



# 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—
  - (a) the House of Lords;
  - (b) the Judicial Committee of the Privy Council;
  - (c) the Courts-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.
- (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.