



# Human Rights Act 1998

## 1998 CHAPTER 42

### *Public authorities*

#### **6 Acts of public authorities.**

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if—
  - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
  - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- (3) In this section “public authority” includes—
  - (a) a court or tribunal, and
  - (b) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
- (4) <sup>F1</sup> .....
- (5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.
- (6) “An act” includes a failure to act but does not include a failure to—
  - (a) introduce in, or lay before, Parliament a proposal for legislation; or
  - (b) make any primary legislation or remedial order.

#### **Textual Amendments**

- F1** S. 6(4) repealed (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 146, 148, Sch. 9 para. 66(4), [Sch. 18 Pt. 5](#); [S.I. 2009/1604](#), [art. 2\(d\)\(f\)](#)

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#### **Modifications etc. (not altering text)**

- C1** S. 6 excluded (5.3.2015) by [Infrastructure Act 2015 \(c. 7\), ss. 8\(3\)\(b\)](#), 57(1); S.I. 2015/481, reg. 2(a)
- C2** S. 6(1) applied (2.10.2000) by 1999 c. 33, [ss. 65\(2\)](#), 170(4); S.I. 2000/2444, art. 2, [Sch. 1](#) (subject to transitional provisions in [arts. 3, 4, Sch. 2](#))
- C3** S. 6(3)(b) modified (1.12.2008 with exception in art. 2(2) of commencing S.I.) by [Health and Social Care Act 2008 \(c. 14\), ss. 145\(1\)-\(4\)](#), 170 (with s. 145(5)); S.I. 2008/2994, [art. 2\(1\)](#)

## **7 Proceedings.**

- (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
  - (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
  - (b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.
- (2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.
- (3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.
- (4) If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act.
- (5) Proceedings under subsection (1)(a) must be brought before the end of—
  - (a) the period of one year beginning with the date on which the act complained of took place; or
  - (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,
 but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.
- (6) In subsection (1)(b) “legal proceedings” includes—
  - (a) proceedings brought by or at the instigation of a public authority; and
  - (b) an appeal against the decision of a court or tribunal.
- (7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
- (8) Nothing in this Act creates a criminal offence.
- (9) In this section “rules” means—
  - (a) in relation to proceedings before a court or tribunal outside Scotland, rules made by <sup>F2</sup> . . . [<sup>F3</sup>the Lord Chancellor or] the Secretary of State for the purposes of this section or rules of court,
  - (b) in relation to proceedings before a court or tribunal in Scotland, rules made by the Secretary of State for those purposes,

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- (c) in relation to proceedings before a tribunal in Northern Ireland—
- (i) which deals with transferred matters; and
  - (ii) for which no rules made under paragraph (a) are in force, rules made by a Northern Ireland department for those purposes, and includes provision made by order under section 1 of the <sup>M1</sup>Courts and Legal Services Act 1990.
- (10) In making rules, regard must be had to section 9.
- (11) The Minister who has power to make rules in relation to a particular tribunal may, to the extent he considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 6(1), by order add to—
- (a) the relief or remedies which the tribunal may grant; or
  - (b) the grounds on which it may grant any of them.
- (12) An order made under subsection (11) may contain such incidental, supplemental, consequential or transitional provision as the Minister making it considers appropriate.
- (13) “The Minister” includes the Northern Ireland department concerned.

#### Textual Amendments

- F2** Words in s. 7(9)(a) repealed (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S. I. 2003/1887\)](#), art. 9, **Sch. 2 para. 10(2)**
- F3** Words in s. 7(9)(a) inserted (12.1.2006) by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), art. 8, **Sch. para. 3**,

#### Modifications etc. (not altering text)

- C4** S. 7 amended (2.10.2000) by [Regulation of Investigatory Powers Act 2000 \(c. 23\)](#), **ss. 65(2)(a)**, 83 (with s. 82(3)); [S.I. 2000/2543](#), **art. 3**
- C5** S. 7: referred to (11.3.2005) by [Prevention of Terrorism Act 2005 \(c. 2\)](#), {s. 11(2)}
- C6** S. 7(9)(a): functions of the Secretary of State to be exercisable concurrently with the Lord Chancellor (12.1.2006) by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), **art. 3(2)** (with arts. 4, 5)
- C7** S. 7(11): functions of the Secretary of State to be exercisable concurrently with the Lord Chancellor (12.1.2006) by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), **art. 3(2)** (with arts. 4, 5)

#### Marginal Citations

- M1** 1990 c. 41.

## 8 Judicial remedies.

- (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
- (2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

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- (3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—
- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
  - (b) the consequences of any decision (of that or any other court) in respect of that act,
- the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
- (4) In determining—
- (a) whether to award damages, or
  - (b) the amount of an award,
- the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.
- (5) A public authority against which damages are awarded is to be treated—
- (a) in Scotland, for the purposes of section 3 of the <sup>M2</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;
  - (b) for the purposes of the <sup>M3</sup>Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.
- (6) In this section—
- “court” includes a tribunal;
- “damages” means damages for an unlawful act of a public authority; and
- “unlawful” means unlawful under section 6(1).

#### Marginal Citations

**M2** 1940 c. 42.

**M3** 1978 c. 47.

## 9 Judicial acts.

- (1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only—
- (a) by exercising a right of appeal;
  - (b) on an application (in Scotland a petition) for judicial review; or
  - (c) in such other forum as may be prescribed by rules.
- (2) That does not affect any rule of law which prevents a court from being the subject of judicial review.
- (3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.
- (4) An award of damages permitted by subsection (3) is to be made against the Crown; but no award may be made unless the appropriate person, if not a party to the proceedings, is joined.

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(5) In this section—

“appropriate person” means the Minister responsible for the court concerned, or a person or government department nominated by him;

“court” includes a tribunal;

“judge” includes a member of a tribunal, a justice of the peace [<sup>F4</sup>(or, in Northern Ireland, a lay magistrate)] and a clerk or other officer entitled to exercise the jurisdiction of a court;

“judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge; and

“rules” has the same meaning as in section 7(9).

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**Textual Amendments**

**F4** Words in definition s. 9(5) inserted (N.I.)(1.4.2005) by [2002 c. 26, s. 10\(6\), Sch. 4 para. 39](#); [S.R. 2005/109, art. 2](#) Sch.

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