



Human Rights Act 1998

1998 CHAPTER 42

Legislation

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—
 - [^{F1}(a) the Supreme Court;]
 - (b) the Judicial Committee of the Privy Council;
 - (c) the [^{F2}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.
 - [^{F3}(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”)—

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- (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)**

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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