

GUIDELINES
FOR UNION OFFICIALS
on the
HUMAN RIGHTS ACT

CWU Employment Law Department

The Human Rights Act includes the following Articles of the European Convention on Human Rights

The right to life (Article 2)

Protection from torture and inhuman and degrading treatment or punishment (Article 3)

Protection from slavery and forced or compulsory labour (Article 4)

The right to liberty and security of person (Article 5)

The right to a fair trial (Article 6)

Protection from retrospective criminal offences (Article 7)

The protection of private and family life (Article 8)

Freedom of thought, conscience and religion (Article 9)

Freedom of expression (Article 10)

Freedom of association and assembly (Article 11)

The right to marry and found a family (Article 12)

Freedom from discrimination (Article 14)

The right to property (Article 1 of the first Protocol)

The right to education (Article 2 of the first Protocol)

The right to free and fair elections (Article 3 of the first Protocol)

The abolition of the death penalty in peacetime (Articles 1 and 2 of the sixth Protocol)

A PLAIN GUIDE FOR OFFICIALS TO THE HUMAN RIGHTS ACT 1998

The Human Rights Act (HRA) came into force in October 2000. It allows British citizens to enforce their existing rights under the European Convention of Human Rights (ECHR) in UK courts and Tribunals, rather than having to take claims to the European court in Strasbourg.

1. Motion 82 at Main Annual Conference 2001 instructed the NEC to produce a plain guide to this Act for officials. This guide attempts to fulfill that instruction on the basis of advice received from Counsel on the operation of the Act since it came into force, particularly as it affects employment rights.
2. Despite the expectations raised by some commentators and lawyers the HRA has not had a very great impact on UK practice or law, generally, or in the field of employment rights. Nevertheless, it remains an important document bringing together, as it does, the basic rights of citizens and employees, which were not previously contained in the largely unwritten British constitution.
3. The Act mainly applies to public authorities but it has potential to be extended to other, private sector organisations and legal entities.
4. This guide is not intended to be a final statement of the law in this area, which is both complex and still developing. The European court has often stated that the convention is a “living instrument” which should be interpreted in the light of changing social conditions, and that it is designed to give rise to rights which are effective in practice rather than on paper.
5. Most of the rights contained in these documents ECHR rights are not absolute. So, for instance, the right to freedom of expression in Article 10, may be restricted by the needs of democratic society, to protect the reputation or rights of others and so on. It is these restrictions and qualifications which make the HRA less useful than it was originally thought.
6. Nevertheless all UK legislation must be interpreted, so far as is possible, to comply with the European Convention of Human Rights. The way it works is that if a court can interpret it to comply with the ECHR then it can make a declaration that a particular law is incompatible. It is then up to the UK Parliament to bring that law into line with ECHR. In addition all public authorities will act unlawfully if they breach the ECHR. These written human rights are mainly about the individual’s relationship with State bodies. They do not usually apply to private sector employers such as BT, Girobank, Alliance & Leicester, Telewest etc, nor will they apply to bodies which have mixed public and private functions e.g. Consignia/The Post Office. Counsel’s advice is that most of the “private acts” of that corporation, including most decisions taken in relation to employees would not be covered by HRA. On the other hand employment decisions of public sector bodies such as local authorities are covered. As this is a bit of a “grey area”, it will await the ingenuity of lawyers to interpret the law further.

7. Key Articles Affecting Employment Matters

The HRA is not centrally concerned with the regulation of the labour relationship or, indeed, with collective rights. There is, for example, no right to work or to a fair wage in the ECHR and the European court has declined to read a right to collective bargaining or a right to strike into Article 11. Nevertheless, in time, the HRA may have an influence on employment practices in some of the following areas.

- i) The right to privacy (Article 8). In practice, existing UK law, (e.g. the Data Protection Act 1998), may provide equally effective protection against employer practices of surveillance as Article 8, though the existence of that right establishes the principle clearly.
- ii) Although individuals may freely agree to waive their rights under the HRA, officials should be on their guard against attempts by employers to introduce blanket waiver clauses into contracts of employment.
- iii) Employers will increasingly seek to impose contractual provisions when they wish to infringe on any of the HRA rights. This, of course, provides an opportunity for Union intervention to shape the written agreement as a more effective means of protecting workers' rights than relying on possible litigation under the Act, which can be remote, delayed and costly. In this way collective bargaining could be extended.

8. The articles below are probably those of most importance to the employment relationship in rough order of significance.

Article 8 guarantees respect for private and family life, home and correspondence (including e-mails and phone conversations.) So, for instance, the European court recently ruled that a senior police officer had the right not to have her phone calls intercepted when she was using what she was told was a private line. Other forms of intrusive surveillance may breach that Article. The bad news is that the European court might allow an employer to draw up clear workplace rules which prevent any "reasonable expectation" of privacy arising. Article 8 is likely to have strongest effect in relation to secret surveillance.

Article 10 protects the right to freedom of expression, a fundamental right which is already protected by UK law e.g. the right to disclose practices and abuses ("whistle-blowing"). While Article 10 does give a general right to freedom of expression, it is recognised that it may legitimately be restricted in the context of the employment relationship e.g. the employer may still be able to discipline a worker for publicly criticising it on television. Everything depends on the particular facts of the case.

Article 9 guarantees the right to freedom of thought, conscience and religion. Again, the UK has existing law protecting these rights, particularly Northern

Ireland in the case of religious discrimination. Rulings of the European court have not been encouraging in this area. In one case, a woman was dismissed as a result of her refusal to work Sundays because of her religious beliefs; the court concluded that she was dismissed for not working certain hours rather than exercising her religious beliefs.

Article 11 is intended to protect freedom of association, including the right of individuals to form and join Unions for the protection of their interests. UK law in these areas have been improved in recent years, though not sufficiently in our view. The European court has declined to interpret this Article as requiring a right to collective bargaining, a right to consultation or a right to strike. There are court cases currently pending in that court challenging union discrimination legislation and the rules on lawful strikes in UK law.

Article 6 guarantees the right to a fair hearing in public by an independent and impartial Tribunal but this is already well established in UK law. It does not cover internal disciplinary hearings. Any effect the Article is likely to have is in relation to external Tribunal procedures. These are currently undergoing a major change with the new Employment Bill 2002, which introduces a new requirement to exhaust internal disciplinary procedures before going to a Tribunal. It seems unlikely that these provisions will be effectively challenged under this Article, but one should never underestimate the ingenuity of lawyers.

Article 14 contains a general prohibition against discrimination “on any grounds” in relation to the enjoyment of rights conferred by the ECHR. This is a complex provision and it is not clear how much further it would improve on existing UK discrimination law, which is currently being amended in line with EU Directives.

Conclusion

The Human Rights Act 1998 is now firmly established in UK law. It guarantees certain rights that were not always recognised in practice and it extends protection in other directions.

However, it is not a law that greatly enhances our rights, especially in the field of employment. This is because each new right is hedged with small print qualifications. Nevertheless, it is an important codification of human rights which, along with other EU and UK legislation, such as the Data protection Act and Public Interest Disclosure Act, could be developed in the future to strengthen workers' rights.

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