that a human right *may be subject under law* to a reasonable limit. If you cannot identify a law or regulation, then you may not be able to limit human rights.

**If yes, then consider the following factors:**

**What is the nature of the human right to be limited?**

*Section 13(2)(a)*

Which human right/s protected by the Act will be, or are, subject to limits?

What is the purpose of the human right?

What are the values that underpin the right and what is its scope?

**Is the purpose of imposing the limitation consistent with the values of a free and democratic society?**

*Section 13(2)(b)*

What is the purpose of the limit? For example, does it address a specific area of public or social concern that is pressing and substantial? Is it sufficiently important to justify the limit?

Limiting some rights will require more justification than others. For example, limitations on freedom of expression will be easier to justify than limitations on the right to be free from torture.

**If no, then the limit may not be reasonable or justified.**

**Is there a relationship between the law imposing the limit on the human right and the purpose of the limit?**

**If so, does the limit help achieve the purpose?**

*Section 13(2)(c)*

Does the limit advance the purpose it is designed to achieve?

Is there material/evidence available to support this? Identify material that demonstrates this, such as research findings, consultation findings, reviews and empirical data.

For example, a ban on smoking in or around public hospitals has a clear purpose of preventing people from developing cancer and other associated health issues. Is there evidence that banning smoking will achieve the policy's purpose (i.e., to prevent harm and for the advancement of public health)? There is ample evidence that suggests smoking bans help to curb rates of lung cancer and other health issues, so a rational connection can be made between the purpose and the prohibition.

The limit does not need to completely achieve its purpose or be the best way of achieving its purpose.

**If no to either question, then the limit may not be reasonable or justified.**

**Is there a less restrictive and reasonably available way to achieve the purpose?**

*Section 13(2)(d)*

Is the limitation necessary? Is there any obvious and compelling alternative way to achieve the same purpose which has a less restrictive effect on the right?

Can you achieve the same purpose in more than one way? If so, what is the option that has the least impact on human rights?

If there is another available way that the purpose of the limitation can be achieved that would have a lesser (negative) impact on the human right, then the limit is likely to be found to be unreasonable. Only a measure that would achieve the same purpose as effectively as the proposal will qualify as a true alternative.

**If yes, then the limit may not be reasonable or justified.**

**Is the importance of the purpose of the law limiting the human right greater than the importance of preserving the human right in this case, taking into account the nature and extent of the limitation on the human right?**

*Section 13(2)(e) – (f)*

Consider whether the benefits gained by fulfilling the purpose of the limitation outweigh the harm caused to the human right.

This is a balancing exercise that involves comparing the importance of the purpose of limiting the human right with the importance of the human right and the extent of the limitation to be imposed. The more important the human right and the greater the incursion upon it, the more important the purpose of the limit will need to be to show that it is reasonable and demonstrably justified.

**If yes, then the limit on the human right contained in the proposal is likely to be reasonable and demonstrably justifiable under section 13 of the *Human Rights Act 2019*.**

