

**EXPLANATORY MEMORANDUM TO THE  
HUMAN RIGHTS ACT 1998 (AMENDMENT) ORDER 2005**

**2005 No. 1071**

1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

- 2.1. This instrument repeals Part I, Schedule 3, to the Human Rights Act 1998 (“the 1998 Act”). The repeal reflects the withdrawal by the United Kingdom of its derogation from the European Convention on Human Rights (“the Convention”). The derogation concerned detention provisions in the Anti-terrorism, Crime and Security Act 2001 (“the 2001 Act”), which were repealed with effect from 14 March 2005 by the Prevention of Terrorism Act 2005. The United Kingdom notified the Secretary General of the Council of Europe on 16<sup>th</sup> March, 2005 of the withdrawal of its derogation.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1. This instrument comes into force less than 21 days after it is laid. This instrument is not a controversial measure, and it does not affect a person’s rights. Instead, it is a consequential measure, and its purpose is to ensure that the 1998 Act accurately reflects the withdrawal of the United Kingdom’s derogation from the Convention. In the circumstances, it was considered appropriate to amend the 1998 Act quickly, so that it correctly reflects the present state of affairs. (The 21 day rule was not observed in relation to previous orders that amended the 1998 Act to reflect the making or withdrawal of derogations: see SI 2001/1216 (repealed Part I of Schedule 3 of the 1998 Act, to reflect withdrawal of a derogation), and SI 2001/4032 (inserted new Part I of Schedule 3, to reflect making of a new derogation)).

**4. Legislative Background**

- 4.1. The Secretary of State is required by sections 14(5) and 16(7) of the 1998 Act to amend that Act to reflect both the making of derogations by the United Kingdom, where such derogations are designated by order, and the withdrawal of derogations.

**5. Extent**

5.1. This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1. The Secretary of State for Constitutional Affairs, Lord Falconer of Thoroton, has made the following statement regarding Human Rights:

“In my view the provisions of the Human Rights Act 1998 (Amendment) Order 2005 are compatible with the Convention rights.”

## **7. Policy objectives**

7.1. This instrument ensures that the Secretary of State complies with his duty under the 1998 Act to amend that Act, to reflect the withdrawal by the United Kingdom of its derogation from the Convention.

## **8. Impact**

8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

9.1. Edward Adams at the Department for Constitutional Affairs (0207 210 8746, Edward.Adams@dca.gsi.gov.uk) can answer any queries regarding the instrument.