

PART 9 - HUMAN RIGHTS ACT 1998

1. Background

In 1951 the United Kingdom became the first State to ratify the European Convention on Human Rights since when it has been binding on the United Kingdom. However, because the Convention was not incorporated in UK law, points of law under the Convention were not able to be argued before UK Courts. This changed with the enactment of the Human Rights Act 1998.

2. Purpose of the Act

The purpose of the Act is to give further effect to rights and freedoms granted under the European Convention on Human Rights and for connected purposes.

The Convention Rights under the Act mean the rights and fundamental freedoms set out in Articles 2-12 and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 1-3 of the First Protocol and Articles 1 and 2 of the Sixth Protocol (see Appendix).

3. Commencement Date and Retrospectivity

The Act came into force on 2nd October, 2000. There was a degree of retrospective effect by virtue of Section 22(4). Acts or omissions occurring even before the Act was passed are liable to become relevant in proceedings if such acts or omissions contravene the Convention.

4. The Nature of the Rights

Some of the Convention Rights are absolute (such as the prohibition of torture and slavery). Most of the Convention Rights are qualified (i.e. subject to provisos etc.).

5. Implications for Legislation

Section 3 of the Act provides that, so far as possible, legislation must be read and given effect in a way which is compatible with the Convention Rights.

6. Implications for Public Authorities (includes Blaby District Council)

Section 6 of the Act provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right, unless the authority has to act in such a way so as not to contravene primary legislation. (The generally held view is that there will rarely be occasions where an authority is able to establish that it has to act so as not to contravene legislation. This is because the Courts will try to construe legislation in such a way so as to avoid making a declaration of incompatibility).

7. Rights of Victims of Unlawful Acts of Public Authorities

Section 7 of the Act provides that where a public authority acts in a way made unlawful by Section 6, a victim of the same may, within one year of the unlawful act, either bring proceedings against the authority or rely on that Convention right in any legal proceedings (Court awards may include damages and authority decisions may be quashed).

Rights are likely to be interpreted generously having regard to the purpose of the Convention to protect individuals' rights. Interpretation may even extend in some cases to holding that there is a positive duty to protect people's rights, possibly even from acts of other private individuals.

8. Strasbourg Jurisprudence

Section 2 of the Act requires Courts and Tribunals to take into account any decision of the European Court of Human Rights, any opinion or decision of the European Commission of Human Rights, or any decision of the Council of Ministers in so far as is relevant (Strasbourg Jurisprudence).

As a result of the requirement to take into account Strasbourg Jurisprudence, there will be new principles and concepts of law introduced. One key concept is proportionality as a ground of challenge so that a decision of an authority may be struck down if it goes further than is necessary to achieve its purpose (i.e. it may be struck down on this ground even if not unreasonable in terms of what are called the Wednesbury principles).

9. Remedial Action for Legislation Declared Incompatible

Section 10 of the Act enables Ministers to amend incompatible legislation by Order.

10. The Cultural Change Consequent upon the Human Rights Act 1998

Interpretation of legislation will take as a starting point what outcome would be compatible with Convention rights and then see if it is possible to give a meaning to legislation accordingly.

11. Defences

The authority establishes its actions are compatible with the Convention rights.

The authority establishes it is constrained by primary legislation (but see Paragraph 7 above which sets out implications for public authorities).

APPENDIX

HUMAN RIGHTS ACT 1998

The Articles

Part 1

THE CONVENTION

RIGHTS AND FREEDOMS

Article 2

Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term “forced or compulsory labour” shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

Article 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other Officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6
Right to a fair trial

- 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;

- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society

in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 **Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 **Freedom of assembly and association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 **Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14 **Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 16
Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17
Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18
Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Part II

THE FIRST PROTOCOL

Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2 Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3 Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Part III

THE SIXTH PROTOCOL

Article 1 Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.