

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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- [F1(a) the Supreme Court;]
 - (b) the Judicial Committee of the Privy Council;
 - (c) the [F2Court 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 [F4Chancellor of the High Court] 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.

Textual Amendments

- 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)
- **F4** Words in s. 4(5)(f) substituted (1.10.2013) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 14** para. 5(5); S.I. 2013/2200, art. 3(g)

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 [FSSupreme Court] against any declaration of incompatibility made in the proceedings.
- (5) In subsection (4)—

"criminal proceedings" includes all proceedings before the [F6Court Martial Appeal Court]; and

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"leave" means leave granted by the court making the declaration of incompatibility or by the $[^{F7}$ Supreme Court]

Textual Amendments

- F5 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)
- **F6** 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**
- F7 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)

Modifications etc. (not altering text)

S. 5(2) functions made exercisable concurrently or jointly with the Welsh Ministers by 2006 c. 32, Sch. 3A para. 1 (as inserted (1.4.2018) by Wales Act 2017 (c. 4), s. 71(4), Sch. 4 para. 1 (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 3(p))

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