

# **SUPREME COURT HOLDS THAT PUBLIC AUTHORITIES MAY DISAPPLY SECONDARY LEGISLATION WHERE INCOMPATIBLE WITH THE HUMAN RIGHTS ACT**

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Firm news

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Responding to news that the Supreme Court has today unanimously held that public authorities, courts or tribunals can disapply a provision of secondary legislation which, if applied, would result in incompatibility with rights under the European Convention on Human Rights, Andrew Lidbetter, partner in Herbert Smith Freehills' disputes practice, says that "this judgment is of significant constitutional importance".

He explains that "it confirms that secondary legislation is subordinate to the requirements of an Act of Parliament and, in a human rights context, creates the general rule that such provisions must be disregarded where they result in a breach of a Convention right."

Today's judgment will undoubtedly have implications well beyond the welfare benefits context as it clearly sets out how local authorities and tribunals can deal with situations in which secondary legislation is incompatible with Convention rights.

From a procedural perspective, this case is also understood to be the first "leapfrog" case from the Upper Tribunal to reach the Supreme Court. Herbert Smith Freehills is delighted to have acted pro bono for three charities - Liberty, Child Poverty Action Group, and Public Law Project - who jointly intervened before the Supreme Court in *RR v Secretary of State for Work and Pensions* [2019] UKSC 52.

Andrew Lidbetter concludes: "With the raft of Statutory Instruments required from the Government in advance of Britain's exit from the European Union, this judgment is likely to act as an important safeguard against any new regulations that produce an outcome which is incompatible with Convention rights and the Human Rights Act."

The Supreme Court's full ruling can be viewed [here](#).

[Read more about the ruling on our Public Law Notes Blog](#)

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