

Human Rights Act 1998

1. Background and main provisions

1.1 The **Human Rights Act** received Royal Assent on 9 November 1998 and entered fully into force on 2 October 2000.

1.2 Before 2 October 2000 an individual who wished to challenge the UK Government for non-compliance with the **European Convention on Human Rights** generally had to go to the European Court of Human Rights in Strasbourg, and could only do so after showing that there was no remedy in the UK courts. This meant that it could take many years for a case to be decided. It was also expensive.

1.3 Parliament decided that the importance of maintaining basic human rights in this country meant that rights under the Convention should be enforceable in the UK courts and tribunals. The **Human Rights Act** achieves this by:

- making it unlawful for a public authority to act incompatibly with the Convention rights, and allowing for a case to be brought in a UK court or tribunal against the authority where it does so. (However, a public authority will not have acted unlawfully under the Act if as the result of a provision of primary legislation it could not have acted differently.)
- requiring that all legislation be interpreted and given effect as far as possible compatibly with the Convention rights. Where it is not possible to do so, a court may:
 - quash or dis-apply subordinate legislation; or
 - (if it is a "higher court") grant a declaration of incompatibility, thereby triggering a new power allowing a Minister to amend the legislation by order so as to bring it into line with Convention rights
- requiring UK courts and tribunals to take account of the caselaw of the Court and the Commission in Strasbourg and also the Committee of Ministers. They will also be bound to develop the common law compatibly with the Convention rights
- requiring ministers, when sponsoring a new Bill, either to make a "statement of compatibility" - a statement that, in the minister's view, the provisions of the Bill are compatible with the Convention rights - or to declare that he/she is unable to make such a statement but nevertheless wishes Parliament to proceed with the Bill

2. The Convention rights

2.1 The **European Convention on Human Rights** *as ratified by the United Kingdom* guarantees the following rights and freedoms:

- Right to life (**Article 2**)
- Freedom from torture and inhuman or degrading treatment or punishment (**Article 3**)

- Freedom from slavery and forced or compulsory labour (**Article 4**)
- Right to liberty and security of person (subject to a derogation applicable to Northern Ireland) (**Article 5**)
- Right to a fair and public trial within a reasonable time (**Article 6**)
- Freedom from retrospective criminal law and no punishment without law (**Article 7**)
- Right to respect for private and family life, home and correspondence (**Article 8**)
- Freedom of thought, conscience and religion (**Article 9**)
- Freedom of expression (**Article 10**)
- Freedom of assembly and association (**Article 11**)
- Right to marry and found a family (**Article 12**)
- Prohibition of discrimination in the enjoyment of the Convention rights (**Article 14**)
- Right to peaceful enjoyment of possessions and protection of property (**Article 1 of Protocol 1**)
- Right to education (subject to a UK reservation) (**Article 2 of Protocol 1**)
- Right to free elections (**Article 3 of Protocol 1**)
- Right not to be subjected to the death penalty (**Articles 1 and 2 of Protocol 6**)

2.2 Collectively, these are referred to in the Act as "Convention rights".

2.3 Certain additional rights, such as the right to enter and remain in the State of which one is a national, are proclaimed by other protocols to the Convention which, to date, have not been ratified by the United Kingdom. These rights are not incorporated by the **Human Rights Act 1998**, and are not "Convention rights" for the purposes of the Act.

3. Citizenship and Convention rights

3.1 Is there a Convention right to citizenship?

3.1.1 Neither the Convention nor any of its protocols proclaims, in express language, the right to citizenship of any particular State.

3.1.2 Is a right to citizenship nevertheless implied by any of the Convention provisions? The Home Office view is that citizenship is a substantive legal status, producing both advantages and disadvantages for those who have it. Many of the consequences that flow from possession of citizenship in the United Kingdom - the right to vote, the duty of allegiance etc - have nothing to do with the rights protected by the Convention. None is essential to the enjoyment of Convention rights. It follows that, in our view, the grant of citizenship would be an inappropriate and disproportionate response to the alleged breach of Convention rights.

3.1.3 Some support for the Home Office position is given by the judgement of the Court of Appeal in *Montana* (23.11.00).

There, the Court was concerned with **Article 8** of the Convention (right to respect for family life) and the policy on registration of illegitimate children of British fathers under **s.3(1) BNA 1981** (see Volume 1 **Chapter 9.9**). It said:

"The mere fact that citizenship is withheld cannot itself be either a failure to respect or interference with family life. Common citizenship is not a necessary component of family life. A family unit may consist of people of different citizenships living together who experienced no consequent disadvantages. There may be incidental practical disadvantages flowing from lack of citizenship, but for the purposes of article 8 these cannot be considered in abstract. The effect in any individual case can only be understood in the light of the circumstances of that case.

The Secretary of State's policy to ensure as far as is possible that a child in [the Appellant's] position is "not disadvantaged" is, we think, an adequate recognition of this fact. In terms of Article 8 a policy which takes account of the attitude of both parents and links with the United Kingdom is entirely justified."

3.1.4 The Court in Montana went on to suggest, without formally deciding the point, that discriminatory provisions in the nationality legislation might breach **Article 14** (prohibition on discrimination in relation to the enjoyment of Convention rights) unless such discrimination could be reasonably and objectively justified.

3.2 Citizenship and Article 6

3.2.1 The Strasbourg case law indicates that there is no "civil right" to citizenship, or to residence in a particular State. Similarly, in *Peter Harrison -v- SSHD* [2003] EWCA 432, Lord Justice Keene said that "were it necessary to decide whether the right to British citizenship fell within the concept of "civil rights" in Article 6(1) [in the particular circumstances of the case it was not necessary to make that decision], I would take the view that it did not". It follows that a person applying for citizenship or leave to remain in the United Kingdom cannot demand a "fair and public hearing" under **Article 6** of the Convention.

3.2.2 It is not clear whether the same principle would apply to deprivation of citizenship.