



# Human Rights Act 1998

## 1998 CHAPTER 42

### *Legislation*

#### **4 Declaration of incompatibility.**

- (1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.
- (2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.
- (3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.
- (4) If the court is satisfied—
  - (a) that the provision is incompatible with a Convention right, and
  - (b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility,it may make a declaration of that incompatibility.
- (5) In this section “court” means—
  - [<sup>F1</sup>(a) the Supreme Court;]
  - (b) the Judicial Committee of the Privy Council;
  - (c) the [<sup>F2</sup>Court Martial Appeal Court] ;
  - (d) in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;
  - (e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal.
  - [<sup>F3</sup>(f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the [<sup>F4</sup>Chancellor of the High Court] or a puisne judge of the High Court.]
- (6) A declaration under this section (“a declaration of incompatibility”)—

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*Changes to legislation: There are currently no known outstanding effects for the Human Rights Act 1998, Section 4. (See end of Document for details)*

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- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
- (b) is not binding on the parties to the proceedings in which it is made.

#### **Textual Amendments**

- F1** S. 4(5)(a) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 66\(2\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F2** Words in s. 4(5)(c) substituted (28.3.2009 for certain purposes and 31.10.2009 otherwise) by [Armed Forces Act 2006 \(c. 52\), ss. 378, 383, Sch. 16 para. 156](#); S.I. 2009/812, [art. 3](#) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, [art. 4](#)
- F3** S. 4(5)(f) inserted (1.10.2007) by [Mental Capacity Act 2005 \(c. 9\), ss. 67\(1\), 68\(1\)-\(3\), Sch. 6 para. 43](#) (with ss. 27, 28, 29, 62); S.I. 2007/1897, [art. 2\(1\)\(c\)\(d\)](#)
- F4** Words in s. 4(5)(f) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 14 para. 5\(5\)](#); S.I. 2013/2200, [art. 3\(g\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Human Rights Act 1998, Section 4.