

# The Human Rights Act: Future Impact

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## *Will no one rid me of this meddlesome Act?*

Wide scope of the Convention implemented through the HRA means that it impinges on most areas of legal practice, from commercial property to crime, family law to taxation:

*Commercial property:* Parochial Church Council of Aston Cantlow & Wilmcote with Billesley v Wallbank and another [2001] 3 All ER 393 CA

*Crime:* R v Kansal [2001] 3 WLR 1562 HL

*Family:* Mountney v Treharne : re Stewart Richard Mountney [2002] 2 WLR 1760

*Tax:* R v Allen [2001] 4 All ER 768 HL and R v Special Commissioners ex parte Morgan Grenfell [2002] 3 All ER 1[HL]

## **Three Litigation Questions**

Three areas where the HRA as it has operated in the United Kingdom, and the European Convention on Human Rights as it has been applied and interpreted in Strasbourg, reveal points of general importance, and some outstanding questions. Each area shows the difficulties which arise in grafting a new "rights culture" on to English statutory and common law assumptions and the solutions which have been found (so far) to those problems.

- **Access to court**

- *X v Bedfordshire CC* [1995] 2 AC 633 HL: immunity from suit or the limits of a duty of care?
- *Z v United Kingdom* (2002) 34 EHRR 97: *Strasbourg's answer*
- **Dyer v United Kingdom DR 39, 246: Immunity for the Army from soldiers' claims, now confirmed in Matthews v Ministry of Defence UKHL 4 (13 February 2003)**
- **Lithgow v The United Kingdom (1986) 8 EHRR 329: A special statutory remedy replaced an individual shareholder's claim**
- *Aldridge and Others v Norwich Union Life insurance Co* [1998] CLC 1621; *Times* 13

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August 1999 (CA): Consequences under section 47 Financial Services Act 1986

- the expert witness immunity rule in *Stanton v Callaghan* [2000] 1 QB 75 CA, may well be liable to review in the light of *Z v UK*

- **Protection of the “private life” of companies and commercial interests**

*Article 8 rights of privacy, confidentiality and protection from the compulsory inspection of documents apply to commercial and professional circumstances generally as well as to both companies and natural persons (although the extent of the protection of companies may be less extensive than the protection of the private lives of individuals):*

- *Niemitz v Germany 16 EHRR 97 held that professional premises of a lawyer were protected by Article 8;*
- *Funke v France 16 EHRR 297 held that commercial and business documents were protected where they were held at home, or at the applicant’s office; Amann v Switzerland 30 EHRR 84, confirms that the protection continues while business documents continue to be held (eg by the other side’s solicitors), having been obtained compulsorily;*
- *Ets Colas v France (Eur Ct HR Judgments of 16 April 2002, paras 41-2) and Roquette Freres (Case C-94/00, para 29, reversing Hoechst AG v Commission (1989) 3 ECR 2859) establish that companies’ premises and documents are protected by Article 8, although the protection may be less extensive than the protection of private individuals.*

- **Fundamental rights and disclosure of documents and information**

*Note the further scope for the significance of Article 8 in other commercial areas where statute provides that documents must be disclosed, especially:*

- *under the Companies Act (s 434 and Fayed v UK 18 EHRR 393),*
- *Company Directors' Disqualification Act (see Official Receiver v Stern [2000] 1 WLR 230) and*
- *the Insolvency Acts 1986 and 2000 in respect of both companies and personal bankruptcy (Haig v Aitken [2000] 3 All ER 80, Foxley v UK [2000] BPIR 1009).*

*To see what is about to change in the Isle of Man (and which the United Kingdom has not yet come to terms with), note particularly Hatton v UK (2002) 34 EHRR 1:*

*Compare the limited review of night flight regulation on "rationality" grounds which failed in R. v. Secretary of State for Transport, ex parte Richmond LBC [1996] 1 WLR 1460 with Hatton v UK, where the European Court of Human Rights awarded damages for sleep disturbance due to night flights at Heathrow, because the economic advantage and necessity of night flights had not been sufficiently established. Watch for the outcome of the UK's "appeal" in Hatton, due after Easter 2003.*

### **Crystal ball gazing**

The clear assertion of the application of Convention rights to companies and to all forms of commercial as well as personal documents and information highlights the wide scope of the HRA and its vital importance in commerce, banking, financial services, regulatory and insolvency work.

In all these areas "public authorities" are more or less interested in information, documents or explanations which start out as commercially confidential and sensitive. The mere fact of investigation in these areas has a potential impact on reputation, itself protected not merely by Article 8, but also by Article 1 of Protocol 1, as a "possession".

The protection is not absolute: an interference with the rights protected by either Article is permissible if it is:

- provided for by law **and**
- necessary for a legitimate purpose **and**
- if the interference is proportionate.

*These requirements have their own case law, so, for example, the "law" which provides the basis for the act of a public authority must be sufficiently clear and accessible: Sunday Times v United Kingdom (1979) 2 EHRR 245. Each exception, and every interference with Convention rights, must be shown to pursue a legitimate aim and be proportionate to that aim and the burden of doing so is on the authority concerned: Manchester Corporation v Farnworth [1930] AC 171.*

*This is not a stringent test. Frequently it offers no more than a rational framework for the "common sense" conclusions of the Civil Procedure Rules and even the former Rules of the Supreme Court. However, the very fact that the HRA is relevant to all litigation, and so much non-contentious work besides, provides an advantage to those who understand, and so can rely on Convention rights.*

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