

MAY 2019

## **LTN 24 | THE HUMAN RIGHTS ACT 1998**

### **What is the Human Rights Act 1998?**

1. The Human Rights Act 1998 (“the 1998 Act”) incorporates the European Convention on Human Rights into UK law. Prior to the 1998 Act, any party who believed that their convention rights had been breached was required to take the case to the European Court of Human Rights (“ECtHR”) in Strasbourg. The aim of the 1998 Act is to incorporate the main provisions of the Convention into UK law so that individuals can benefit from their rights in the UK courts, without submitting a claim to the ECtHR. The 1998 Act requires the UK courts to interpret any UK law, whenever passed, in a way which is compatible with the Convention. If the UK law cannot be made compatible the higher UK courts can give a Declaration of Incompatibility which causes the UK Parliament to reconsider, and possibly, change the law.
2. The Commission for Equality on Human Rights (CEHR) was established by the Equality Act 2006. Following the introduction of the Equality Act 2010 the CEHR’s role was extended to protect, enforce and promote equality across the nine “protected” characteristics - age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment (see LTN 78 – Equality Act 2010).

### **What is the Convention?**

3. The full title of the Convention is The European Convention on Human Rights and Fundamental Freedoms. The Convention, which was drafted after the atrocities of the Second World War, was a treaty agreed in 1953 by governments who were members of the Council of Europe. They had the intention of setting a number of fundamental rights and standards that every person would enjoy and which set out the circumstances in which states could interfere with or restrict those rights.
4. There are three categories of rights. Whether or not authorities can interfere with the rights (and, if they can, the extent to which they can) depends on the type of right in question. The categories of rights are as follows:
  - absolute rights;
  - limited rights; and
  - qualified rights

### **What are the rights and freedoms guaranteed by the Convention?**

5. Not all of the rights in the Convention are incorporated into UK law by the 1998 Act. The rights which have been incorporated are:
- a. The Right to Life;
  - b. The Prohibition of Torture;
  - c. The Prohibition of Slavery and Forced Labour;
  - d. The Right to Liberty and Security;
  - e. The Right to a Fair Trial;
  - f. No Punishment without Law;
  - g. Right to Respect for Private and Family Life;
  - h. Freedom of Thought, Conscience and Religion;
  - i. Freedom of Expression;
  - j. Freedom of Assembly and Association;
  - k. The Right to Marry;
  - l. Prohibition of Discrimination;
  - m. Protection of Property;
  - n. Right to Education;
  - o. Right to Free Elections; and
  - p. Abolition of the Death Penalty.

### **Why is the Act relevant?**

6. The fundamental premise of the 1998 Act and the Convention is that the rights and freedoms of individuals must be protected from unlawful interference by the State, a term which includes Government, courts, and public bodies such as the police and local authorities. The 1998 Act makes it unlawful for public authorities to act in a manner inconsistent with people's Convention rights. All local authorities (including parish councils, parish meetings without a separate parish council and, in Wales, community councils) fall within the definition of public authorities and, therefore, have a duty not to act in a way which is incompatible with the 1998 Act. This means that all councils and parish meetings without a separate parish council should acknowledge and understand the application of the Convention rights in their day-to-day activities. e.g the treatment of members of the public or when they are devising new policies or internal procedures.

### **Is the 1998 Act relevant to every decision made by local councils (and parish meetings)?**

7. The short answer is no. Most everyday decisions made by councils (and parish

meetings without a separate parish council) are unlikely to conflict with human rights. It is quite unlikely, for example, that local councils will make decisions which engage the Right to Life or the Prohibition of Torture. Most local authorities have found that the rights they are likely to encounter most frequently are contained in Article 6 (the Right to a Fair Trial) and Article 8 (the Right to Respect for Private and Family Life) found in Schedule 1 to the 1998 Act.

### **Article 6 - the Right to a Fair Trial**

The rights protected by Article 6 are far broader than they appear. The full text of Article 6 is set out at the end of this legal topic note. Two elements of Article 6 are likely to be particularly relevant to local authorities generally.

#### **i The right to a fair hearing**

8. It would be impossible to list all the factors likely to point to a fair or to an unfair trial. Previously, the courts have considered that the following factors (all of which could be relevant to proceedings brought by or defended by local councils) are relevant:
  - equality of arms (i.e. the resources of both parties). This is frequently relevant where an individual issues a claim against a large organisation (including a council);
  - the use of evidence (especially expert or hearsay (second hand) evidence);
  - the right to a hearing 'within a reasonable time'. Proceedings have to be started within the relevant limitation period (see LTN 15 - Legal Proceedings) and, once started, have to be pursued with due speed.

#### **ii The right to a hearing by an independent and impartial tribunal established by law**

9. Local councils are often involved in deciding matters which relate to their own commercial and financial interests. In such circumstances, third parties may claim, with some legitimacy, that when dealing with such matters councils are not sitting as 'impartial tribunals.'
10. The Government, recognising the potential conflict, has done much to reduce the circumstances in which public authorities adjudicate on matters which involve (i) the public and (ii) the public authorities' own commercial interests. Appeals against Housing Benefit determinations, for example, used to be heard

by panels of councillors sitting on 'Housing Benefit Review Boards'. Many felt that it was unfair that councillors could (i) take part in meetings setting councils budgets and, at the same time, (ii) determine appeals against Housing Benefit. It was thought that councillors were not sufficiently impartial, and consequently, the Government decided that appeals in relation to Housing Benefit should be determined by an outside body.

11. The courts have recognised that it will not always be easy for councils to disassociate themselves from issues in which they have legitimate interests. Consequently, the courts have realised that it would be impractical to insist that all decisions in which councils have an interest should be taken by third parties. The courts have stated that the rights guaranteed by the 1998 Act will be protected sufficiently as long as there is a right of appeal against relevant decisions.

## **Article 8 – The Right to Respect for Private and Family Life**

12. The full text of Article 8 is also set out at the end of this Note. Article 8 may well be the right which is engaged most frequently by local government bodies. Clearly the right to respect the home is a right which is particularly relevant to the government bodies which are also housing authorities pursuant to the Housing Act 1985 but the right can also affect local councils.

### **i Respect for the home**

13. Local authorities have powers to evict (and to ask the police to remove) travellers and gypsies. Further details are set out in LTN 53 (Protection of Common Land). Local councils have the power to remove trespassers from their land (under the common law) and to request that the police use their powers under the Criminal Justice and Public Order Act 1994 (as amended by the Anti-Social Behaviour Act 2003). Local councils should, nevertheless, consider that taking action may well involve an interference with the homes of gypsies and travellers within the meaning of the 1998 Act.
14. Local councils may obtain copies of two documents published by the then (office of the Deputy Prime Minister (ODPM) and now the Ministry Communities and Local Government (MHCLG) called 'Guidance on Managing Unauthorised Camping' and Supplement to 'Managing Unauthorised Camping: A Good Practice Guide.

## ii **Respect for private life**

15. A good example of this aspect of Article 8 in practice is the case of *Peck v UK* [2003] ECHR 287. The case demonstrates the potentially wide scope of the right under Art 8, particularly the right to respect for private life. Peck was captured on a local authority CCTV system while, in a fit of deep depression, he attempted to commit suicide in the centre of Brentwood. To publicise their CCTV system, the local authority released unmasked still and video images of Mr Peck to the press and TV, and these images were widely shown.
16. Mr Peck failed in his attempt (prior to the 1998 Act) to challenge the local authority's action under English law but he succeeded in establishing a violation of his rights under Art 8. The right to respect for private life was held to apply in relation to the disclosure of the CCTV material, even though the events took place in public. The local authority's reasons for disclosing the material were, moreover, insufficient to justify the serious nature of the interference. Local councils wishing to make use of CCTV systems are now required to comply with the provisions of:
- Regulation of Investigatory Powers Act 2000
  - Private Security Act 2001;
  - Protection of Freedoms Act 2012 (and the Surveillance Camera Code of Practice issued under this Act) and
  - Investigatory Powers Act 2016.

Further details are set out in LTN 13 - Policing your Area.

### **Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
13	Policing your area	Sets out some HRA considerations in respect of CCTV.
15	Legal Proceedings	Most legal proceedings will engage Article 6 - the Right to a Fair Trial.
53	Protection of Common Land	Sets out the powers of the police to remove individuals (and their vehicles) from common land.

58	Planning	Sets out the relevant principles for commencing claims for Judicial Review
78	The Equality Act 2010	Explains forms of and protection from alleged discrimination in respect of protected characteristics..

## **APPENDIX**

### **ARTICLE 6**

#### **RIGHT TO A FAIR TRIAL**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b. to have adequate time and facilities for the preparation of his defence;
  - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## **ARTICLE 8**

### **RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

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