

In October 2000 the Human Rights Act 1998 comes into full effect. From then onwards, all our laws must be read and given effect in a way that is compatible with the "Convention rights". It will be unlawful for a public authority - an expression which includes the courts - to act in a way which is incompatible with a Convention right. What is the European Convention of Human Rights ("ECHR"), and why does it matter?

# The Human Rights Act 1998

Henry Brooke assesses the likely impact of the implementation of the Human Rights Act 1998.

The Convention is one of the first offspring of the Universal Declaration of Human Rights. That Declaration was adopted by the General Assembly of the United Nations in December 1948. For the first time, following the horrors of the second world war, the nations of the world publicly acknowledged that each human being had certain minimum rights which no state was entitled to override or to remove. The event symbolised the fact that the protection of human rights had become a major subject of international concern for the first time in world history.

The original draft of the ECHR was prepared the following year. English common lawyers contributed to the drafting process. The rights it identified were largely taken from the Declaration, but its draftsmen were determined that this Convention should have teeth. Once a state joined the new Council of Europe and submitted to the jurisdiction of its new court at Strasbourg, its citizens could access that court provided that they first exhausted their remedies at home. If their complaint had substance, the Strasbourg court

would rule on it.

Although that court has never possessed any enforcement machinery itself, a state is almost always bound to comply with its rulings. In the last resort, it would be expelled from the Council of Europe if it refused. The court may order it to pay compensation to the citizen whose rights have been violated. It will also have to change its laws to ensure that they do not contravene the Convention in future. In England this has happened quite often, particularly in cases involving prisoners' rights or the rights of those with some form of mental incapacity.

We learned that our freedom-based laws were not always very good at protecting the rights of vulnerable minorities. Parliament used to give very wide powers to the Home Secretary, or to prison governors or the directors of psychiatric hospitals. English judges could do nothing about this, because parliament is sovereign, but the Strasbourg court could, and repeatedly did.

Members of the Council of Europe sign up to a club that is overtly devoted to the principles of the rule of law and the enjoyment of human rights and fundamental freedoms. The idea of the rule of law is very evident in Article 6(1) of the Convention. It provides that independent and impartial tribunals must be established by law to determine people's civil rights and obligations, and to determine criminal charges. This means that the courts must be genuinely independent. Their hearings must be both fair and public.

This is why in Scotland, where the Human Rights Act is already in force in relation to "devolution issues", the courts recently ruled that a temporary sheriff, appointed for a year at a time by a member of the executive, is not an independent tribunal. It is also the reason why the Strasbourg court has ruled that the trial of Jamie Bulger's killers was not fair, because those two boys were so overawed by the trappings of a full Crown Court trial that they could not defend themselves properly.

The Convention guarantees basic civil and political rights to everyone within the jurisdiction of a contracting state. The rights and freedoms the states undertake to secure include the right, without discrimination, to life, liberty and security of the person. The right not to be subjected to torture, or to inhuman or degrading treatment or

punishment. The right to a fair trial, and the presumption of innocence. The right to respect for private life, home and correspondence. The right to freedom of expression. The right to freedom of thought, conscience and religion. The right to freedom of assembly and association. The right to the peaceful enjoyment of a person's possessions.

In the case of some of these rights, the Convention provides a "let-out" for a public authority. It can defend itself successfully if it can show two things. That an interference with the right in question was in accordance with the law. And that the interference was necessary in a democratic society to achieve a purpose identified in the relevant part of the Convention. This is where rocks lie ahead. Courts will have to balance individual interests against community interests. They will be accused of making political judgments when they do. They may also have to balance one right against another: the "right to privacy", for instance, against the right to freedom of expression. The media will once again accuse "out of touch" judges of "gagging free speech".

Most of the Convention's principles are familiar to English lawyers. After all, as I have said, English lawyers helped draft the thing in the first place. Where it will make a difference is that it will shine a spotlight on the rights of the person who is asserting them. He or she will be in the driving seat. Once the relevant right is identified, then there must be a justification for violating it in the interests of the community at large. Article 8, concerned with private and family life, refers in this context to national security, the prevention of disorder or crime, the protection of health or morals, and the protection of the rights and freedoms of others as some of the countervailing interests that may "trump" an individual right.

Interesting times lie ahead. Judges, magistrates, lawyers, police, probation staff, prison staff and others are now undergoing massive training programmes, or ought to be. English law and practice will never be quite the same again.

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**"Getting human rights right and joining up all the elements of the criminal justice system are the biggest challenges for the next decade."**

*Denis O'Connor, Assistant Commissioner, Community Issues, Metropolitan Police*