Declarations of Incompatibility under the Human Rights Act 1998[1]

28 made
20 still standing, 8 overturned on appeal

April 2013

Part 1 - Declarations of Incompatibility made under s 4 of Human Rights Act 1998

Case Name and Description	Date	Content of the Declaration	Follow-up action
R (on the application of H) v Mental Health Review Tribunal for the North and East London Region & The Secretary of State for Health (Court of Appeal) [2001] EWCA Civ 415 *The case concerned a man who was admitted under section 3 of the Mental Health Act 1983 and sought discharge from hospital.*	28 Mar 2001	Sections 72 and 73 of the Mental Health Act 1983 were declared incompatible with Article 5(1) and 5(4) in as much as they did not require a Mental Health Review Tribunal to discharge a patient where it could not be shown that he was suffering from a mental disorder that warranted detention.	**Section 10 remedial order used to remedy the incompatibility.** The legislation was amended by the Mental Health Act 1983 (Remedial) Order 2001 (SI 2001 No.3712) **(In force 26 Nov 2001)**

[1] Table compiled on the basis of the Ministry of Justice report *Responding to Human Rights Judgments: Report to the Joint Committee on Human Rights on the Government response to human rights judgments 2011-12*, September 2012 available at http://www.justice.gov.uk/downloads/publications/policy/moj/responding-human-rights-judgments.pdf <Accessed 30 April 2013>.

McR's Application for Judicial Review (Kerr J) [2003] N.I 1 *A man charged with the attempted buggery of woman argued that the existence of the offence was in breach of Article 8.*	15 Jan 2002	Section 62 of the Offences Against the Person Act 1861 (attempted buggery), which continued to apply in Northern Ireland, was incompatible with Article 8 to the extent that it interfered with consensual sexual behaviour between individuals.	**Legislative provisions repealed**. Section 62 was repealed in NI by the Sexual Offences Act 2003, sections 139, 140, Schedule 6 paragraph 4 and Schedule 7. **(In force 1 May 2004)**
International Transport Roth GmbH v Secretary of State for the Home Department (Court of Appeal, upholding Sullivan J) [2002] EWCA Civ 158 *International Transport Roth GmbH challenged a penalty regime, which applied to carriers who unknowingly transported clandestine entrants to the UK.*	22 Feb 2002	The penalty scheme contained in Part II of the Immigration and Asylum Act 1999 was incompatible with Article 6 because the fixed nature of the penalties offended the right to have a penalty determined by an independent tribunal. It also violated Article 1 of Protocol 1 as it imposed an excessive burden on the carriers.	**Ordinary legislation used to remedy the incompatibility.** The legislation was amended by the Nationality, Immigration and Asylum Act 2002, section 125, and Schedule 8. **(In force 8 Dec 2002)**
R (on the application of Anderson) v Secretary of State for the Home Department (House of Lords) [2002] UKHL 46 *The appellant challenged the Secretary of State for the Home Department's power to set the minimum period that must be served by a mandatory life sentence*	25 Nov 2002	Section 29 of the Crime (Sentences) Act 1997 was incompatible with the right under Article 6 to have a sentence imposed by an independent and impartial tribunal in that the Secretary of State decided on the minimum period which must be served by a mandatory life sentence prisoner before he was considered for release on licence.	**Provisions repealed and ordinary legislation used to remedy the incompatibility.** The law was repealed by the Criminal Justice Act 2003, sections 303(b)(I), 332 and Schedule 37, Pt 8. Transitional and new sentencing provisions

prisoner.			were contained in Chapter 7 and Schedule 21 and 22 of that Act. **(Date power repealed 18 Dec 2003)**
R v Secretary of State for the Home Department, ex parte D (Stanley Burnton J) [2002] EWHC 2805 *D challenged the Secretary of State for the Home Department's discretion to allow a discretionary life prisoner to obtain access to a court to challenge his/her continued detention.*	19 Dec 2002	Section 74 of the Mental Health Act 1983 was incompatible with Article 5(4) to the extent that the continued detention of discretionary life prisoners who had served the penal part of their sentence depended on the exercise of a discretionary power by the executive branch of government to grant access to a court.	**Ordinary legislation used to remedy the incompatibility.** The law was amended by the Criminal Justice Act 2003 section 295. **(In force 20 Jan 2004)**
Blood and Tarbuck v Secretary of State for Health (Sullivan J). Unreported *The applicant challenged the rules preventing a deceased father's name from being entered on the birth certificate of his child.*	28 Feb 2003	Section 28(6)(b) of the Human Fertilisation and Embryology Act 1990 was incompatible with Article 8, and/or Article 14 taken together with Article 8, to the extent that it did not allow a deceased father's name to be given on the birth certificate of his child.	**Ordinary legislation used to remedy the incompatibility.** The law was amended by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003. **(In force 1 Dec 2003)**

Bellinger v Bellinger (House of Lords) [2003] UKHL 21 *A post-operative male to female transsexual appealed against a decision that she was not validly married to her husband, by virtue of the fact that at law she was a man.*	10 Apr 2003	Section 11(c) Matrimonial Causes Act 1973 was incompatible with Articles 8 and 12 in so far as it makes no provision for the recognition of gender reassignment.	**Ordinary legislation used to remedy the incompatibility.** In *Goodwin v UK* 11 Jul 2002, the European Court of Human Rights had already identified the absence of any system for legal recognition of gender change as a breach of Articles 8 and 12. This was remedied by the Gender Recognition Act 2004. **(In force 4 April 2005)**
R (on the application of M) v Secretary of State for Health (Maurice Kay J) [2003] EWHC 1094 *A patient lived in hostel accommodation but remained liable to detention under the Mental Health Act 1983. Section 26 of that Act operated to automatically designate her adoptive father as her "nearest relative". However, her clinical team was aware that he had abused her as a child and the legislative scheme did not allow the patient or anyone else to challenge his status as nearest relative.*	16 Apr 2003	Sections 26 and 29 of the Mental Health Act 1983 were incompatible with Article 8, in that the claimant had no choice over the appointment or legal means of challenging the appointment of her nearest relative.	**Ordinary legislation used to remedy the incompatibility.** The Government published a Bill which would have replaced these provisions in 2004, which was subsequently withdrawn. The Mental Health Act 2007 was passed, with sections 23-26 addressing the incompatibility. **(In force 3 Nov 2008)**
R (on the application of Wilkinson) v Inland	18 Jun	Section 262 of the Income and Corporation	**The relevant legislative**

Revenue Commissioners (Court of Appeal, upholding Moses J) [2003] EWCA Civ 814 (The declaration was unaffected by a subsequent HL ruling on 5 May 2005. [2005] UKHL 30.) *The case concerned the provision of Widows Bereavement Allowance to widows but not widowers.*	2003	Taxes Act 1988 was incompatible with Article 14 when read with Article 1 of Protocol 1 in that it discriminated against widowers in the provision of Widows Bereavement Allowance.	**provision was no longer in force, having been amended by ordinary legislation.** The section declared incompatible had already been repealed by the Finance Act 1999 sections 34(1), 139, Schedule 20. **(In force in relation to deaths occurring on or after 6 Apr 2000)**
R (on the application of Hooper and others) v Secretary of State for Work and Pensions (Court of Appeal, upholding Moses J) [2003] EWCA Civ 875 (The declaration was unaffected by a subsequent HL ruling on 5 May 2005. [2005] UKHL 29.) *The case concerned an application for a declaration that failing to make payments to men equivalent to the Widowed Mother's Allowance which was only paid to women was contrary to Article 14.*	18 Jun 2003	Sections 36 and 37 of the Social Security Contributions and Benefit Act 1992 were in breach of Article 14 in combination with Article 8 and Article 1 of Protocol 1 in that benefits were provided to widows but not widowers.	**The relevant legislative provision was no longer in force, having been amended by ordinary legislation.** The law had already been amended at the date of the judgment by the Welfare Reform and Pensions Act 1999, section 54(1). **(In force 9 Apr 2001)**
R (on the Application of Sylviane Pierrette Morris) v Westminster City Council & First Secretary of State	7 Oct 2004	Section 185(4) of the Housing Act 1996 was incompatible with Article 14 to the extent that it requires a dependent child	**Ordinary legislation used to remedy the incompatibility.**

(Keith J) [2004] EWHC 2191 *A single mother who was a British citizen sought local authority accommodation for herself and her child, who was subject to immigration control.*		who is subject to immigration control to be disregarded when determining whether a British citizen has priority need for accommodation.	The Court of Appeal upheld the DoI on 14 October 2005 [2005] EWCA Civ 1184. New measures were introduced in Schedule 15 to the Housing and Regeneration Act 2008. **(In force 2 March 2009)**

A and others v Secretary of State for the Home Department (House of Lords) [2004] UKHL 56 *The applicants challenged their detention under section 23 of the Anti-terrorism, Crime and Security Act 2001. The detainees were all foreign nationals who had been certified by the Secretary of State as suspected international terrorists. They could not be deported since that would have involved a breach of Article 3. They were detained without charge or trial in accordance with a derogation from Article 5(1) provided by the Human Rights Act 1998 (Designated Derogation) Order 2001.*	16 Dec 2004	That the Human Rights Act 1998 (Designated derogation) Order 2001 be quashed because it was not a proportionate means of achieving the aim sought and could not therefore fall within Article 15. The court also declared that section 23 of the Anti-terrorism, Crime and Security Act 2001 was incompatible with Articles 5 and 14 as it was disproportionate and permitted the detention of suspected international terrorists in a way that discriminated on the ground of nationality or immigration status.	**Ordinary legislation used to remedy the incompatibility.** The provisions were repealed by the Prevention of Terrorism Act 2005, which put in place a new regime of control orders. **(In force 11 Mar 2005)**
R (Baiai and others) v SS Home Dept (QBD) [2006] EWHC 823 and 1454 *Procedures put in place to deal with sham marriages, specifically those affecting persons subject to immigration control wanting to marry in the UK, were challenged as being contrary to Articles 12 (the right to marry) and 14 (non-discrimination).*	10 Apr 2006 and 16 June 2006	Except in relation to cases involving irregular immigrants, s19(3) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 is incompatible with a) Art 12 in that it is disproportionate and b) Arts 12 and 14 in that it discriminates unjustifiably on grounds of nationality and religion.	**Section 10 remedial order used to remedy the incompatibility.** The DoI was upheld by the Court of Appeal on 23 May 2007 ([2007] EWCA Civ 478) and objection to s19 held to apply in respect of irregular immigrants also. The Secretary of State did not appeal the Art 14 point and stated that legislation would be

			passed to remove the discriminatory aspect of the scheme. The HL ([2008] UKHL 53) held that the DoI should be limited to a declaration that s19(1) was incompatible with Art 14 taken together with Art 12, insofar as it discriminated between civil marriages and Church of England marriages. HL used s3 to read s19(3)(b) compatibly with Art 12. The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial Order) 2011 **came into force on 9 May 2011** and abolished the certificate of approval scheme. A case was also taken to the ECtHR (*O'Donoghue v UK*, Dec 2010) which found the Certificate of Approval scheme breached Arts 12 and 14.

R (Gabaj) v First Secretary of State (Admin Court) (unreported) *As in the case of Morris, above, a British citizen sought housing and his relative, in this case his pregnant wife, was a foreign national not eligible for housing assistance.*	28 Mar 2006	Section 185(4) of the Housing Act 1996 is incompatible with Art 14 to the extent that it requires a pregnant member of the household of a British citizen , if both are habitually resident in the UK, to be disregarded when determining whether the British citizen has a priority need for accommodation or is homeless, when the pregnant member of the household is a person from abroad who is ineligible for housing assistance.	**Ordinary legislation used to remedy the incompatibility.** The law was amended by Schedule 15 of the Housing and Regeneration Act 2008. The Act received Royal Assent on 22 July 2008. Schedule 15 was **brought into force on 2 March 2009**.
R (Wright et al) v Secretary of State for Health and Secretary of State for Education and Skills (QBD) [2006] EWHC 2886 (Admin) *This case concerned the Care Standards Act 2000 Part VII procedures in relation to provisional listing of care workers as unsuitable to work with vulnerable adults.*	16 Nov 2006	Procedures under the Care Standards Act 2000 Part VII in relation to provisional listing of care workers as unsuitable to work with vulnerable adults were incompatible with Arts 6 and 8.	**Ordinary legislation used to remedy the incompatibility.** The Court of Appeal overturned the declaration. They used s3 to read the 2000 Act so as to require the SS to give the care worker an opportunity to make representations before he was included in the list, unless the resultant delay in giving such an opportunity would expose vulnerable adults

			to the risk of harm. 24 October 2007 [2007] EWCA Civ 999 The House of Lords reinstated the DoI, holding s.82(4)(b) was incompatible with Arts 6 and 8. The solution devised by the CA using s3 was not sufficient to solve the problem. It offered some care workers the opportunity to make representations in advance, while denying that opportunity to others. 21 Jan 09 [2009] UKHL 3 By the date of the HL judgment **(January 2009)**, the transition to a new scheme under the Safeguarding Vulnerable Groups Act 2006 was already underway. The new SVGA scheme does not include the feature of provisional listing which

			was the focus of challenge in this case. However, the new Act was challenged in the Royal College of Nursing case below.
R (Clift et al) v Secretary of State for the Home Department (HL) [2006] UKHL 54 *A conjoined appeal from former and serving prisoners on the issue of whether the early release provisions, to which each applicant was subjected, were discriminatory.*	13 Dec 2006	The early release provisions contained in the Criminal Justice Act 1991 s46(1) and s50(2) were incompatible with Art 14 of the Convention, in conjunction with Art 5, to the extent that they prevented prisoners liable for removal from having their cases reviewed by the Parole Board in the same manner as other long-term prisoners.	**Ordinary legislation used to remedy the incompatibility.** Remedied in the Criminal Justice and Immigration Act 2008, section 27. **(**The amendment came **into force on 14 July 2008** but reflected administrative arrangements addressing the incompatibility that had been put in place shortly after the declaration was made**)**
Smith v Scott [2007] CSIH 9 Registration Appeal Court (SC) *The case concerned the incapacity of convicted*	24 Jan 2007	Where there had been repeated refusals to accede to a prisoner's request to have his name added to the electoral register, a declaration was made that the Representation of the People Act 1983 s.3(1) was incompatible Art.3, Protocol 1 on the grounds that it imposed a blanket	**Draft Bill introduced to parliament in November 2012 containing three options (one of which is to maintain the status quo)**

prisoners to vote under s3 of the Representation of the People Act 1983.		ban on convicted prisoners voting in Parliamentary elections. This declaration was substantially similar to the judgment of the ECtHR in *Hirst v UK*.	The Government has not yet remedied this incompatibility. See also on this issue: *Hirst v UK*; *Greens and MT v UK* and *Scoppola v Italy*. A Committee is being set up to consider the options set out in the Voting Eligibility (Prisoners) Bill.[2]
R (F and Thompson) v Secretary of State for Justice [2008] EWHC 3170 (Admin) *The juvenile and adult claimants had been convicted of sexual offences. Under s82 of the Sexual Offences Act 2003, the nature of the offences they committed and the length of their sentences mean that they are subject to the notification requirements set out in Part 2 of that Act for an indefinite period. There is no statutory mechanism for reviewing the notification requirements.*	19 Dec 2008	The Sexual Offences Act 2003 s.82(1) was incompatible with Art 8 in subjecting certain sex offenders to notification requirements (including travel) indefinitely without the opportunity for review.	**Section 10 remedial order used to remedy the incompatibility.** The DoI was upheld by the Court of Appeal [2009] EWCA Civ 792 DoI also upheld by the Supreme Court [2010] UKSC 17 On 30 July 2012 the Sexual Offences Act 2003 was amended by the Sexual Offences Act

[2] See HC Deb, 4 March 2013, c791.

			2003 (Remedial) Order 2012 to introduce a mechanism which will enable registered sex offenders who are subject to notification requirements for life to apply for those requirements to be reviewed. **(Into force 30 July 2012)**
R (Royal College of Nursing) v SSHD [2010] EWHC 2761 (Admin) *A scheme established under the Safeguarding Vulnerable Groups Act 2006 stipulated that a person convicted or cautioned in respect of offences listed under the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 Sch.1 para.3 be placed on a list and barred from working with children or vulnerable adults.*	10 Nov 2010	The scheme established under the Safeguarding Vulnerable Groups Act (SVGA) 2006 was incompatible with Art 6 as the listed person was denied the right to make representations in advance of being listed.	**Ordinary legislation used to remedy the incompatibility.** Section 67(2) and (6) of the Protection of Freedoms Act 2012 amends Schedule 3 to the SVGA 2006. **(Into force 10 September 2012)**
T, R on the application of) v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice; AW, R (on the application of) v Secretary	29 Jan 2013	A Declaration of Incompatibility was issued in respect of the disclosure provisions under the Police Act 1997. The provisions were described as being	**Appeal pending** On 26 February 2013, the Home

of State for Justice and JB, R (on the application of) v Secretary of State for Justice [2013] EWCA Civ 25 *The disclosure of all criminal convictions and cautions for the purpose of an enhanced criminal record check ("ECRC") under the Police Act 1997 was challenged as being in violation of the Article 8 right to respect for private and family life.*		of a blanket nature and interfering with the right to respect for private life (Article 8) more than is necessary to achieve the purpose of protecting children and vulnerable adults.	Secretary and Justice Secretary filed an application with the Supreme Court for permission to appeal.

Part 2 - Declarations of Incompatibility made but overturned on appeal

Case Name & Court that made the declaration	Date of Original decision	Substance of declaration of incompatibility	Declaration overturned
R. (Alconbury Developments Ltd.) v Secretary of State for the Environment, Transport and the Regions (Divisional Court, Harrison J & Tuckey L.J) [2001] H.R.L.R. 2 *The Secretary of State's powers to determine planning applications were challenged on the basis that the dual role of the Secretary of State in formulating policy and taking decisions on applications inevitably resulted in a situation whereby applications could not be disposed of by an independent and impartial tribunal.*	13 Dec 2000	The Secretary of State's powers to determine planning applications were in breach of Article 6(1), to the extent that the Secretary of State as policy maker was also the decision-maker. A number of provisions were found to be in breach of this principle, including the Town and Country Planning Act 1990, sections 77, 78 and 79.	The House of Lords overturned the declarations, holding that although the Secretary of State was not himself an independent and impartial tribunal, decisions taken by him were not incompatible with article 6(1) provided they were subject to review by an independent and impartial tribunal which had full jurisdiction to deal with the case as the nature of the decision required. 9 May 2001 [2001] UKHL 23

Wilson v First County Trust Ltd (No.2) (Court of Appeal) [2001] EWCA Civ 633 *The case concerned a pawnbroker who entered into a regulated loan agreement but did not properly execute the agreement so that the permission of the court was required to enforce it.*	2 May 2001	Section 127(3) of the Consumer Credit Act 1974 was declared incompatible with the Article 6 and Article 1 Protocol 1 by the Court of Appeal to the extent that it caused an unjustified restriction to be placed on a creditor's enjoyment of contractual rights.	The House of Lords overturned the declaration stating that since section 127(3) does not bar access to the court to determine whether or not the agreement was in fact enforceable, it was not incompatible with Article 6. 10 Jul 2003 [2003] UKHL 40
Matthews v Ministry of Defence (QBD, Keith J) [2002] EWHC 13 (QB) *A navy engineer came into contact with asbestos lagging on boilers and pipes and developed pleural plaques and fibrosis as a result. The Secretary of State issued a certificate that stated that M's injury had been attributable to service and made an award of no fault compensation. The effect of the certificate, made under section 10 of the Crown Proceedings Act 1947, was to preclude the engineer from pursuing a personal injury claim for damages from the Navy due to the Crown's immunity in tort during that period. The engineer claimed this was a breach of Article 6.*	22 Jan 2002	Section 10 of the Crown Proceedings Act 1947, which precluded Mr Matthews from pursuing a personal injury claim for damages from the Navy, was incompatible with Article 6 of the ECHR in that it was disproportionate to meeting the aim of avoiding claims arising out of military training where operational conditions were being simulated since that was not the case here.	The House of Lords upheld the Court of Appeal decision ([2002] EWCA Civ 773) to overturn the declaration. It held that Article 6(1) applies only to civil rights which can, on arguable grounds, be recognised under domestic law and where the restriction on the right of access is procedural (and not substantive) in nature. 13 Feb 2003 [2003] UKHL 4

R (Uttley) v Secretary of State for the Home Department (Moses J) [2003] EWHC 950 *Uttley argued that his release on license was an additional penalty to which he would not have been subject at the time he was sentenced.*	8 Apr 2003	Sections 33(2), 37(4)(a) and 39 of the Criminal Justice Act 1991 were incompatible with the claimant's rights under Article 7, insofar as they provided that he would be released at the two-thirds point of his sentence on licence with conditions and be liable to be recalled to prison.	The House of Lords overturned the declaration, holding that the penalty that was "applicable" was the *maximum penalty* which the legislature prescribed for a criminal offence at the time it was committed. 30 Jul 2004 [2004] UKHL 38
R (on the Application of MH) v Secretary of State for Health (Court of Appeal) [2004] EWCA Civ 1609 *MH, a patient detained under section 2 of the Mental Health Act 1983, was incompetent to apply for discharge from detention. Her detention was extended by operation of provisions in the Mental Health Act 1983.*	3 Dec 2004	Section 2 of the Mental Health Act 1983 is incompatible with Article 5(4) of the ECHR in so far as: (i) it is not attended by provision for the reference to a court of the case of an incompetent patient detained under section 2 in circumstances where a patient has a right to make application to the MHRT but the incompetent patient is incapable of exercising that right; and (ii) it is not attended by a right for a patient to refer his	House of Lords overturned the declaration. The court held that the statutory scheme was capable of operating so as to give practical effect to the patient's rights under Article 5(4) since, amongst other things, tribunals were designed, by their composition and procedure, to provide appropriate expertise and easy access, and the Secretary of State could refer the patient's case at any stage under section 67 to a tribunal. 20 Oct 2005 [2005] UKHL 60

		case to a court when his detention is extended by the operation of section 29(4).	
Re MB (QBD) [2006] EWHC 1000 (Admin) *The Secretary of State's made a non-derogating control order under section 2 of the Prevention of Terrorism Act 2005 against MB, who he believed intended to travel to Iraq to fight against coalition forces.*	12 April 06	The procedure provided in s.3 of the Prevention of Terrorism Act 2005 for supervision by the court of non-derogating control orders was incompatible with D's right to a fair hearing under Art.6(1) of the Convention.	The Court of Appeal overturned the declaration on 1 August 2006 [2006] EWCA Civ 1140 The House of Lords upheld the decision to overturn the DoI and used s3 to read in fair trial rights [2007] UKHL 46 Para 4(3)(d) of the Schedule to the 2005 Act which provides that a court may not disclose material contrary to the public interest should be read and given effect "except where to do so would be incompatible with the right of the controlled person to a

			fair trial".
Javad Nasseri v Secretary of State for the Home Department [2007] EWHC 1548 (Admin) QBD (Admin) (McCombe J) *The case concerned a challenge by an Afghan national, to a decision to remove him to Greece under the terms of the Dublin Regulation. The issue was whether para 3 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which requires listed countries (including Greece) to be treated as countries from which a person will not be sent to another State in contravention of his Convention rights, is compatible with Article 3.*	2 July 2007	Schedule 3 para.3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 provided that the states listed at Sch.3 para.2 should be treated as places where an asylum seeker's life and liberty would not be threatened, and from where he would not be sent to another state in contravention of his human rights. The provisions of Sch.3 para.3 were incompatible with the ECHR Art.3 because they operated to prevent the Secretary of State or the court from investigating a potential breach of Art.3.	The Court of Appeal overturned the declaration 14 May 2008 [2008] EWCA Civ 464 Upheld by House of Lords 6 May 2009 [2009] UKHL 23 The court said that Article 3 does not impose a freestanding procedural obligation to investigate whether there was a risk of a breach of Article 3 by the receiving state, independently of whether such a risk actually existed. EU Member States are entitled to assume adherence to Treaty obligations (here

			ECHR) unless the evidence showed otherwise.
R (Black) v Secretary of State for Justice [2008] EWCA Civ 359 *The case concerned the application of Art 5(4) to the early release of determinate sentence prisoners subject to the release arrangements in the Criminal Justice Act 1991. Under s35(1) the decision whether to release long-term prisoners serving 15 years or more who have reached the halfway point of their sentence, when they become eligible for parole, lies with the Secretary of State rather than the Parole Board. Section 35(1) was repealed and replaced by the Criminal Justice Act 2003. However, it continues to apply on a transitional basis to offences committed before 4 April 2005.*	15 April 2008	s35 Criminal Justice Act 1991 was incompatible with Art 5 (4) because if left the decision as to release of prisoners in the hands of the executive.	The House of Lords overturned the declaration 21 Jan 2009 [2009] UKHL 1 The court held that sentences for a determinate period, where the lawfulness of the detention for the purposes of article 5(4) has been satisfied by the original sentencing procedures, the implementation of that sentence can properly be left to the executive unless some new issue arises affecting the lawfulness of the detention.