

A-0170

**THE HUMAN RIGHTS ACT 1998 AND IMMIGRATION AND ASYLUM ACT 1999-  
NOTES OF TALK GIVEN BY JOHN WALSH, DOUGHTY STREET CHAMBERS, AT  
SEMINAR ON 24 NOVEMBER 2000**

**1. European Convention on Human Rights**

- \* art.2 right to life
- \* art.3 prohibition of torture, inhuman and degrading treatment
- \* art.4 prohibition of slavery and forced labour
- \* art.5 right to liberty and security
- \* art.6 right to a fair trial
- \* art.7 no unlawful punishment
- \* art.8 right to respect for private and family life
- \* art.9 freedom of thought, conscience and religion
- \* art.10 freedom of expression
- \* art.11 freedom of assembly and association
- \* art 12 right to marry
- \* art 13 prohibition against discrimination

**First Protocol**

- \* art.1 enjoyment of property
- \* art.2 right to education
- \* art.3 right to free elections

**Sixth Protocol**

- \* art.1 abolition of the death penalty

**2. Some rights not incorporated in HRA 1998**

**3. Criticisms of ECHR:**

50 years old  
Stress on legal principles not legal rules  
Role of precedent diminished  
Emphasis on political rights-other rights such as social and cultural rights not so central  
Eurocentric  
Stems development of the UK common law

**4. Human Rights Act 1998**

Section 2 "A court or tribunal determining a question which has arisen in connection with a Convention rights must take into account any...."

Courts must take into account but not bound by ECHR jurisprudence (s 2(3)).

Thus, English Cts likely to develop the law in their own way

In certain areas likely to take a more robust approach  
Rights already there

Note: Cts on their own motion must take into account ECHR

Section 3 "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights"

Section 4 Declaration of incompatibility

Section 6 Duty of public authority not to act in a way incompatible with a Convention right

Includes failure not to act s.6(6)

Broad definition of public authority s.6(3)

Potential divergence in High Court cases and above

Jurisdiction of Court limited to error of law or entry into the arena to satisfy itself that it is not breaching article 6 ?

See Wade LQR [2000] 217, contrast Beatson and Grosz LQR [2000] 385

Some judgments pre Oct.2nd considered that the intensive scrutiny approach appropriate:

R v SSHD ex parte Launder (HL) [1997] 1 WLR 839 (Lord Hope)

R v SSHD ex parte Turgut (CA) [2000] INLR 292 (Schiemann LJ)

R v SSHD ex parte Smith [1995] 4 All ER 427 (Simon Brown LJ)

Horizontal effect

5. Immigration and Asylum Act 1999

The appellate authority bound by ss. 2,6 HRA.

IAA 1999 s 65 grants a right of appeal if breach of "his human rights"

Very broad scope for appeal

Note: Pardeepan (OOTH02414)

When can the appellate authority be in breach of s 6 HRA?

MNM (OOTH02423) - article 6 ECHR and immigration

Provision for routine bail hearings s.44-50

The decision to detain itself arguably an appealable decision as breach of article 5 ECHR

Conditions in detention, refusal to transfer from Rochester to detention centre, refusal to provide interpreters etc can found appealable rights.

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