The Human Rights Act 1998

This book critically examines the Human Rights Act 1998 (HRA) and evaluates its impact from a multi-disciplinary perspective. The book includes both a domestic and international analysis of the effectiveness of the HRA, and also considers possible future developments in policy and practice as well as contemplating the potential for a British Bill of Rights. The editors have collected pieces from contributors drawn from diverse spheres, all of whom are internationally recognised for their impact in the field of human rights law. Contributors include members of the bench in the United Kingdom and Australia, academics, researchers, members of NGOs, and campaigners as well as people’s testimony of lived experiences in relation to the Human Rights Act. Valuable contributions from the likes of Costas Douzinas, Keith Ewing, Helen Fenwick, Lady Hale, Irene Khan, Michael Kirby, Francesca Klug, Peter Tatchell and others have resulted in a book which draws out the connections between legal framework, theory, and the actual experience of the protection afforded to groups and individuals by the HRA. Confronting the Human Rights Act 1998 will be of particular interest to scholars and students of Law, International Studies and Political Science.


The Law of Human Rights has been highly acclaimed and is quickly establishing itself as the authoritative practitioner text in the field. Written by two leading practitioners, it provides a comprehensive and systematic treatment of human rights law and practice in the UK and offers detailed analysis of the effects of incorporation of the European Convention on Human Rights into domestic law by the Human Rights Act 1998, including an examination of the wider impact of the new regime upon the civil and criminal law more generally. It draws systematically upon European Convention case-law, common law principles and practice, experience from Canada, New Zealand and other jurisdictions, as well as detailed analysis of the new Act itself, to provide essential guidance on how the new law is working in practice, while the annual supplements track the case-law as it is actually decided. The first section deals with the nature of rights, problems of incorporation, the impact of the Convention prior to incorporation and the interpretation of human rights instruments. The main part of the book consists of a detailed analysis of the rights granted by the Convention, and the effects of their incorporation. Each chapter in this section focuses upon a particular right, and contains a discussion of the pre-existing status of the right in English law, a thorough analysis of the European case law, and full examination of the likely impact of incorporation on English law. This impact is considered in relation to a number of subject areas, including business and commerce, criminal law and justice, education, employment, immigration, media, mental health, police and prisoners. Each chapter has detailed appendices drawing out lessons from the experience under the Canadian Charter and the New Zealand Bill of Rights as well as discussion of the relevant right in other jurisdictions. The book also has a section dealing with remedies and procedure under the Human Rights Act and the procedure for taking cases to the European Court of Human Rights, plus a second volume containing a wide range of relevant materials. Regular paperback supplements keep the book fully up to date with relevant case-law and related legislation as the implementation of the new Act proceeds.

The second supplement, included in this set, brings the main work fully up to date to July 2002 and includes all the relevant case-law as the Human Rights Act continues to be tested in the courts.

Royal assent, 9th November 1998

This text examines the compatibility of UK employment law with the European Convention on Human Rights and, in particular, the potential impact on three main areas: individual employment law, where the process of bringing a case before the employment tribunal and the terms and conditions of employees working for public bodies may fall foul of Article 6 (The Right to a Fair Trial); collective employment law, where the law relating to trade unions and industrial action is examined, in the light of Article 11 (Freedom of Assembly); and discrimination law, with the requirements of Article 14 (Prohibition of Discrimination) and previous decisions of the European Court of Justice.

Since its inception in 1998 the Human Rights Act (HRA) has come in for a wide variety of criticism on legal, constitutional, political and cultural grounds. More recently, this criticism escalated significantly as politicians have seriously considered proposals for its abolition. This book examines the main arguments against the HRA and the issues which have led to public hostility against the protection of human rights. The first part of the book looks at the legal structures and constitutional aspects of the case against the HRA, including the criticism that the HRA is undemocratic and is used by judges to subvert the will of parliament. The second part of the book looks at specific issues, such as immigration and terrorism, where cases involving the HRA have triggered broader public concerns about the protection of human rights. The final section of this book looks at some of the structural issues that have generated hostility to the HRA, such as media coverage and the perception of the legal profession. This book aims to unpick the complex climate of hostility that the HRA has faced and examine the social, political and legal forces that continue to inform the case against the HRA.

By giving further effect to the European Convention on Human Rights, the Human Rights Act 1998 has had a significant effect on property law. Article 1 of the First Protocol to the
Convention is particularly important, as it protects against the interference with the enjoyment of possessions. Compulsory acquisition, insolvency, planning, taxation, environmental regulation, and landlord and tenant laws are just some of the fields where the British and European courts have already had to assess the impact of the Protocol on private property. The Human Rights Act 1998 also restricts the scope of property rights, as some Convention rights conflict with rights of private property. For example, the Article 8 right to respect for the home has been used to protect against environmental harm, in some cases at the expense of property and economic rights. This book seeks to provide a structured approach to the extensive case law of the European Court of Human Rights and the UK courts on these issues, and to provide guidance on the direction the law is likely to take in future. Chapters cover the history and drafting of the relevant Convention rights, the scope and structure of the rights (especially Article 1 of the First Protocol), and how, through the Human Rights Act 1998, the Convention rights have already affected and are likely to affect developments in selected areas of English law. Human Rights: A Modern Agenda examines the implications of the interface between the Scotland Act 1998 and the Human Rights Act 1998. Its purpose is to increase awareness and stimulate public debate about a new role for human rights in a changed and still changing Scotland. The book raises critical questions and provides facts as well as opinions to help inform the public debate on the implications of the most profound constitutional change in Scotland for the past three centuries. Previously a T & T Clarke publication The Human Rights Act 1998 had a profound effect on the law of the United Kingdom, and in no area more so than judicial review. This book gives practical guidance on the interplay between the Act and domestic public law. Essay from the year 2013 in the subject Law - Criminal process, Criminology, Law Enforcement, grade: 60, University of Wales, Aberystwyth, course: LLB, language: English, abstract: The purpose of this essay is to critically examine the impact of the Human Rights Act 1998 on the operation of the burden of proof and on the area of law concerned with the exclusion of evidence obtained by illegal or improper means. From the text: Presumption of innocence; Human Rights Act; Evidential Burden; Legal Burden.

This second supplement to the highly-acclaimed The Law of Human Rights, published in October 2000, brings the work fully up to date to July 2002. The Human Rights Act 1998 is criticised for providing a weak protection of human rights. The principle of parliamentary legislative supremacy prevents entrenchment, meaning that courts cannot overturn legislation passed after the Act that contradicts Convention rights. This book investigates this assumption, arguing that the principle of parliamentary legislative supremacy is sufficiently flexible to enable a stronger protection of human rights, which can replicate the effect of entrenchment. Nevertheless, it is argued that the current protection should not be strengthened. If correctly interpreted, the Human Rights Act can facilitate democratic dialogue that enables courts to perform their proper correcting function to protect rights from abuse, whilst enabling the legislature to authoritatively determine contestable issues surrounding the extent to which human rights should be protected alongside other rights, interests and goals of a particular society. This understanding of the Human Rights Act also provides a different justification for the preservation of Dicey's conception of parliamentary sovereignty in the UK Constitution. The new Human Rights Act 1998 will affect a wide range of legal areas including police powers, criminal and civil rules of evidence and procedure, family law, planning, employment law, freedom of information, privacy, tax, education, environmental law, immigration and asylum, and electoral law. The Act brings with it a whole new European legal system with different rights, different courts, a new body of case-law and a legal status which differs from the status accorded to EC law. Substantial, clear, rigorous and comprehensive ... the new Human Rights title in the groundbreaking undergraduate textbook series. Business and the Human Rights Act 1998 focuses on the commercial implications of this groundbreaking Act, providing a thorough and authoritative treatment of the subject. The Act will allow companies, as well as individuals, direct access to certain of the guarantees contained in the European Convention on Human Rights. Businesses will therefore have a new weapon in challenging the actions of Government and other public authorities. Detailed consideration is also given in the text to the position of those companies which are themselves likely to be designated public authorities under the new legislation and which will potentially be exposed to claims under the Act. By reference to existing Convention case-law, the book assesses the practical implications of the Act for business and provides guidance on the new procedure for introducing human rights issues in domestic courts and tribunals. This book provides lawyers with the detail they need to advise on the risks and opportunities presented by the Act. This work addresses the Human Rights Act 1998 from the point of view of immigration, asylum and nationality practitioners. It covers the European Convention on Human Rights, the Human Rights Act 1998 and the Immigration and Asylum Bill of 1999. The Impact of the Human Rights ACT 1998 on the Law of Evidence in the United Kingdom
With many issues still to be resolved, the Human Rights Act has brought considerable uncertainty with respect to healthcare law. Written as a critical collection of essays, this invaluable book provides a careful examination and analysis of the issues and how they might be resolved. The book fully explores the relevance and potential impact of the European Convention on Human Rights and Biomedicine, both generally and in specific areas such as medical research and biotechnology. The Human Rights Act, expected to come into force in early 2000, will affect all areas of family law. This bulletin provides family law practitioners with guidance on the Act. It includes the text of the Act and its attendant schedules which contain inter alia, the Convention of Human Rights itself, a narrative commentary and a summary of the existing Strasbourg jurisprudence in the field of family law. It is aimed at all family law practitioners needing to be made aware of the implications of the Act and the existing jurisprudence. Subscribers to Butterworths Family Law Service and Rayden and Jackson on Divorce and Family Matters will automatically receive a copy of the bulletin as part of their subscription in April 1999.
This book proposes answers to questions about the relationship between the Human Rights Act, human rights principles and the common law. The Human Rights Act 1998 was fully implemented in October 2000, and since then it has become clear how fundamentally the Act will challenge all aspects of our legal system. As Sir Stephen Sedley said in his 2000 Eldon lecture: the courts are going to be dependent as never before on the advocates who come before them for knowledgeable and balanced argument about the Convention. This book provides advocates with a guide to the preparation and presentation of Convention-based arguments before domestic courts and tribunals. It analyses recent domestic and Strasbourg case law and sets out points for advocates covering the different issues which may need to be addressed in each area. The book shows advocates how to provide courts with structured and effective guidance on the application of the Human Rights Act, ensuring that they are able to identify and to promote human rights arguments in advancing their clients cases. An invaluable compendium of the Parliamentary debates on one of the most far reaching pieces of legislation this century – The Human Rights Act 1998. It is essential reading for those taking cases under the Act or interested in the development of human rights. As well as setting out the Government’s intention for each section of the Act in an accessible format, this book is also a good read. Key issues include: Pepper v Hart statements on interpretation of the Human Rights Act; Underlying principles of the Human Rights Act. In light of recent criticism of the EU and Strasbourg, Mary Arden makes an invaluable contribution to the debate on transnational courts and human rights. Drawing on years of experience as a senior judge, she explains clearly how human rights law has evolved, and the difficult balances that judges have to strike when interpreting it. This practitioner text provides treatment of human rights law and practice in the UK, including detailed analysis of the impact of the incorporation of the European Convention on Human Rights into domestic law by the Human Rights Act 1998.

Under the Human Rights Act, British courts are for the first time empowered to review primary legislation for compliance with a codified set of fundamental rights. In this book, Aileen Kavanagh argues that the HRA gives judges strong powers of constitutional review, similar to those exercised by the courts under an entrenched Bill of Rights. The aim of the book is to subject the leading case-law under the HRA to critical and presentations. It is written as it discusses key issues as it considers recent case law from the European Court of Human Rights on domestic violence and the Human Rights Act, ensuring that they are able to identify and to promote human rights arguments in advancing their clients cases. An invaluable compendium of the Parliamentary debates on one of the most far reaching pieces of legislation this century – The Human Rights Act 1998. It is essential reading for those taking cases under the Act or interested in the development of human rights. As well as setting out the Government’s intention for each section of the Act in an accessible format, this book is also a good read. Key issues include: Pepper v Hart statements on interpretation of the Human Rights Act; Underlying principles of the Human Rights Act. In light of recent criticism of the EU and Strasbourg, Mary Arden makes an invaluable contribution to the debate on transnational courts and human rights. Drawing on years of experience as a senior judge, she explains clearly how human rights law has evolved, and the difficult balances that judges have to strike when interpreting it. This practitioner text provides treatment of human rights law and practice in the UK, including detailed analysis of the impact of the incorporation of the European Convention on Human Rights into domestic law by the Human Rights Act 1998. Under the Human Rights Act, British courts are for the first time empowered to review primary legislation for compliance with a codified set of fundamental rights. In this book, Aileen Kavanagh argues that the HRA gives judges strong powers of constitutional review, similar to those exercised by the courts under an entrenched Bill of Rights. The aim of the book is to subject the leading case-law under the HRA to critical and presentations. It is written as it discusses key issues as it considers recent case law from the European Court of Human Rights on domestic violence and the Human Rights Act, ensuring that they are able to identify and to promote human rights arguments in advancing their clients cases. An invaluable compendium of the Parliamentary debates on one of the most far reaching pieces of legislation this century – The Human Rights Act 1998. It is essential reading for those taking cases under the Act or interested in the development of human rights. As well as setting out the Government’s intention for each section of the Act in an accessible format, this book is also a good read. Key issues include: Pepper v Hart statements on interpretation of the Human Rights Act; Underlying principles of the Human Rights Act.