

Human Rights Act 1998

AN OVERVIEW FROM A COMMERCIAL PERSPECTIVE

Introduction

The Human Rights Act came into force on 2 October 2000. The immediate effect is to allow claimants, both individuals and companies, to enforce their rights enshrined in the European Convention of Human Rights (the Convention) in British courts. Previously it was necessary to go the European Court of Human Rights in Strasbourg after the appeal process had been exhausted in British courts. Consequently, it may loosely be said that the Human Rights Act does not introduce new rights to claimants, rather, it enables easier, cheaper, and more immediate enforcement of those rights.

The Human Rights Act allows courts to overturn public authority decisions based upon secondary legislation, including regulations. However, the courts cannot overturn primary legislation – acts of Parliament, or decisions of public authorities based upon it. In the event of a conflict the courts will try to interpret acts of Parliament to conform with the HRA, and failing that issue a Declaration of Incompatibility. Public authorities are not defined in the Human Rights Act, and include government departments; local authorities; the NHS; police, prison and immigration officers; public prosecutors, courts and tribunals, non-departmental public bodies; and any person exercising a public function.

Application in a commercial context

The Human Rights Act requires public authorities not to breach Convention rights, unless required to do so by act of Parliament. This will require not only government bodies, but also many private organisations when exercising public functions, to respect and apply human rights principles. Private organisations affected by the Human Rights Act include those with public regulatory functions i.e. the Law Society, and British Medical Council and other professional bodies. Private organisations will also be required to apply human rights principles in the performance of many contracts entered into with public authorities i.e. security companies participating in crime and disorder reduction partnerships. Any private supplier performing public functions should consider the application of human rights carefully such areas include for example security, residential care, public administration, and education.

Due process and criminal procedure

The introduction of due process principles (the right to liberty and security (Article 5), the right to a fair trial (Article 6), and no punishment without law (Article 7)) into the court and criminal process will have a significant effect of forcing a review of legal, administrative, and investigative practice by public authorities. There are likely to be many challenges made to the exercise of regulatory powers with regard to self-incrimination in the field of financial services, competition law, environmental law, and criminal law. A recent example of this is the extension of the principle against self-incrimination to the registered keeper of a car in Scotland, resulting in the acquittal of a drunk driver. Another area likely to prove contentious are 'sus laws', restricting criminal investigations based on random or irrational factors without a sound basis for arousing suspicion.

Right to respect for private and family life (Article 8)

The right to respect for private and family life is one of the most used rights of the Convention, and has produced some of the most startling decisions. It protects the privacy of personal life; family life, correspondence; the home, and, to a lesser extent the office; against excessive intrusion beyond that necessary in the public interest in a democratic society. Of immediate relevance in the commercial context are restrictions on the monitoring of mail and telecommunications, and other surveillance and investigations of business activities. This may have significant impact on employers monitoring employees using telecommunication equipment for example.

Freedom of expression (Article 10)

The approach of the European Court of Human Rights has been to permit few restrictions by national authorities of political expression; to respect national standards applicable to artistic expression; and to be reluctant to become involved in national standards applicable to commercial speech. Consequently, with regard to advertising, and the publication of true statements damaging the commercial interests of others, the right to free expression has been balanced against the competing interests of respecting the privacy of others, and the confidentiality of commercial information. This has been shown in two cases in which an injunction was upheld against publication of consumer dissatisfaction regarding a mail order retailer; and a brochure by a former employee of a company seeking to attract their customers to his new business. Consequently, the Human Rights Act should have little effect on issues of commercial confidentiality and defamation, but journalists may enjoy greater freedom with regard to political expression.

Freedom of assembly and association (Article 11)

The Human Rights Act recognises the related rights to form and join organised social groups, such as trade unions, and political parties, and the related right to meet together. The right to assembly is qualified by the requirement of being peaceful, and it does not include a right to pass in public places, or assemble for social purposes. It is expected that the present English law concerning public demonstrations will be challenged as overly restrictive.

More importantly in a commercial context is the effect of the Convention on union rights, particularly as regards rights to organise and hold collective bargaining. An immediate example of this is the Employment Relations Act 1999 which implements the freedom of association principles encapsulated within the Human Rights Act. The Employment Relations Act makes it automatically unfair to dismiss a striking worker within the first 8 weeks of a strike, and thereafter not until reasonable steps have been taken to resolve the dispute. Some commentators have controversially described this legislation as a backdoor right to strike. What is certain is that it will require increased attention to be given to labour relations.

Prohibition of discrimination (Article 14)

Convention rights 'shall be secured without discrimination' – businesses should be vigilant in implementing equal opportunity legislation and policies.

Property rights (Article 1/1)

The Human Rights Act recognises the rights of both natural and legal persons to enjoy their property and not have it arbitrarily removed. Consequently, sole traders and partnerships will enjoy human rights protection as natural persons, and companies will also enjoy limited human rights as legal persons. To show a breach of property rights it is necessary to establish depreciated financial value, and public authorities may defend their actions on the basis of due process in the public interest. Protected property rights are understood broadly, and have included the goodwill in an accountancy business which was refused registration under a new system of regulation, and compensation for planning blight.

Other rights

Other rights within the Human Rights Act of limited application in a commercial context include:

- Right to life (Article 2)
- Prohibition of torture (Article 3)
- Prohibition of slavery and forced labour (Article 4)
- Freedom of thought, conscience and religion (Article 9)
- Right to marry (Article 12)
- Restriction on political activity of aliens (Article 16)
- Right to education (Protocol, Article 2)
- Prohibition of abuse of rights (Article 17)
- Right to free elections (Protocol, Article 3)
- Limitation on use of restrictions on rights (Article 18)

Where to get advice and materials

The Lord Chancellor's Department (<http://www.open.gov.uk/lcd/humanrights/humanrfr.htm>)

The Home Office (<http://homeoffice.gov.uk/hract/hramenu.htm>)

Her Majesty's Stationery Office (<http://legislation.hmso.gov.uk/acts.htm>)

Business Support Helpline

What businesses need to do

Obtain detailed advice to determine how your business may be affected by the Human Rights Act.

The impact of the Human Rights Act may require your business to change present practices in recognition of the human rights of employees, and other parties. Furthermore, if you act in the role of a public authority your business may have to change the ways it deals with the public.

The business may also enjoy enhanced human rights, and be able to enforce these rights against public authorities.

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