

# Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION  
NOT FOR PUBLICATION OR BROADCAST BEFORE 0001 HOURS  
TUESDAY 3 OCTOBER 2000

## THE LAW COMMISSIONS REVIEW STRASBOURG CASE LAW ON THE AWARD OF DAMAGES UNDER ECHR

The Law Commission and the Scottish Law Commission today published a joint report (Damages under the Human Rights Act 1998 (Law Com No 266/Scot Law Com No 180/Cm 4853)) in which they carry out a review of the Strasbourg case law on the award of damages under the Human Rights Act 1998.

The Human Rights Act 1998 provides citizens of the United Kingdom with important protection for certain of their rights under the European Convention on Human Rights ("the Convention rights"). Section 7 of the Act gives a new claim against public authorities where the public authority has acted in a way which is incompatible with one or more of those rights. The claim may be brought by a victim of the public authority's action, and the remedies sought may include damages in compensation for the violation of the Convention rights.

Section 8 of the Human Rights Act provides that before a court may award damages it must be satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made. This is the test used by the European Court of Human Rights in Strasbourg under Article 41 of the Convention. Section 8 provides that courts in this country must take into account the principles applied by the Strasbourg Court in deciding whether to award compensation for a violation of the Convention, and the amount of any award.

The Law Commission has, jointly with the Scottish Law Commission, conducted an Article-by-Article analysis of the case law and practice of the Strasbourg Court in relation to the award of compensation, with summaries of the relevant cases.

The Chairmen of the Commissions, Mr Justice Carnwath CVO and Lord Gill, said today:

**“With the implementation of the Human Rights Act 1998 the courts will face difficult questions on the award of compensation for human rights violations. This Report seeks to inform all court users of the relevant case law of the Strasbourg Court and its implications for courts in the United Kingdom.”**

The primary principle governing the award of compensation by that Court is that the victim should, as far as possible, be placed in the same position as if the violation of his or her rights had not occurred. This approach is not significantly different to the rules currently applied by courts in this country to the award of damages. Where courts have established appropriate levels of compensation for particular types of loss in other claims under English or Scots law, we anticipate that similar rules will be used in relation to claims under the Human Rights Act.

There are some points where the practice of the Strasbourg Court differs from that in the United Kingdom. For example, unlike a court in England, the Strasbourg Court does not award punitive damages. Conversely, the Strasbourg Court has awarded compensation in relation to some forms of non-pecuniary, or intangible, loss – such as for interference in the relationship between parent and child – which have not yet been recognised by courts in this country.

The report does not propose legislation. Instead it provides useful and informative guidance for court users dealing with the new Human Rights Act.

## NOTES FOR EDITORS

1. The Law Commission and the Scottish Law Commission were set up by the Law Commissions Act 1965 to promote the reform of the law.

2. 

<b>THE LAW COMMISSIONERS</b>	<b>THE SCOTTISH LAW COMMISSIONERS</b>
The Hon Mr Justice Carnwath CVO ( <i>Chairman</i> )	The Hon Lord Gill ( <i>Chairman</i> )
Professor Hugh Beale	Mr Patrick Hodge QC
Mr Charles Harpum	Professor Gerard Maher
Judge Alan Wilkie QC	Professor Kenneth Reid
	Professor Joseph Thomson

3. The full text of the report, together with a summary, is available on the Internet at

**<http://www.lawcom.gov.uk> OR <http://www.scotlawcom.gov.uk>**

It is also available from The Stationery Office priced at £18.75.

**FURTHER ENQUIRIES TO:**

**The Hon Mr Justice Carnwath CVO OR  
Chairman, Law Commission  
TEL: (020) 7453 1249**

**Norman Raven  
Secretary, Scottish Law Commission  
TEL: (0131) 668 2131**

**Nicola Pittam  
Lawyer, Law Commission  
TEL: (020) 7453 1237**