Bill of Rights unlikely to alter employer's human rights obligations

Matthew Howse

Employees' freedoms on privacy, religion and political belief will continue

The Queen's Speech confirmed a Conservative manifesto pledge to replace the UK's Human Rights Act 1998 with a British 'Bill of Rights and Responsibilities'. The proposals were criticised by both the Labour Party and the Liberal Democrats, as well as human rights organisations.

UK courts are bound by the decisions of the European Court of Human Rights (ECHR) through the Act, and a number of the court's recent decisions, such as one giving voting rights to prisoners, and another preventing the deportation of foreign nationals who have committed serious crimes, have led to concerns it has become too active in handling political questions that previously would have been settled in the UK itself.

The government also believes that a number of ECHR decisions have expanded the scope of human rights beyond what was intended by those drafting the original convention, and that this has affected the employment relationship, in particular the right to private and family life, freedom of thought, conscience and religion, freedom of expression, assembly and association, and the right not to be discriminated against.

Case law has examples of where the convention and ECHR decisions have affected UK employment situations. In Halford v UK, the ECHR decided that the right to privacy applies in the workplace, and restricted an employer's ability to monitor its

employees, either by checking their emails, and by using video recordings to monitor their activities.

The right to manifest religious belief cropped up in the case [Eweida v UK](#). Here the ECHR found an employer's policy, which prevented an employee from wearing a Christian cross that was visible to the public, was not justified.

The right to freedom of assembly and association in relation to political opinion featured in the ECHR case [Redfearn v UK](#). Here the court decided that the UK was in breach of the right, as the employee was not protected in law from being dismissed as a result of his membership of a political party. The UK government subsequently amended legislation so that employees would be protected when exercising their rights to political opinion from the first day of employment.

Introducing a Bill of Rights as new primary legislation would break the formal link with the ECHR, so the court would no longer be able to order a change to UK law - it would become just an advisory body instead. The main change would be that ECHR decisions would not be binding on the UK's Supreme Court, and would not have the power to determine the meaning of UK legislation, thereby limiting the scope for overriding Parliament's intentions.

However, the government has said it believes the principles set out in the convention should underpin any modern democratic nation, and that fundamental human rights are as important today as ever. So it is likely the Bill of Rights will bring the same level of protection as the Human Rights Act, and won't change UK employment law. An employer will probably still need to respect an employee's human rights in the same way as under the convention and, if those rights are breached, this is likely to be regarded as a breach of an employer's implied obligation of trust and confidence towards its employees. Similarly, dismissing an employee for a reason which would contravene that person's human rights is likely to be held unfair.

Even prior to the introduction of the convention, UK courts generally upheld an employee's fundamental human rights. So, regardless of the content of the proposed Bill of Rights, it is likely that common law principles will be upheld to interpret legislation in line with human rights.

Matthew Howse is a partner, and Sarah Stock an associate, in Morgan Lewis' London employment practice

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