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## SCHEDULES

### SCHEDULE 1

Section 1(3).

#### THE ARTICLES

#### PART I

#### THE CONVENTION

#### RIGHTS AND FREEDOMS

#### *ARTICLE 2*

##### *RIGHT TO LIFE*

- 1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2 Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### *ARTICLE 3*

##### *PROHIBITION OF TORTURE*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### *ARTICLE 4*

##### *PROHIBITION OF SLAVERY AND FORCED LABOUR*

- 1 No one shall be held in slavery or servitude.
- 2 No one shall be required to perform forced or compulsory labour.
- 3 For the purpose of this Article the term "forced or compulsory labour" shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

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- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

## **ARTICLE 5**

### *RIGHT TO LIBERTY AND SECURITY*

- 1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3 Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

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## **ARTICLE 6**

### *RIGHT TO A FAIR TRIAL*

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3 Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## **ARTICLE 7**

### *NO PUNISHMENT WITHOUT LAW*

- 1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
- 2 This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

## **ARTICLE 8**

### *RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE*

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of

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the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### **ARTICLE 9**

#### *FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION*

- 1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
- 2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

### **ARTICLE 10**

#### *FREEDOM OF EXPRESSION*

- 1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- 2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

### **ARTICLE 11**

#### *FREEDOM OF ASSEMBLY AND ASSOCIATION*

- 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

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## **ARTICLE 12**

### *RIGHT TO MARRY*

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

## **ARTICLE 14**

### *PROHIBITION OF DISCRIMINATION*

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## **ARTICLE 16**

### *RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS*

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

## **ARTICLE 17**

### *PROHIBITION OF ABUSE OF RIGHTS*

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

## **ARTICLE 18**

### *LIMITATION ON USE OF RESTRICTIONS ON RIGHTS*

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

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## PART II

### THE FIRST PROTOCOL

#### ARTICLE 1

##### PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

#### ARTICLE 2

##### RIGHT TO EDUCATION

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

#### ARTICLE 3

##### RIGHT TO FREE ELECTIONS

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

### [<sup>F1</sup>PART 3

#### ARTICLE 1 OF THE THIRTEENTH PROTOCOL

##### ABOLITION OF THE DEATH PENALTY

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#### Textual Amendments

**F1** Sch. 1 Pt. 3 substituted (22.6.2004) by [The Human Rights Act 1998 \(Amendment\) Order 2004 \(S.I. 2004/1574\)](#), art. 2(3)

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.]

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## PART III

### THE SIXTH PROTOCOL

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#### SCHEDULE 2

Section 10.

#### REMEDIAL ORDERS

##### *Orders*

- 1 (1) A remedial order may—
  - (a) contain such incidental, supplemental, consequential or transitional provision as the person making it considers appropriate;
  - (b) be made so as to have effect from a date earlier than that on which it is made;
  - (c) make provision for the delegation of specific functions;
  - (d) make different provision for different cases.
- (2) The power conferred by sub-paragraph (1)(a) includes—
  - (a) power to amend primary legislation (including primary legislation other than that which contains the incompatible provision); and
  - (b) power to amend or revoke subordinate legislation (including subordinate legislation other than that which contains the incompatible provision).
- (3) A remedial order may be made so as to have the same extent as the legislation which it affects.
- (4) No person is to be guilty of an offence solely as a result of the retrospective effect of a remedial order.

##### *Procedure*

- 2 No remedial order may be made unless—
  - (a) a draft of the order has been approved by a resolution of each House of Parliament made after the end of the period of 60 days beginning with the day on which the draft was laid; or
  - (b) it is declared in the order that it appears to the person making it that, because of the urgency of the matter, it is necessary to make the order without a draft being so approved.

##### *Orders laid in draft*

- 3 (1) No draft may be laid under paragraph 2(a) unless—
  - (a) the person proposing to make the order has laid before Parliament a document which contains a draft of the proposed order and the required information; and
  - (b) the period of 60 days, beginning with the day on which the document required by this sub-paragraph was laid, has ended.

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- (2) If representations have been made during that period, the draft laid under paragraph 2(a) must be accompanied by a statement containing—
- (a) a summary of the representations; and
  - (b) if, as a result of the representations, the proposed order has been changed, details of the changes.

#### *Urgent cases*

- 4 (1) If a remedial order (“the original order”) is made without being approved in draft, the person making it must lay it before Parliament, accompanied by the required information, after it is made.
- (2) If representations have been made during the period of 60 days beginning with the day on which the original order was made, the person making it must (after the end of that period) lay before Parliament a statement containing—
- (a) a summary of the representations; and
  - (b) if, as a result of the representations, he considers it appropriate to make changes to the original order, details of the changes.
- (3) If sub-paragraph (2)(b) applies, the person making the statement must—
- (a) make a further remedial order replacing the original order; and
  - (b) lay the replacement order before Parliament.
- (4) If, at the end of the period of 120 days beginning with the day on which the original order was made, a resolution has not been passed by each House approving the original or replacement order, the order ceases to have effect (but without that affecting anything previously done under either order or the power to make a fresh remedial order).

#### *Definitions*

- 5 In this Schedule—
- “representations” means representations about a remedial order (or proposed remedial order) made to the person making (or proposing to make) it and includes any relevant Parliamentary report or resolution; and
- “required information” means—
- (a) an explanation of the incompatibility which the order (or proposed order) seeks to remove, including particulars of the relevant declaration, finding or order; and
  - (b) a statement of the reasons for proceeding under section 10 and for making an order in those terms.

#### *Calculating periods*

- 6 In calculating any period for the purposes of this Schedule, no account is to be taken of any time during which—
- (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.

- [<sup>F57</sup> (1) This paragraph applies in relation to—



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- (a) any remedial order made, and any draft of such an order proposed to be made,—
    - (i) by the Scottish Ministers; or
    - (ii) within devolved competence (within the meaning of the Scotland Act 1998) by Her Majesty in Council; and
  - (b) any document or statement to be laid in connection with such an order (or proposed order).
- (2) This Schedule has effect in relation to any such order (or proposed order), document or statement subject to the following modifications.
  - (3) Any reference to Parliament, each House of Parliament or both Houses of Parliament shall be construed as a reference to the Scottish Parliament.
  - (4) Paragraph 6 does not apply and instead, in calculating any period for the purposes of this Schedule, no account is to be taken of any time during which the Scottish Parliament is dissolved or is in recess for more than four days.]

#### Textual Amendments

**F5** Sch. 2 para. 7 inserted (27.7.2000) by S.I. 2000/2040, art. 2, Sch. Pt. I para. 21 (with art. 3)

## SCHEDULE 3

Sections 14 and 15.

### DEROGATION AND RESERVATION

#### [<sup>F6</sup>PART I

#### DEROGATION]

#### Textual Amendments

**F6** Sch. 3 Pt. I inserted (20.12.2001) by S.I. 2001/4032, art. 2, Sch.

#### *United Kingdom's derogation from Article 5(1)*

The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary General of the Council, and has the honour to convey the following information in order to ensure compliance with the obligations of Her Majesty's Government in the United Kingdom under Article 15(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950.

#### *Public emergency in the United Kingdom*

The terrorist attacks in New York, Washington, D.C. and Pennsylvania on 11th September 2001 resulted in several thousand deaths, including many British victims and others from 70 different countries. In its resolutions 1368 (2001) and 1373 (2001), the United Nations Security Council recognised the attacks as a threat to international peace and security.

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The threat from international terrorism is a continuing one. In its resolution 1373 (2001), the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks.

There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or groups, and who are a threat to the national security of the United Kingdom.

As a result, a public emergency, within the meaning of Article 15(1) of the Convention, exists in the United Kingdom.

*The Anti-terrorism, Crime and Security Act 2001*

As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, inter alia, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic law powers. The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ("SIAC"), established under the Special Immigration Appeals Commission Act 1997, which will have power to cancel it if it considers that the certificate should not have been issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, the certificate will be reviewed by SIAC at regular intervals. SIAC will also be able to grant bail, where appropriate, subject to conditions. It will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom.

The extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001 is a measure which is strictly required by the exigencies of the situation. It is a temporary provision which comes into force for an initial period of 15 months and then expires unless renewed by Parliament. Thereafter, it is subject to annual renewal by Parliament. If, at any time, in the Government's assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order, repeal the provision.

*Domestic law powers of detention (other than under the Anti-terrorism, Crime and Security Act 2001)*

The Government has powers under the Immigration Act 1971 ("the 1971 Act") to remove or deport persons on the ground that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation. The courts in the United Kingdom have ruled that this power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful (*R v Governor of Durham Prison, ex parte Singh* [1984] 1A11 ER 983).

*Article 5(1)(f) of the Convention*

It is well established that Article 5(1)(f) permits the detention of a person with a view to deportation only in circumstance where "action is being taken with a view to deportation" (*Chahal v United Kingdom* (1996) 23 EHRR 413 at paragraph 112). In that case the European Court of Human Rights indicated that detention will cease to be

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permissible under Article 5(1)(f) if deportation proceedings are not prosecuted with due diligence and that it was necessary in such cases to determine whether the duration of the deportation proceedings was excessive (paragraph 113).

In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with Article 5(1)(f) as interpreted by the Court in the *Chahal* case. This may be the case, for example, if the person has established that removal to their own country might result in treatment contrary to Article 3 of the Convention. In such circumstances, irrespective of the gravity of the threat to national security posed by the person concerned, it is well established that Article 3 prevents removal or deportation to a place where there is a real risk that the person will suffer treatment contrary to that article. If no alternative destination is immediately available then removal or deportation may not, for the time being, be possible even though the ultimate intention remains to remove or deport the person once satisfactory arrangements can be made. In addition, it may not be possible to prosecute the person for a criminal offence given the strict rules on the admissibility of evidence in the criminal justice system of the United Kingdom and the high standard of proof required.

#### *Derogation under Article 15 of the Convention*

The Government has considered whether the exercise of the extended power to detain contained in the Anti-terrorism, Crime and Security Act 2001 may be inconsistent with the obligations under Article 5(1) of the Convention. As indicated above, there may be cases where, notwithstanding a continuing intention to remove or deport a person who is being detained, it is not possible to say that “action is being taken with a view to deportation” within the meaning of Article 5(1)(f) as interpreted by the Court in the *Chahal* case. To the extent, therefore, that the exercise of the extended power may be inconsistent with the United Kingdom’s obligations under Article 5(1), the Government has decided to avail itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.

## PART II

### RESERVATION

At the time of signing the present (First) Protocol, I declare that, in view of certain provisions of the Education Acts in the United Kingdom, the principle affirmed in the second sentence of Article 2 is accepted by the United Kingdom only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure.

Dated 20 March 1952

Made by the United Kingdom Permanent Representative to the Council of Europe.

## SCHEDULE 4

Section 18(6).

### JUDICIAL PENSIONS

#### *Duty to make orders about pensions*

- (1) The appropriate Minister must by order make provision with respect to pensions payable to or in respect of any holder of a judicial office who serves as an ECHR judge.

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- (2) A pensions order must include such provision as the Minister making it considers is necessary to secure that—
- (a) an ECHR judge who was, immediately before his appointment as an ECHR judge, a member of a judicial pension scheme is entitled to remain as a member of that scheme;
  - (b) the terms on which he remains a member of the scheme are those which would have been applicable had he not been appointed as an ECHR judge; and
  - (c) entitlement to benefits payable in accordance with the scheme continues to be determined as if, while serving as an ECHR judge, his salary was that which would (but for section 18(4)) have been payable to him in respect of his continuing service as the holder of his judicial office.

#### *Contributions*

- 2 A pensions order may, in particular, make provision—
- (a) for any contributions which are payable by a person who remains a member of a scheme as a result of the order, and which would otherwise be payable by deduction from his salary, to be made otherwise than by deduction from his salary as an ECHR judge; and
  - (b) for such contributions to be collected in such manner as may be determined by the administrators of the scheme.

#### *Amendments of other enactments*

- 3 A pensions order may amend any provision of, or made under, a pensions Act in such manner and to such extent as the Minister making the order considers necessary or expedient to ensure the proper administration of any scheme to which it relates.

#### *Definitions*

- 4 In this Schedule—
- “appropriate Minister” means—
- (a) in relation to any judicial office whose jurisdiction is exercisable exclusively in relation to Scotland, the Secretary of State; and
  - (b) otherwise, the Lord Chancellor;
- “ECHR judge” means the holder of a judicial office who is serving as a judge of the Court;
- “judicial pension scheme” means a scheme established by and in accordance with a pensions Act;
- “pensions Act” means—
- (a) the <sup>M1</sup>County Courts Act Northern Ireland) 1959;
  - (b) the <sup>M2</sup>Sheriffs’ Pensions (Scotland) Act 1961;
  - (c) the <sup>M3</sup>Judicial Pensions Act 1981; or
  - (d) the <sup>M4</sup>Judicial Pensions and Retirement Act 1993; and
- “pensions order” means an order made under paragraph 1.

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**Marginal Citations**

- M1** 1959 c. 25 (N.I.).
- M2** 1961 c. 42.
- M3** 1981 c. 20.
- M4** 1993 c. 8.

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