

Number 01

Possession Orders: A breach of the Human Rights Act, the Right to a private and home life?

The Human Rights Act came into force on 2 October 2000. It was heralded as one of the most important pieces of legislation for over 100 years. Speculation on its effects has covered most areas of law including property law.¹

Court decisions on the application of the Act are now being reported and it is important to be aware of their implications.

Human Rights Act Article 8

Article 8 Human Rights Act provides for a right to a private and family life² Although this is a qualified right, to what extent can a possession order (which of necessity deprives the tenant of his home) be said to be a breach of human rights? This has now been decided by the Court of Appeal.³

The Facts

The Poplar Housing Association sought a possession order under the Housing Act 1988 of premises of which the Defendant was tenant. The housing association relied on Section 21 (4) which stated in mandatory terms that if the Court was satisfied with certain conditions, it "shall make an Order for Possession of a dwelling house let on an Assured Shorthold Tenancy, which is a periodic tenancy". The tenant argued that to make a Possession Order on a mandatory basis would breach Article 8, the right to a family life, and would involve interpreting the Housing Act⁴ in a manner incompatible with the Human Rights Act. She also contended that the mandatory nature of the Order would be a breach of her Article 6 right to a fair trial.

¹ Training on the implications of the Human Rights Act is available from Radcliffes.

² Art. 8: Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

³ *Poplar Housing and Regeneration Community Association Limited v. Donoghue* [2001] All ER(D) 210.

⁴ Housing Act 1988 Section 21(4) provides that a Court shall make an Order for possession of a dwelling-house let on an assured shorthold tenancy which is a periodic tenancy if the court is satisfied (a) that the landlord or, in the case of joint landlords, at least one of them has given to the tenant a notice stating that, after a date specified in the notice, being the last day of a period of the tenancy and not earlier than two months after the date the notice was given, possession of the dwelling-house is required by virtue of this section; and (b) that the date specified in the notice under paragraph (a) above is not earlier than the earliest day on which, apart from section 5(1), the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the notice under paragraph (a) above.

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The Judge rejected those submissions and this was endorsed by the Court of Appeal. The provisions of Section 21(4) Housing Act did not conflict with the Defendant's rights to a family life. The Court held that such a provision was necessary in a democratic society as it was necessary to provide a procedure to recover possession of a property at the end of a tenancy. The Court therefore refused to accept that the mandatory nature of the Possession Order did not constitute a breach of the Defendant's right to a family life.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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