

# HUMAN RIGHTS ACT 2001

## Chapter 1

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## AN ACT

to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; and for connected purposes.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

### *Introduction*

#### **1. The Convention and the Sixth Protocol**

(1) In this Act, "the Convention rights" means the rights and fundamental freedoms set out in —

- (a) Articles 2 to 12 and 14 of the Convention;
- (b) Articles 1 and 2 of the Sixth Protocol,

as read with Articles 16 to 18 of the Convention.

(2) Those Articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 13 and 15).

(3) The Articles are set out in Schedule 1.

(4) The Council of Ministers may by order make such amendments to this Act as it considers appropriate to reflect the effect, in relation to the Island, of a protocol.

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(5) In subsection (4), "protocol" means a protocol to the Convention which —

- (a) the United Kingdom has ratified on behalf of the Island; or
- (b) the United Kingdom has signed with a view to ratification on behalf of the Island.

(6) No amendment may be made by an order under subsection (4) so as to come into operation before the protocol concerned is in force in relation to the Island.

**2. Interpretation of Convention rights**

(1) A court or tribunal determining a question which has arisen under this Act in connection with a Convention right must take into account any —

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
- (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
- (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
- (d) decision of the Committee of Ministers taken under Article 46 of the

Convention,

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.

*Interpretation of legislation*

**3. Legislation**

(1) So far as it is possible to do so, Acts and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section —

- (a) applies to Acts and subordinate legislation whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any incompatible Act; and
- (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if

(disregarding any possibility of revocation) an Act prevents removal of the incompatibility.

#### **4. Declaration of incompatibility**

(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of an Act is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by an Act, is compatible with a Convention right.

(4) If the court is satisfied —

- (a) that the provision is incompatible with a Convention right, and
- (b) that (disregarding any possibility of revocation) the Act concerned prevents removal of the incompatibility,

it may make a declaration of that incompatibility.

(5) In this section, "court" means —

- (a) the Judicial Committee of the Privy Council;
- (b) the High Court.

(6) A declaration under this section (in this Act referred to as "a declaration of incompatibility") —

- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
- (b) is not binding on the parties to the proceedings in which it is made.

#### **5. Right of intervention**

(1) Where a court is considering whether to make a declaration of incompatibility, the Attorney General is entitled to notice in accordance with rules of court.

(2) In any case to which subsection (1) applies, the Attorney General (or a person nominated by him) is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.

(3) Notice under subsection (2) may be given at any time during the proceedings.

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(4) A person who has been made a party to criminal proceedings as the result of a notice under subsection (2) may, with leave, appeal against any declaration of incompatibility made in the proceedings.

(5) If a court makes a declaration of incompatibility, it shall cause a copy of that declaration to be served on the Attorney General, whether or not he is a party to proceedings under this section or otherwise.

*Public authorities*

**6. Acts of public authorities**

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if —

- (a) as the result of one or more provisions of an Act, the authority could not have acted differently; or
- (b) in the case of one or more provisions of, or made under, an Act which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section, "public authority" includes —

- (a) a court or tribunal, and
- (b) any person certain of whose functions are functions of a public nature,

but, subject to subsection (4), does not include —

- (i) Tynwald;
- (ii) the Legislative Council;
- (iii) the House of Keys; or
- (iv) a person exercising functions in connection with proceedings in Tynwald, the Legislative Council or the House of Keys.

(4) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.

(5) In this section, "an act" includes a failure to act but does not include a failure to —

- (a) introduce in, or lay before, Tynwald, the Legislative Council or the House of Keys a proposal for legislation; or
- (b) pass any Act.

## **7. Proceedings**

(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may —

- (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
- (b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a victim of the unlawful act.

(2) In subsection (1)(a), "appropriate court or tribunal" means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.

(3) If the proceedings are made by way of petition of doléance, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.

(4) Proceedings under subsection (1)(a) must be brought before the end of —

- (a) the period of one year beginning with the date on which the act complained of took place; or
- (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule of law imposing a stricter time limit in relation to the procedure in question.

(5) In subsection (1)(b) "legal proceedings" includes —

- (a) proceedings brought by or at the instigation of a public authority; and
- (b) an appeal against the decision of a court or tribunal.

(6) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

## **8. Judicial remedies**

(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.

(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.

(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including —

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- (a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and
- (b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

- (4) In determining —
  - (a) whether to award damages, or
  - (b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) public authority against which damages are awarded is to be treated for the purposes of the Civil Liability (Contribution) Act 1981 as liable in respect of damage suffered by the person to whom the award is made.

- (6) In this section —
  - "court" includes a tribunal;
  - "damages" means damages for an unlawful act of a public authority; and
  - "unlawful" means unlawful under section 6(1).

## **9. Judicial acts**

(1) Proceedings under section 7(1)(a) in respect of a judicial act may be brought only —

- (a) by exercising a right of appeal;
- (b) on a petition of dolence; or
- (c) in such other forum as may be prescribed by rules.

(2) That does not affect any rule of law which prevents a court from being the subject of judicial review under a petition of dolence.

(3) In proceedings under this Act in respect of a judicial act done in good faith, damages may not be awarded otherwise than to compensate a person to the extent required by Article 5(5) of the Convention.

(4) An award of damages permitted by subsection (3) is to be made against the Treasury; but no award may be made unless the Attorney General (or a person nominated by him), if not a party to the proceedings, is joined.

- (5) In this section —
  - "court" includes a tribunal;
  - "judge" includes a member of a tribunal, a justice of the peace and a clerk or other officer entitled to exercise the jurisdiction of a court;

"judicial act" means a judicial act of a court and includes an act done on the instructions, or on behalf, of a judge.

*Other rights and proceedings*

**10. Safeguard for existing human rights**

A person's reliance on a Convention right does not restrict —

- (a) any other right or freedom conferred on him by or under any law having effect in the Island; or
- (b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 7 to 9.

**11. Freedom of expression**

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied —

- (a) that the applicant has taken all practicable steps to notify the respondent; or
- (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to —

- (a) the extent to which —
  - (i) the material has, or is about to, become available to the public; or
  - (ii) it is, or would be, in the public interest for the material to be published;
- (b) any relevant privacy code.

(5) In this section —

"court" includes a tribunal; and

"relief" includes any remedy or order (other than in criminal proceedings).

**12. Freedom of thought, conscience and religion**

(1) If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

(2) In this section, "court" includes a tribunal.

*Derogations and reservations*

**13. Derogations and reservations**

(1) In this Act, "designated derogation" means —

(a) the derogation from Article 5(3) of the Convention which is set out in Schedule 2; and

(b) any other derogation from an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Council of Ministers.

(2) In this Act, "designated reservation" means any reservation to an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Council of Ministers.

(3) A designation order may be made under subsection (1)(b) in anticipation of the making of a proposed derogation.

(4) The Council of Ministers must by order make such amendments to this Act as are necessary to reflect any designation order under subsection (1)(b) or (2).

(5) In this section, any reference to a derogation or a reservation is a reference to a derogation or reservation by the United Kingdom on behalf of the Island.

**14. Period for which designated derogations and reservations have effect**

(1) If an order under section 13 designating a derogation or reservation has not already been revoked, that derogation or reservation ceases to be designated for the purposes of this Act when —

(a) in the case of a reservation, it is withdrawn, whether in whole or in part; or

(b) in the case of a derogation, when it is amended or replaced.

(2) The Council of Ministers must by order make such amendments to this Act as are necessary to reflect the effect of subsection (1).

(3) Subsection (1) does not prevent the Council of Ministers from exercising its powers under subsection (1)(b) or subsection (2) of section 13 to make a fresh designation order.

**15. Periodic reviews of designated derogations and reservations: reports to Tynwald**

(1) The Council of Ministers must review all extant designated derogations and designated reservations at least once in each succeeding period of 5 years following the date on which section 13 comes into operation.

(2) The Council of Ministers must cause a report on the results of the review to be prepared and laid before Tynwald.

(3) Where the Council of Ministers has notice of the happening of any of the events specified in paragraphs (a) and (b) of section 14(1) it must cause a report to be laid before Tynwald.

*Parliamentary procedure*

**16. Statements of compatibility**

The explanatory memorandum of a Bill in the Legislative Council or the House of Keys must include either —

- (a) a statement to the effect that in the view of the member moving the Bill, its provisions are compatible with the Convention rights; or
- (b) a statement to the effect that although the member is unable to make such a statement the member nevertheless wishes to proceed with the Bill.

*Supplemental*

**17. Rules and orders**

(1) In this Act (with the exception of section 18), "rules" means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this Act by the Deemsters.

(2) In making rules for the purpose of section 7, regard must be had to section 9.

(3) All orders and rules under this Act (with the exception of orders under section 23(2)) shall be laid before Tynwald as soon as practicable after they are made, and if at the sitting at which any order or rule is laid or at the next following sitting Tynwald fails to approve it, the order or rule shall cease to have effect.

**18. Extension of enabling powers**

(1) A Department or other body or person which has power to make rules in relation to a particular tribunal may, to the extent it considers it necessary to ensure that the tribunal can provide an appropriate remedy in relation to an act (or proposed act) of a public authority which is (or would be) unlawful as a result of section 6(1), by order add to —

- (a) the relief or remedies which the tribunal may grant; or
- (b) the grounds on which it may grant any of them.

(2) An order made under subsection (1) may contain such incidental, supplemental, consequential or transitional provision as the Department, body or person making it considers appropriate.

**19. Interpretation etc.**

(1) In this Act —

"Act" means —

- (a) an Act of Tynwald;
- (b) an Act of Parliament which has effect in the Island (directly or by virtue of an Order in Council);
- (c) a Church Measure which has effect in the Island;
- (d) an Order in Council made in exercise of Her Majesty's Royal Prerogative and which extends to or has effect in respect of the Island;

and includes any provision of a public document, instrument or Order in Council which is excluded from the definition of "subordinate legislation";

"Church Measure" means —

- (a) a Measure of the Church Assembly;
- (b) a Measure of the General Synod of the Church of England;
- (c) a Measure enacted in accordance with the Church Legislation Procedure Act 1993;
- (d) a Measure under the Church (Application of General Synod Measures) Act 1979 which continues to have effect by virtue of section 5(1) of the Church Legislation Procedure Act 1993;

"the Commission" means the European Commission of Human Rights;

"the Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the Island;

"declaration of incompatibility" means a declaration under section 4;

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"11th Protocol" means the protocol to the Convention (restructuring the control machinery established by the Convention) agreed at Strasbourg on 11th May 1994;

"6th Protocol" means the protocol to the Convention agreed at Strasbourg on 28th April 1983;

"subordinate legislation" means —

- (a) any public document; and
- (b) any instrument of a legislative character which has effect in, or in relation to, the Island and which is made under —
  - (i) an Act of Parliament; or
  - (ii) a Church Measure;

but does not include —

- 1. any provision of a public document or an instrument referred to in paragraph (b) which amends an Act;
- 2. any provision of an Order in Council which extends a provision of an Act of Parliament to the Island; or
- 3. any provision of a public document or an instrument referred to in paragraph (b) which operates to bring one or more provisions of an Act into operation;

"tribunal" means any tribunal in which legal proceedings may be brought.

(2) The references in section 2(1)(b) and (c) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the 11th Protocol.

(3) The reference in section 2(1)(d) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the 11th Protocol.

(4) The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the 11th Protocol (transitional provisions).

**20. Saving for criminal law**

Nothing in this Act creates a criminal offence.

**21. Application to Crown**

This Act binds the Crown.

**22. Transitional**

Section 7(1)(b) applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise that subsection does not apply to an act committed before the coming into force of that section.

**23. Short title and commencement**

(1) This Act may be cited as the Human Rights Act 2001.

(2) This Act shall come into force on such day as the Council of Ministers may by order appoint; and different days may be appointed for different purposes.

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Section 1(3)

## SCHEDULE 1 THE ARTICLES

### PART I THE CONVENTION

#### *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;
  - (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;

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- (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.

### *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.

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### *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 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.

### *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,

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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.

## **PART II**

### **THE SIXTH PROTOCOL**

#### *Article 1*

#### *Abolition of the death penalty*

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

#### *Article 2*

#### *Death penalty in time of war*

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

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Section 13(1)(a)

### SCHEDULE 2

#### THE 1988 DEROGATION

##### *The 1988 notification*

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.

There have been in the United Kingdom in recent years campaigns of organised terrorism connected with the affairs of Northern Ireland which have manifested themselves in activities which have included repeated murder, attempted murder, maiming, intimidation and violent civil disturbance and in bombing and fire raising which have resulted in death, injury and widespread destruction of property. As a result, a public emergency within the meaning of Article 15(1) of the Convention exists in the United Kingdom.

The Government found it necessary in 1974 to introduce and since then, in cases concerning persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of certain offences under the legislation, who have been detained for 48 hours, to exercise powers enabling further detention without charge, for periods of up to five days, on the authority of the Secretary of State. These powers are at present to be found in Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.

Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984 provides for a person whom a constable has arrested on reasonable grounds of suspecting him to be guilty of an offence under Section 1, 9 or 10 of the Act, or to be or to have been involved in terrorism connected with the affairs of Northern Ireland, to be detained in right of the arrest for up to 48 hours and thereafter, where the Secretary of State extends the detention period, for up to a further five days. Section 12 substantially re-enacted Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1976 which, in turn, substantially re-enacted Section 7 of the Prevention of Terrorism (Temporary Provisions) Act 1974.

Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 (SI 1984/417) and Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 (SI 1984/418) were both made under Sections 13 and 14 of and Schedule 3 to the 1984 Act and substantially re-enacted powers of detention in Orders made under the 1974 and 1976 Acts. A person who is being examined under Article 4 of either Order on his arrival in, or on seeking to leave, Northern Ireland or Great Britain for the purpose of determining whether he is or has been involved in terrorism connected with the affairs of Northern Ireland, or whether there are grounds for suspecting that he has committed an offence under Section 9 of the 1984 Act, may be detained under Article 9 or 10, as appropriate, pending the conclusion of his examination. The period of this examination may exceed 12 hours if an examining officer has reasonable grounds for suspecting him to be or to have been involved in acts of terrorism connected with the affairs of Northern Ireland.

Where such a person is detained under the said Article 9 or 10 he may be detained for up to 48 hours on the authority of an examining officer and thereafter, where the Secretary of State extends the detention period, for up to a further five days.

In its judgment of 29 November 1988 in the Case of *Brogan and Others*, the European Court of Human Rights held that there had been a violation of Article 5(3) in respect of each of the applicants, all of whom had been detained under Section 12 of the 1984 Act. The Court held that even the shortest of the four periods of detention concerned, namely four days and six hours, fell outside the constraints as to time permitted by the first part of Article 5(3). In addition, the Court held that there had been a violation of Article 5(5) in the case of each applicant.

## *Human Rights Act 2001*

Following this judgment, the Secretary of State for the Home Department informed Parliament on 6 December 1988 that, against the background of the terrorist campaign, and the over-riding need to bring terrorists to justice, the Government did not believe that the maximum period of detention should be reduced. He informed Parliament that the Government were examining the matter with a view to responding to the judgment. On 22 December 1988, the Secretary of State further informed Parliament that it remained the Government's wish, if it could be achieved, to find a judicial process under which extended detention might be reviewed and where appropriate authorised by a judge or other judicial officer. But a further period of reflection and consultation was necessary before the Government could bring forward a firm and final view.

Since the judgment of 29 November 1988 as well as previously, the Government have found it necessary to continue to exercise, in relation to terrorism connected with the affairs of Northern Ireland, the powers described above enabling further detention without charge for periods of up to 5 days, on the authority of the Secretary of State, to the extent strictly required by the exigencies of the situation to enable necessary enquiries and investigations properly to be completed in order to decide whether criminal proceedings should be instituted. To the extent that the exercise of these powers may be inconsistent with the obligations imposed by the Convention the Government has availed itself of the right of derogation conferred by Article 15(1) of the Convention and will continue to do so until further notice.

Dated 23 December 1988.

### *The 1989 notification*

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 his communication to the Secretary General of 23 December 1988, reference was made to the introduction and exercise of certain powers under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984.

These provisions have been replaced by section 14 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989, which make comparable provision. They came into force on 22 March 1989. A copy of these provisions is enclosed.

The United Kingdom Permanent Representative avails himself of this opportunity to renew to the Secretary General the assurance of his highest consideration.

23 March 1989.

### *The 1998 notification*

On the instructions of my authorities, I have the honour to convey to you the following information.

In his communications from this Delegation to the then Secretary General of 23 December 1988 and 23 March 1989, reference was made to the introduction and exercise of certain powers under Section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1984, Article 9 of the Prevention of Terrorism (Supplemental Temporary Provisions) Order 1984 and Article 10 of the Prevention of Terrorism (Supplemental Temporary Provisions) (Northern Ireland) Order 1984 and to the replacement of those provisions by Section 14 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Temporary Provisions) Act 1989.

These powers were previously extended by Order in Council to cover the Channel Islands and the Isle of Man. Following the adoption, by the authorities in Jersey, Guernsey and the Isle of Man of legislation making comparable provision, the relevant orders in Council have been repealed. A copy of the new legislation for the Isle of Man, Guernsey and Jersey is enclosed. In respect of the Isle of Man the relevant provisions are Section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism Act 1990 which entered into force on 1 December 1990. In respect of Guernsey the relevant provisions are Section 12 of and paragraph 6 of Schedule 5 to the Prevention of Terrorism (Bailiwick of Guernsey) Law 1990 which entered into force on 1 January 1991. In respect of Jersey the relevant provisions are Article 13 of and

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paragraph 6 of Schedule 5 to the Prevention of Terrorism (Jersey) Law 1996 which entered into force on 1 July 1996.

I avail myself of this opportunity to renew to you, Sir, the assurances of my highest consideration.

12 November 1998.