

Review of the Implementation of the Human Rights Act – July'07

Introduction

This review was undertaken by the Department of Constitutional Affairs to consider issues relating to the implementation of the Human Rights Act (HRA).

Report findings

- § The impact of the HRA upon the development of UK law has been significantly less, and less negative, than predicted;
- § Arguments based on the HRA have been raised in about 1/3rd of cases considered by the House of Lords since the HRA came into force¹ – in many instances the courts would have reached the same conclusions under common law, found that the decision challenged had been properly taken or rejected the arguments under the HRA as being misconceived or irrelevant to the case;
- § The impact of the HRA has been largely beneficial and has led to a positive dialogue between the UK judges and those of the European Court of Human Rights;
- § The HRA has not significantly altered the constitutional balance between Parliament, the Executive and the Judiciary;
- § Decisions of the courts under the HRA have had no significant impact on criminal law or on the Government's ability to fight crime. The HRA has had an impact on the Government's counter-terrorism legislation but this has been as a result of the decisions of the European Court of Human Rights;
- § The HRA has had a significantly beneficial impact on policy development and leads to better policy outcomes by promoting "greater personalisation and therefore better public outcomes". The HRA has impacted on policy formulation in three ways:
 1. through formalisation of the process for ensuring compatibility with convention rights, including the requirement for a positive statement of compatibility for all Bills and the scrutiny of the Joint Parliamentary Committee on Human Rights;
 2. in response to litigation which may force a change in policy or a change in the method of policy delivery;
 3. through changes in behaviour driven by the fact that it is unlawful for a public authority to act in a way incompatible with the Convention rights.
- § Concerns remain about:
 - myths and perceptions of the HRA and the problem of the Act being widely misunderstood by the public;
 - deficiencies in training and guidance leading to an imbalance in that too much attention has been paid to individual rights at the expense of the interests of the wider community;

¹ This figure is accurate to May 2006.

Points of interest

1. The most important cases have been in the field of public law. The courts recognise that there is an area of judgment within which the judiciary will defer, on democratic grounds, to the considered opinion of the legislature or the Executive. This is more commonly referred to as the “discretionary area of judgment” rather than “deference”.
2. There are continued difficulties defining “public authorities” under the HRA – since this Report was published this problem has been brought into sharp focus following the recent House of Lords decision in YL.
3. The Report considers that the UK Government tends to get better outcomes than previously in Strasbourg through having the HRA because these issues are adjudicated by the UK judges in a manner which has gained the approval and respect of the European Court of Human Rights.
4. As regards devolution, the Report states²:

The Human Rights Act provides not only the constitutional framework within which devolved powers are exercised, but lies at the foundation of the way devolution has been effected. Any process of amendment would need to pay due regard to this dimension.

...

A commitment to safeguarding human rights and equality of opportunity was a fundamental part of the Belfast Agreement and has consequently been incorporated into the Northern Ireland Act 1998.

5. The Report briefly considers the option of a “UK Bill of Rights” which would involve repealing the HRA and enacting a separate set of fundamental rights which would not, in law, be connected to the European Convention on Human Rights.³ The Report considers two major difficulties with such an approach: the first relates to the effect that this would have on Parliamentary sovereignty in that the entrenchment of rights under a BOR would mean that Parliament cannot amend or violate them; the second difficulty is the uncertainty and confusion that would result from having two sets of fundamental rights – the BOR and the European Convention on Human Rights. The Report considers that such an approach would result in individuals no longer having a “single clear catalogue of their rights and freedoms, which the Human Rights Act provides and which is shared by 800 million people across Europe”.

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September 2007

² Pg 36.

³ Pg 5/6.