Twenty years of the Human Rights Act: Extracts from the evidence

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1 ECtHR Judgments against the UK: the effects of the HRA

Box 1: Lord Irvine of Lairg, House of Lords Second Reading Debate, 3 Nov 1997

“Our legal system has been unable to protect people in the 50 cases in which the European Court has found a violation of the convention by the United Kingdom. That is more than any other country except Italy. The trend has been upwards. Over half the violations have been found since 1990.”1

Source: HL Deb, 3 Nov 1997, col 1228

Box 2: Bingham Centre for the Rule of Law

[...] In 2017 only 0.2%, 2 out of all 1,068 judgments given by the Strasbourg Court found a violation by the UK, and in 2016 this figure was 0.7%, 7 out of all 993 judgments. Again, this represents a decrease since the coming into force of the HRA. For example, in 1999 6.8% of all judgments given by the Court found at least one violation by the UK, and in 2000 this figure was 2.3%. The figure was 2.1% in 2001; 3.6% in 2002; 2.8% in 2003; and 2.6% in 2004.1

Source: HRA0026

Box 3: Dr Alice Donald

One means of assessing whether the HRA has succeeded in its aspiration to ‘bring rights home’ is to determine whether it has led to a reduction in the number of judgments at the European Court of Human Rights (ECtHR) finding a violation by the UK of one or more rights contained in the European Convention on Human Rights (ECHR). Allowing for a lag of several years from the enactment of the HRA, as public authorities adjusted their policies and practices and older cases worked through the domestic and Strasbourg systems, a decline in adverse judgments would be expected as a result of the fact that UK courts and other public authorities now consider human rights more explicitly and intensively than before—and that the Strasbourg Court is, in turn, more likely to endorse their reasoning and conclusions.

Source: HRA0021

1 Note that because of the time taken for cases to reach Strasbourg most of these cases will have originated before the Human Rights Act came into force.
Table 1. Judgments finding a violation against the UK 2001–2017

![Graph showing judgments finding a violation against the UK 2001-2017](image)

Source: Statistics from ECHR website [https://www.echr.coe.int/Pages/home.aspx?p=court/annualreports&c](https://www.echr.coe.int/Pages/home.aspx?p=court/annualreports&c)
2 Relationship of UK Courts and ECtHR

Box 4: Professor Merris Amos

British courts can now exert strong influence, changing the course of Convention jurisprudence for all Contracting States, and helping to ensure that where the UK wishes to maintain a national position on an important issue, such as its ban on political advertising, this is far more possible than might have otherwise been the case. Applications against the UK now considered by the ECtHR where a UK court has not had the chance to exert its influence are very rare.

Source: HRA0019

Box 5: Bingham Centre for the Rule of Law

[…] the JCHR observed in 2014 that in an increasing number of recent UK cases, the Strasbourg Court has “demonstrated its willingness to defer to the reasoned and thoughtful assessment by national authorities (including Parliament) of their Convention obligations, resulting in legislation being upheld as being within the UK’s margin of appreciation”.

This is evidenced for example in cases such as Animal Defenders International v UK (Application no. 48876/08) in 2013, which concerned the prohibition on paid political advertising in UK law and where the Grand Chamber, by nine votes to eight, found no violation of Article 10 ECHR. The Court considered the domestic examination of the issues and stated that it “attaches considerable weight to these exacting and pertinent reviews, by both parliamentary and judicial bodies, of the complex regulatory regime governing political broadcasting in the United Kingdom and to their view that the general measure was necessary to prevent the distortion of crucial public interest debates and, thereby, the undermining of the democratic process”.

Similarly, in 2014 in Jones and Others v UK (Applications nos. 34356/06 and 40528/06) the ECtHR upheld the House of Lords’ decision to grant state immunity in respect of civil proceedings concerning allegations of torture and held that there was therefore no violation of Article 6 ECHR. The European Court commented on the UK court’s consideration of the case. It stated that “In the present case, it is deemed clear that the House of Lords fully engaged with all of the relevant arguments concerning the existence, in relation to civil claims of infliction of torture, of a possible exception to the general rule of State immunity” and that “In these circumstances, the Court is satisfied that the grant of immunity to the State officials in this case reflected generally recognised rules of public international law.”

Source: HRA0026
3  Using the ECHR in the UK courts

Box 6: Lord Mishcon, Second Reading Debate, House of Lords, 3 Nov 1997

[…] the only way in which advantage can be taken of that convention is by telling one’s client (if one happens to be a lawyer) ‘in our view, you have definitely got rights under this convention. But I am sorry that, in order to exercise them, you will have to take a journey to Strasbourg with me. It will take a long time because the lists are cluttered up. I am afraid that when we start thinking of legal costs, the amount will be considerable. I am afraid also that you will not necessarily have the benefit, as you would have done if things had been different, of going before an English judge who would interpret—as much as he could—by the principles of English law the law set down by the convention.”

Source: HL Deb, 3 Nov 1997, col 1251

Box 7: Rt Hon Jack Straw, Home Secretary, Second Reading Debate, House of Commons, 16 February 1998

The effect of non-incorporation on the British people is a practical one. The rights, originally developed by Britain, are no longer seen as British, and enforcing them takes far too long and costs far too much—on average five years and £30,000 to get an action into the European Court at Strasbourg once all domestic remedies have been exhausted. Bringing these rights home will mean that the British people will be able to argue for their rights in the British courts, without inordinate delay and cost.

Source: HC Deb, 16 February 1998, col 768

Box 8: Age UK, 2018

If the HRA had not been incorporated into domestic law, it would have been much harder for those cases involving older people and the abuse of their rights under the ECHR to have been brought in the UK courts. The individuals affected by the breaches in question would have had to bring a case to the European Court of Human Rights in Strasbourg, a long, costly and time-consuming process for anyone but even more difficult for older people who are likely to experience particular challenges, including lack of mental and physical capacity as well as limited financial means, to bringing such a case.

Source: HRA0011

Box 9: Coram Children’s Legal Centre

One of the key benefits of the HRA for children has been the ability to bring cases rapidly to national courts and to access immediate remedies. This is particularly important as timescales are important to children and young people who may otherwise age out of protections available only through the ECHR.

Source: HRA0018
Box 10: Judicial Power Project

The first mistake is to confuse the merits of the HRA with the question of whether the law should secure human rights. It is undeniable that the law should respect, promote and secure human rights. The question is how best to realise this end and in particular whether the HRA helps or hinders the realisation of rights and whether it does so by acceptable means.

The second mistake is to think that before the HRA was enacted human rights were not protected in the UK or were somehow in constant danger of violation. Prior to the HRA's enactment, the UK, like other similar common law countries, had a long and enviable (if inevitably imperfect) record of securing rights, and otherwise governing well, by way of parliamentary democracy. In this scheme, courts had a vital but narrow task, a task which the HRA has transformed (subverted) in important and problematic ways.

The third mistake is to think that the HRA is the main way in which our rights are now secured or protected. Human rights are primarily secured through the vast corpus of ordinary law, whether common law or statute, law for which Parliament is responsible. […] At best, the enactment of the HRA helps the law secure rights; it cannot conceivably be the main, or most direct, way in which this is achieved.

Source: HRA0033
4 Judgments on rights

Box 11: HRA and Mental Health

For people with mental health problems and their families, [the Human Rights Act] has meant being able to seek legal accountability in the UK when human rights have been risked or breached.

For the Rabone family, it meant being able to take a human rights case to court after their daughter, Melanie, took her own life on leave from hospital. In this case, the court ruled that the hospital had failed in their duty to protect Melanie’s right to life (Article 2). From this case and others like it, it has been established that hospitals do have a positive obligation under Article 2 to take reasonable steps to protect a patient’s life when there is a real and immediate risk.

Source: Mind (HRA0027)

Box 12: Human rights in hospital

77-year-old Simon had a heart attack while he was in prison awaiting sentence for breaching health and safety regulations. He was rushed to hospital and for the next 14 days he was kept in handcuffs. Even while he was using the toilet and shower, Simon was chained to a prison officer. He took action against this treatment and a judge ruled that it violated his human right not to be subjected to inhuman and degrading treatment. The judge said that being handcuffed while in his own room in a hospital ward with only one door was humiliating and an affront to Simon’s dignity.

Source: Mind (HRA0027)

Box 13: A and S (Children) v Lancashire CC

[…] two brothers were first taken into care in 1998, aged just three and six months’ old, after their mother abandoned them. A placement order was made, severing all ties with their birth family. However, no adoptive placement was found for the boys, and the boys were passed from one foster carer to another over the course of the next 14 years. At least two sets of foster carers were abusive. The local authority and the IRO [Independent Reviewing Officer] agreed to declarations that they acted incompatibly with the ECHR in no fewer than ten ways, involving breaches of Articles 3, 6 and 8 of the Convention.

Source: Coram Children’s Legal Centre (HRA0018)
5  Wider policy changes brought about through individual legal cases

Box 14: Rights to tenancy

In 2002, the Court of Appeal ruled in favour of Juan Godin-Mendoza in the case of Ghaidan v Godin-Mendoza. Juan took the case to the Court of Appeal after the County Court ruled in favour of his landlord, denying him statutory tenancy to the rented property he shared with his recently deceased same-sex partner.

Prior to Juan’s legal challenge, the Rent Act 1977 stated that only a person living with ‘his or her wife or husband’ could become a statutory tenant by succession in circumstances when a partner dies. […]

However, the Court of Appeal ruled that this case violated Juan’s right to protection from discrimination under the HRA. The law was later amended to remove the inequalities that same-sex couples faced with regard to tenancy rights.

Source: Stonewall (HRA0022)

Box 15: Support for family foster carers

Importantly, the HRA provides important protections for some of the most vulnerable children in Britain […]. Examples include:

Ensuring equal financial support for family and non-family members who foster children, when the High Court ruled that payments by a local authority should not discriminate against foster families on the grounds of family status.

Source: Children’s Rights Alliance for England (CRAE) (HRA0013)
6 The Human Rights Act and Parliament

Box 16: Rt Hon Jack Straw, second Reading Debate

The Bill does not create new substantive rights, but it makes the existing convention rights more immediate and relevant. Under the Bill, all courts and tribunals will be required to have regard to these rights.

Having decided that we should incorporate the convention, the most fundamental question that we faced was how to do that in a manner that strengthened, and did not undermine, the sovereignty of Parliament.

Source: HC Deb, 16 February 1998, col 769

Box 17: Judicial Power Project

The HRA is in many ways an astonishing Act. It introduces vague convention rights and vague Strasbourg jurisprudence into our law. It requires other statutes somehow to be read consistently with these vague rights, the working out of which requires domestic courts to make political judgments (about what is or is not proportionate, about what is justified in a free and democratic society) and implicates courts in political controversies about how rights should best be protected. In enacting the HRA, Parliament was clearly willing to compromise existing constitutional principle to some extent. The Act imposes on our judges a radical new set of responsibilities in ways that would otherwise have been thought highly improper.

Source: HRA0033

Box 18: Human Rights Consortium

Under the HRA both the Parliament and Judiciary work in a symbiotic manner to be responsive to each other’s actions and hold each other to account as part of a process of ‘democratic dialogue’ between branches of government. Through the HRA a distinct balancing act is achieved between the retention of the principle of ‘Parliamentary Sovereignty’ and the powers invested in the courts. While the Section 6 powers of the Act make it unlawful for public authorities to violate Convention rights (except where necessary under an Act of Parliament) the restriction on the courts under Section 4 to make a ‘declaration of incompatibility’ (rather than powers to strike down legislation) represent a clever balance between the role of Parliament and the Judiciary.

This approach ultimately retains the principle of ‘Parliamentary Sovereignty’ because it is in fact Parliament that has the final say on whether legislation is reformed to be compatible with Convention rights and it was Parliament who originally made the decision that this was the process by which legislation could be reviewed for Convention compliance by the courts. Therefore, Parliamentary authority is retained by virtue of this process and Parliament can, if it wishes, pass legislation that sits at odds with the Convention in the opinion of the courts.

Source: HRA0030
Box 19: Bright Blue

[...] judicial activism is not a fault. It is essential if judges are to fulfil their constitutional function of keeping the common law up to date. UK judges, as well as the ECtHR adopt the ‘living instrument’ doctrine: namely, interpreting the words of the ECHR in their contemporary sense, rather in the sense in which the original framers of 1950 might have intended. If British judges in past centuries had not been activist, we would not today have the common law protection of human rights which was the source for the ECHR. [...] 

Source: HRA0032

Box 20: Liberty

Concerns over a shift of power away from Parliament as a result of the HRA have been and continue to be misplaced. The HRA expressly retains Parliamentary sovereignty through both the nature of the powers in sections 3 and 4 and the fact that they were bestowed on the judiciary in an Act of Parliament passed by a significant majority. Further, neither power undercuts the political freedom of Parliament to either legislate to reverse a decision under section 3 or to simply ignore or take no action where there has been a declaration of incompatibility under section 4. It must be remembered that when set within a comparative context, judicial review in the UK is relatively weak. Outside the context of EU law, judges have no power whatsoever to strike down primary legislation, even for the most egregious rights violation.

Source: HRA 004

Box 21: Mrs Margaret Beirne

Whilst we never had a complete ‘separation of powers’ system in the UK constitution, the assumption was that all three branches did act as safeguards against the abuse of power by any of the other branches. It seems to me that a parliament (and an executive) that claims to live by the rule of law must be prepared to be told by the judiciary from time to time that they have not got it right and they are acting unlawfully. This inter-action strengthens democracy more generally, and is healthy for the parliament/executive and judiciary since they are forced to learn to respect their respective expertise.

Source: HRA0010
7 The Human Rights Act and Legislation

Box 22: Human Rights Act, s19

A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill—

a) make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (“a statement of compatibility”); or

b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.


Box 23: Lord Irvine of Lairg, Second Reading House of Lords, 3 Nov 1997

Ministers will obviously want to make a positive statement whenever possible. That requirement should therefore have a significant impact on the scrutiny of draft legislation within government. Where such a statement cannot be made, parliamentary scrutiny of the Bill would be intense.

Source: HL Deb, 3 November 1997, col 1233

Box 24: Guide to Making Legislation

The Human Rights Act 1998 makes it unlawful for public authorities to act in a manner that is incompatible with certain rights drawn from the European Convention on Human Rights (the Convention rights) and requires legislation to be interpreted compatibly with the Convention rights so far as it is possible to do so.

Consideration of the impact of legislation on Convention rights is an integral part of the policy-making process, not a last-minute compliance exercise.

Source: Cabinet Office, Guide to Making Legislation, July 2017
Parliamentary scrutiny of legislation

Box 25: The role of the JCHR

In its early days, the Joint Committee on Human Rights reported on all government legislation. However, as the system evolved, the Committee has come to concentrate on those bills most likely to raise issues, so that there is time to pursue important topical inquiries, which enable us to examine emerging issues and set the agenda.

Counsel to the Committee regularly update the Committee on the human rights implications of each item in the legislative programme, and on potential issues in Private Members Bills. At the beginning of the current Parliament the Committee was concerned that the explanatory materials on human rights provided by Government departments varied in quality, and were frequently late. Human rights memoranda are published on gov.uk and not easily linked to the Bill papers to which they relate. Committee staff have worked with Government to improve matters, and to ensure that, in future, human rights memoranda will be published on the Parliamentary legislation page.

Source: JCHR staff; prepared for this paper

Box 26: Bingham Centre for the Rule of Law

“[…] as part of its legislative scrutiny work, the JCHR has highlighted instances of legislative proposals which are not in line with Convention rights. For example, when introducing the Counter-Terrorism and Border Security Bill in the House of Commons in June 2018, the Government made a statement under Section 19 HRA that the provisions of the Bill were compatible with Convention rights. However, the JCHR stated that “This Bill strikes the wrong balance between security and liberty. We doubt whether, as currently drafted, the Bill is compliant with the Convention.

Source: HRA0026

The process when UK courts consider legislation is not compliant with the Convention

Box 27: Ministry of Justice

a declaration of incompatibility does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given. There is no legal obligation on the Government to take remedial action following a declaration of incompatibility or on Parliament to accept any remedial measures the Government may propose.

Source: HRA0017
Box 28: Declarations of Incompatibility

If a higher court is satisfied that legislation is incompatible with [Convention] rights, it may make a declaration of incompatibility under section 4 of the HRA. […]

Since the HRA came into force on 2 October 2000, 40 declarations of incompatibility have been made. Ten of these have been overturned on appeal, and two are currently subject to appeal. Of the remaining 28:

5 related to provisions that had already been changed by primary legislation at the time of the declaration

11 have been addressed by later primary or secondary legislation

3 have been addressed by a remedial order made under section 10 of the HRA

4 the Government has notified Parliament that it is proposing to address by a remedial order

1 is being addressed by administrative measures

4 are currently under consideration.

Source: Ministry of Justice (HRA0017)

Box 29: Remedial Orders

The Human Rights Act 1998 provides that where a court has found legislation to be incompatible with a convention right, Ministers may correct that incompatibility through a “remedial order”, and may use such an order to amend primary legislation. There are special provisions to ensure that this power is not misused. In the non urgent procedure, a proposal for a draft has to be laid before Parliament for 60 days, during which representations may be made. If the Government decides to proceed, it will then lay a draft Order, accompanied by a statement responding to the representations and explaining what changes, if any, have been made to the draft in consequence. In order to be made, the draft Order must be approved by each House of Parliament, a further 60 days after laying. There is also an urgent procedure, in which the Minister may lay a made order, but there is a period of 120 days (again, divided in two 60 day periods) during which representations may be made and responded to. In both cases, each House of Parliament must then approve the Order if it is the have effect (or continuing effect in the case of the urgent procedure).

[...]

The Committee’s Standing Orders require us to report to each House our recommendation as to whether a draft order in the same terms as the proposal should be laid before Parliament, and we may also report on any matter arising from our consideration of the proposal.

Source: JCHR, Second Report of 2017–19; See the JCHR webpages for details of current work on remedial orders, under the “remedial orders” and “publications” tabs.
8 Section 6 of the Human Rights Act

Box 30: Human Rights Act, s6(1) and s6(2)

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.

Source: HRA s6

Box 31: Just Fair

The duty on public authorities not to act in a way that is incompatible with the Convention (Section 6) has transformed the development of policy and the delivery of public services, securing positive changes for people without recourse to the court.

Source: HRA0015
Change secured without using court proceedings

Box 32: British Institute for Human Rights

The HRA section 6 duty on public officials to protect and uphold human rights has transformed how policies are developed and how public services are delivered, ensuring that people’s rights are respected. Importantly, this duty has also secured positive changes for people without recourse to the court. There is evidence that where human rights approaches are embedded in public service delivery and policy, it positively impacts people’s lives, including:

Enabling Gemma, who is in her 40s and has a learning disability, to live independently after she was placed in an older people’s home by the local authority.

Getting Lorraine access to a room with toilet facilities after she was initially given a bucket to use when detained in hospital under the Mental Health Act.

Securing safe accommodation for Yolande and her children when they fled domestic violence, after initially being refused housing.

Giving Paul, a young person, the confidence to have his say when officials were making decisions about where he should live following abuse at home.

Making sure Luke’s concerns about how staff in hospital were restraining him were investigated and addressed.

Getting Gerry and Barbara the support they and their daughter needed so they could remain at home together rather than going into care.

Supporting Sarah, a child with learning disabilities, to access the school transport system rather than leaving her to navigate the complex journey on her own.

Stopping a woman being denied asylum from being evicted whilst she giving birth.

Empowering patients detained in a mental health hospital to register and vote in a general election.

Source: HRA0035

Box 33: improvements to NHS services from a human rights approach

NHS Health Scotland […] has recently tested improvement approaches to embedding human rights in their work and has produced a range of resources setting out how the right to health and a rights based approach can strengthen work to reducing health inequalities. It also uses a tool known as a Health Inequalities Impact Assessment which is used during any planning to assess the potential of any policy, plan, proposal or decision to reduce or increase health inequalities.

Source: Scottish Human Rights Commission (HRA0012)
Box 34: Human Rights in mental health settings

Jenny was an informal patient in a hospital, so she was not detained under the Mental Health Act. Staff told her that she was not allowed to go off the ward to visit the shops or go for a coffee. When Jenny and her [mental health] advocate questioned the hospital staff about this, they said they didn’t feel she was well enough to leave the ward. Jenny’s advocate explained to the staff that Jenny was effectively being unlawfully detained and that this might be a breach of her right to liberty (Article 5). After discussing concerns about her safety, Jenny and the staff agreed a plan together. At first, Jenny agreed that a staff member could accompany her off the ward. The situation was then discussed with the ward manager and Jenny could leave the ward unaccompanied and was safe.

Source: Mind (HRA0027)

Box 35: Disabled people’s rights

For staff in public services it can be quite a revolutionary idea that Deaf and Disabled people also have human rights. Sometimes this is quite a life changing understanding for Deaf and Disabled people themselves.

Source: Inclusion London (HRA0031)

Box 36: Awareness of rights

The lack of visibility of human rights in policy, guidance, and service development frequently leads to people’s human rights either being unconsidered, ignored, risked or breached. The JCHR has previously stated in its ‘Enforcing Human Rights’ report that one of the reasons for the inconsistent implementation of the section 6 duty is the lack of awareness and training of public officials. There is still a widespread lack of awareness among public officials of the UK’s human rights laws and their duties under the HRA.

Source: British Institute for Human Rights HRA 00036

Training in Human Rights

Preparing for the Act

Box 37: Rt Hon Jack Straw; Evidence to JCHR, March 2001

We had to literally double the budget of the Judicial Studies Board to ensure that there was judicial training, not only for the hundreds of professional members of the judiciary but for 30,000 magistrates. They all had to have the training. Officials had to train other officials across Whitehall about what it meant, both in terms of what their obligations were under the Act, but also not suddenly to seize up and think they could not do anything because they read the opening paragraph of a number of the articles and not the qualifying paragraph, things like that. I am in no doubt that it was essential.

**Box 38: Memorandum from the Attorney General, March 2001**

“The thorough training programme devised by the CPS, [...] was delivered over two and a half days (with additional pre and post course work) to nearly 3,000 lawyers and caseworkers in the six months before the Act came into force. The training programme itself followed an extensive awareness raising exercise designed to promote discussion and thinking about ECHR issues from an early stage. Many CPS Areas have maintained a continuing training commitment since the Act came into force.”


**Box 39: Memorandum from the Attorney General, March 2001**

The Act has [...] actively contributed to a raised awareness among CPS prosecutors of the rights of victims and witnesses. Prosecutors are using the Convention to highlight the scope of the rights of victims and witnesses in the criminal process, and how and to what extent these (and the rights of society as a whole) are to be balanced against the rights of the accused.


**Box 40: Human rights in social care delivery**

In a follow up survey to the Commission’s training of older persons social care services, 97% of respondents felt that a human rights based approach can help care providers develop positive relationships with service users and their families.

Care services manager: “staff are working in an industry that is rife with people who all feel they are acting in the best interest of the resident – doctors, social workers, regulators and families. [Human rights training] “Care about Rights” provides a framework for staff to speak up for older people … and has given staff the confidence and ability to get their point across”.

Source: Scottish Human Rights Commission (HRA0012)

**Box 41: Human Rights in End of Life Care**

Sue Ryder and BIHR [British Institute for Human Rights] have partnered to develop and deliver training on human rights in end of life care across the UK. Since March 2017 over 870 professionals working across health and care have been trained to better understand their legal duty to respect and protect the human rights of those in their care. The evaluation of the first six months of training evidences the impact of the training. There have been overwhelmingly positive improvements in both knowledge and confidence of professionals, which both Sue Ryder and participants believe will lead to improvement in patient outcomes. Professionals are sharing stories about how human rights training has helped them to broker more effective discussions between the person in care and their families where there has been a conflict of opinion. By using the human rights legal framework they have been able to take the emotional heat out of the discussion and enabled decisions to be truly person-focused. Many professionals have also commented that the training has helped them re-connect with the human rights values that made them enter their chosen profession in the first place.

Source: Human Rights Alliance (HRA0035)
9 Further issues raised in evidence

Incorporation of other human rights treaties?

Box 42: Rights not directly incorporated in UK Law

The UK has signed and ratified a number of international human rights treaties that have not been incorporated into the national legal system. This is the case with the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD), as well as the European Social Charter under the umbrella of the Council of Europe.

Source: Just Fair (HRA0015)

Box 43: The Northern Ireland Human Right Commission

The ECHR is also distinct from other international human rights treaties in making provision for an adjudicative court. The European Court of Human Rights (ECtHR) provides individual redress for alleged breaches of the rights protected within the ECHR.

Source: HRA0014

The definition of public authority

Box 44: Human Rights Act 1998, s6(3)

(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) ...

(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.

Box 45: Hybrid public authorities

There is an increasing trend of core public authorities delegating their functions and service provision to third parties. Typically, many of these third parties are non-public authorities. However, in the context of performing a public function, they may become hybrid public authorities and thus are subject to the HRA for the purposes of carrying out the delegated public function. With no clear definition of a hybrid public authority in the HRA, we are still grappling with establishing when a non-public authority that has been delegated a public function is subject to the HRA.

Source: NIHRC (HRA0014)

Box 46: Extending the Act to private bodies?

Concern continues to grow at the exercise of enormous power by non-state actors. For example, the ‘gig’ economy or the new economic model leaves many unprotected. Furthermore, the rights of the traditional workforce will be far more vulnerable as a result of Brexit and the loss of EU protection. Private sector actors have access to and control over masses of private information. The HRA only has direct application to public authorities and those bodies which exercise functions of a public nature.

Source: Professor Merris Amos (HRA0019)

Access to justice

Box 47: Equality and Diversity Forum

The most important changes would be those that made the existing HRA law accessible to those who need to benefit from its provisions, namely greater access to legal aid as well as to the remedy of Judicial Review.

Source: HRA0009

Box 48: JCHR: Enforcing Human Rights

The ability to know about and enforce human rights is vital for the rule of law to be a reality. As well as the current review of the impact of legal aid reform in England and Wales, there is a pressing need for a much wider evaluation of the broader landscape of advice, support and means of resolution for legal problems to assess how they can collectively better serve individuals faced with a breach of their human rights. Such a process must also consider the economic viability of the whole system.

Source: JCHR, 10th Report of Session 2017–19,( HC 669, HL 171)
Box 49: Government response to the Joint Committee on Human Rights

Alongside the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the Government is looking to the future to establish how best we can empower people to resolve their problems in a modern justice system. This will include consideration of the broader landscape and how people are supported to use both the courts, and alternative means of problem resolution.


**Freedom of Religion and Belief**

Box 50: Christian Action Research and Education

Our submission focuses on the protection of the right to freedom of religion or belief, and mainly, the right to manifest religious belief in the workplace. The submission argues that the HRA 1998 is unable to adequately protect the right to freedom of religion or belief and further steps need to be taken to ensure a meaningful protection of the right in the UK.

Source: HRA 0006

Box 51: JCHR: Enforcing Rights

Government, NHRIs and human rights advocates should seek ways of engaging more effectively with the public about how different human rights are balanced, in order to address the perspectives that human rights are “for others and not for us” and that “political correctness” stifles debate. The Government should consider the introduction of a legal test to ensure that claims of conscience and faith are reasonably accommodated within the human rights framework. The rights of minority groups will always be vulnerable, and the acid test of an effective human rights system is that it must protect these groups, while ensuring the rights of the majority are also respected.

Source: JCHR, 10th Report of Session 2017–19, (HC 669, HL 171)

Box 52: Government Response to Enforcing Rights

The Government considers that the UK human rights framework ensures that the rights, including the right to freedom of belief, of different groups in society, including minority groups, are upheld.

Source: Ministry of Justice, Government response to the Joint Committee on Human Rights: tenth report of session 2017–19: Enforcing Human Rights, Cm 9703
Wider Understanding of Rights

Box 53: Liberty

To truly bring our Convention rights home it is essential that leadership, public education and time are dedicated to ensuring that rights are properly recognised within the UK’s constitutional settlement. This has less to do with the HRA and more to do with the cultural and political narratives around human rights in the UK in general. The Act itself as applied by the courts has proved capable of furthering the values it is designed to protect, from human dignity and respect to democracy and the rule of law.

Source: HRA0004

Box 54: Children’s Rights Alliance for England

Marking the 20th anniversary of the HRA is an opportunity to build on the experience, lessons and successes of the Act and to renew efforts to foster a culture of rights among decision-makers, public institutions and citizens alike.

Source: HRA0013