

Country File

UNITED KINGDOM

(United Kingdom of Great Britain and Northern Ireland)



Last updated: **November 2009**

Region	Europe
Legal system	Common Law
UNCAT Ratification/ Accession (a)/ Succession (d)	8 December 1988
Relevant Laws	<ul style="list-style-type: none">• Criminal Justice Act of 1988• Human Rights Act of 1998 (as last amended by Armed Forces Act of 2006)• Health and Social Care Act of 2008• The Health and Social Care Act 2008 (Commencement No. 4) Order 2008
Relevant Articles	<ul style="list-style-type: none">• Prohibition of Torture: Sections 1 and 6 of the Human Rights Act in conjunction to Article 3 Schedule 1 of the Human Rights Act• Definition of Torture: Section 134 of the Criminal Justice Act• Penalties: Section 134 of the Criminal Justice Act• Others:<ol style="list-style-type: none">1. Defences: Section 134 of the Criminal Justice Act2. International law status: Sections 2, 3, 4, 5, and 10 of the Human Rights Act
Languages Available	<ul style="list-style-type: none">• English (official language)
Other Relevant Information	<ul style="list-style-type: none">• Legislative sources Full texts of laws are available at http://www.statutelaw.gov.uk• UN Committee Against Torture For comments and recommendations on the legislation

	<p>of the United Kingdom by the UN Committee against Torture, see http://www2.ohchr.org/english/bodies/cat/sessions.htm</p> <p><i>Please note that these comments may have been rendered obsolete by more recent changes to the State party's law and/or practice. APT strongly recommends verification with official sources.</i></p>
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Relevant Articles – UNITED KINGDOM

ENGLISH

Criminal Justice Act of 1988

Section 134 Torture

- (1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.
- (2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—
 - (a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—
 - (i) of a public official; or
 - (ii) of a person acting in an official capacity; and
 - (b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.
- (3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.
- (4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.
- (5) For the purposes of this section "lawful authority, justification or excuse" means—
 - (a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;
 - (b) in relation to pain or suffering inflicted outside the United Kingdom—
 - (i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;
 - (ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse

- under the law of the part of the United Kingdom under whose law he was acting; and
 - (iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.
- (6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

Human Rights Act of 1998 (as last amended by Armed Forces Act of 2006)

Introduction

Section 1 The Convention Rights

- (1) In this Act “the Convention rights” means the rights and fundamental freedoms set out in—
 - (a) Articles 2 to 12 and 14 of the Convention,
 - (b) Articles 1 to 3 of the First Protocol, and
 - (c) Article 1 of the Thirteenth Protocol,as read with Articles 16 to 18 of the Convention.
- (2) Those Articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 14 and 15).
- (3) The Articles are set out in Schedule 1.
- (4) The Secretary of State may by order make such amendments to this Act as he considers appropriate to reflect the effect, in relation to the United Kingdom, of a protocol.
- (5) In subsection (4) “protocol” means a protocol to the Convention—
 - (a) which the United Kingdom has ratified; or
 - (b) which the United Kingdom has signed with a view to ratification.
- (6) No amendment may be made by an order under subsection (4) so as to come into force before the protocol concerned is in force in relation to the United Kingdom.

Section 2 Interpretation of Convention rights

- (1) A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any—
 - (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
 - (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
 - (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
 - (d) decision of the Committee of Ministers taken under Article 46 of the Convention,

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

- (2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.
- (3) In this section “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—
 - (a) by the Lord Chancellor or the Secretary of State, in relation to any proceedings outside Scotland;
 - (b) by the Secretary of State, in relation to proceedings in Scotland; or
 - (c) by a Northern Ireland department, in relation to proceedings before a tribunal in Northern Ireland—
 - (i) which deals with transferred matters; and
 - (ii) for which no rules made under paragraph (a) are in force.

Legislation

Section 3 Interpretation of legislation

- (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.
- (2) This section—
 - (a) applies to primary legislation and subordinate legislation whenever enacted;
 - (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
 - (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

Section 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—
 - (a) the House of Lords;
 - (b) the Judicial Committee of the Privy Council;
 - (c) the 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;
 - (f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.
- (6) A declaration under this section (“a declaration of incompatibility”)—
 - (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.

Section 5 Right of Crown to intervene

- (1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.
- (2) In any case to which subsection (1) applies—
 - (a) a Minister of the Crown (or a person nominated by him),
 - (b) a member of the Scottish Executive,
 - (c) a Northern Ireland Minister,
 - (d) a Northern Ireland department,

is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.
- (3) Notice under subsection (2) may be given at any time during the proceedings.
- (4) A person who has been made a party to criminal proceedings (other than in Scotland) as the result of a notice under subsection (2) may, with leave, appeal to the House of Lords against any declaration of incompatibility made in the proceedings.
- (5) In subsection (4)—

“criminal proceedings” includes all proceedings before the Court-Martial Appeal Court; and

“leave” means leave granted by the court making the declaration of incompatibility or by the House of Lords.

Public authorities

Section 6 Acts of public authorities

- (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.
- (2) Subsection (1) does not apply to an act if—
 - (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
 - (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- (3) In this section “public authority” includes—
 - (a) a court or tribunal, and
 - (b) any person certain of whose functions are functions of a public nature,but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
- (4) In subsection (3) “Parliament” does not include the House of Lords in its judicial capacity.
- (5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.
- (6) “An act” includes a failure to act but does not include a failure to—
 - (a) introduce in, or lay before, Parliament a proposal for legislation; or
 - (b) make any primary legislation or remedial order.

Section 7 Proceedings

- (1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—
 - (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
 - (b) rely on the Convention right or rights concerned in any legal proceedings,but only if he is (or would be) a victim of the unlawful act.
- (2) In subsection (1)(a) “appropriate court or tribunal” means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.
- (3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.
- (4) If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act.

- (5) Proceedings under subsection (1)(a) must be brought before the end of—
- (a) the period of one year beginning with the date on which the act complained of took place; or
 - (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances, but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.
- (6) In subsection (1)(b) “legal proceedings” includes—
- (a) proceedings brought by or at the instigation of a public authority; and
 - (b) an appeal against the decision of a court or tribunal.
- (7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
- (8) Nothing in this Act creates a criminal offence.
- (9) In this section “rules” means—
- (a) in relation to proceedings before a court or tribunal outside Scotland, rules made by the Lord Chancellor or the Secretary of State for the purposes of this section or rules of court,
 - (b) in relation to proceedings before a court or tribunal in Scotland, rules made by the Secretary of State for those purposes,
 - (c) in relation to proceedings before a tribunal in Northern Ireland—
 - (i) which deals with transferred matters; and
 - (ii) for which no rules made under paragraph (a) are in force,
 rules made by a Northern Ireland department for those purposes,
- and includes provision made by order under section 1 of the Courts and Legal Services Act 1990.
- (10) In making rules, regard must be had to section 9.
- (11) The Minister who has power to make rules in relation to a particular tribunal may, to the extent he considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 6(1), by order add to—
- (a) the relief or remedies which the tribunal may grant; or
 - (b) the grounds on which it may grant any of them.
- (12) An order made under subsection (11) may contain such incidental, supplemental, consequential or transitional provision as the Minister making it considers appropriate.
- (13) “The Minister” includes the Northern Ireland department concerned.

Section 8 Judicial remedies

- (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.
- (2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.
- (3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—
 - (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
 - (b) the consequences of any decision (of that or any other court) in respect of that act,the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.
- (4) In determining—
 - (a) whether to award damages, or
 - (b) the amount of an award,the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.
- (5) A public authority against which damages are awarded is to be treated—
 - (a) in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;
 - (b) for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.
- (6) In this section—

“court” includes a tribunal;

“damages” means damages for an unlawful act of a public authority; and

“unlawful” means unlawful under section 6(1).

Section 9 Judicial acts

- (1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only—
 - (a) by exercising a right of appeal;
 - (b) on an application (in Scotland a petition) for judicial review; or
 - (c) in such other forum as may be prescribed by rules.

- (2) That does not affect any rule of law which prevents a court from being the subject of judicial review.
- (3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.
- (4) An award of damages permitted by subsection (3) is to be made against the Crown; but no award may be made unless the appropriate person, if not a party to the proceedings, is joined.
- (5) In this section—
 - “appropriate person” means the Minister responsible for the court concerned, or a person or government department nominated by him;
 - “court” includes a tribunal;
 - “judge” includes a member of a tribunal, a justice of the peace (or, in Northern Ireland, a lay magistrate) and a clerk or other officer entitled to exercise the jurisdiction of a court;
 - “judicial act” means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge; and
 - “rules” has the same meaning as in section 7(9).

Remedial Action

Section 10 Power to take remedial action

- (1) This section applies if—
 - (a) a provision of legislation has been declared under section 4 to be incompatible with a Convention right and, if an appeal lies—
 - (i) all persons who may appeal have stated in writing that they do not intend to do so;
 - (ii) the time for bringing an appeal has expired and no appeal has been brought within that time; or
 - (iii) an appeal brought within that time has been determined or abandoned; or
 - (b) it appears to a Minister of the Crown or Her Majesty in Council that, having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention.
- (2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.
- (3) If, in the case of subordinate legislation, a Minister of the Crown considers—
 - (a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and

- (b) that there are compelling reasons for proceeding under this section,
he may by order make such amendments to the primary legislation as he considers necessary.
- (4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a Convention right and the Minister proposes to proceed under paragraph 2(b) of Schedule 2.
- (5) If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council.
- (6) In this section “legislation” does not include a Measure of the Church Assembly or of the General Synod of the Church of England.
- (7) Schedule 2 makes further provision about remedial orders.

Other rights and proceedings

Section 11 Safeguard for existing human rights

A person’s reliance on a Convention right does not restrict—

- (a) any other right or freedom conferred on him by or under any law having effect in any part of the United Kingdom; or
- (b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 7 to 9.

Derogations and reservations

Section 14 Derogations

- (1) In this Act “designated derogation” means—
any derogation by the United Kingdom from an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Secretary of State
- (3) If a designated derogation is amended or replaced it ceases to be a designated derogation.
- (4) But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1) to make a fresh designation order in respect of the Article concerned.
- (5) The Secretary of State must by order make such amendments to Schedule 3 as he considers appropriate to reflect—
 - (a) any designation order; or
 - (b) the effect of subsection (3).
- (6) A designation order may be made in anticipation of the making by the United Kingdom of a proposed derogation.

Section 15 Reservations

- (1) In this Act “designated reservation” means—
 - (a) the United Kingdom’s reservation to Article 2 of the First Protocol to the Convention; and
 - (b) any other reservation by the United Kingdom to an Article of the Convention, or of any protocol to the Convention,

which is designated for the purposes of this Act in an order made by the Secretary of State.

- (2) The text of the reservation referred to in subsection (1)(a) is set out in Part II of Schedule 3.
- (3) If a designated reservation is withdrawn wholly or in part it ceases to be a designated reservation.
- (4) But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1)(b) to make a fresh designation order in respect of the Article concerned.
- (5) Secretary of State must by order make such amendments to this Act as he considers appropriate to reflect—
 - (a) any designation order; or
 - (b) the effect of subsection (3).

Section 16 Period for which designated derogations have effect

- (1) If it has not already been withdrawn by the United Kingdom, a designated derogation ceases to have effect for the purposes of this Act, at the end of the period of five years beginning with the date on which the order designating it was made.
- (2) At any time before the period—
 - (a) fixed by subsection (1), or
 - (b) extended by an order under this subsection,comes to an end, the Secretary of State may by order extend it by a further period of five years.
- (3) An order under section 14(1) ceases to have effect at the end of the period for consideration, unless a resolution has been passed by each House approving the order.
- (4) Subsection (3) does not affect—
 - (a) anything done in reliance on the order; or
 - (b) the power to make a fresh order under section 14(1)
- (5) In subsection (3) “period for consideration” means the period of forty days beginning with the day on which the order was made.
- (6) In calculating the period for consideration, no account is to be taken of any time during which—
 - (a) Parliament is dissolved or prorogued; or
 - (b) both Houses are adjourned for more than four days.
- (7) If a designated derogation is withdrawn by the United Kingdom, the Secretary of State must by order make such amendments to this Act as he considers are required to reflect that withdrawal.

Section 17 Periodic review of designated reservations

- (1) The appropriate Minister must review the designated reservation referred to in section 15(1)(a)—
 - (a) before the end of the period of five years beginning with the date on which section 1(2) came into force; and

- (b) if that designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).
- (2) The appropriate Minister must review each of the other designated reservations (if any)—
 - (a) before the end of the period of five years beginning with the date on which the order designating the reservation first came into force; and
 - (b) if the designation is still in force, before the end of the period of five years beginning with the date on which the last report relating to it was laid under subsection (3).
- (3) The Minister conducting a review under this section must prepare a report on the result of the review and lay a copy of it before each House of Parliament.

Parliamentary Procedure

Section 19 Statements of compatibility

- (1) A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill—
 - (a) make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (“a statement of compatibility”); or
 - (b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.
- (2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate.

Supplemental

Section 20 Orders etc. under this Act

- (1) Any power of a Minister of the Crown to make an order under this Act is exercisable by statutory instrument.
- (2) The power of the Lord Chancellor or the Secretary of State to make rules (other than rules of court) under section 2(3) or 7(9) is exercisable by statutory instrument.
- (3) Any statutory instrument made under section 14, 15 or 16(7) must be laid before Parliament.
- (4) No order may be made by the Lord Chancellor or the Secretary of State under section 1(4), 7(11) or 16(2) unless a draft of the order has been laid before, and approved by, each House of Parliament.
- (5) Any statutory instrument made under section 18(7) or Schedule 4, or to which subsection (2) applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The power of a Northern Ireland department to make—
 - (a) rules under section 2(3)(c) or 7(9)(c), or
 - (b) an order under section 7(11),

is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

- (7) Any rules made under section 2(3)(c) or 7(9)(c) shall be subject to negative resolution; and section 41(6) of the Interpretation Act Northern Ireland) 1954 (meaning of “subject to negative resolution”) shall apply as if the power to make the rules were conferred by an Act of the Northern Ireland Assembly.
- (8) No order may be made by a Northern Ireland department under section 7(11) unless a draft of the order has been laid before, and approved by, the Northern Ireland Assembly.

Section 21 Interpretation, etc.

(1) In this Act—

“amend” includes repeal and apply (with or without modifications);

“the appropriate Minister” means the Minister of the Crown having charge of the appropriate authorised government department (within the meaning of the Crown Proceedings Act 1947);

“the Commission” means the European Commission of Human Rights;

“the Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;

“declaration of incompatibility” means a declaration under section 4;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“Northern Ireland Minister” includes the First Minister and the deputy First Minister in Northern Ireland;

“primary legislation” means any—

- (a) public general Act;
- (b) local and personal Act;
- (c) private Act;
- (d) Measure of the Church Assembly;
- (e) Measure of the General Synod of the Church of England;
- (f) Order in Council—
 - (i) made in exercise of Her Majesty’s Royal Prerogative;
 - (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
 - (iii) amending an Act of a kind mentioned in paragraph (a), (b) or (c);

and includes an order or other instrument made under primary legislation (otherwise than by the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government, a member of the Scottish Executive, a Northern Ireland Minister or a Northern Ireland department) to the extent to which it operates to bring

one or more provisions of that legislation into force or amends any primary legislation;

“the First Protocol” means the protocol to the Convention agreed at Paris on 20th March 1952;

“the Eleventh Protocol” means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;

“the Thirteenth Protocol” means the protocol to the Convention (concerning the abolition of the death penalty in all circumstances) agreed at Vilnius on 3rd May 2002;

“remedial order” means an order under section 10;

“subordinate legislation” means any—

- (a) Order in Council other than one—
 - (i) made in exercise of Her Majesty’s Royal Prerogative;
 - (ii) made under section 38(1)(a) of the Northern Ireland Constitution Act 1973 or the corresponding provision of the Northern Ireland Act 1998; or
 - (iii) amending an Act of a kind mentioned in the definition of primary legislation;
- (b) Act of the Scottish Parliament;
 - (ba) Measure of the National Assembly for Wales;
 - (bb) Act of the National Assembly for Wales;
- (c) Act of the Parliament of Northern Ireland;
- (d) Measure of the Assembly established under section 1 of the Northern Ireland Assembly Act 1973;
- (e) Act of the Northern Ireland Assembly;
- (f) order, rules, regulations, scheme, warrant, byelaw or other instrument made under primary legislation (except to the extent to which it operates to bring one or more provisions of that legislation into force or amends any primary legislation);
- (g) order, rules, regulations, scheme, warrant, byelaw or other instrument made under legislation mentioned in paragraph (b), (c), (d) or (e) or made under an Order in Council applying only to Northern Ireland;
- (h) order, rules, regulations, scheme, warrant, byelaw or other instrument made by a member of the Scottish Executive, Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Assembly Government, a Northern Ireland Minister or a Northern Ireland department in exercise of prerogative or other executive functions of Her Majesty which are exercisable by such a person on behalf of Her Majesty;

“transferred matters” has the same meaning as in the Northern Ireland Act 1998; and

“tribunal” means any tribunal in which legal proceedings may be brought.

- (2) The references in paragraphs (b) and (c) of section 2(1) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.
- (3) The reference in paragraph (d) of section 2(1) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.
- (4) The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

Section 22 Short title, commencement, application and extent

- (1) This Act may be cited as the Human Rights Act 1998.
- (2) Sections 18, 20 and 21(5) and this section come into force on the passing of this Act.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (4) Paragraph (b) of subsection (1) of section 7 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise that subsection does not apply to an act taking place before the coming into force of that section.
- (5) This Act binds the Crown.
- (6) This Act extends to Northern Ireland.

SCHEDULE 1 The Articles

Part I The Convention Rights and Freedoms

Article 3 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

SCHEDULE 2 Remedial Orders

Section 1 Orders

- (1) A remedial order may—
 - (a) contain such incidental, supplemental, consequential or transitional provision as the person making it considers appropriate;
 - (b) be made so as to have effect from a date earlier than that on which it is made;
 - (c) make provision for the delegation of specific functions;
 - (d) make different provision for different cases.
- (2) The power conferred by sub-paragraph (1)(a) includes—

- (a) power to amend primary legislation (including primary legislation other than that which contains the incompatible provision); and
 - (b) power to amend or revoke subordinate legislation (including subordinate legislation other than that which contains the incompatible provision).
- (3) A remedial order may be made so as to have the same extent as the legislation which it affects.
- (4) No person is to be guilty of an offence solely as a result of the retrospective effect of a remedial order.

Section 2 Procedure

No remedial order may be made unless—

- (a) a draft of the order has been approved by a resolution of each House of Parliament made after the end of the period of 60 days beginning with the day on which the draft was laid; or
- (b) it is declared in the order that it appears to the person making it that, because of the urgency of the matter, it is necessary to make the order without a draft being so approved.

Section 3 Orders laid in draft

- (1) No draft may be laid under paragraph 2(a) unless—
 - (a) the person proposing to make the order has laid before Parliament a document which contains a draft of the proposed order and the required information; and
 - (b) the period of 60 days, beginning with the day on which the document required by this sub-paragraph was laid, has ended.
- (2) If representations have been made during that period, the draft laid under paragraph 2(a) must be accompanied by a statement containing—
 - (a) a summary of the representations; and
 - (b) if, as a result of the representations, the proposed order has been changed, details of the changes.

Section 4 Urgent cases

- (1) If a remedial order (“the original order”) is made without being approved in draft, the person making it must lay it before Parliament, accompanied by the required information, after it is made.
- (2) If representations have been made during the period of 60 days beginning with the day on which the original order was made, the person making it must (after the end of that period) lay before Parliament a statement containing—
 - (a) a summary of the representations; and
 - (b) if, as a result of the representations, he considers it appropriate to make changes to the original order, details of the changes.

- (3) If sub-paragraph (2)(b) applies, the person making the statement must—
 - (a) make a further remedial order replacing the original order; and
 - (b) lay the replacement order before Parliament.
- (4) If, at the end of the period of 120 days beginning with the day on which the original order was made, a resolution has not been passed by each House approving the original or replacement order, the order ceases to have effect (but without that affecting anything previously done under either order or the power to make a fresh remedial order).

Section 5 Definitions

In this Schedule—

“representations” means representations about a remedial order (or proposed remedial order) made to the person making (or proposing to make) it and includes any relevant Parliamentary report or resolution; and

“required information” means—

- (a) an explanation of the incompatibility which the order (or proposed order) seeks to remove, including particulars of the relevant declaration, finding or order; and
- (b) a statement of the reasons for proceeding under section 10 and for making an order in those terms.

Section 6 Calculating periods

In calculating any period for the purposes of this Schedule, no account is to be taken of any time during which—

- (a) Parliament is dissolved or prorogued; or
- (b) both Houses are adjourned for more than four days.

Section 7

- (1) This paragraph applies in relation to—
 - (a) any remedial order made, and any draft of such an order proposed to be made,—
 - (i) by the Scottish Ministers; or
 - (ii) within devolved competence (within the meaning of the Scotland Act 1998) by Her Majesty in Council; and
 - (b) any document or statement to be laid in connection with such an order (or proposed order).
- (2) This Schedule has effect in relation to any such order (or proposed order), document or statement subject to the following modifications.
- (3) Any reference to Parliament, each House of Parliament or both Houses of Parliament shall be construed as a reference to the Scottish Parliament.
- (4) Paragraph 6 does not apply and instead, in calculating any period for the purposes of this Schedule, no account is to be taken of any time

during which the Scottish Parliament is dissolved or is in recess for more than four days.

SCHEDULE 3 Derogation and Reservation

Part I Derogation

Repealed

Health and Social Care Act of 2008

Part 5 Miscellaneous

Social care

Section 145 Human Rights Act 1998: provision of certain social care to be public function

- (1) A person (“P”) who provides accommodation, together with nursing or personal care, in a care home for an individual under arrangements made with P under the relevant statutory provisions is to be taken for the purposes of subsection (3)(b) of section 6 of the Human Rights Act 1998 (c. 42)(acts of public authorities) to be exercising a function of a public nature in doing so.
- (2) The “relevant statutory provisions” are—
 - (a) in relation to England and Wales, sections 21(1)(a) and 26 of the National Assistance Act 1948 (c. 29),
 - (b) in relation to Scotland, section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49), and
 - (c) in relation to Northern Ireland, Articles 15 and 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).
- (3) In subsection (1) “care home”—
 - (a) in relation to England and Wales, has the same meaning as in the Care Standards Act 2000 (c. 14), and
 - (b) in relation to Northern Ireland, means a residential care home as defined by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation)(Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) or a nursing home as defined by Article 11 of that Order.
- (4) In relation to Scotland, the reference in subsection (1) to the provision of accommodation, together with nursing or personal care, in a care home is to be read as a reference to the provision of accommodation, together with nursing, personal care or personal support, as a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8).
- (5) Subsection (1) does not apply to acts (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) taking place before the coming into force of this section.

The Health and Social Care Act 2008 (Commencement No. 4) Order 2008

Citation and interpretation

1. — (1) This Order may be cited as the Health and Social Care Act 2008 (Commencement No. 4) Order 2008.
- (2) In this Order, “the Act” means the Health and Social Care Act 2008.

Appointed day for provisions relating to the Human Rights Act 1998

2. — (1) Except as provided in paragraph (2), 1st December 2008 is the appointed day for the coming into force of section 145 of the Act (Human Rights Act 1998: provision of certain social care to be public function).
- (2) Paragraph (1) does not apply to a person who is an adult placement carer within the meaning of regulation 46 of the Care Homes (Wales) Regulations 2002 (Rheoliadau Cartrefi Gofal (Cymru) 2002).