Moving towards the HRA

If anyone should happen to ask you what Thatcher and Blair have in common, tell them this. When the poll tax of dismal memory was imposed on a surprised citizenry by Margaret Thatcher, it was tried out first in Scotland. The very same thing happened when Tony Blair wanted to give his gratified subjects the Human Rights Act (HRA).

While the HRA will not come into force generally until October 2, the Scotland Act 1998 s 29(2)(d) already provides that legislation by the Scottish Parliament is ultra vires if incompatible with any of the Convention rights. Members of the Scottish executive have no power to issue subordinate legislation or do any other act if it would contravene the Convention: see the Scotland Act 1998 s 57(2). And so on.

One dramatic output of this shrewd Blairite move was the decree of the Scottish High Court of Justiciary in the Starrs case, based on article 6 of the Convention (right to a fair trial). That article says that in the determination of any criminal charge against him, everyone is entitled to a fair and public hearing by an independent and impartial tribunal. In ***Starrs*** it was put to the High Court of Justiciary, and they perforce agreed, that a judge could scarcely be regarded as "independent" if, having been appointed by the executive on a temporary basis, he was liable to be sacked next day by that same executive if his performance was not considered up to snuff.

In response, and well in advance of October 2, the Government has announced that all this nonsense of temporary judges is to disappear pronto throughout the United Kingdom. On April 12, Jane Kennedy, Parliamentary Secretary in the Lord Chancellor's Department, was asked about this. I give her reply, as recorded by Hansard.

Jane Kennedy: The Lord Chief Justice of England and Wales, and the Lord Chief Justice of Northern Ireland and the Lord Chancellor have agreed new arrangements for part-time judicial appointments for which the Lord Chancellor is responsible. We accord the highest value to the maintenance of judicial independence for all judges, full-time and part-time, and the arrangements have been fashioned for that purpose.

The announced changes affect a variety of judicial officers including Recorders, Deputy District Judges, Acting Stipendiary Magistrates, Deputy Masters or Registrars of the Supreme Court, Deputy High Court Judges, Deputy Circuit Judges, together with retired Lords of Appeal in Ordinary, Lords Justices and High Court Judges.

Furthermore the Lord Chancellor has decided that no useful purpose is served by retaining the separate offices of Assistant Recorder and Recorder. He will, accordingly, be recommending to Her Majesty that all serving Assistant Recorders should be appointed Recorders. In future, appointments will be made direct to Recordership through an openly advertised selection procedure. Many other judicial posts are affected, but perhaps I have said enough to whet the appetite.

The next day (April 13) it was the turn of the Solicitor General (Mr Ross Cranston) to face the music on preparations for the coming into force of the HRA. Mr Andrew Mackinlay (Labour) questioned him on the HRA s 19, which provides for a statement of compatibility from Ministers introducing legislation into Parliament.

Mr Mackinlay: Is it not time that we revisited section 19? It is inadequate, and will lead to embarrassment for the United Kingdom and to work for the Law Officers, who will have to defend our statute book in the European Court and other courts. Did my hon. and learned Friend notice this week that my right hon. Friend the Deputy Prime Minister was unable to give a human rights compliance notice in relation to the Local Government Bill? On the advice of the Lord Chancellor, he is unable to explain why he is not able to give that notice. It is nonsense. Private Members' Bills and private Bills are passing through the House, and with them there is apparently no need for human rights compliance certification. Again, that is nonsense. When these measures reach the statute book, the Law Officers will sometimes have to defend the indefensible. We should recognise that we are being sloppy and that these issues should be taken up with expedition.

The Solicitor General acknowledged that Mr Mackinlay had a point. He said the matter was being considered. Perhaps all will be ready by October 2 (or perhaps not, we shall see).

When the Conservatives tried to cash in, the Solicitor General was ready for them. He pointed out that under the changes noted above Edward Garnier QC, the shadow Attorney General, is in clover. He is no longer a mere Assistant Recorder. Overnight he has suddenly become a Recorder.

It is one way to keep the Opposition quiet.

Francis Bennion
www.francisbennion.com

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