

The Human Rights Act 1998

The Act came into force 2nd October 2000

The Act has its roots in the Second World War. Stunned by the atrocities committed during the conflict the great and the good of Europe got together in the late forties and formulated the Human Rights Convention. It seemed the answer to such things as the Holocaust was to give everyone plenty of basic human rights.

The Convention's 18 articles and latterly six protocols would make sure that such barbarism would never be repeated

In 1950 Britain signed the European Convention on Human Rights some fifty years later the labour government has incorporated the convention into domestic law.

In 1959 The European Court of Human Rights (ECHR) was set up in Strasbourg to make decisions based on the Convention

Who sits on this European Court?

Each of the 40 nations of the Council of Europe is entitled to one Judge.

What difference has it made so far?

It has ruled that our system of military court martial is illegal.

It has decided that the killers of James Bulger did not get a fair trial in the British Courts.

Diane Blood fought for the right to be fertilised with her dead husband's sperm, then fought for the right to include the father on the birth certificate. She won on both counts after protracted legal battles.

Outline of the Human Rights Act

Section 1: specifies which of the Convention Rights are covered by the Human Rights Act.

Section 2: requires courts or tribunals determining questions which have arisen in connection with the Convention rights to take into account the decisions of Strasbourg (the European Court and Commission of Human Rights and the Committee of Ministers) so far as is relevant.

Section 3: requires legislation to be interpreted as far as possible in a way which is compatible with the Convention rights. This applies to all legislation, whenever enacted.

Section 4: allows the higher courts to make a 'declaration of incompatibility' where they find that primary legislation is incompatible with a Convention right. The continuing validity and enforcement of the legislation is not affected by such a declaration.

Section 5: states that when a court is considering making a declaration of incompatibility, the Crown is entitled to notice and to be joined as party to the proceedings. This will enable a Minister to provide the court with information which may be relevant to the issue in question.

Section 6: defines a public authority and makes it unlawful for a public authority to act in a way which is incompatible with a Convention right unless it is required to do so by primary legislation or inevitably incompatible secondary legislation.

Section 7: victims may rely on the Convention rights in legal proceedings in UK courts and tribunals or institute separate proceedings. Separate proceedings must be brought within one year (or less) of the date on which the act complained of took place or after a longer period if the court or tribunal judges that to be fair under the circumstances. Shorter time periods may also apply. For example, if proceedings were brought by judicial review, then the shorter judicial review time limit would apply.

Section 8: the court may grant such relief as it considers just and appropriate, provided they are within its powers.

Section 9: concerns methods of challenging acts of courts and tribunals which are alleged to be incompatible with a Convention right.

Section 10: the relevant Minister may by order amend infringing legislation following a declaration of incompatibility or a finding of the European Court of Human Rights if he is satisfied that there is a compelling reason to do so.

Section 11: makes clear that the Act does not restrict any existing rights that an individual might have under UK law or his right to bring proceedings under existing law

Section 12: contains safeguards concerning court or tribunal orders (particularly injunctions) which might breach the right to freedom of expression.

Section 13: obliges the courts to have particular regard to the importance of the right to freedom of thought, conscience and religion.

Section 19: requires that when legislation is introduced into either House for a second reading, the Minister responsible must make a written statement that he considers the Bill is compatible with the Convention rights or that he is unable to make such a statement but wishes Parliament to proceed with the Bill anyway.

Section 21: interpretation section, in particular defining the meaning of primary and subordinate legislation

Section 22: ensures that victims can rely on their Convention rights in proceedings brought by a public authority, even if the act in question took place before section 7 comes into force.

The Convention Rights

These are the Convention rights set out in the Human Rights Act.

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

(subject to a UK derogation relating to the situation in Northern Ireland)

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 interest 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 is 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.

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 (subject to a UK reservation)

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.

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 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.

The Treaty of Lisbon

It makes significant advances regarding the protection of fundamental rights. It opens the way for the Union to seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In addition, the Treaty of Lisbon guarantees the enforcement of the Charter of Fundamental Rights. The EU therefore acquires for itself a catalogue of civil, political, economic and social rights, which will be legally binding not only on the Union and its institutions, but also on the Member States as regards the implementation of Union law. The Charter lists all the fundamental rights under six major headings: Dignity, Freedom, Equality, Solidarity, Citizenship and Justice. It also proclaims additional rights not contained in the European Human Rights Convention, such as data protection, bioethics and the right to good administration. It reaffirms important steps to outlaw discrimination on the grounds of gender, race and colour. It also mentions social rights applied within companies, e.g. workers' rights to be informed, to negotiate and take collective action – in other words, the right to strike.

Last but not least, the Treaty of Lisbon introduces a new right, which will enable you to have your say on European matters: a petition with at least one million signatures obtained from a number of Member States can be sent to the Commission inviting it to take a legislative initiative.