



# Human Rights Act 1998

## 1998 CHAPTER 42

### *Legislation*

#### **3 Interpretation of legislation.**

- (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
- (2) This section—
  - (a) applies to primary legislation and subordinate legislation whenever enacted;
  - (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
  - (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

#### **4 Declaration of incompatibility.**

- (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.
- (2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.
- (3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.
- (4) If the court is satisfied—
  - (a) that the provision is incompatible with a Convention right, and
  - (b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility,it may make a declaration of that incompatibility.
- (5) In this section “court” means—

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- [<sup>F1</sup>(a) the Supreme Court;]
  - (b) the Judicial Committee of the Privy Council;
  - (c) the [<sup>F2</sup>Court Martial Appeal Court] ;
  - (d) in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;
  - (e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal.
  - [<sup>F3</sup>(f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.]
- (6) A declaration under this section (“a declaration of incompatibility”)—
- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
  - (b) is not binding on the parties to the proceedings in which it is made.

**Annotations:**

**Amendments (Textual)**

- F1** S. 4(5)(a) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 66\(2\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F2** Words in s. 4(5)(c) substituted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 156](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F3** S. 4(5)(f) inserted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\)](#), ss. 67(1), 68(1)-(3), [Sch. 6 para. 43](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2\(1\)\(c\)\(d\)](#)

**5 Right of Crown to intervene.**

- (1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.
- (2) In any case to which subsection (1) applies—
- (a) a Minister of the Crown (or a person nominated by him),
  - (b) a member of the Scottish Executive,
  - (c) a Northern Ireland Minister,
  - (d) a Northern Ireland department,
- is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.
- (3) Notice under subsection (2) may be given at any time during the proceedings.
- (4) A person who has been made a party to criminal proceedings (other than in Scotland) as the result of a notice under subsection (2) may, with leave, appeal to the [<sup>F4</sup>Supreme Court] against any declaration of incompatibility made in the proceedings.
- (5) In subsection (4)—
- “criminal proceedings” includes all proceedings before the [<sup>F5</sup>Court Martial Appeal Court]; and
  - “leave” means leave granted by the court making the declaration of incompatibility or by the [<sup>F6</sup>Supreme Court]

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**Annotations:**

**Amendments (Textual)**

- F4** Words in s. 5(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 66\(3\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F5** Words in s. 5(5) substituted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378, 383, [Sch. 16 para. 157](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F6** Words in s. 5(5) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 66\(3\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

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**Commencement Orders yet to be applied to the Human Rights Act 1998:**

Commencement Orders bringing legislation that affects this Act into force:

- [S.I. 2009/1059](#) Order transitional provisions for effects of commencing SI 2009/812