

# **The European Convention On Human Rights Act 2003**

## **Part 38-04-13**

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## Introduction

The purpose of this manual is to inform Revenue officers about the European Convention on Human Rights and related matters. The manual gives background information to the European Convention on Human Rights and the European Convention on Human Rights Act 2003 and provides an overview of the role of the European Court of Human Rights and the European Charter on Human Rights. The manual provides instruction for steps to be taken by Revenue officers if they are presented with a claim or challenged under human rights law.

## 1 Background

The European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") is a binding treaty of the Council of Europe<sup>1</sup>. It protects fundamental, civil and political rights and freedoms such as the right to life, liberty and security and freedom of thought, expression and assembly. Among other rights, it protects privacy, property and the right to a fair trial and ensures no unfair duplication of proceedings. Ireland was one of the original signatories of the ECHR, which in September 1953 was formally ratified in Ireland and became binding on the State.

The ECHR was brought into Irish law in 2003. The European Convention on Human Rights Act 2003 ("the Act") incorporates the standards set out in the ECHR into Irish law, allowing them to be considered before the Irish Courts.

### 1.1 Key sections of the Act

Section 2 of the Act requires the Courts, subject to the rules of law in relation to such interpretation and application, to interpret and apply the law in a manner that is compatible with the ECHR standards. The ECHR standards are usually considered in parallel with the Irish Constitution, which has primacy over the Act in cases where there is any uncertainty. If the two conflict, the Constitution prevails.

Section 3 of the Act creates a statutory obligation on every 'organ of the state', whether that is a government department, a local authority or public institution such as Revenue, to perform its functions 'in a manner compatible with the State's obligations under the Convention'. This obligation is subject to the statutory provisions or rules of law other than the Act.

Section 4 of the Act provides that decisions coming from the European Court of Human Rights (see below) may be used in arguments before the Irish Courts.

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<sup>1</sup>The Council of Europe is an international organisation whose aim is to uphold human rights, democracy and the rule of law in Europe. Ireland was a founder member in 1949.

Section 5 of the Act deals with ‘declarations of incompatibility’. This means that the High Court, the Court of Appeal or the Supreme Court may make a declaration that a statutory provision or rule of law, including common law, is incompatible with Ireland’s obligations under the ECHR. The law in question would remain in force, but the declaration could result in the Oireachtas repealing or replacing the law.

## 1.2 European Court of Human Rights

The European Court of Human Rights, based in Strasbourg, sets the best practice standard in human rights for the 47 member states of the Council of Europe. It decides cases brought by individuals claiming a breach of their ECHR rights, once they have taken all possible steps to have their complaint dealt with at national level. In Irish terms this effectively means that the case has been before the High Court and the Court of Appeal or the Supreme Court and has not been upheld. States have a duty to comply with judgments against them from the European Court of Human Rights. It is not a court of fourth instance<sup>2</sup> and does not create precedents for Irish courts.

The European Court of Human Rights is not to be confused with the Court of Justice of the European Union (CJEU), based in Luxembourg.

## 1.3 The Charter of Fundamental Rights of the EU

The Charter of Fundamental Rights of the European Union (“the Charter”) brings together the fundamental rights of persons living in the European Union (EU). It was introduced to bring consistency and clarity to the rights established at different times and in different ways in individual EU Member States.

The Charter sets out the full range of civil, political, economic and social rights based on:

- the fundamental rights and freedoms recognised by the ECHR
- the constitutional traditions of the EU Member States, for example, longstanding protections of rights which exist in the various national laws and Constitutions of EU Member States
- the Council of Europe's Social Charter
- the Community Charter of Fundamental Social Rights of Workers, and
- other international conventions to which the EU or its Member States are parties.

The Charter became legally binding on EU Member States when the Treaty of Lisbon entered into force in December 2009.

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<sup>2</sup>The fourth instance doctrine asserts that the ECtHR is not a court of appeal or a court which can quash rulings given by the courts in the States which are party to the Convention or retry cases heard by them. It is not the function of the ECtHR to reconsider questions of fact or national law.

## 1.4 How is the Charter different from the ECHR?

Although the Charter and the ECHR contain overlapping human rights provisions, the two operate within separate legal frameworks:

- The Charter was drafted by the EU and is interpreted by the CJEU in Luxembourg.
- The ECHR was drafted by the Council of Europe in Strasbourg and is interpreted by the European Court of Human Rights there.

The Charter provides an overarching framework for human rights in the EU, of which the ECHR forms a key part.

When the Charter is applied, its terms are addressed to

- the institutions and bodies of the EU
- national authorities only when they are implementing EU law.

For example, the Charter applies when Ireland adopts or applies a national law implementing an EU directive or when Irish authorities apply an EU regulation directly.

In cases where the Charter does not apply, the protection of fundamental rights is guaranteed under the Constitution and international conventions such as the ECHR. The Charter does not extend the scope of the EU to matters beyond its normal remit.

## 2 Revenue Implications

Legislation administered by Revenue complies with the principles laid down in the ECHR. Revenue policies and procedures – implemented in accordance with the appropriate authorisations, instructions and safeguards – also comply. Revenue officers operate in accordance with the Revenue Customer Service Charter, which recognizes basic rights and responsibilities of taxpayers.

A taxpayer may seek to invoke the ECHR, the Act or the Charter in the course of his or her dealings with Revenue. The claim may be about process or about the law. It should be noted, in relation to a ECHR claim about the law, that under Section 5 of the Act, only the High Court, the Court of Appeal or the Supreme Court may make a declaration that a statutory provision or rule of law is incompatible with the State's obligations under the ECHR.

If a Revenue officer receives a claim from or is challenged by a taxpayer seeking to invoke the ECHR, the Act or the Charter, they should follow the procedure set out in the next section of this TDM.

### 3 Procedure for Revenue Officers

A claim that Revenue or an officer of Revenue is in breach of obligations under the ECHR, the Act or the Charter should be referred to the Revenue Solicitor's Office (RSO) and EU Branch of International Division.

The consideration of the claim and of Revenue's response to the claim should not hold up progress of ongoing work. The Revenue officer dealing with the taxpayer can continue the normal line of work, including work relating to the taxpayer concerned, while the claim is under consideration. The Revenue officer may wish to inform the taxpayer of this.

The officer should refer the matter to the RSO and to EU Branch, International Division, at the following addresses:

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

The officer should clearly indicate whether the matter is connected to a matter under appeal to TAC or to a court, whether Revenue's Complaint and Review procedures have been invoked, or if the officer is aware of the matter having been referred to any other body for review.

The RSO and/or the EU Branch will respond, to the officer who referred the matter, with guidance.

Revenue staff with queries relating to items included in this manual can contact the Office of the Revenue Solicitor or the EU Branch of International Tax Division at the email addresses listed above.