

The Supreme Court of the United Kingdom

Practice Direction 9

The Human Rights Act 1998

Appeals involving declarations of incompatibility

9.1.1 Where an appellant or a respondent seeks a declaration of incompatibility under the Human Rights Act 1998, the appropriate section of Form 1 or Form 3 must be completed and the provisions of the relevant Practice Direction must be complied with: see Practice Direction 4 paragraph 4.2.12.

9.1.2 The Crown has the right to intervene in any appeal where the Court is considering whether to declare that a provision of primary or subordinate legislation is incompatible with a Convention right: see rule 40. In any appeal where the Court is considering, or is being asked to consider, whether to make, uphold or reverse such a declaration, the Registrar must notify the appropriate Law Officer(s)¹ if the Crown (through a Minister, governmental body or other person defined in Human Rights Act 1998 s 5(2)) is not already a party to the appeal: rule 40(1).

9.1.3 The person notified under paragraph 9.1.2 must within 21 days of receiving such notice, or such extended period as the Registrar may allow, serve on the parties and file a notice stating whether or not the Crown intends to intervene in the appeal; and the identity of the Minister or other person who is to be joined as a party to the appeal². Where the Crown intends to intervene in the appeal, notice can be given in Form 2.

9.1.4 If a Minister or other person has already been joined to proceedings in the court below in accordance with the provisions of s 5 of the Human Rights Act 1998, the permission of the Court is not required for the continued intervention of the Crown.

9.1.5 Once joined to the appeal, the case for the Minister or other person must be filed in accordance with Practice Direction 6, paragraph 6.3.

9.1.6 The Court may order the postponement or adjournment of the hearing of the appeal for the purpose of giving effect to the provisions of this direction or the requirements of the Act.

Other Human Rights Act appeals

9.1.7 Where an appellant or a respondent seeks to challenge an act of a public authority under the Human Rights Act 1998, the appropriate section of Form 1 or Form 3 must be completed and the provisions of the relevant Practice Direction must be complied with: see Practice Direction 4 paragraph 4.2.12.

¹ The Registrar notifies:

- (i) in appeals from England, the Attorney-General;
- (ii) in appeals from Scotland, the Advocate General for Scotland and the Lord Advocate;
- (iii) in appeals from Wales, if appropriate, the Counsel General of the National Assembly for Wales
- (iv) in appeals from Northern Ireland, the Attorney General for Northern Ireland

² Human Rights Act 1998 ss5(2) and 9(5)

9.1.8 Where an issue under the Human Rights Act is raised in respect of a judicial act³, the Registrar notifies the Crown through the Treasury Solicitor as agent for the Lord Chancellor⁴.

9.1.9 Except as stated above, no special steps are required for other Human Rights Act appeals.

³ Human Rights Act 1998 ss 7, 9(3) and 9(4)

⁴ In appeals from Scotland, the Registrar notifies the Solicitor to the Scottish Government; in appeals from Northern Ireland, he notifies the Crown Solicitor and the Departmental Solicitor.