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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made following the making by the United Kingdom of a derogation from Article 5(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), agreed by the Council of Europe at Rome on 4th November 1950. Article 5(1) provides that everyone has the right to liberty and security of person and that no one shall be deprived of his liberty save in the cases set out in that Article and in accordance with a procedure prescribed by law. One of the exceptions is contained in sub-paragraph (1)(f) of Article 5 which permits 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.

Section 23 of the Anti-terrorism, Crime and Security Act 2001 contains an extended power to arrest and detain a foreign national where it is intended to remove or deport the person from the United Kingdom because the Secretary of State believes that his presence is a risk to national security and suspects him of being an international terrorist, but where such removal or deportation is not for the time being possible. In such cases, detention may be incompatible with Article 5(1)(f) of the Convention because it is not for the time being possible to take action with a view to deportation, for example, if deportation would result in treatment contrary to Article 3 of the Convention.

This Order amends Schedule 3 to the Human Rights Act 1998, to set out the derogation by the United Kingdom from Article 5(1) of the Convention.