

Personnel Today

The future of the Human Rights Act and implications for employment law

By Matthew Howse And Sarah Stock



Today's Queen's Speech stopped short of a legislative plan to scrap the Human Rights Act, but it did confirm government plans to present proposals for reform. Matthew Howse and Sarah Stock of global law firm Morgan Lewis explore the possible impact on UK employment law.

The Human Rights Act implements the European Convention on Human Rights into UK law. Currently, UK courts are bound by the decisions of the European Court of Human Rights (ECtHR).

A number of ECtHR decisions have caused concern that it has become overly active in dealing with political questions that would have previously been settled locally in UK courts.

In the Queen's Speech, the Conservatives pulled back from a plan to scrap the Human Rights Act (introduced under Labour) immediately and replace it with a British Bill of Rights. Instead, it has promised a consultation on whether or not to proceed with its plan.

The Conservatives' view is that a number of ECtHR decisions have expanded the scope of human rights beyond what was intended by those who drafted the original Convention.

Most significantly, these proposals have focused on recent decisions of the ECtHR, which have given voting rights for prisoners and have prevented the deportation of foreign nationals who have committed serious crimes.

The proposals are for the British Bill of Rights and Responsibilities to be limited to the most serious cases, although it is not entirely clear at this stage what this means.

Introducing the Bill of Rights as new primary legislation would break the formal link between British courts and the ECtHR, and, as such, the decisions of the ECtHR will not be binding on the UK Supreme Court.

The ECtHR would also not be able to order a change in UK law, and would instead become an advisory body only. These proposals have been criticised by Labour and the Liberal Democrats, as well as by human rights organisations.

The impact of human rights on the employment relationship

Human rights as set out in the European Convention have impacted the employment relationship. Particularly the right to a private and family life; to freedom of thought, conscience and religion; to freedom of expression; to freedom of assembly and association; and the right not to be discriminated against.

Some key examples of how the Convention and ECtHR decisions have significantly affected employment law in the UK are set out below:

- **The right to manifest religious belief:** In the case of *Eweida v UK*, the ECtHR found that British Airways' policy which prevented Ms Eweida from wearing a visible Christian cross was not justified.
- **The right to privacy in the workplace:** The ECtHR case of *Halford v UK*, held that the right to privacy applies in the workplace, including the restrictions on an employer concerning monitoring its employees, such as monitoring emails and using video footage.
- **The right to freedom of association in relation to political opinion:** The ECtHR found in the case of *Redfearn v UK* that the UK was in breach of the right to freedom of association in relation to political grounds, as the employee did not benefit from any protection from being dismissed as a result of his membership to a political party. The UK Government subsequently amended the local legislation so that employees would be able to bring an unfair dismissal claim relating to dismissal for political opinion from the first day of employment.

Will a repeal of the Human Rights Act mean less protection for employees?

The Conservatives' position is that the principles as set out in the Convention should underpin any modern democratic nation, and that fundamental human rights are as important today as ever.

As such, it is probable that the Bill of Rights will bring the same level of protection as the Human Rights Act 1998, and is likely to have little impact on employment law in the UK.

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From an employment perspective, an employer is likely to be bound to respect an employee’s human rights in the same way as under the Convention.

If an employer breaches an employee’s human rights, 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 be in contravention of one of his or her human rights is likely to be held unfair.

A further point is that, even prior to the introduction of the Convention, UK courts generally upheld an employee’s fundamental human rights.

Therefore, regardless of the content of the proposed Bill of Rights, it is likely that common law principles will be upheld in the UK to interpret legislation in line with human rights.

The Bill of Rights is unlikely to have a major effect on employment law in the UK. However, the main change would be that decisions from the ECtHR would not be binding in this country.

The Supreme Court would, therefore, not have to follow the decisions from the ECtHR, and the ECtHR would not have the power to determine the meaning of UK legislation, thereby limiting scope for the ECtHR to override the UK Parliament’s intentions.

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