

HUMAN RIGHTS ACT 1988

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1. Purpose

- 1.1 To bring to the attention of Members the implications of the Human Rights Act 1998 (the Act).

2. Summary

- 2.1 The European Convention on Human Rights will largely be incorporated into British law by the Act. The Act will come into force in October 2000. The delay is to give public authorities time to learn about, and adjust to, what the new Act requires of them.

The new Act will enable people to enforce their convention rights in UK courts rather than at the European Court of Human Rights in Strasbourg.

Public authorities will have to act in a way that is consistent with convention rights. It will be unlawful to do otherwise.

The Council will need to look at all its policies and procedures to ensure that they do not conflict with the Convention on Human Rights. Each Directorate will need to carry out a systematic review before October 2000.

3. Recommendations

- 3.1 To note the contents of this report and note the work the Council needs to carry out in preparation for the implementation of the Act which includes:

- (a) training of officers and members about the implications of the Act
- (b) reviewing the Council's policies, procedures and strategies to ensure that they are compatible with the Act.

- 3.2 A report on progress will be made to a future meeting of the Committee.

4. **Background**

- 4.1 In 1949 the Council of Europe drew up the European Convention for the Protection of Human Rights and Fundamental Freedoms. The United Kingdom was one of the original 23 signatories. The Convention is designed to protect a set of fundamental human rights and provide a mechanism to bring to the attention of Europe violations of the treaty. The UK Government ratified the treaty in 1962. However the rights inherent in the Convention were not incorporated into UK domestic law until the Human Rights Act 1998. The decision not to incorporate was made on the grounds that to do so would compromise the sovereignty of Parliament.
- 4.2 This Government indicated its intention to incorporate the Convention into domestic law in the Queen's speech in 1997. The Human Rights Act 1998 received royal assent in November 1998 and is expected to be fully in force on the 2 October 2000. It will apply to England, Scotland, Wales and Northern Ireland. It is probably the most fundamental change in the country's recent legal and constitutional history. The Act incorporates into domestic law most, although not all, the rights protected by the Convention.
- 4.3 Local authorities will need to be fully aware of its implications for all of their activities. The Act introduces an obligation on public authorities to act consistently with Convention rights. To act inconsistently with these rights will be unlawful, unless primary legislation prevents the public authority from acting in any other way. This involves positive obligations to secure peoples Convention rights, as well as a duty not to infringe them. Local authorities are public authorities under the Act.
- 4.4 In the past complaints about breaches of the Convention have been taken up against the Government at the European Court of Human Rights in Strasbourg. This could be a very expensive and was always a slow process. With the new legislation people will be able to enforce their Convention rights in UK courts at all levels.
- 4.5 The reason the Act will not be brought into force before the Year 2000 is to give those involved in the administration of justice and in public authorities time to learn about, and adjust to what the new Act requires of them.
- 4.6 The new Act will change the way in which public authorities conduct themselves, and change the way in which the legislation is interpreted and will change the way in which the court system operates. It will be much easier in the future for people to rely on Convention rights against public authorities.
- 4.7 The Convention is a living instrument. This means that as values in society change over time so too does the scope of the Convention rights.
- 4.8 Some Convention rights are absolute. However the majority are not and in these circumstances the Convention sets out when interference with the persons rights is permitted. Any interference must be sanctioned by law and must go no further than necessary and be proportionate to meet a pressing social need.

The European Court of Human Rights permits States a wide degree of discretion to determine what is the right balance between individual rights and social responsibilities in their particular democracy.

5. **Issues and Choices**

5.1 The Council will need to develop good practice to ensure that its policy making, procedures, exercise of discretion and decisions which affect people are compatible with Convention rights. Below is a by no means exhaustive list of activities which are affected by Convention rights.

5.2 **Community Safety**

Article 8 of the Convention deals with the right to respect for ones private and family life and home. This will be relevant in action taken against anti social neighbours or provision for sex offenders in the community. The Convention also has implications for the use of CCTV.

5.3 **Education**

Education policies must take account of the right of parents to respect for their religious and philosophical beliefs. Education policies, sibling admissions policies and resource allocation to special educational needs may all raise issues under Article 14 of the Convention which deals with discrimination.

5.4 **Employment**

Convention rights will need to be considered in relation to long periods of suspension, prohibitions on contacting the press, dismissal for conduct outside the work context and dress codes. The European Court recently ruled that the regulations restricting political activity by senior UK local government officers are compatible with the right to freedom of expression.

5.5 **Environment and Planning**

Local authorities may need to place more emphasis on the protection of the individual when they exercise discretion in planning decisions. The objections of third parties opposed to the granting of planning permission may need to be taken into account because of the right to the enjoyment of their property. The environmental impact of the planning decision on a neighbouring property brings into play the right for respect for home, privacy and family life.

5.6 **Fair hearings in determining civil rights**

Article 6 of the Convention guarantees a right to a fair trial in public within a reasonable time by an independent, impartial tribunal. It is not necessary for every stage in a local authority's decision making process to comply with Article 6 if there is a right of appeal to a judicial body with full jurisdiction. Article 6 provides a standard against which authorities can measure the adequacies of their internal procedures relating to areas such as licensing, planning, benefit reviews.

5.7 **Gypsies and Travellers**

A right to respect of family life and home can be relied on even when that home has been occupied or established unlawfully. The eviction would only be justified if it were proportionate when balancing this right with the interest of the community at large. The availability of alternative sites within the locality would be one factor to take into account when carrying out this balancing exercise.

5.8 **Taxi, Theatre, Public Entertainments, Street Trading, Residential Homes etc. Licensing and Registration**

The terms and conditions imposed on the grant of a licence will need to be proportionate and necessary to protect the interests of a democratic society. Article 6 principles would also apply.

5.9 **Social Services for Children and Adults**

Decisions about all aspects of personal social services will need to be looked at in the light of Convention rights. Under Article 2 the right to life includes a duty to protect life and under Article 8 the right to respect for family life will need to be balanced by circumstances when interference with this right is justified. This Article will also be relevant when making decisions about the choice of residential accommodation over domiciliary care for a client. The way in which residential facilities are run will have to respect the Human Rights of clients as set out in the Convention. A local authorities policy on mixed race or same sex adoptions would need to take account of Article 12 (the right to find a family) and Article 14 (to enjoy this right without discrimination).

Not every interference with a Convention right amounts to a breach of the individuals Human Rights. Members and Officers will need training to appreciate the appropriate balance between the different freedoms and obligations, and the scope for justifying necessary interferences with the rights concerned.

The training of Members and Officers should concentrate on:

Raising awareness of the Act:

Familiarising everyone with the key principles and how they relate to local government.

Considering how to knit the principles into the day to day decision making by committees and officers.

Ensuring specialist training for identified staff - particularly policy makers and lawyers.

Annexed to this report is a copy of the articles of the European Convention on Human Rights which have effect under the Human Rights Act 1988.

6. **Implications**

6.1 Environmental

The Council will need to review its planning regime in the light of the Convention.

6.2 Equalities

Article 14 of the Convention prohibits discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This is much wider than current UK legislation relating to sex, race and disability.

6.3 Financial

The financial consequences of the Act are:

- (a) Training - this will have to be provided to Members and selected officers - it will be from existing training resources;
- (b) Changes to processes and procedures - work to alter the way we do business will be part of a rolling programme, and not require any additional resources;
- (c) Cost of breaches - this is unquantifiable, and is dependent upon how well the previous two points are implemented. The Council's intention is not to have any such cases.

6.4 Legal

This piece of legislation fundamentally changes the way in which the law is likely to be interpreted in the future.

6.5 Staff and Accommodation

None identified

7. **Conclusions**

- 7.1 The Council cannot afford to wait until the Act comes into force. Potentially it could receive many legal challenges unless a thorough and comprehensive review of its policies procedures and processes is done before the Act comes into force. There will be a significant need for Member and Officer training which will need to be a priority if the Council is to be prepared.

Background Papers: None