

McCann v The State Hospitals Board for Scotland (Scotland) [2017] UKSC 31.

The appellant sought judicial review of a smoking ban in effect at the State Hospital at Carstairs. It was alleged that the ban, which included the grounds of the hospital and home visits, was ultra vires as there had been no account taken of the requirements of the Mental Health (Safety and Security) (Scotland) Regulations 2005 or section 1 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Further, it was claimed that the ban infringed the appellant's rights under article 8 and article 14 of the European Convention on Human Rights. The appeal was partially allowed. The Supreme Court found that the ban did not comply with the 2003 Act or 2005 Regulations. As a result, McCann's article 8 rights to privacy had been infringed however, this was held to be proportionate in the pursuit of protection of health recognised in article 8(2). The court rejected the argument of article 14 as with time the ban was set to be extended to all NHS facilities and also to prisons.

Case located at: <https://www.supremecourt.uk/cases/docs/uksc-2015-0135-judgment.pdf>