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The courts use the proportionality test to assess the Convention-compatibility of the full range of government action, from administrative decisions to primary legislation. In applying the test, the courts are often conscious of the need to pay some

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government. This
rigorous analysis of
the relationship
between
proportionality and
deference under the
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sets out a model of
proportionality,
drawn from existing

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case law, which
integrates
deference within
the multi-stage
proportionality test.

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proportionality is
closely related to
the self-restraining
judicial principle
that when the
courts engage in
judicial review they
should pay some
deference to the
judgment of the
original decision-

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maker. To date, there has yet to be a sophisticated analysis of proportionality and deference 1

~~A Structural,
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act. the courts use the proportionality test to assess the convention

compatibility of the full range of government action, from administrative decisions to

primary legislation. in applying the test, the courts are often conscious of the need to pay some

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proportionality test
the model is
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sensitive and can be
applied to
proportionality

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based judicial
review of all forms
of government
activity the model

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applying
proportionality,
deference to the
decision-maker is
the proper course

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in many cases. 17
THE CHALLENGE
TO BRITISH
COURTS Despite
this overlap and
despite the perhaps
subtle influence of
proportionality in
traditional judicial
review, it has never
been a concept
applied directly in
British
administrative law.

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The model is structural in that it takes account of the operation of deference within the process of proportionality. The model is institutionally sensitive in that it takes account of the

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