

## Immigration, Asylum and Human Rights

Nicholas Blake QC

and

Raza Husain

Series Editor: John Wadham



## **Contents**

Preface Table of Cases Table of Primary Legislation Table of Secondary Legislation											
					Table of International Instruments						
					In	Introduction					
					1.		fuman Rights Act 1998 and the Immigration and	10			
	•	m Act 1999	18								
	1.1	Introduction	18								
	1.4	The scheme of immigration control	19								
	1.14	The duty to act compatibly	22								
	1.33	The enforcement of the duty	31								
	1.54	The application and interpretation of the Convention	40								
	1.87	Immigration appeals	52								
	1.95	Section 65 of the IAA 1999	54								
	1.109	Prevention of abuse	57								
	1.123	Special Immigration Appeals Commission	62								
2.	The P	rotection of Life, Bodily Integrity and Human Dignity	64								
	2.1	Introduction	64								
	2.7	Scope of application: deliberate harm	66								
	2.37	Absolute nature of the obligation	77								
	2.44	Incremental and updating approach	79								
	2.49	Expulsion cases and the death penalty	81								
		• • • • • • • • • • • • • • • • • • •									

vi Contents

	2.54	The UN Convention Against Torture 1984	84		
	2.61	Harm by non-state agents	87		
	2.66	Application to expulsions	88		
	2.81	Generalized failure of protection	93		
	2.84	Application in the United Kingdom	94		
3.	Protec	tion from Arbitrary Detention	114		
	3.1	Introduction	114		
	3.3	The requirements of Article 5: the right to liberty and			
		security of the person	115		
	3.76	The domestic legal framework	142		
		The impact of Article 5	150		
	3.146	Home Office, Operational Enforcement Manual,			
		21 December 2000, Chapter 38	162		
4.	The P	rotection of Family and Private Life	165		
	4.1	Introduction	165		
	4.7	Is there family and private life enjoyed?	166		
	4.29	Interference with the right to respect for family and			
		private life	175		
	4.66	Justification: the law	189		
	4.71	Justification: legitimate motives	190		
	4.77	Justification: proportionality and necessity	192		
	4.93	Application	198		
5.	Procedural Rights 21				
	5.1	Introduction	211		
	5.7	The requirements of Article 6 and the position at common law	213		
	5.74	Article 13	236		
	5.84	Conclusions on the compatibility of domestic immigration			
		law with Articles 6 and 13	240		
	5.92	Article 6(1): scope revisited—the decision in <i>Maaouia</i> v <i>France</i>			
		and the domestic position	242		
		Judicial review and Article 13	256		
	5.145	7 11	264		
	E 170	the approach under the Human Rights Act 1998	264		
	5.178	Judicial review and statutory appeals in the light of the Human Rights Act 1998	278		
		Tuman rigino / tet 1//0	210		
6.	Discri	mination	311		
	6.1	Scope of Article 14	311		

Contents	vii	
7. Postscript: The Implications of the Anti-Terr and Security Act 2001 for Immigration and		
<ul><li>7.1 Introduction</li><li>7.6 Anti-Terrorism, Crime and Security Act</li></ul>	336 t 339	
Appendix One Human Rights Act 1998		
Appendix Two European Convention on Human	Rights 376	
Index	405	