

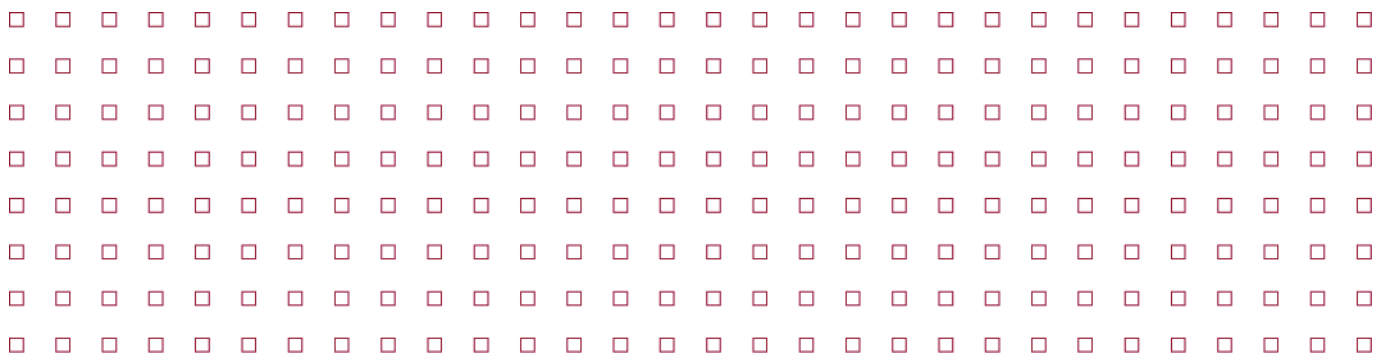


Ministry of  
**JUSTICE**

# **United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment**

5<sup>th</sup> Report by the United Kingdom of  
Great Britain and Northern Ireland

September 2011







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**JUSTICE**

**United Nations Convention Against Torture  
and Other Cruel, Inhuman or Degrading  
Treatment**

5th Report by the United Kingdom of Great Britain  
and Northern Ireland

(Part 1) Metropolitan Area

(Part 2) UK Crown Dependencies

(Part 3) UK Overseas Territories

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## INTRODUCTION

1. This is the fifth report by the United Kingdom under Article 19 of the United Nations Convention Against Torture. It provides information on how the UK has continued to fulfil its obligations under the Convention since the examination of the UK's 4<sup>th</sup> report in November 2004 and the supplementary update provided to the Committee Against Torture in March 2006 (CAT/C/GBR/CO/4/Add.1).
2. The United Kingdom is a unitary State comprising England, Wales, Scotland and Northern Ireland (but not the Crown Dependencies: i.e. the Isle of Man and the Channel Islands). References in this report to 'Great Britain' means England, Wales and Scotland taken together. This report has been compiled with the full cooperation of the devolved administrations of Wales, Scotland and Northern Ireland.
3. The fifth periodic report of the Crown Dependencies of the United Kingdom (Guernsey, Jersey and the Isle of Man) is submitted as Part 2 of this report. The fourth periodic report of the UK Overseas Territories is submitted as Part 3 of this report.

### **Domestic prohibition of torture**

4. Torture is a criminal offence in the United Kingdom under section 134 of the Criminal Justice Act 1988, and it carries a maximum penalty of life imprisonment. The Human Rights Act 1998, which came into force in October 2000, gives further effect in the United Kingdom law to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 3 of the ECHR provides that no one shall be subjected to torture, inhuman or degrading treatment or punishment. The Human Rights Act places a statutory obligation upon all public authorities to act compatibly with the Convention rights and strengthens a victim's or ability to rely upon the Convention rights in civil and criminal proceedings.
5. The United Kingdom is also party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in the United Kingdom on 1 February 1989. Since November 2004 the Committee has made four visits to the United Kingdom in 2005, 2007, 2008 and 2010. They visited Northern Ireland in 2008 and Guernsey and Jersey in 2010.

### **Article 22 of the Convention Against Torture**

6. In July 2004 the then Government reviewed on its position regarding the right of individual communication under article 22 of this Convention, as part of a wider review of international human rights instruments.

7. The Government found that it remained to be convinced of the added practical value to people in the United Kingdom of rights of individual petition to the United Nations including that conferred by Article 22 of CAT.
8. The United Nations committees that consider petitions are not courts, and they cannot award damages or produce a legal ruling on the meaning of the law, whereas the United Kingdom has strong and effective laws under which individuals may seek remedies in the courts or in tribunals if they feel that their rights have been breached.
9. In 2004, the Government acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW OP). One of the reasons for doing so was to enable consideration, on a more empirical basis, of the merits of the right of individual petition more generally. Since March 2005, the UK has been named in only two applications to the UN CEDAW committee, and both were found inadmissible.
10. On 27 February 2009, the UK ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities. To date the UK's experience under both protocols has not provided sufficient empirical evidence to decide either way on the value of other individual complaint mechanisms. The Government will need further evidence, over a longer period, to establish what the practical benefits are.

#### **Optional Protocol to the Convention Against Torture**

11. The United Kingdom ratified the Optional Protocol to the Convention in December 2003. On 31 March 2009 the United Kingdom Government announced the establishment of the UK's National Preventative Mechanism (NPM). A more detailed description of the establishment of the UK's NPM can be found at paragraph 283. The UK fully supports the work of the Subcommittee on the Prevention of Torture also established under Optional Protocol. Professor Malcolm Evans of Bristol University has been elected as independent member of the subcommittee and is currently its chair.

#### **Role of non-governmental organisations**

12. The United Kingdom Government recognises that non-governmental organisations have a significant part to play in preventing torture and other forms of ill-treatment. In preparing this report the Government sought the views of non-governmental organisations:
  - Legal academics
  - Amnesty International UK
  - British Institute of Human Rights
  - British Irish Rights Watch
  - Committee on the Administration of Justice

- Human Rights Watch
- Justice, Liberty
- Medical Foundation for the Care of Victims of Torture
- Prison Reform Trust
- REDRESS
- Equality and Human Rights Commission
- Northern Ireland Human Rights Commission
- Scottish Human Rights Commission
- UNICEF UK
- Children's Rights Alliance for England
- Save the Children UK
- Equality Commission for Northern Ireland
- Christians Against Torture
- Welsh Refugee Council
- Penal Reform International
- Association for the Prevention of Torture
- Reprieve.

#### **Publication and distribution of the report**

13. Copies of this report have been made available to the United Kingdom Parliament, the devolved legislatures, and have been placed in legal deposit libraries in the United Kingdom. Copies of this report is available free of charge to all interested non-governmental organisations and to all human rights contact points in the principal public authorities. A link to the report will be placed on the Ministry of Justice website ([www.justice.gov.uk](http://www.justice.gov.uk)). To request a copy of the report, contact Information & Human Rights Policy, Ministry of Justice, 102 Petty France, London SW1H 9AJ or [humanrights@justice.gsi.gov.uk](mailto:humanrights@justice.gsi.gov.uk).

#### **UK policy on torture**

14. The United Kingdom's policy on torture and cruel and inhuman or degrading treatment or punishment is clear. The United Kingdom Government does not engage in torture, or solicit, encourage or condone its use. It works closely with its international partners to prevent torture occurring anywhere in the world.
15. On coming to office in May 2010, the Coalition Government affirmed its absolute opposition to torture. It made clear that the UK must be prepared at all times to judge itself against the highest international standards and to work hard to embed respect for international law and respect for human rights. This includes acknowledging where problems

have arisen that have affected the UK's moral standing, tackling difficult issues head on, and acting on lessons learnt.

16. In the period since the Committee's examination of the UK's fourth periodic report in November 2004, the reputation of the UK security services has been clouded by serious allegations about the role the UK has played in the treatment of detainees held by other countries. These allegations are not proven. However their seriousness has resulted in an erosion of public confidence in the UK's intelligence services and a tarnishing of the UK's reputation as a country that upholds human rights, justice, fairness and the rule of law. The Government is committed to clearing the stain on the UK's reputation and getting to the bottom of what happened, so that the UK intelligence services are able to get on with their important work with their reputation restored.
17. On 6 July 2010, the Prime Minister explained to Parliament how the Government intends to deal with the allegations. His full statement can be found at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100706/debtext/100706-0001.htm>
18. The Prime Minister announced that an independent, judge-led inquiry would examine whether, and if so to what extent, the UK Government and its intelligence agencies were involved in improper treatment of detainees held by other countries in counter-terrorism operations overseas, or were aware of improper treatment of detainees in operations in which the UK was involved, in the immediate aftermath of the attacks of 11 September 2001.
19. The three member Inquiry panel will be chaired by Sir Peter Gibson, a former senior Court of Appeal judge and statutory commissioner for intelligence services. Sir Peter will be joined by Dame Janet Paraskeva, former head of the Civil Service Commissioners, and Peter Riddell, a former journalist and senior fellow at the Institute for Government. (The Prime Minister's letter to Sir Peter Gibson setting out the terms of the Inquiry can be found at <http://download.cabinetoffice.gov.uk/intelligence/pm-letter-gibson.pdf>). The Inquiry's Terms of Reference and a protocol for the conduct of its work are both available at: [www.detaineeinquiry.org.uk](http://www.detaineeinquiry.org.uk).
20. The Inquiry will begin work as soon as possible after the end of criminal processes related to the allegations. The Government has made it clear that the Inquiry will not be open-ended: it is expected to report within a year of starting work.
21. Although some of the Inquiry's hearings will be in public, it will not be possible to have a fully public inquiry because of the nature of the evidence being considered and the need to protect sensitive information about sources, capabilities and partnerships. However, the inquiry will be able to look at all information relevant to its work, including sensitive information; it will have access to all relevant government papers,

including those held by the intelligence services; and it will be able to take evidence in public, including from those who have bought accusations against the government and their representatives, and from non-governmental organisations. The Government will ensure that the Inquiry will get the full co-operation it needs from relevant Departments and agencies. The Government is confident that the Inquiry will reach an authoritative view on the actions of the state and the UK security services, and that it will make proper recommendations for the future. The Government is also determined to have greater clarity about what is and what is not acceptable now and in the future.

22. The Government has also taken steps to improve the way decisions about foreign and security policy are made in Britain by setting up a new National Security Council (NSC) which brings together strategic decisions about foreign, security and defence policy. One of the NSC's first acts was to finalise and publish the *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees*. The Guidance can be found at <http://download.cabinetoffice.gov.uk/intelligence/consolidated-guidance-iosp.pdf>
23. The Guidance sets out the standards under which intelligence agencies and armed forces operate, making clear that UK intelligence officers must operate in accordance with international and domestic law, including the Convention against Torture and the Human Rights Act 1998. It stipulates that firstly, UK services must never take any action where they know or believe that torture will occur; secondly, if they become aware of abuses by other countries, they should report that to the Government so it can take the necessary action to stop it; and thirdly, in extracting information in cases where UK services believe that there may be information crucial to saving lives but where there may also be a serious risk of mistreatment, it is for UK Ministers to determine how to mitigate that risk. However, the Guidance is not and does not purport to be guidance to Ministers and does not seek to regulate the details of how Ministers will respond in individual cases.
24. The Guidance is subject to two judicial review challenges, which argue that it fails to reflect the Government's international and domestic law obligations. The Government believes the Guidance is fully consistent with its legal obligations, and is defending the proceedings.
25. The UK will provide an update to the Committee on the outcome of these proceedings once they are known.

## **Section I: Observations of the Committee following its examination of the UK's 4<sup>th</sup> Periodic Report**

### **SUBJECTS OF CONCERN**

26. At paragraph 4 and 5 of the Concluding Observations issued after the examination of the UK's 4<sup>th</sup> report under Convention Against Torture (CAT/C/CR/33/3), the United Nations Committee Against Torture raised subjects of concern and made recommendations to the UK Government. The UK Government's responses to those subjects of concern and recommendations are provided at paragraphs 27 to 154 below.

**(a) remaining inconsistencies between the requirements of the Convention and the provisions of the State party's domestic law which, even after the passage of the Human Rights Act, have left continuing gaps; notably:**

**(i) article 15 of the Convention prohibits the use of evidence gained by torture wherever and by whomever obtained; notwithstanding the State party's assurance set out in paragraph 3 (g), supra, the State party's law has been interpreted to exclude the use of evidence extracted by torture only where the State party's officials were complicit.**

27. The House of Lords in the case of *A v Secretary of State for the Home Department (No.2)* [2005] made it clear that evidence obtained by torture is inadmissible in legal proceedings. In addition to this ruling from the then highest court in the UK, there are relevant statutory provisions. For the purposes of criminal proceedings in England and Wales section 76 of the *Police and Criminal Evidence Act 1984 (PACE)* provides that a court shall not allow a confession to be given in evidence against an accused person unless the prosecution have proven beyond reasonable doubt that it was not obtained by oppression or in consequence of anything said or done which was likely to render it unreliable. Section 76(8) of PACE makes it clear that "oppression" includes torture. Under section 78 of PACE a court may also refuse to allow evidence on which the prosecution seeks to rely if it appears to the court that the admission of the evidence would have such an effect on the fairness of the proceedings that the court ought not to admit it. Such exclusion would clearly apply to evidence obtained by torture. Similar provisions are provided for in Scotland and Northern Ireland.

**(ii) article 2 of the Convention provides that no exceptional circumstances whatsoever may be invoked as a justification for torture; the text of Section 134(4) of the Criminal Justice Act however provides for a defence of "lawful authority, justification or excuse" to a charge of official intentional infliction of severe pain or suffering, a defence which**

is not restricted by the Human Rights Act for conduct outside the State party, where the Human Rights Act does not apply; moreover, the text of section 134(5) of the Criminal Justice Act provides for a defence for conduct that is permitted under foreign law, even if unlawful under the State party's law.

28. Having carefully re-examined the arguments put forward both by the Committee and by the UK on previous occasions, the UK remains of the view that section 134 of the *Criminal Justice Act 1988* is consistent with the obligations that the UK has undertaken by signing and ratifying the Convention. However, the Government will look again at the position in the light of any further developments, including the conclusions of Sir Peter Gibson's inquiry (referred to at paragraph 18 above).

**(b) the State party's limited acceptance of the applicability of the Convention to the actions of its forces abroad, in particular its explanation that "those parts of the Convention which are applicable only in respect of territory under the jurisdiction of a State party cannot be applicable in relation to actions of the United Kingdom in Afghanistan and Iraq"; the Committee observes that the Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the de facto effective control of the State party's authorities.**

29. As explained previously, the UK does not accept that where military forces operate overseas it is exercising legal or de facto effective control. The UK ceased detention operations in Iraq from 1 January 2009. The UK does not exercise jurisdiction either in Afghanistan or Iraq; nor is the UK in a position to take "effective legislative, administrative, judicial or other measures to prevent acts of torture" in the territory of those countries, as set out in Article 2 of the Convention. The UK therefore submits that those parts of the Convention which are applicable only in respect of territory under the jurisdiction of a State party cannot be applicable in relation to actions of the UK in Afghanistan or Iraq. Furthermore where actions are attributable to the UN they may be outside the scope of otherwise applicable human rights treaties (as the ECtHR found in *Behrami v France* (App No 71412/01) and *Saramati v France Germany and Norway* (App No 78166/01) in relation to the applicability of the European Convention on Human Rights.

**(c) the incomplete factual and legal grounds advanced to the Committee justifying the derogations from the State party's international human rights obligations and requiring the emergency powers set out in Part IV of the Anti-terrorism, Crime and Security Act 2001(ATCSA); similarly, with respect to Northern Ireland, the absence of precise information on the necessity for the continued emergency provisions for that jurisdiction contained in the Terrorism Act 2000.**

30. Terrorism poses particular challenges to the police and intelligence agencies, and the criminal justice system. Changes to the criminal law have been made to address these challenges, but there remain some

individuals who cannot be prosecuted, in particular because of the need to act early, using intelligence rather than evidential material, and the need to protect sensitive operational techniques and sources.

31. Nevertheless, there are individuals about whom there are real grounds for suspecting involvement in a range of terrorism-related activity. A series of non-prosecution (civil) executive actions have been put in place to manage the risk to the public posed by suspected terrorists who cannot be prosecuted – including control orders, asset freezes and, in relation to foreign national suspected terrorists, deportation or exclusion on national security grounds. The use of a particular action – and indeed precisely how an individual action is used – are dependent on specific factors in each individual case, and tailored to the risk posed in that case.
32. It was in this context that the UK derogated from Article 5 (right to liberty) of the European Convention on Human Rights (ECHR) and developed the provisions in Part 4 of the *Anti-terrorism, Crime and Security Act 2001* (ATCSA). The Part 4 powers allowed the detention of foreign nationals pending their deportation, even if removal was not currently possible provided that the Secretary of State reasonably believed that the person's presence in the UK was a risk to national security and reasonably suspected that the person was involved with international terrorism linked with Al Qaeda. The UK's highest court, the House of Lords, quashed the derogation order made under the *Human Rights Act 1998* and concluded that Part 4 was incompatible with Articles 5 (right to liberty) and 14 (prohibition of discrimination) of the ECHR.
33. The Northern Ireland-specific provisions contained in Part VII of the *Terrorism Act 2000* were repealed on 31 July 2007 as part of a security normalisation programme that also involved the removal of other security measures. Terrorism legislation in Northern Ireland is now for the most part identical to the rest of the UK.
34. In order to tackle residual risks of paramilitary and community-based pressures on jurors, a limited form of non-jury trial has been retained. The *Justice and Security (Northern Ireland) Act 2007* provides that the Director of Public Prosecutions for Northern Ireland can issue a certificate for non-jury trial where he believes the test in the legislation is met. There is now a presumption in favour of jury trial in all cases and a certificate for non-jury trial can only be issued where a case is connected with the Northern Ireland security situation and it is judged that in view of that there is a risk that the administration of justice might be impaired if the case were tried before a jury. The Act also contains a number of measures to increase the safety of jurors, including full anonymity for all jurors, thereby reducing the need for non-jury trial.
35. The rationale for this was explained to Parliament's Joint Committee on Human Rights in January 2007. At that time there was intelligence of eleven cases where jury tampering had been reported since 1999. However, seven of those occurred between 2004 and 2006 and seven of



the eleven involved persons with paramilitary connections. There were also a number of anecdotal examples where there appears to have been intimidation in a case and one case where a trial collapsed as a result of jury-tampering. Given that at that time the Diplock system ensured that most cases connected with paramilitaries were tried without a jury it is reasonable to assume that a return to full jury trial would lead to a significant increase in an already notable problem.

36. The number of instances of intimidation of witnesses recorded by the police has increased over recent years. For example, the Police Service of Northern Ireland (PSNI) recorded 174 instances of witness intimidation in 2009/10 compared with 74 cases of witness intimidation in 2004/05. Whether this is due to an increase in the actual occurrence of such offences, to a change towards greater readiness of victims and witnesses to report such instances to the police or to a combination of these is unclear. Evidence from the 2008/09 Northern Ireland Crime Survey suggests that in around 7% of incidents there is some sort of harassment or intimidation felt/experienced by the victim or members of his/her household and that this has come mainly from the person who committed the offence. This was the same level as reported in 2003/04 survey.
37. Intimidation is therefore still a significant problem in Northern Ireland, despite the recent improvements in the security situation. It poses a significant risk to the ability of the criminal justice system to deliver fair trials in certain cases. Money appears to be used in many cases as an incentive to encourage jurors to reach a particular verdict (six of the eleven cases mentioned above). Blackmail and intimidation seem to be used if financial motivators do not have the desired effect. Intimidation occurs in (among others) assault, murder and attempted murder cases, (all of which were offences that were tried in a Diplock court by default, unless there was evidence the case was unconnected with the security situation).
38. The close-knit nature of Northern Ireland society means that individuals are known within their communities. Even when jurors do not personally know a defendant, they could live within a threatening environment and fear that they could become targeted by associates of the defendant. This less overt form of intimidation and the fear of intimidation could potentially be as significant for jurors as the actual acts of intimidation described above.
39. The system of non-jury trial is temporary. It can be extended for periods of two years with the agreement of Parliament. The Secretary of State for Northern Ireland intends to renew the current provisions, which expire on 31 July 2011, for a further two years. An Order has been laid before Parliament to this effect.
40. Although the armed forces have not been deployed in routine support of the police (except in specialist roles such as explosive ordinance disposal work) since the end of 2006, it is necessary to retain an

*in extremis* ability to call on military support. For example, if there was another serious public order incident on the scale of that surrounding the Whiterock parade in September 2005, military support might be necessary to enable the effective management of the incident and the protection of the public. The decision to call in military support rests with the Chief Constable of the PSNI.

41. The 2007 Act therefore contains some powers to enable the military to carry out that role, if required. These are subject to annual review by an Independent Reviewer, whose reports will be published and presented to Parliament. The powers can be repealed as and when they are no longer required.
42. Both the Independent Monitoring Commission (tasked with reporting on levels of paramilitary activity and the Government's delivery of its security normalisation commitments) and Lord Carlile (Government's independent reviewer of terrorism legislation) concluded that the provisions of the 2007 Act were not terrorism legislation.

**(d) the State party's reported use of diplomatic assurances in the "refoulement" context in circumstances where its minimum standards for such assurances, including effective post-return monitoring arrangements and appropriate due process guarantees followed, are not wholly clear and thus cannot be assessed for compatibility with article 3 of the Convention.**

43. The United Kingdom approach to deportation with diplomatic assurances (DWA) is informed by international human rights conventions, including UNCAT and the ECHR, and associated case law. The UK Government would not seek to deport an individual if there was a real risk that they would face torture or ill-treatment upon return to their country of origin. In its use of DWA, the United Kingdom is not in any way derogating from its commitment to non-refoulement. The policy allows the United Kingdom to tackle the threat posed by foreign nationals who are suspected of involvement in terrorism and to meet its human rights obligations. The United Kingdom is fully mindful of the established ECHR case law in this area, and does not seek to balance the public interest served by a deportation with any risks to the rights of the individual as set out in Article 3 of the ECHR, UNCAT and other human rights conventions.
44. While aware that the phrase "diplomatic assurances" is often used as a generic description, the United Kingdom is aware of the considerable variation in the particular practices operated by States under this heading. With regard to the United Kingdom's own practice, considerable care has been taken to conclude framework arrangements with a number of countries which enable us to seek and obtain assurances from the highest level of government in the particular areas relevant to the particular individual whose deportation is being considered. For example, if it emerges in enquiries that the individual faces detention, criminal charges or trial on return, care is taken to ascertain precisely what the law of the country provides in these areas,

how it operates in practice, what the standards are and exactly how all this will be applied to the individual in question. The seeking and obtaining of assurances does not automatically mean that the individual will be deported. It is only when all the information is assessed that a judgement is made as to whether or not an individual's deportation would be consistent with the UK's human rights obligations.

45. Where an individual is to be removed on national security grounds, there is a statutory right of appeal; and the body hearing that appeal will have to satisfy itself that the legal test for removal (i.e. that the person's deportation from the United Kingdom would be conducive to the public good) is satisfied. The appellate body will also consider whether or not the proposed removal is consistent with the UK's national and international human rights obligations. Any appeal will normally be heard in the first instance by the Special Immigration Appeals Commission (SIAC). SIAC was set up to deal with immigration appeals where intelligence and other sensitive material can be used as evidence.
46. SIAC examines both the national security case for deportation and issues surrounding the safety of the appellant following a deportation. Such issues include the destination country's human rights record, the circumstances which the individual is likely to face on return, the strength of the bilateral relationship between the UK and the receiving country, the general assurances in the framework arrangement, any assurances specific to the particular individual, and any arrangements for verifying compliance with the undertakings given by the receiving state. There is a wide and ongoing duty of disclosure to provide to the appellant/special advocate material held by the UK government that adversely affects the Government's case or supports the appellant's case.
47. SIAC has developed a four part test which the assurances must satisfy:
  - i. The terms of the assurances must be such that, if fulfilled, the person returned will not be subjected to ill treatment contrary to Article 3 of the ECHR;
  - ii. The assurances must be given in good faith. SIAC will look for clear evidence of a settled political will to fulfil the assurances. It also considers, in some cases, whether the receiving government has adequate control over its police and security agencies to ensure that the assurances it has given can be upheld at all levels;
  - iii. There must be a sound objective basis for believing that the assurances will be fulfilled. SIAC will look for evidence that it is in the receiving government's interest to ensure that it abides by the assurances;
  - iv. The fulfilment of the assurances must be capable of being verified.
48. In the United Kingdom, following an appeal in SIAC, each side has the option of appealing the case to the Court of Appeal and then the Supreme Court. When an appellant has exhausted domestic rights of

appeal, they may ask the European Court of Human Rights to consider their case.

49. The UK has legislated s.54 of the Immigration, Asylum and Nationality Act 2006 to make it clear that involvement in terrorism is contrary to the purposes and principles of the UN for the purposes of Article 1F(c) of the Refugee Convention Accordingly, the provisions of the Refugee Convention would not apply in terrorism related deportations. Also, Article 33(2) of that Convention denies the benefit of the normal prohibition on return 'refoulement' where there are reasonable grounds for regarding the person concerned as a danger to the security of the country in which he is.
50. However, the Government will not deport a person where there are substantial grounds for believing there is a real risk of torture or other cruel, inhuman or degrading treatment or punishment, or that the death penalty will apply. The UK is deeply conscious of its human rights obligations and intends at all times to fulfil them.
51. If a foreign national is suspected of being involved in terrorism, and the circumstances are such that a prosecution is not possible (for example, the necessary evidence may not be admissible in court or the evidence might, if presented in court, compromise or endanger the source of the intelligence), or the individual has served a sentence for their criminal offences and still poses a danger to national security, deportation is one of several potential options which are considered.
52. The UK considers that the use of government to government assurances can in certain circumstances enable a particular deportation to be effected in a manner which is consistent with its human rights obligations, including those deriving from Article 3 of the UN Convention Against Torture, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the ECHR.
53. The United Kingdom does not understand the Committee's reference to "minimum standards" as the standards applied are those which have been interpreted in case-law, for example, by the European Court of Human Rights. In February 2009 the House of Lords upheld the use of government to government assurances with Algeria and Jordan in their judgment in the cases of Othman (OO) and RB&U. In doing so the House of Lords was satisfied that the relevant appellate body (the Special Immigration Appeals Commission) had applied the correct legal tests in determining the adequacy of assurances with Algeria and Jordan and that it was open to the Commission to reach the factual conclusions it did. The Commission analysed the assurances with rigour and the leading judgments for each of those countries (in which the assurances were considered in detail) were each over 100 pages in length.<sup>1</sup>

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<sup>1</sup> <http://www.publications.parliament.uk/pa/ld200809/ldjudgmt/jd090218/rbauge-1.htm>

Mr Othman (OO), having exhausted all domestic appeal rights, has since applied to the European Court of Human Rights.

54. Government to government assurances may be used in deportation cases to ensure an individual's safety on return, particularly in the national security context. The Government believes that the test of whether or not substantial grounds for removal exist depends on a case-specific analysis of the totality of the evidence, and that assurances fall to be assessed in the same way as any other evidence. It does not consider that a system of minimum standards could or should over-ride this.
55. Framework Memoranda of understanding (MOUs) on Deportation with Assurances (DWA) which regulate the process of seeking assurances have been negotiated with Jordan, Lebanon and Libya (all in 2005) and Ethiopia (in 2008). Separate assurances, set out in an exchange of letters between the then Prime Minister, Mr Blair, and President Bouteflika in July 2006 apply in respect of Algeria.
56. In addition to having in place a process for seeking human rights assurances from other governments, the United Kingdom has made provision in all existing arrangements for monitoring the treatment received by any individuals deported and for adherence to the assurances provided. In some countries, monitoring will be carried out by an independent body appointed for this purpose such as the Adaleh Centre in Jordan and the Ethiopian Human Rights Commission in Ethiopia. In the case of Algeria, the monitoring is done through the British Embassy.
57. To date nine Algerians have been deported under DWA arrangements. There is no credible evidence that they have been mistreated. Allegations were made that two of these individuals were ill-treated by the authorities when they were returned to Algeria. SIAC asked the United Kingdom Government to investigate this – an official visit to Algeria found that the claims of ill-treatment, which were not made by the individuals themselves, were false.
58. Thirteen appeals are before the United Kingdom courts and one case is before the European Court of Human Rights. The Government has not deported anyone to Libya and has not attempted to do so since the United Kingdom Courts rejected the validity of the Government's framework arrangement with the Libyan Government in 2008. Given the current situation in Libya, the United Kingdom does not intend to use the DWA MoU agreed in 2005.
59. The Government makes an assessment of an individual's safety on return at the time of a deportation decision. Any decisions to deport are kept under review during any appeal process and the safety on return assessment is reviewed again before an individual is physically removed. Circumstances in all countries can change, but this does not invalidate the concept of seeking assurances. Existing and prospective

DWA arrangements, including with those countries affected by recent events in the Middle East, are regularly reviewed, taking into account political developments.

60. The Government's "Programme for Government" published on 20 May 2010, included a commitment to seek assurances from further countries as part of a wider review of counter terrorism legislation. The review, which reported in January 2011 and was informed by an independent report by Lord Macdonald of River Glaven QC, found that the policy of DWA legally compliant and did not undermine the government's commitment to its international human rights obligations.

**(e) the State party's resort to potentially indefinite detention under the Anti-terrorism, Crime and Security Act 2001 of foreign nationals suspected of involvement in international terrorism and the strict regime applied in Belmarsh prison.**

61. In 2001, the UK derogated from Article 5 (right to liberty) of the European Convention on Human Rights (ECHR) and Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and introduced the provisions in Part 4 of the *Anti-terrorism, Crime and Security Act 2001* (ATCSA). The Part 4 powers allowed the detention pending deportation of foreign nationals, even if removal was not currently possible, if the Secretary of State reasonably believed that the person's presence in the UK was a risk to national security and reasonably suspected that the person was involved with international terrorism linked with Al Qaeda. In December 2004, the House of Lords quashed the derogation order made under the *Human Rights Act 1998* and concluded that Part 4 was incompatible with Articles 5 (deprivation of liberty) and 14 (prohibition of discrimination) of the ECHR.
62. In response to the Lords ruling against Part 4 of ATCSA, the Government repealed Part 4 and replaced it with the control order regime under the *Prevention of Terrorism Act 2005* (2005 Act). The 2005 Act allows for a control order to be made against a suspected terrorist, whether a UK national or a non-UK national, and whether the terrorism-related activity is international or domestic. They have been used to manage the risk posed by a small number of suspected terrorists whom the Government can neither prosecute nor deport.
63. The Government reports quarterly to Parliament on the exercise of the Secretary of State for the Home Department's powers under the 2005 Act. The last statement on control orders was published on 17 March 2011 and covered the period up to 10 March 2011. At that time 10 orders were in force and 50 individuals had been subject to a control order (the total number of control orders ever made is higher than this, as some individuals have had more than one order made against them).
64. Control orders place upon an individual one or more obligations that are designed to prevent, restrict or disrupt his involvement in terrorism-related activity. This could for example include measures such

as a ban on the use of communications equipment or a restriction on an individual's movement. Specific obligations imposed under a control order are tailored to the risk posed by that individual and must be necessary and proportionate in each case. Breach of any of the obligations of the control order without reasonable excuse is a criminal offence punishable with a prison sentence of up to five years or a fine, or both.

65. There are 2 types of control order:
  - Non-derogating control orders. They can impose conditions short of a deprivation of liberty under Article 5 of the ECHR.
  - Derogating control orders. They allow for conditions which amount to a deprivation of liberty under Article 5 of the ECHR.
66. No derogation from Article 5 of the ECHR has been made to date in relation to control orders. Therefore only non-derogating control orders have been made.
67. Control orders are subject to regular and rigorous oversight. There are a number of safeguards in place to protect the rights of the individual:
  - Permission by the High Court for each non-derogating control order to be made (in urgent cases, the Home Secretary may make a non-derogating order without permission but it must be confirmed by the High Court within 7 days).
  - The High Court making derogating control orders, after application by the Home Secretary.
  - Mandatory review of each control order by the High Court. The court may consider the case in open or closed session – depending on the nature and sensitivity of the information under consideration. As far as possible, individuals are represented in open court, and by a lawyer of their choice. In closed sessions special advocates are used to represent the interests of the individuals. For non-derogating control orders, the court must agree with the Home Secretary's belief that there is a reasonable suspicion that the individual is or has been involved in terrorism-related activity. For derogating control orders, the court must be satisfied on the balance of probabilities that the individual is or has been involved in terrorism-related activity. In both cases, the control order must be considered necessary for purposes connected with protecting members of the public from a risk of terrorism. The judge must also satisfy himself that each obligation imposed by the order is necessary, and compliant with the ECHR – including Articles 8 (right to respect for private and family life) and, in the case of non-derogating control orders only, Article 5 (right to liberty). For both types of order the judge will further ensure that the individual's right to a fair hearing in accordance with Article 6 is protected. If any of these tests are not met in the case of a non-derogating control order, the judge can quash the order, quash one or more obligations imposed by the order, or give directions for

the revocation of the order or for the modification of the obligations it imposes. If any of these tests are not met in the case of a derogating control order, the judge can revoke the order (and may, if he thinks fit, direct that this is to have effect as if the order had been quashed) or modify the obligations imposed by the order (and where the modification made removes an obligation may, if he thinks fit, direct that this is to have effect as if the obligation had been quashed).

- A right of appeal to the High Court against a decision by the Home Secretary to renew a non-derogating control order, or to modify an obligation imposed by a non-derogating control order, without the controlled person's consent; and against a decision by the Home Secretary to refuse a request by a controlled person to revoke his order and/or to modify and obligation under the order.
  - A right of appeal to the High Court for revocation or modification of a derogating control order.
  - Strict time limits for each control order (a maximum of 12 months for non-derogating control orders and 6 months for derogating control orders, though both can be renewed).
  - Regular (quarterly), formal and audited review from a review group established by the Home Office (the Control Order Review Group), with representation from law enforcement and intelligence agencies, to ensure that continuation of each control order and its obligations remains necessary and proportionate.
  - Both the Government and individuals who are subject to control orders have the option of applying to the court for an anonymity order to protect the identity of the controlled individual. Likewise, either party may also apply to have the anonymity order removed. A small number of individuals who have been subject to a control order have taken this course of action.
68. There is also regular scrutiny of the legislation as a whole:
- Independent annual review of the operation of the 2005 Act by the independent reviewer of terrorism legislation.
  - Annual renewal of the legislation after a debate and vote by both Houses of Parliament.
  - The Home Secretary must report to Parliament every three months on the exercise of her powers during that time.
69. The Government has reviewed control orders as part of its review of counter-terrorism and security powers, the outcome of which was announced on 26 January 2011. The review concluded that there remains a serious threat from terrorism which is as serious as we have faced at any time and will not diminish in the foreseeable future; that there is likely to continue to be a need to protect the public from the threat posed by a small number of individuals who can neither be prosecuted nor deported; but that the existing control order system is not



as effective as it could be, and arrangements could be put in place that would mitigate risk while increasing civil liberties. The Review therefore included a commitment to repeal control orders and replace them with a less intrusive and more focused system of terrorism prevention and investigation measures. The Terrorism Prevention and Investigation Measures Bill was introduced in the House of Commons on 23 May 2011, which will deliver on this commitment. The Bill will allow measures to be imposed on suspected terrorists who we can neither prosecute nor – in the case of foreign nationals – deport, for the purpose of protecting the public. It will introduce greater safeguards for the civil liberties of those subject to the measures, and clear limits on the restrictions that may be imposed under the measures. The new system will be complemented by an increase in funding for the police and Security Service to enhance their covert investigative capabilities.

**(f) the investigations carried out by the State party into a number of deaths by lethal force arising between the entry into force of the Convention in 1988 and the Human Rights Act in 2000 which have failed to fully meet its international obligations.**

70. Police officers in England and Wales are not routinely armed. The use of firearms is a rare last resort, considered only where there is a serious risk to public or police safety. When it is necessary for police officers to deploy firearms, it is vital that they are properly equipped and expertly trained, to respond effectively to the serious situations they have to face. Police firearms capability is focused in a relatively small number of highly trained officers.
71. The use of firearms by police officers in England and Wales is closely governed by Association of Chief Police Officers (ACPO) guidelines. These guidelines can be found on the ACPO website.<sup>2</sup> Once authorised to use firearms, it is for the individual officer to ensure they act within the law. Under section 3 of the *Criminal Law Act 1967*, the use of force for the prevention of crime and apprehension of offenders and those unlawfully at large (both by the police and the public) must be 'reasonable' in all the circumstances. It may be for a court to decide whether the officer's behaviour was reasonable.
72. Police officers are not exempt from the normal requirement of the law that any force used must be proportionate. The Independent Police Complaints Commission (IPCC) fully and thoroughly investigates all fatal police shootings in England and Wales and is completely independent of the police service.
73. The IPCC recently published their annual report on deaths following police contact on:  
[http://www.ipcc.gov.uk/annual\\_report\\_2008\\_death\\_section.pdf](http://www.ipcc.gov.uk/annual_report_2008_death_section.pdf).

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<sup>2</sup> [www.acpo.police.uk](http://www.acpo.police.uk)

Five people were fatally shot by police officers in 2007/08 compared to one in 2006/07 and five in 2005/06. In 2007/08 two of the shootings involved armed officers from Kent Police and three people were shot by officers from the Metropolitan Police Service. Two of these people died in the same incident.

74. In England and Wales, the police discharged a conventional firearm in only three incidents in 2006/07 (down from 9 incidents in the previous year). Figures for conventional firearm discharges in 2007/08 have not yet been collated.
75. With regard to death in a military context, any death arising by lethal force would be thoroughly investigated. The Ministry of Defence is unaware of any such deaths between 1988 and 2000 where investigations have failed to fully meet international obligations.

**(g) reports of unsatisfactory conditions in the State party's detention facilities including substantial numbers of deaths in custody, inter-prisoner violence, overcrowding and continued use of "slopping out" sanitation facilities, as well as reports of unacceptable conditions for female detainees in the Hydebank Wood prison, including a lack of gender-sensitive facilities, policies, guarding and medical aid, with male guards alleged to constitute 80% of guarding staff and incidents of inappropriate threats and incidents affecting female detainees.**

### England and Wales

76. In July 2008, following publication of the "*Review of the forum for preventing deaths in custody; Report of the Independent Reviewer*",<sup>3</sup> the Ministry of Justice announced the creation of a new Ministerial Council on Deaths in Custody. The Committee has three tiers. The first is a Ministerial Board on Deaths in Custody, the remit of which includes all types of death in state custody (prison, approved premises, police, immigrations and those detained under the Mental Health Act (MHA) in hospital). The second is an Independent Advisory Panel (IAP). The role of the IAP is to provide independent advice and expertise to the Ministerial Board. It provides guidance on policy and best practice across sectors and makes recommendations to Ministers and heads of key agencies. The Council's third tier is a broadly based group representing practitioners and stakeholders, which supports the IAP. The shared purpose of the Board and the Panel is to bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales.
77. The work of the IAP will primarily be taken forward via working groups, each led by a member of the Panel and the initial scoping work for the

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<sup>3</sup> [www.preventingcustodydeaths.org.uk/fulton\\_review\\_of\\_forum\\_for\\_preventing\\_deaths\\_in\\_custody.pdf](http://www.preventingcustodydeaths.org.uk/fulton_review_of_forum_for_preventing_deaths_in_custody.pdf)

groups is now well under way. An overview of the particular areas being considered by these groups is provided below:

- *Use of Physical Restraint*  
This working group will undertake a review of the number of deaths in custody where the use of restraint may have been a contributory factor and examine the guidance currently being used within the different custodial settings in relation to its use. They will also consider whether cross sector guidance on the principles of the use of restraint would be useful.
- *Cross Sector Learning*  
This group will identify how the different sectors capture and share learning in relation to deaths and near deaths in custody, as well as how this learning is used to inform policy and training, feedback to operational staff and communicated to bereaved families. They will also liaise with relevant investigative and regulatory bodies to explore opportunities for disseminating the early lessons that they identify as part of their work.
- *Information Flow through the Criminal Justice System (CJS)*  
This group will examine how information about an individual's health needs and their risk of suicide/self harm could be more effectively shared during their journey through the Criminal Justice System.
- *Deaths of Patients Detained under the Mental Health Act (MHA)*  
This group will undertake some scoping work to identify the key work priorities for the IAP in relation to the deaths of those detained under the MHA, which will be taken forward as part of the longer-term work programme.
- *Article 2 Compliant Investigations*  
This working group will build upon the work undertaken by the Forum for Preventing Deaths in Custody, which examined whether the current arrangements for investigating deaths in custody complied with Article 2 of the European Convention on Human Rights.
- *The Risks Relating to the Transfer and Escorting of Detainees*  
This group will explore the particular risks relating to the transfer and escorting of detainees and the training provided to escort staff. A key focus will be the revised Person Escort Record (PER) in order to learn as much as possible about the process and how any benefits from it can be maximised.

### **Prisoner consultation**

78. The National Offender Management Service encourages prisoners to take responsibility for their actions and to help both themselves and their fellow prisoners. Representative committees exist in many establishments and these are often an effective way of communicating with, and getting feedback from, prisoners.
79. Prisoner committees are purely local groups to involve prisoners in local issues and do not require or receive any funding. Governors and

controllers have discretion in deciding how far to allow prisoners' associations to operate in their establishments. They must take account of local conditions and the implications for good order and discipline.

80. A Prison Service Instruction 35/2011 Prisoner participation in public consultation exercises, has been published to ensure that where a consultation takes place on matters which have a specific impact on the rights, health and interests of prisoners, as distinct from the public as a whole, it is important they are made aware and able to respond if they wish.

### **Northern Ireland**

81. In Northern Ireland a Prisoner Ombudsman was appointed in May 2005. In September 2005 the remit of the Prisoner Ombudsman was extended to investigate and report on the circumstances and events surrounding any deaths in custody. This remit is in addition to any investigations undertaken by the police and the Coroner.

82. There has been a steady increase in the prison population in Northern Ireland since April 2004 to the point where the figure reached a new high of 1711 on 3 June 2011. The table below outlines the prison population from 2000 – June 2011.

| <b>Year</b> | <b>Maximum Prison Population</b> |
|-------------|----------------------------------|
| 2000        | 1,185                            |
| 2001        | 953                              |
| 2002        | 1,085                            |
| 2003        | 1,228                            |
| 2004        | 1,335                            |
| 2005        | 1,394                            |
| 2006        | 1,507                            |
| 2007        | 1,518                            |
| 2008        | 1,594                            |
| 2009        | 1,542                            |
| 2010        | 1,551                            |
| 2011        | 1,711                            |

83. The current prison estate in Northern Ireland consists of three prisons as well as a separate Prisoner Assessment Unit, a training college and a Headquarters. All of these establishments are currently holding a prisoner population for which they were not originally designed. As a result, each has had to accommodate a wide range of categories of prisoners with a high level of complexity, particularly at Maghaberry.
84. Since June 2004, female prisoners previously accommodated at Mourne House, Maghaberry, have been accommodated in Ash House within the Young Offenders Centre complex at Hydebank Wood.
85. An outline business case for the replacement of Magilligan Prison has been completed. However, the interim report the Prison Review Team

(PRT) published earlier this year found that plans for the adult male prison estate did not focus on rehabilitation as a core aim; did not offer any new thinking or approach and offered no discussion of open or semi-open prisons, or of step-down or supported accommodation. The PRT proposed that plans for the prison estate, including the estate for women and young offenders, should be revisited and revised to reflect current circumstances against the backdrop of a significantly changed financial environment. The Director General is committed to bringing forward by mid-August, a costed options appraisal which will update and refresh the Estates Strategy, based on an evaluation and reassessment of the likely population trends over the next 10 years. This exercise will help to identify the appropriateness and relevance of key elements of the outline business case and whether it fits with the new vision being set for today's Prison Service. The situation with regard to a women's facility will also be reviewed to take account of the review team's views.

#### **Use of "slopping out" sanitation facilities**

86. The Northern Ireland Prison Service (NIPS) has taken steps to facilitate improved access to toilets at both Hydebank Wood and Magilligan. At Magilligan, an electronic unlock system is in operation for those prisoners accommodated in residential units that do not have in-cell sanitation. The electronic unlock system provided a new standard for the management of access to sanitation. Training for prisoners on the operation of the electronic unlock system and, where necessary, on use of the sluice room is provided at induction. The operation of the system is monitored daily and any faults attended to with urgency. The unlock system only applies in the three H Block residential units at Magilligan where, despite the increase in the prisoner population, NIPS has in place a policy to avoid cell sharing. (In one wing of one H block new cell doors have been installed and the prisoners, who are risk assessed, have their own keys).
87. In addition, a 60 cell unit, Halward House, was opened in Magilligan in October 2008 and a 120 cell unit, Braid House, was opened in Maghaberry in early 2010. The final business case for a further 120 cell unit at Maghaberry was approved in 2010. Construction is underway and the unit should be available for summer 2012. Each of these units has full in-cell sanitation.
88. At Hydebank Wood, in-cell sanitation is available throughout the establishment.

#### **Conditions for female detainees in the Hydebank Wood Prison**

89. The Committee raises specific concerns in relation to women in custody at Hydebank Wood, including issues in respect of "a lack of gender-sensitive facilities, policies, guarding and medical aid", the alleged over-representation of male officers on the staff of Ash House, and "incidents of inappropriate threats and incidents affecting female detainees".

90. In 2010/11, 384 women were committed to prison in Northern Ireland (some on more than one occasion). Women prisoners in Northern Ireland are accommodated in Ash House at Hydebank Wood Prison. This was, originally, one House of the male Young Offenders Centre, but it was re-designated in June 2004 when the women prisoners were transferred from Mourne House at Maghaberry. Although female prisoners are housed in dedicated residential accommodation, they are required to share a limited number of services and facilities.
91. At 3 June 2010 there were 45 women prisoners in Ash House. Currently, 71% of the staff assigned to Ash House are female, and prisoners have access to women staff at any time. A female Governor, dedicated to the management of the female prisoners in Ash House, has been in post for the last six years.
92. Currently, Ash House has five landings, including Ash 5 which opened in April 2007. Ash 5 can accommodate up to 10 prisoners and provides more independent living conditions for those prisoners who meet the necessary criteria and are suitably risk assessed. Ash House can accommodate a maximum of 74 prisoners. Two Mother and Baby rooms are available, as well as two cells suitable for women with disabilities, which are larger than the standard cells. All cells have integral sanitation.
93. In March 2007, the Government published a review<sup>4</sup> by Baroness Corston into the vulnerability of woman in the Criminal justice system in England and Wales. Recognising that many of Baroness Corston's findings and recommendations have strong resonance in Northern Ireland, the Criminal Justice Sector has been examining ways in which a more joined-up approach can be taken in relation to addressing women's offending in Northern Ireland.
94. NIPS has, in recent years, examined the options for providing purpose-built accommodation and facilities for women prisoners. The initial study indicated the possibility of using land at Hydebank Wood (subject to planning approval) to locate the facility. A Strategic Outline Business Case has been prepared, but, in light of the findings of the Prison Review Team interim report published earlier this year, NIPS is reviewing the appropriateness of the wider Prison Estate Strategy, including the estate for women and young offenders. The Prison Service is committed to bringing forward, by mid-August, a costed options appraisal which will update and refresh the Estate Strategy. The new arrangements will reflect the recommendations made in the interim report, as well as any recommendations made by the Prison Review Team in its final report.

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<sup>4</sup> <http://www.justice.gov.uk/publications/corston-report.htm>

95. Strategically, NIPS has worked in partnership with the Department of Justice and the Probation Board Northern Ireland (PBNI) to develop a holistic strategy for the management of women offenders. The Women's Offending Behaviour Strategy, covering the period 2010–2013, is progressed jointly by DOJ, PBNI and NIPS. The strategy's vision is to provide a criminal justice system in which the particular needs of women offenders, and those at risk of offending, are recognised and addressed, and effective pathways out of crime are delivered. The strategy is broken down into four strands:
- providing alternatives to prosecution and custody;
  - reducing offending;
  - Inspire Women's Project: gender-specific community supervision and interventions; and
  - developing a gender-specific approach to the management of women in custody.
96. The strategy seeks to build on existing partnership working between criminal justice agencies and other statutory, community and voluntary sector agencies, to deliver services and interventions to women in a holistic and coordinated way. The aim is to address the often complex needs of women offenders more effectively, and support an improved approach to managing women in Northern Ireland, both in the community and in custody.
97. As well as looking at the accommodation needs of women prisoners, the Prison Service has developed Gender-specific Standards (published in November 2010) and guidance for working with women prisoners, as well as a range of policies and procedures to improve the regime for women.
98. Progress to date includes the development of new offender management processes (as required by the Criminal Justice [Northern Ireland] Order 2008), to provide a multi-disciplinary approach to addressing the needs of women offenders. Women prisoners now benefit from the services of a multi-disciplinary Offender Management Group which has been established at Hydebank Wood. This group specifically addresses key issues, referring prisoners for support in relation to issues such as offending behaviour, addictions, learning and skills, employment and family links. It helps to prepare women for release, including those being released on licence or whose release is directed by Parole Commissioners. The Offender Management Group allocates dedicated Sentence and Case Managers who discuss release arrangements and supervision plans with community based staff. At the appropriate stage of custody, the Sentence and Case Managers also prepare all eligible women for release in order to support their rehabilitation, and assess their readiness for returning to the community.

99. Key developments have also been taken forward in relation to family links. NIPS has worked with Barnardos to develop a comprehensive Family Strategy, key elements of which include providing information, advice and support to families; and giving assistance with visits, including family visit arrangements, and family programmes. New initiatives include a Family Support Group, which meets monthly, and is attended by the Governor, the visits manager and family members. This provides families with an opportunity to raise issues of concern to them, and provide feedback with regard to their experience of visiting the prison. They can also make suggestions regarding areas for improvement. It is intended that the Family Strategy will evolve as new initiatives develop, and progress will be taken forward through co-ordinated multi-agency working, including Barnardos, NIACRO, the Quaker Service and NIPS.
100. A significant example of progress has been the development of improvements in relation to visits, most notably the introduction, in December 2009, of the Extended Visits Scheme for Mothers and Children in Ash House. This scheme enables mothers to have unsupervised visits of up to 6 hours with their children in a safe and secure facility adjacent to Ash House. The facility attempts to replicate a comfortable, domestic, residential setting, and is designed to ensure that women in custody can continue to develop and sustain relationships with their children. The visits are intended to provide mothers with the opportunity to engage with their children in positive activities and bond with them in a way that is not possible in normal visits.
101. Other developments include:
- the delivery of a rolling programme of gender-specific training for staff working with women prisoners;
  - new, less intrusive, search procedures for women prisoners;
  - the inclusion of women offenders as a distinct element of the Resettlement Pathways Model, including the addition of 2 new pathways of particular significance to women – supporting those who have been abused, raped or who have experienced domestic violence (Pathway 8), and supporting those who have been involved in Prostitution (Pathway 9) – this provides the strategic framework for making progress on these issues;
  - the introduction of a resettlement initiative directly linked to a new Probation-led women's project in the community, which ensures a continuity of support for women being released from prison, enabling them to leave prison with established links to support in the community and with established relationships to help them sustain those positive links; and
  - the development of learning and skills, employment and debt and money management initiatives, tailored for women prisoners.



102. Further gender-specific initiatives, guidance and procedures for Ash House are being developed in close consultation with both staff and prisoners.
103. A refurbishment of the healthcare centre, to create dedicated facilities for women prisoners, was completed in February 2009. Since the transfer of lead responsibility for prisoner healthcare to the Department of Health, Social Services and Public Safety (DHSSPS) in April 2008, the South Eastern Health & Social Care Trust has been working in partnership with NIPS to develop a comprehensive Prison Healthcare Strategy for 2009 to 2014. This strategy aims to provide an effective mechanism for responding to the healthcare needs of prisoners, including the delivery of gender specific services, and interventions to address the needs of women prisoners. The Prison Healthcare strategy aims to address issues such as the mental health needs of women prisoners, and to provide appropriate interventions, on a multi-agency basis, in relation to issues such as mental health, personality disorder, addictions, and the promotion of women's health and well-being.

**(h) reports of incidents of bullying followed by self-harm and suicide in the armed forces, and the need for full public inquiry into these incidents and adequate preventive measures.**

104. The question of a full public inquiry into bullying incidents was examined carefully by Nicholas Blake QC in his review of the deaths of recruits at the Princess Royal Barracks, Deepcut.<sup>5</sup> The Review found no evidence of collusion, cover up, breach of legal duty of care or any other failure to foresee or prevent any individual death and so concluded a public inquiry would not be necessary. It is Mr Blake's view and that of the Government, that given the extensive investigations that have taken place, there is no public or service interest in pursuing a public inquiry. The purpose of a public inquiry is not merely to rebut stories in the press that raise concerns as to harassment or abusive behavior. Such matters need, first, to be the subject of proper investigation and resolution by the available procedures, whether criminal, civil or disciplinary.
105. The Armed Forces take their duty of care very seriously. The wellbeing of personnel remains fundamental to the core values and standards of the Armed Forces. The Armed Forces want all service personnel to live and work in an environment free from harassment, intimidation and discrimination. Bullying and harassment is taken extremely seriously by the Armed Forces and is recognised to have an extremely detrimental effect upon team cohesion. The Armed Forces do not deny that problems such as bullying exist in the Armed Forces, just as they do in wider society. It is made very clear to all recruits and trainees that the Armed Forces do not tolerate any form of bullying and harassment. The training makes clear that any suspicion of bullying should be dealt with

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<sup>5</sup> <http://www.official-documents.gov.uk/document/hc0506/hc07/0795/0795.asp>

immediately. All Service Personnel are made aware that if they are a victim of bullying or harassment then they can complain either through their chain of command or to the Independent Service Complaints Commissioner. All complaints are treated seriously. Where there are allegations of serious offences it is important that they are properly investigated. If someone is found to have done something wrong then appropriate action will be taken.

106. Following a number of reports on initial training the Armed Forces have undertaken a huge amount of work to improve the training environment, to reduce the risks to trainees and to improve the care and welfare support provided to individuals. Training to instructing staff has improved so that they better understand the needs of young people today. All trainees are given details of who they may turn to for help or advice, and steps have been taken to review the supervisory care provided. The Armed Forces are committed to maintaining the improvements already achieved, and continuing to address the areas where performance can be improved. The Armed Forces do not rely solely on internal assessments of progress to date, and Office of Standards in Education (Ofsted) is currently engaged in a round of inspections which will comment on the care and welfare provision for recruits and trainees.

**(i) allegations and complaints against immigration staff, including complaints of excessive use of force in the removal of denied asylum seekers.**

107. Persons seeking to remain in the UK without any legal basis to do so sometimes physically contest the right of the authorities to enforce the law. Under these circumstances, escorts may have to enforce their removal and regrettably, this may from time to time involve the use of restraint. There are safeguards to ensure that excessive force is not used and there are procedures to deal with allegations of excessive force or assault.
108. Where a detainee alleges assault by the main escort contractor or other escorts employed under contract to the UK Border Agency (UKBA), the complaint will be referred to the UKBA's Professional Standards Unit (PSU) to investigate. At the start of any investigation, allegations of a criminal nature are automatically referred to the police to conduct their own parallel investigation, and where there is evidence, it is open to the police to mount a prosecution. Once the PSU's investigation is completed, the detainee is provided with a formal response, which will include details of how to exercise their right of appeal to the Prison and Probation Ombudsman should they remain dissatisfied with the outcome.
109. The courts have accepted that the PPO is in principle sufficiently independent to carry out an investigation that complies with Article 2 ECHR and Article 3 ECHR. The PPO's Terms of Reference make it clear that whilst it is sponsored and funded by MOJ, it is wholly independent in respect of its investigative functions. The mechanism

for investigating complaints is also subject to the oversight of the Complaints Audit Commission.

110. Where a detainee alleges assault by escorts employed under contract to an airline rather than to UKBA, the complaint will fall properly to the carrier to investigate and not to the PSU. In cases where such escorts are employees of UKBA's main escort contractor, the company will conduct its own internal investigation.
111. The performance of the main escort contractor is constantly monitored by the escorting contract monitor, a Crown Servant. In all allegations of assault, the escorting contract monitor will consider whether the allegation is such that it is appropriate to suspend the certification of the escorting officer(s) involved. The contract monitor also sees PSU investigation reports and considers their findings. More generally, HM Chief Inspector of Prisons has a statutory role in relation to inspecting detainee escorts under section 5A (5A) of the *Prison Act 1952*. In addition, at Heathrow, an Independent Monitoring Board (IMB) has been established to monitor conditions for detainees in the holding rooms and whilst under escort to their flight.

## RECOMMENDATIONS

**(a) the State party take appropriate measures in the light of the Committee's views to ensure, if necessary explicitly, that the defences that might be available to a charge brought under Section 134 (1) of the Criminal Justice Act be consistent with the requirements of the Convention.**

112. As explained in paragraph 25, the UK Government remains of the view that section 134 of the *Criminal Justice Act* is consistent with the obligations that the UK has undertaken by signing and ratifying the Convention. However, the Government will review its position in the light of the conclusions of the Inquiry by Sir Peter Gibson (referred to at paragraph 18 above).

**(b) the State party should review, in the light of its experience since its ratification of the Convention and the Committee's jurisprudence, its statute and common law to ensure full consistency with the obligations imposed by the Convention; for greater clarity and ease of access, the State party should group together and publish the relevant legal provisions.**

113. The Government believes the law on torture as contained in section 134 of the Criminal Justice Act is consistent with the obligations in the Convention. The Government is not convinced on the need to group together common law and statute law that could be relevant in this respect. However if needed it will revisit the position in the light of the conclusions of the Inquiry by Sir Peter Gibson.

**(c) the State party should reassess its extradition mechanism in so far as it provides for the Home Secretary to make determinations on issues such as medical fitness for trial which would more appropriately be dealt with by the courts.**

114. Under the UK's extradition legislation, it is for the judge to decide whether a person's extradition would be compatible with the person's rights under the European Convention on Human Rights (sections 21 and 87 of the *Extradition Act 2003*).
115. It is therefore the courts who make an assessment on the health of someone prior to extradition; this is not a matter for the Secretary of State. (The issue before the court is a person's fitness for **extradition** rather than their fitness for **trial**.)
116. Where it appears to the judge that a person's physical or mental condition is such that it would be unjust or oppressive to extradite him, the judge must order the person's discharge or adjourn the extradition hearing until it appears to him that it would no longer be unjust or oppressive to extradite him (if the request falls under Part 1 and part 2 of the Act). Sections 25 and 91 of the *Extradition Act 2003* refer.

**(d) the State party should appropriately reflect in formal fashion, such as legislative incorporation or by undertaking to Parliament, the Government's intention as expressed by the delegation not to rely on or present in any proceeding evidence where there is knowledge or belief that it has been obtained by torture; the State party should also provide for a means whereby an individual can challenge the legality of any evidence in any proceeding plausibly suspected of having been obtained by torture.**

117. The House of Lords in the case of *A v Secretary of State for the Home Department (No.2)* [2005] made it clear that evidence obtained by torture is inadmissible in legal proceedings. In addition to this ruling from the highest court in the UK, there are relevant statutory provisions. For the purposes of criminal proceedings in England and Wales section 76 of the *Police and Criminal Evidence Act 1984* (PACE) provides that a court shall not allow a confession to be given in evidence against an accused unless the prosecution have proven beyond reasonable doubt that it was not obtained by oppression or in consequence of anything said or done which was likely to render it unreliable. Section 76(8) of PACE makes it clear that "oppression" includes torture. Under section 78 of PACE a court may also refuse to allow evidence on which the prosecution seeks to rely if it appears to the court that the admission of the evidence would have such an effect on the fairness of the proceedings that the court ought not to admit it. Such exclusion would clearly apply to evidence obtained by torture. Similar provisions are provided for in Scotland and Northern Ireland.

**(e) the State party should apply articles 2 and/or 3, as appropriate, to transfers of a detainee within a State party's custody to the custody whether de facto or de jure of any other State.**

118. Under the UK's extradition legislation (sections 21 and 87 of the Extradition Act 2003), it is for the courts to decide whether a person's extradition would be compatible with the person's rights under the European Convention on Human Rights. The UK considers that it fulfils its obligations with regards to Articles 2 and 3 of the Convention Against Torture by virtue of the incorporation of the European Convention on Human Rights (ECHR) into domestic law, including immigration law, under the Human Rights Act 1998.
119. The UK does not consider that the Convention Against Torture applies extra-territorially. The Government cannot 'expel' 'return' or 'extradite' someone from territory other than UK territory. The Government does not consider that the terms 'expel' 'return' or 'extradite' apply to overseas military operations and associated activities. Torture is forbidden under UK Service law, and is punishable by the same sentence as would be applied under UK criminal law. UK forces are subject to UK Service law at all times, wherever in the world they are serving.
120. UK armed forces operate under the auspices of NATO's International Security Assistance Force (ISAF), whose mandate derives from UN Security Council Resolution 1386 of 20 Dec 2001, which authorises "all necessary measures to fulfil its mandate". ISAF's mandate was most recently renewed by UN Security Council Resolution 1943, on 13 October 2010. British forces release those individuals who are deemed not to be a security threat after initial questioning.
121. The UK no longer detains in Iraq. In Afghanistan, UK Forces transfer detainees only to the Afghan Government. In this, the UK takes its human rights obligations very seriously. Under the terms of the MOU with the Afghan Government (agreed in April 2006) there is a monitoring regime in place that allows UK personnel to visit detainees held by the Afghan Government. The UK has also obtained explicit undertakings that the Afghan Government will permit monitoring by human rights organisations such as the International Committee of the Red Cross (ICRC) and the Afghan Independent Human Rights Commission (AIHRC).

**(f) the State party should make public the result of all investigations into alleged conduct by its forces in Iraq and Afghanistan, particularly those that reveal possible actions in breach of the Convention, and provide for independent review of the conclusions where appropriate.**

122. Where allegations are made in the form of legal challenges, material is made available to the claimants, their lawyers and the Courts.
123. When considering the release of such information into the public domain, the Government has to balance the importance of ensuring

accountability of the Armed Forces, with the importance of respecting the rights of potential defendants in criminal proceedings and of protecting the rights of people against whom unfounded allegations are made.

124. Where disciplinary proceedings are taken, individuals will be prosecuted before the Court Martial. The procedure at the Court Martial is broadly similar to a Crown Court and the proceedings are open to the public.
125. In addition to the Baha Mousa Inquiry, the former Secretary of State for Defence announced on 2 October 2009 a public inquiry into allegations of unlawful killing and mistreatment of Iraqi nationals by British forces in southern Iraq in 2004. The Al Sweady Inquiry has been established under the Inquiries Act 2005 and is chaired by Sir Thyne Forbes, a former High Court judge, who is investigating allegations that have previously been subject to two RMP investigations and judicial review proceedings. The MOD and Army will continue to co-operate fully with the Inquiry, however it is not possible to comment further on matters on which the Inquiry will want to reach its own conclusions.

**(g) the State party should re-examine its review processes, with a view to strengthening independent periodic assessment of the ongoing justification for emergency provisions of both the Anti-terrorism, Crime and Security Act 2001 and the Terrorism Act 2000, in view of the length of time the relevant emergency provisions have been operating, the factual realities on the ground and the relevant criteria necessary to declare a state of emergency.**

126. The response to the Subject of Concern (e), in paragraph 61 of this report, sets out the UK's current position on the emergency provision of the *Anti-terrorism, Crime and Security Act 2001* and the *Terrorism Act 2000*, and particularly the review process around these acts.

**(h) the State party should review, as a matter of urgency, the alternatives available to indefinite detention under the Anti-terrorism, Crime and Security Act 2001.**

127. As above, the powers under Part 4 of the *Anti-Terrorism, Crime and Security Act 2001* have now been repealed – see paragraph 62 of this report.

**(i) the State party should provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001, what the State party's minimum contents are for such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases.**

128. Extradition from the UK generally takes place under treaties or international agreements. Human rights safeguards are enshrined within the UK's domestic extradition legislation and therefore in the majority of

cases the UK would not require diplomatic assurances about specific aspects of a person's treatment if extradited. Nonetheless, the UK does on occasion seek assurances in certain cases although it does not maintain a central record of how many extraditions have occurred where diplomatic assurances were received. The UK would regard such assurances as binding on the country requesting extradition and is not aware of any cases where such assurances have been breached. We are fully aware of our international obligations and reiterate the position that the UK would not consider entering into such an agreement, or returning someone even where such an agreement exists, where there were substantial grounds for believing an individual returnee would be tortured.

129. Eleven people have been deported from the UK rather than extradited following the receipt of assurances from the intended destination state which enabled the UK to satisfy itself that the removal was in conformity with the UK's international obligations. In the case of two individuals who were deported to Libya in 2004, subsequent enquiries by the Embassy in Tripoli established that neither man had been detained following his return. In the case of the other nine, all of whom were deported to Algeria having withdrawn their appeals against the decision to deport them (or in one case chose not to appeal); the deportees were offered an arrangement which would allow them or a nominated person to maintain contact with the Embassy in Algiers. We are not aware of any credible evidence that the assurances received have not been observed. (See also paragraph 57 above.)

**(j) the State party should ensure that the conduct of its officials, including those attending interrogations at any overseas facility, is strictly in conformity with the requirements of the Convention and that any breaches of the Convention that it becomes aware of should be investigated promptly and impartially, and if necessary the State party should file criminal proceedings in an appropriate jurisdiction.**

130. All UK intelligence officers and service personnel are given guidance about the standards that must apply during the detention and interviewing of detainees overseas, including how they must work with our intelligence liaison partners. On 6 July 2010, the Prime Minister announced the publication of the *Consolidated guidance to intelligence officers and service personnel on the detention and interviewing of detainees overseas, and on the passing and receipt of intelligence relating to detainees*. This guidance is a practical framework for the range of circumstances in which personnel might have involvement with a detainee and it makes clear that the UK acts in compliance with its domestic and international legal obligations.
131. The UK Armed Forces are given thorough mandatory training, which includes specific guidance on handling prisoners. This includes training on the Law of Armed Conflict (LOAC). The training also includes reference to other international human rights treaty obligations where appropriate. All personnel must attend refresher training.

132. Relevant standards of conduct and physical treatment of prisoners required of UK officials are contained in relevant international law and the domestic law that applies to UK officials at all times, wherever in the world they are serving. Torture, wherever it occurs, is explicitly recognized as a criminal offence in UK domestic law, and therefore there is no scope for UK Forces to torture with impunity. This means that wherever in the world they are serving, regardless of whether or not that country is a signatory to the European Convention on Human Rights or the UN Convention Against Torture, UK officials can be held accountable for their actions.
133. Where allegations of wrongdoing are made against UK officials, they are thoroughly investigated. For intelligence officers, any cases of potential criminal wrongdoing are referred to the appropriate authorities to consider whether there is a basis for inviting the police to conduct a criminal investigation. For the armed forces, the Service Police are independent of the chain of command for the purposes of investigations and are therefore impartial. The decision on prosecution rests with the Director of Service Prosecutions, head of the Service Prosecuting Authority (SPA).
134. The SPA was formed on the 1 January 2009. It incorporates the Navy Prosecution Authority, the Army Prosecution Authority and the Royal Air Force Prosecution Authority. It is headed by a civilian director and is independent of the services and the Ministry of Defence to ensure its prosecutorial independence.

**(k) the State party should take all practicable steps to review investigations of deaths by lethal force in Northern Ireland that have remained unsolved, in a manner, as expressed by representatives of the State party, “commanding the confidence of the wider community”.**

135. The question of how to address the legacy of Northern Ireland’s violent past is a significant challenge. The responsibility for doing this rests not only with the devolved administration and local politicians in Northern Ireland but also with central Government, the Irish and US Governments. There is little cross community consensus on how this should be achieved. However a range of measures is in place to review unsolved deaths in Northern Ireland as outlined below.
136. There is a need for consensus across the community in Northern Ireland on how to deal with the legacy of Northern Ireland’s violent past in a positive and healing way. The new Government is embarking on a series of discussions with the political parties in Northern Ireland and with victims’ groups. The results of these discussions will form the basis for the new Government’s approach towards the past.
137. The Police Service of Northern Ireland’s (PSNI) Historical Enquiries Team (HET) began its work in January 2006 and provides a thorough and independent re-examination of 3,268 deaths in Northern Ireland



attributable to “the Troubles” and committed between 1968 and 1998. The HET has three aims:

- to assist in bringing a measure of resolution to those families of victims affected by deaths attributable to ‘the Troubles’;
- to re-examine all deaths in Northern Ireland attributable to ‘the Troubles’ and ensuring that all investigative and evidential opportunities are examined and exploited in a manner that satisfies the PSNI’s obligation of an ‘Effective Investigation’. (Article 2, Code of Ethics for PSNI); and
- to do so in a way that commands the confidence of the wider community.

138. A HET review of a case is a five-step process involving the following stages:
- Collection
  - Assessment
  - Review
  - Focussed re-investigation
  - Resolution.
139. As at November 2010, 1473 cases had been completed, concerning 1944 victims. The HET pledges to deal with families with honesty, trust and confidentiality. Providing such a ‘family centred’ approach is at the heart of the HET project, and the HET’s primary aim is to address, as far as possible, all the unresolved concerns that families raise. Given the scale of its remit a prioritisation system for reviewing cases is necessary. In order to treat each case equally the HET allocate cases on a chronological basis, beginning with incidents which took place in 1968. There are a number of occasions, however, when it is necessary to depart from this chronological approach. These include previously opened investigations, humanitarian considerations, issues of serious public interest, and linked series of murders.
140. The HET works closely with the Office of the Police Ombudsman for Northern Ireland (OPONI). In cases where there are allegations about the actions of police officers, the HET refers them to OPONI and separate, parallel investigations are conducted. HET and the OPONI hold monthly strategic and tactical meetings. A Memorandum of Understanding has been adopted between the two parties and is subject to regular review. As of November 2010 the Police Ombudsman has more than 90 historical cases to investigate.
141. An inquest is one other mechanism which can contribute to the provision of an investigation into a death. The purpose of an inquest is to establish who the deceased was and how, when and where they died. It is for the

coroner to determine the scope of the inquest and decide what material is relevant to the inquest.

142. The Bloody Sunday Inquiry was established on 29 January 1998. Its remit was to determine, so far as possible, the truth of what happened in Londonderry on 30 January 1972, when soldiers opened fire during a disturbance resulting in thirteen people being killed and another thirteen wounded, one of whom subsequently died. The Tribunal of the Inquiry was chaired by Lord Saville of Newdigate, supported by Mr Justice Hoyt (Canada) and Mr Justice Toohey (Australia). The Inquiry completed its public proceedings in November 2004 and the Report was published on 15 June 2010. The Prime Minister made a statement in Parliament in response to the report. The entire text of the report (5,000 pages) as well as the Inquiry's Principal Conclusions document is available on the Inquiry's website.<sup>6</sup>
143. Independent public inquiries into allegations of state collusion in the deaths of Robert Hamill, Rosemary Nelson and Billy Wright were announced by the then Secretary of State for Northern Ireland to the UK Parliament on 16 November 2004. Each inquiry was conducted by a panel of three, chaired by a senior retired judge. The Billy Wright Inquiry presented its report to the Secretary of State for Northern Ireland on 13 September 2010 and was published in Parliament the following day by way of an oral statement by the Secretary of State. The full text of the report is available on the Inquiry's website.<sup>7</sup> The Robert Hamill Inquiry completed its report in February 2011, thus fulfilling its terms of reference. However, in view of an announcement by the Public Prosecution Service for Northern Ireland on 21 December 2010 that three individuals are to face charges in connection with the murder of Robert Hamill, the Secretary of State for Northern Ireland has decided not to publish the Inquiry's report until the legal proceedings have concluded. The Hamill family support this decision. The report of the Rosemary Nelson Inquiry was published by the Secretary of State for Northern Ireland on 23 May 2011 by way of an oral statement in Parliament. The full text of the report is available on the Inquiry's website.<sup>8</sup>
144. Regarding an inquiry into Patrick Finucane's death, the previous Government announced in 2005 that the inquiry would be set up under the new Inquiries Act. However no inquiry was established due to the family's opposition to an inquiry held under this legislation. The last Government was clear that, if there was to be statutory inquiry into Mr Finucane's death, it would have to be held under the Inquiries Act. The Secretary of State for Northern Ireland in the new Coalition Government met the Finucane family on 9 November to discuss the

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<sup>6</sup> <http://www.bloody-sunday-inquiry.org/index.html>

<sup>7</sup> <http://www.billywrightinquiry.org/>

<sup>8</sup> <http://www.rosemarynelsoninquiry.org/>

case before setting out before Parliament a decision making process to determine how to address the question of whether or not an inquiry should be held. A Written Ministerial Statement was issued on 11 November 2010 outlining a two-month period for representations to be made to Government, after which Government will consider these representations and then take a decision. This process was extended on 11 January 2011, with the agreement of the family, for a further two months. The Government is currently considering the issue carefully and will announce a decision on the way forward shortly.

**(l) the State party should develop an urgent action plan, including appropriate resort to criminal sanctions, to address the subjects of concern raised by the Committee in paragraph 4(g) as well as take appropriate gender-sensitive measures.**

145. The UK Government has given careful consideration to this recommendation. However, it does not believe that the development of a large-scale, overarching plan such as the Committee appears to be recommending would be helpful in the general development of its custodial policy, or in dealing with specific subjects identified by the Committee. In the Government's opinion such a plan would be unwieldy and excessively difficult to co-ordinate and monitor.

146. Individual Government Departments and the Devolved Administrations have already developed plans to address the subjects identified by the Committee, and the Government believes that these are suitable and sufficient to bring about necessary improvements.

**(m) the State party should consider designating the Northern Ireland Human Rights Commission as one of the monitoring bodies under the Optional Protocol.**

147. In determining which bodies in the UK should be designated to form the national preventive mechanism, the Government adopted two sets of criteria. Firstly, it was strongly of the view that bodies forming the mechanism should be compliant with the requirements of the Optional Protocol in terms of independence, capability, and professional knowledge, in accordance with Article 18. Secondly, it was firmly of the belief that the statutory basis on which those bodies operate should either give them unrestricted access to places of detention and to people deprived of their liberty – including the power to make unannounced visits – and unrestricted access to information about such persons and their conditions of detention; or, at least, should contain nothing to prevent such access and such visits, in accordance with Articles 19 and 20.

148. The Northern Ireland Human Rights Commission is an investigatory body and, although it holds wide-ranging powers in relation to access to places of detention, it is required to provide a fifteen-day consultation period with establishments in which it intends to carry out investigations, and may be subject to restrictions imposed by a county court. This

clearly does not allow the Commission to carry out unannounced visits and, therefore the Commission has not been designated as part of the UK national preventive mechanism.

149. There is already an effective range of existing statutory and lay inspection bodies in Northern Ireland that have full, unannounced access to places of detention on a regular basis, and these bodies are therefore well-placed to carry out the requirements of the Optional Protocol in Northern Ireland.<sup>9</sup>

**(n) the State party should consider offering, as routine practice, medical examinations before all forced removals by air and, in the event that they fail, thereafter.**

150. A risk assessment is conducted on each detainee prior to their removal, which would cover any known medical condition, and the advice of the doctor will be sought where a need is identified. This will include whether or not the detainee is fit to fly, whether a medical escort will be required, or if there are any other medical factors of which escorts need to be aware.
151. All detainees are seen by a nurse within two hours of their arrival at an Immigration Removal Centre and an appointment is made for them to see a General Practitioner (GP) within 24 hours. Nurses are present in the Centres for 24 hours, 7 days a week and GPs are present during the day and on an on-call basis outside of office hours. These examinations take place every time a detainee arrives at a Centre, including following return from a failed removal.

**(o) the State party should consider developing a means of central collection of statistical data on issues arising under the Convention in the State party's prisons and other custodial facilities.**

152. The England & Wales Prison Service already collects centrally via the National Offender Management and Sentencing (NOMS) Analytical Services, a range of statistical data which includes the number of deaths in custody and assaults. This information is published in the National Offender Management Service Annual Report and Accounts.<sup>10</sup> Similar information for Scotland is published in the Scottish Prison Service's Annual Report and Accounts.<sup>11</sup> Deaths in custody for Scottish prisons

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<sup>9</sup> A list of the bodies included in the United Kingdom's NPM can be found at: [http://www.apr.ch/index.php?option=com\\_k2&view=item&id=873:the-united-kingdoms-national-preventive-mechanism&Itemid=269&lang=en](http://www.apr.ch/index.php?option=com_k2&view=item&id=873:the-united-kingdoms-national-preventive-mechanism&Itemid=269&lang=en) and at Annex 1

<sup>10</sup> <http://www.justice.gov.uk/noms-annual-report-accounts-09-10.htm>

<sup>11</sup> <http://www.sps.gov.uk/Default.aspx?DocumentID=67e156ce-a4c9-49f5-a526-0dab421427f6>

are reported separately in an internal document, which is available on request from the Scottish Prison Service.<sup>12</sup>

153. Annual statistics are published on the detention of persons at police stations. Police forces are required under annual data requirements to provide information relating to the exercise of certain powers under the *Police and Criminal Evidence Act (PACE) 1984* and the *Police and Criminal Evidence (Northern Ireland) Order 1989*. This includes data on stop and search, arrest and detention, including the periods of detention in which detainees are held.

**(p) the State party should make the declaration under article 22 of the Convention.**

154. The UK Government's position on a declaration under Article 22, and its policy on individual petition to the UN treaty monitoring bodies, is found at paragraphs 6–11 above.

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<sup>12</sup> gaolinfo@sps.gov.uk

## PART 1: METROPOLITAN TERRITORY

### Section II: Information relating to articles 1–16 of the Convention

#### Introduction

155. This part of the report provides information on developments since the United Kingdom's 4<sup>th</sup> Periodic Report of November 2003, the oral examination on that report in November 2004, and the initial response to the Committee's concluding observations, provided on 20 April 2006.

### Article 2: Effective measures to prevent acts of torture

#### POLICE CUSTODY

##### Legal Framework

156. *The Police and Criminal Evidence Act 1984 (PACE)*<sup>13</sup> and the *Police and Criminal Evidence (Northern Ireland) Order 1989*<sup>14</sup> requires that the Secretary of State must issue Codes of Practice to deal with stop and search, arrest, detention, treatment and questioning of persons, identification and recording of interviews. The Codes are subject to ongoing review and amendments to any part of any code is subject to consultation and approval by Parliament. The Codes must be made available on request at a police station to detainees or to members of the public. The Codes are available free of charge on the Home Office website and hard copies are commercially available from the publishers. The Codes deal with contacts between the police and public in the exercise of police powers. They regulate police powers and procedures in the investigation of crime and set down safeguards and protections for members of the public. Equivalent PACE codes exist in Northern Ireland issued under the *Police and Criminal Evidence (Northern Ireland) Order 1989*. Revisions to the codes are subject to consultation and approval by the Northern Ireland Assembly.

157. In Scotland procedures for detention are contained in Sections 14 to 15A of the *Criminal Procedure (Scotland) Act 1995*. Further procedures for Police detention and custody in Scotland are contained the ACPOS document "Custody Manual of Guidance, 2008". This document sets out

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<sup>13</sup> <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/?view=Standard&pubID=810826>

<sup>14</sup> Electronic link is not available. However hard copies are available from the Ministry of Justice.

definitive guidance on how Police Forces in Scotland should put in place strategic and operational policies to maintain a high standard of custodial care for those that come into the care or custody of the Police.

158. PACE is subject to ongoing internal review but also subject to regular and frequent public review. This is carried out in two ways: first, changes to individual areas of PACE through new or proposed enactments, which are subject to parliamentary scrutiny; and second (and more strategically) review through public consultation exercises.
159. On 28 August 2008 the Government launched its public consultation document "PACE Review: Government proposals in response to the Review of the *Police and Criminal Evidence Act 1984*". This was subject to a three month consultation period and was in response to a public consultation paper published in March 2007 which invited the public, stakeholders and practitioners to provide constructive proposals for change. No changes were proposed to the period of detention for non-terrorism cases and the proposals endorse maintaining the existing safeguards and protections for the individual. The paper proposes consideration of an independent appropriate adult being made available to all juveniles and mentally vulnerable adults. This would be in addition to parental attendance and is aimed at enhancing the support for and communication with a vulnerable detainee in police custody. The information and response are published on the Home Office website.<sup>15</sup> A separate but broadly similar consultation paper on PACE proposals in Northern Ireland was published in January 2009.<sup>16</sup>
160. From an operational perspective, the application of PACE is subject to scrutiny by supervisory management within the police service, by solicitors representing detainees, by crown prosecutors, by the courts, by the inspectorate regime and by the local community through local individuals acting as independent custody visitors. Additionally, the Independent Police Complaints Commission has full investigation powers to deal with complaints or incidents of concern relating to custody and custodial care.
161. In February 2006, the Home Office and the Association of Chief Police Officers in conjunction with CENTREX (the Central Police Training and Development Authority and now known as the National Policing Improvement Agency) published guidance on the Safer Detention and Handling of Persons in Police Custody.<sup>17</sup> The guidance identifies the standards expected in the handling of persons who come into contact with the police. It outlines the framework within which the police and other agencies must operate and sets the strategic mechanisms which

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<sup>15</sup> <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/PACE-Review/>

<sup>16</sup> <http://www.nio.gov.uk/index/public-consultation/archive-consultation.htm>

<sup>17</sup> [http://police.homeoffice.gov.uk/publications/operational-policing/Safer\\_Detention\\_and\\_Handlin1.pdf](http://police.homeoffice.gov.uk/publications/operational-policing/Safer_Detention_and_Handlin1.pdf)

should be in place to deliver the required outcomes. The focus of the guidance is to help reduce deaths in custody and minimise adverse incidents. It aims to provide the practitioner with practical support, advice and direction in raising the standards of custodial care and enhancing the treatment of person in custody. Implementation of the guidance in each force area is subject to oversight by the National Policing Improvement Agency, Association of Chief Police Officers and the Home Office. In January 2008, an accompanying training package for custody officers was published.

162. Schedule 8 to the *Terrorism Act 2000* provides a separate detention regime in respect of individuals arrested under section 41 of the Act or detained under Schedule 7. Schedule 8 makes provision for, amongst other things, treatment, identification and legal representation, and sets out the process by which the police and Crown Prosecution Service may obtain extension of detention warrants from the relevant judicial authority. Detention under Schedule 8 is also governed by a Code of Practice issued under PACE (“Code H”). The maximum period of pre-charge detention was reviewed as part of the Government’s review of Counter Terrorism and Security Powers, which reported to Parliament in January 2011. Following the review, the Government reduced the maximum period of detention from 28 to 14 days by allowing the temporary, secondary legislation which kept 28 days as the maximum period, to lapse. Legislation is currently being passed, which will permanently reduce the maximum period to 14 days.

### **Notifications on Arrest**

163. On arrest, a person must be taken to a police station as soon as practicable. On arrival at the police station, the person will be brought before the custody officer who will determine whether grounds exist for that person to be released with or without charge or detained in order to progress the investigation. The custody officer must inform the person of their right to have someone informed of their arrest; the right to consult privately with a solicitor and that free independent legal advice is available; and the right to consult the Codes of Practice. The detainee must also be given a written notice setting out these rights, the arrangements for obtaining legal advice, the right to a copy of the custody record, and also of the caution issued before any questioning about an offence can be undertaken.
164. The Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C)<sup>18</sup> of PACE sets out considerations specific to citizens of independent Commonwealth countries or foreign nationals. This provides that any detainee must be informed of their right for their relevant consular offices to be informed of their detention, their

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<sup>18</sup> [http://police.homeoffice.gov.uk/publications/operationalpolicing/2008\\_PACE\\_Code\\_C\\_\(final\).pdf?view=Binary](http://police.homeoffice.gov.uk/publications/operationalpolicing/2008_PACE_Code_C_(final).pdf?view=Binary)



whereabouts, and the grounds for the detention. In the case of those countries with which the United Kingdom has a bilateral consular convention or agreement in place requiring notification of arrest, the appropriate consular office must be informed as soon as practicable. Irrespective of such a convention, if the detainee is a political refugee, the consular office shall only be informed at the detainee's express request.

### **Audio- and video-recording of interviews**

165. General information on audio and video recording of interviews can be found at paragraphs 98 to 100 of the UK's 4<sup>th</sup> periodic report. There are no plans to roll out nationally the use of video recording of interviews with suspects. Instead it will remain a matter for operational discretion for each force area based on the individual circumstances of the case whether the interview with a suspect should be video as well as audio recorded.
166. The *Counter Terrorism Act 2008* introduces new police powers. Sections 26 of that Act require all post charge terrorism interviews to be video recorded with sound (these provisions have yet to be brought into force) and a commitment was made during the Parliamentary debates that the visual recording with sound of all interviews under section 41 of or schedule 7 to the *Terrorism Act 2000* will be made compulsory. The Secretary of State will make an order under paragraph 2 of Schedule 8 to the 2000 Act giving effect to that commitment. PACE Codes will be revised and a new Code on the visual recording of interviews with sound will provide guidance to police officers on how the visual recording should be conducted. All terrorism interviews in Northern Ireland are already video recorded with sound in accordance with an existing code of practice.

### **Measures to prevent ethnic discrimination**

167. Information on measures to prevent ethnic discrimination was provided at paragraphs 98 to 114 of the UK's 4<sup>th</sup> Periodic Report.

### **Police Codes of Practice**

168. The Codes of Practice for the Detention, Treatment and Questioning of Persons by Police Officers makes provision for all detainees to be informed of their right to legal advice and the procedures to be taken to facilitate this right. A Notice of Rights and Entitlements is also made available to all persons detained in police custody.
169. There may be occasions when a person detained in custody declines to seek legal advice and waives this right. On such occasions, the Codes of Practice for the Detention, Treatment and Questioning of Persons by Police Officers set out procedures to be followed by police officers including the need to provide reminders to the detainee, throughout the detention period, of this right. The Code also outlines the conditions

under which adverse inferences may be drawn from a person's failure or refusal to say anything about their involvement.

### **Access to Healthcare**

170. The Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C)<sup>19</sup> issued under PACE requires that the custody officer at a police station in which a person is detained must make sure that a detainee receives appropriate clinical attention as soon as reasonably practical, whether the detainee requests it or not, if that person is considered to be in need of attention. This may include taking the person to a hospital or other suitable medical facility, or for the person to be seen by a healthcare professional at the police station. A healthcare professional means a clinically qualified person working within the scope of practice determined by their relevant professional body. Whether examination by a health care professional at the police station is appropriate depends on the duties they are carrying out at the time.
171. In January 2008, Skills for Health published national occupational standards for healthcare professionals working in police custody.<sup>20</sup> This sets out the competencies required to deliver appropriate and timely healthcare by healthcare professionals for detainees at the police station.

### **Police Custody in Northern Ireland**

172. The Criminal Justice Board for Northern Ireland has been working to ascertain how best to monitor and publish information to help people in the criminal justice system avoid discrimination on any improper ground. The Police Service of Northern Ireland (PSNI) has commenced collecting data for equality monitoring purposes with effect from July 2008. Arrangements are now in place for the voluntary equality monitoring of those entering police custody suites across a range of seven indicators. Although the collection of data has commenced and the data collected in a number of categories is comprehensive, the voluntary disclosure of some key information has been limited. As a result, PSNI is exploring ways of encouraging individuals to disclose information across all categories so as to give sufficient data for reliable analysis. Although equality monitoring will not in itself directly prevent discrimination, when published, the data will help to identify inconsistencies that need further investigation.

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<sup>19</sup> <http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-c?view=Binary>

<sup>20</sup> <https://tools.skillsforhealth.org.uk/suite/show/id/12>

### **PACE in Northern Ireland**

173. PACE Code C (NI)<sup>21</sup> contains similar provision to that in England and Wales on the provision of healthcare for persons detained by police. To reduce the risk of self-harm and deaths in custody, a risk assessment, including the need for clinical treatment, is completed on each detainee as they enter the custody facility and during their period of detention as considered necessary. Appropriate clinical attention is provided as soon as reasonably practicable even if the detainee makes no request for it. Where the need for attention is considered urgent the nearest available forensic medical officer or ambulance is called immediately.

### **Access to legal advice in Police Custody**

174. General information on access to legal advice in police custody in England, Wales and Scotland can be found at paragraphs 101 to 105 of the UK's 4<sup>th</sup> periodic report.

### **Police custody in Scotland**

175. In Scotland, access to solicitors for detained persons is now provided for under section 15A of the *Criminal Procedure (Scotland) Act 1995* (as amended by the *Criminal Procedure (Legal Advice, Detention and Appeals) (Scotland) Act 2010*). Persons detained under section 14 of the 1995 Act, and taken to a police station or other premises or place, are entitled to have details of their detention sent to a solicitor and to one other person without delay. Those detained by the police will be told of this right immediately on arrival at the police station or other premises. Under section 15A the detained person has a right to legal advice before and during questioning. The consultation can be by any appropriate means including advice over the telephone. Advice by other means such as telephone may take place as an initial step. If the suspect however wishes to consult in person then the solicitor should attend the police station.
176. A suspect is entitled to decline any questions and no adverse inference can be drawn from such a silence.
177. Where a person is arrested on any criminal charge, section 17 of the 1995 Act entitles them to have a solicitor notified that professional assistance is needed. The solicitor must be informed where they are being detained, whether they are to be freed and, if not, the court to which they are to be taken and when they are due to appear there. The accused and solicitor are entitled to have a private interview before any judicial examination or appearance in court. Under the *Terrorism Act 2000*, where a person has been permitted to consult a solicitor, the

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<sup>21</sup> <http://www.nio.gov.uk/index/nio-publication/nio-pubs-search-results.htm?category=&keyword=codes+of+practice&order=date>

solicitor is allowed to be present during any interview carried out in connection with the terrorist investigation.

## **PRISON CUSTODY**

### **Access to legal advice in prisons**

178. Information on access to legal advice in prisons in the UK can be found at paragraphs 263 to 270 of the UK's 4<sup>th</sup> periodic report.

## **IMMIGRATION SERVICE**

### **Recording of interviews and access to legal advice**

179. The asylum interview is essentially a fact-finding exercise to enable applicants to say why they fear persecution in their own country and is not conducted under caution. A verbatim record is kept of the interview and a copy provided to the interviewee. The UK Border Agency is also required to allow applicants other than those entitled to publicly funded legal representation at interview or who have the resources to fund their own legal representation, to have their asylum interviews tape recorded where they make such a request. The UK Border Agency is not required to tape record asylum interviews where applicants with legal representation choose not to have their legal representative present at interview.

180. Information on interviews with suspected immigration offenders conducted under caution at police stations can be found at paragraph 194 of the UK's 4<sup>th</sup> report.

181. Immigration removal centres within the United Kingdom are subject to The Detention Centre Rules 2001 (SI 2001 No 238)<sup>22</sup> which make provision for their regulation and management. The Rules govern matters such as welfare, healthcare, religious observance and correspondence. They also provide for the duties of Detainee Custody Officers. A comprehensive set of operating standards, which underpin the Rules and determine an auditable minimum level of care and service across all aspects of life in removal centres, is also in place. There is a rolling programme of self-audit of the standards and provision for oversight of self-audit procedures.

182. Centres are subject to independent oversight by Independent Monitoring Boards and HM Chief Inspector of Prisons.

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<sup>22</sup> <http://www.opsi.gov.uk/SI/si2001/20010238.htm>

## MILITARY REGULATIONS

183. The Service Police Codes of Practice (SPCoP, revised in October 2009)<sup>23</sup> provide direction on treatment and questioning of all persons suspected of being involved in offences under the *Armed Forces Act 2006* (which replaced single service discipline acts on 31 October 2009) and ensure they are dealt with fairly and properly in accordance with the law.
184. The remainder of the codes deal with contact between Service Police and members of the Service community in the exercise of their powers. They also provide a clear statement of the rights of the individual and the powers of the Service Police.
185. In addition, codes of practice exist for the management of personnel whilst in service custody which provide clear direction on the appropriate treatment and rights of persons in service custody including humane treatment, visits by independent duty personnel and procedures for complaint.
186. Service Custody Premises must be licensed for use and are only issued with that license subject to meeting the strict criteria for both the physical safety of the facilities and evidence of safe practices and procedures as stipulated in doctrine.

## PEACETIME REGULATIONS

187. The Armed Forces are subject to the following peacetime regulations:
- The Service Custody and Service of Relevant Sentence Rules 2009
  - Service Code of Practice for the Management of Personnel in Service Custody and Committed to Service Custody Premises and Civil Prisons 2009
  - Army Code 64180 – Military Custody and Summary Dealing – Unit Folder.
  - *Corporate Manslaughter and Corporate Homicide Act 2007* – will apply to Service Custody with effect from April 2011.
  - Army General Administrative Instruction (AGAI) – Volume 3 – Chapter 110 – Army Suicide Vulnerability Risk Management (SVRM) Policy.
  - AGAI 109 – U18 policy.
  - Military Corrective Training Centre has bespoke comprehensive unit standing orders and contingency plans.

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<sup>23</sup> Electronic link is not available. However hard copies are available from the Ministry of Justice.

- Each licensed custody facility is required to produce bespoke standing orders.

### **Arrest and detention of terrorist suspects in Northern Ireland**

188. Part VII of the *Terrorism Act 2000* gave powers to the security forces in Northern Ireland in order to counter the terrorism threat over and above those in other UK-wide terrorism legislation. These provisions were repealed in July 2007 as part of a programme of security normalisation launched in response to the Provisional IRA's announcement of an end to its armed campaign. Since July 2007 all terrorist suspects in Northern Ireland are arrested and detained under the permanent, UK-wide arrangements in the *Terrorism Act 2000*.

### **TORTURE EQUIPMENT**

189. Her Majesty's Government remains committed to preventing British companies from manufacturing, selling or procuring equipment designed primarily for torture or other cruel, inhuman or degrading treatment or punishment.

### **ORDERS FROM SUPERIOR OFFICERS AS A JUSTIFICATION OF TORTURE**

#### **The concept of "Due Obedience" as a defence**

190. There is no criminal law defence of 'due obedience' in English Law.
191. The offence of torture is defined in English law in the *Criminal Justice Act 1988*. British service personnel are subject to a disciplinary system in which offences are defined by reference to English domestic criminal law and the English court's jurisdiction wherever they are in the world. Therefore torture is an offence under Service law, and could attract the same maximum sentence as could be applied under UK criminal law, which is imprisonment for life.
192. UK forces are subject to Service law at all times, wherever in the world they are serving. Therefore service personnel can, and will, be prosecuted if there is evidence that they have tortured, assaulted or committed any other offence against a person.
193. Invoking a superior order is no defence to torture – the only defences that may be deployed are the statutory defences detailed in the *Criminal Justice Act 1988* (see also paragraph 28 above) and general defences such as insanity. An order to torture would be unlawful, and since a subordinate may disobey an unlawful order, he could (and would) refuse to undertake the order. If such an order were to be given, the subordinate would be able to report it higher up the chain of command (i.e. above the officer giving the illegal order) and to the service police, who would investigate the order as a criminal offence.

## Article 3: Return of individuals to States where they might face torture

### EXTRADITION PROCEDURES

194. General information on extradition procedures can be found at paragraphs 10–14 of the 2<sup>nd</sup> Report and paragraphs 44 of the UK's 4<sup>th</sup> Report.

### ASYLUM PROCEDURES

195. Paragraphs 21 and 22 of the UK's 3<sup>rd</sup> periodic report and paragraphs 46 to 56 of the UK's 4<sup>th</sup> report set out the UK's policy on treatment of asylum seekers in relation to the requirements of the Convention Against Torture including policy on removal to other countries and the appeals system.

196. The United Kingdom continues to assess asylum applications against the criteria set out in the 1951 United Nations Convention Relating to the Status of Refugees. Figures for the number of applications received for asylum in the United Kingdom from 2002 to 2009, and percentages for those granted asylum are set out in the table below. Decision figures do not necessarily relate to applications received in that year. Information is of initial decisions, excluding the outcome of appeals or other subsequent decisions.

| <b>Applications<sup>(1)</sup> received for asylum in the United Kingdom, initial decisions and percentages from 2003 to 2010</b> |             |             |             |             |             |             |                 |                 |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-----------------|-----------------|
|  | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009 (P)</b> | <b>2010 (P)</b> |
| Applications received  | 49,405      | 33,960      | 25,710      | 23,610      | 23,430      | 25,930      | 24,485          | 17,790          |
| Applications withdrawn   | 1,835       | 2,205       | 2,545       | 1,780       | 1,230       | 2,740       | 3,345           | 2,905           |
| <b>Percentages of initial decisions considered under normal procedures</b>   |             |             |             |             |             |             |                 |                 |
| Total  | (100)       | (100)       | (100)       | (100)       | (100)       | (100)       | (100)           | (100)           |
| Granted asylum   | (6)         | (3)         | (7)         | (10)        | (16)        | (19)        | (17)            | (17)            |
| Granted exceptional leave to remain, humanitarian protection or Discretionary leave <sup>(2)</sup>                               | (11)        | (9)         | (10)        | (11)        | (10)        | (11)        | (11)            | (8)             |
| Refused asylum, ELR, HP and DL   | (83)        | (88)        | (83)        | (79)        | (74)        | (70)        | (72)            | (75)            |

(1) Figures (other than percentages) rounded to the nearest 5 (- = 0, \* = 1 or 2) and may not sum to the totals shown because of independent rounding.

(p) Provisional figures – possible revision in August

(2) Humanitarian Protection (HP) and Discretionary Leave (DL) replaced Exceptional Leave to Remain (ELR) from 1 April 2003

## Article 4: Criminalisation of Torture

197. Details of measures to criminalise torture in the UK can be found at paragraphs 39 to 41 of the UK's 4<sup>th</sup> periodic report. The UK has reiterated its view that UK law is consistent with the Convention at paragraph 28 of this report.

### MILITARY PERSONNEL

198. *The Criminal Justice Act 1988* applies both to civilians and to military personnel as does all criminal law in the UK. Service law contains a provision which stipulates that an act that would be an offence under the criminal law of England and Wales is also an offence under Service law. Therefore, torture is explicitly forbidden under Service law, and is punishable by the same sentence as could be applied under UK criminal law.

199. UK forces are subject to Service law at all times, wherever in the world they are serving. Therefore, service personnel can, and will, be prosecuted if there is evidence that they have tortured, assaulted or committed any other offence against a person. There is no statute of limitations on section 134 of the *Criminal Justice Act 1988*.

### POLICE PERSONNEL

#### England and Wales

200. Discipline and unsatisfactory performance procedures are laid out in *Police Acts 1996* and 1997 (which replaces those under Part IX of the PACE Act), and are set out in the Police (Conduct) Regulations 2008<sup>24</sup> and the Police (Performance) Regulations 2008.<sup>25</sup>
201. In 2004 the Home Secretary commissioned a review of the current arrangements for dealing with police misconduct and unsatisfactory performance. The Review of Police Disciplinary Arrangements<sup>26</sup> was conducted by William Taylor (former Commissioner of the City of London Police and former HM Inspector of Constabulary for Scotland).
202. The recommendations contained in the report, published in 2005, were accepted by Ministers and led to the Police Advisory Board for England and Wales (PABEW) being asked to take forward the process for implementing the recommendations.
203. The Taylor Review found that the current system of dealing with police misconduct was overly bureaucratic and legalistic with little or no

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<sup>24</sup> [http://www.opsi.gov.uk/si/si2008/uksi\\_20082864\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20082864_en_1)

<sup>25</sup> [http://www.opsi.gov.uk/si/si2008/draft/ukdsi\\_9780110835181\\_en\\_1](http://www.opsi.gov.uk/si/si2008/draft/ukdsi_9780110835181_en_1)

<sup>26</sup> <http://press.homeoffice.gov.uk/documents/police-disciplinary-arrangements/>



encouragement for managers to swiftly and proportionately deal with low level misconduct matters. Disciplinary hearings were seen as being more akin to a criminal court hearing, and even low level misconduct matters were decided by a three person panel of senior police officers.

204. The Taylor Review proposed that the new misconduct procedures should be based on Advisory, Conciliation and Arbitration Service (ACAS, an organisation devoted to preventing and resolving employment disputes) principles which would modernise the system and make it easier for individual officers and the police service generally to learn lessons and improve the service to the public. One of the key points to emerge was the need to shift the emphasis and culture in police misconduct matters towards an environment focused on development and improvement as opposed to one focused on blame and punishment. In addition, the report stressed the importance of carrying out a full assessment of the alleged conduct at an early stage with a view to then implementing a proportionate and non-bureaucratic response. The report also recommended a review of the existing procedures for dealing with individual poor performance and attendance of police officers.
205. The new Police (Performance) Regulations 2008 and the Police (Conduct) Regulations 2008 were introduced in December 2008 to create a conduct and unsatisfactory performance environment for police officers that more closely reflects those which operate in normal employment practice.
206. The new procedures provide a fair, open and proportionate method of dealing with alleged misconduct and unsatisfactory performance. They are intended to encourage a culture of learning and development for individuals and/or the organisation. Sanction has a part, when circumstances require this, but improvement will always be an integral dimension of any outcome (even in the case where an individual has been dismissed there can be learning opportunities for the Police Service).
207. The Conduct and Performance Regulations mean that:
- There is a new set of ‘Standards of Professional Behaviour’ which sets out the standards expected of police officers. These standards include areas such as ‘Authority, Respect and Courtesy’ which sets out that police officers must not under any circumstances inflict, instigate or tolerate any act of inhuman or degrading treatment as enshrined in Article 3 of the European Convention on Human Rights;
  - Disciplinary proceedings now follow processes that are recognised in other employment models;
  - The civil standard of proof (“balance of probabilities” rather than the criminal standard of “beyond reasonable doubt”) continues to be required in disciplinary cases;

- There is a fast track procedure to deal with officers against whom there is overwhelming evidence of serious misconduct;
- There are greater powers for proceedings in the absence of accused officers who report sick when facing disciplinary action;
- The chief officer may suspend a member of his or her force where an allegation indicates a serious disciplinary offence, whether or not the matter has been investigated. An officer under suspension is unable to retire from the force without the leave of the chief constable; and
- There is a robust procedure for dealing with unsatisfactory performance (or attendance) by police officers, with the possibility of dismissing officers when their performance cannot be brought up to expected standards.

### **Scotland**

208. Equivalent arrangements apply in Scotland under the Police (Efficiency) (Scotland) Regulations 1996 and the Police (Conduct) (Scotland) Regulations 1996. Both are currently being reviewed by the Police Advisory Board for Scotland (PABS) Technical Working Group (TWG). This review will take account of the work carried out in England and Wales by the Taylor Review.

## **Article 5: Establishment of Jurisdiction**

209. The United Kingdom Government's consistent position has been that the UN Convention Against Torture has no bearing on the issue of civil jurisdiction in relation to acts committed abroad but only relates to criminal jurisdiction. Consistent with this position, the United Kingdom gave effect to the relevant provisions of the Convention by enacting sections 134 and 135 of the Criminal Justice Act 1988 which makes torture a crime punishable in the United Kingdom.
210. On 7 July 2011, the Grand Chamber of the European Court of Human Rights handed down judgments in *Al Skeini v UK* (Application no 55721/07) and *Al-Jedda v UK* (Application NO 27021/08). In *Al-Jedda* the Court decided that the UK had jurisdiction under Article 1 ECHR (obligation to respect human rights in respect of an individual who had been interned by British forces acting pursuant to UNSCR 1546 and in respect of *Al-Skeini*, the claimants fell within UK jurisdiction because they were civilians killed during security operations carried out by British soldiers in Basrah between the period May 2003 and June 2004. Although the decisions are very recent and the full implications of the judgments are being worked through, the Court reaffirmed the principle that the meaning of "jurisdiction" in Article 1 ECHR is primarily territorial, though there are a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a state outside its territorial boundaries". On the facts of the case in *Al-Skeini*, the Court considered that exceptional circumstances did exist to establish jurisdiction within

specific geographic and temporal boundaries in Iraq. In particular the Court noted that the UK had assumed “authority and responsibility for the maintenance of security in South East Iraq” and that the UK “through its soldiers engaged in security operations in Basrah during the period in question, exercised authority and control over individuals killed in the course of such security operations, so as to establish a link between the deceased and the United Kingdom for the purposes of Article 1”.

211. In *Al-Saadoon and Mufdhi v United Kingdom* (no 61498/08) a Chamber of the European Court of Human Rights considered the question whether the transfer by the UK of the applicants, who were in the custody of UK troops in Iraq, to Iraqi authorities for trial violated Article 3 of the ECHR. The UK Court of Appeal (CoA) in *Saadoon and Mufdhi* ([2009] EWCA Civ7) held that the ECHR only applies to individuals detained by UK forces in Iraq where the UK exercises both *de jure* and *de facto* legal control over them; *de facto* physical control by itself is insufficient to engage ECHR rights and obligations. The Chamber of the European Court of Human Rights agreed with this position in principle but found that the UK did have *de jure* control whereas the CoA held that it did not; thus the Chamber concluded that the individuals in question came within UK jurisdiction. The Court held that Article 3 ECHR (prohibition of torture) was violated in this case as the transfer of the individuals to the Iraqi authorities in circumstances in which they faced a real risk of the death penalty exposed them to psychological suffering of a nature and degree that constituted inhuman treatment.) Her Majesty’s Government’s request for a referral to the Grand Chamber was refused.
212. Relevant standards of conduct and physical treatment of prisoners required of UK forces are contained in relevant international law and the Service law that applies to UK forces at all times, wherever in the world they are serving. Service law explicitly makes torture a criminal offence, thus reflecting the Convention against Torture.

## **Article 6: Detention of individuals suspected of torture**

213. Procedures for the detention of individuals alleged to have committed torture remain as set out in paragraphs 155–164 of this report.

## **Article 7: Prosecution of individuals suspected of torture and not extradited**

### **First prosecution in the UK for an offence of torture**

214. In 2005, the UK conducted the first domestic prosecution of a foreign national for acts of torture committed outside the United Kingdom. The prosecution was pursued against an Afghan national, Faryadi Zardad, who had commanded a checkpoint in Afghanistan between 1992–1996.

215. In accordance with Article 6(1) of the Convention, Zardad was arrested by police at his home in London in July 2003 and taken into custody. Initial investigations into his past, prompted by a television news programme, led to the conclusion that there was a reasonable prospect of his being convicted of crimes of torture and hostage-taking.
216. Zardad was detained for interview in accordance with PACE, and supplementary PACE Codes of Practice – the law of the State referred to in Article 6(1) of the Convention. During his detention he was afforded all the rights applicable to a detained person under these provisions. These included regular medical attention and the right to be “assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national”, as stipulated in Article 6(3) of the Convention.
217. There was no application by Afghanistan for Zardad’s extradition to Afghanistan. Article 7(1) of the Convention stipulates that the State Party under whose jurisdiction a person alleged to have committed acts of torture is found shall submit the case to its competent authorities for the purpose of prosecution, if it does not extradite him.
218. Accordingly, the Crown Prosecution Service (CPS) reviewed the evidence against Zardad, subsequently deciding that he should be prosecuted for offences of torture and hostage-taking. The decision was taken on the basis of the test set out in the Code for Crown Prosecutors. This test is applied to all criminal cases prosecuted by the CPS; as required by Article 7(2) of the Convention, no distinction in the standard of evidence required for prosecution and conviction is made for cases prosecuted on the basis of extra-territorial jurisdiction.
219. Operational difficulties, and cost to public funds, of bringing criminal proceedings based on extra-territorial jurisdiction should not, however, be underestimated. They are immense, and not always fully appreciated. The majority of the investigations had to be carried out in Afghanistan, often in difficult or dangerous circumstances. On four occasions investigators were also accompanied by prosecution lawyers. In passing sentence, the trial judge, the Honourable Mr Justice Treacy, commented:
- “I know that the officers who worked in Afghanistan on the investigation and handling of this case have worked under conditions of extreme personal discomfort, at times under extreme personal risk and it is plain to me that they have shown a degree of dedication to their task which goes well beyond the ordinary.”

### **Background facts**

220. The evidence related to the civil war taking place in Afghanistan between 1992 and 1996. Afghan clans were unable to agree a basis for power sharing after the departure of Russian forces; the main conflict was between two rival factions: Hezb-e-Islami and Jamiat-e-Islami.

221. Faryadi Zardad was a commander within Hezb-e-Islami with approximately 1,000 men under his control; he had a military base in the Hezb-e-Islami stronghold of Sarobi which he controlled. Almost all traffic between Peshawar, in Pakistan, and Kabul, Afghanistan, would take the road through Sarobi. All such traffic had to pass Mr Zardad's military base, with a checkpoint positioned at a strategically important point in the road.
222. Control of the checkpoint enabled him and his soldiers to steal goods and money from persons passing through; to prevent supplies getting through to his enemies in Kabul; and to exchange prisoners taken by rival groups.
223. Mr Zardad and the soldiers under his command committed manifold crimes of torture and hostage taking. They used indiscriminate and unwarranted violence on innocent civilian travellers, including torture, beatings, woundings, imprisonment, extortion and executions.
224. When the Taliban took control of Afghanistan, Mr Zardad fled to Pakistan, from where he made his way to the UK. He applied for asylum in the UK in September 1998.

#### **Trial**

225. At trial Mr Zardad faced an indictment containing a count of conspiracy to torture and a count of conspiracy to take hostages between 1992 and 1996. He was represented throughout the legal proceedings by leading counsel and junior counsel. He was tried before a judge of the High Court and a jury at the Central Criminal Court. On 18 July 2005 following a re-trial (the jury were unable to reach a verdict at an earlier trial) he was unanimously convicted of both counts. On 19 July 2005 the trial judge sentenced him to 20 years imprisonment on each count to run concurrently.

#### **Legal precedent**

226. In the course of the first trial the Court gave judgment on the circumstances within which a person can be said to be "a person acting in an official capacity" – in other words a de facto public official – as set out in Article 1 of the Convention and UK implementing legislation.
227. This judgment is significant because this was the first case of its kind under English law and because so few other judgments by courts of other States Party to the Convention have been reported. There was therefore no existing national precedent to assist the judge in interpreting the Convention and implementing legislation. The consequent weight the judge attached to international sources in his judgment – including two decisions of the UN Committee Against Torture (CAT) – is noteworthy and sets a useful precedent for national courts in other jurisdictions dealing with similar cases.

228. Section 134(1) of the *Criminal Justice Act*, which gives effect to the wording of Articles 1 and 4 of the Convention, provides that:
- “A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.”
229. The Defence contended that Mr Zardad was not a “public official or person acting in an official capacity” for the purposes of section 134: it was not sufficient for the prosecution to claim that because Mr Zardad was a commander in a group which exercised control over a part of Afghanistan he was a de facto “public official”. On the contrary, the prosecution must show that either there was no state authority in Afghanistan at the relevant time in which case other entities could exercise quasi-governmental authority; or, if there was a state authority (as was the case here: a government existed in Kabul and it had a recognised Ambassador to the United Nations), the prosecution must show that Mr Zardad owed his position to that authority. As support the defence relied on the decision of the CAT in the case of *HMHI v Australia*, Communication No. 177/2001.
230. The prosecution argued that Mr Zardad held a post as a de facto public official because his faction in the civil war controlled an area of Afghanistan in such a way as to amount to a governmental authority, irrespective of the existence, on paper at least, of a formal government authority based in Kabul. To this end the prosecution relied on the decision of the CAT in *Elmi v Australia*, Communication No 120/1998 and of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in *Furundzija* (10 December 1998: IT-95-17H-T).
231. The Court held that, for the purpose of the elements of torture as set out in Article 1 of the Convention and section 134 of the *Criminal Justice Act*, the reality of any particular situation should be examined for sufficient evidence that an organisation has actual control of an area and exercises the type of authority which a government would exercise:
- “I have construed [section 134(1)] having had regard to the purpose of the Convention and the international authorities which have been drawn to my attention, as including in the phrase “person acting in a public capacity”, those people who are acting for an entity which has acquired de facto effective control over an area of a country and is exercising governmental or quasi-governmental functions in that area.”
232. The Court found that merely to apply that test advocated by the defence would not reflect the realities of many countries and would leave a substantial gap in the implementation of section 134 of the *Criminal Justice Act*.

## **Article 8: Extradition of individuals suspected of torture**

233. The UK has received no extradition requests for anyone accused of torture since the 4<sup>th</sup> report.

## **Article 9: Mutual Legal Assistance**

234. As described in previous reports, the United Kingdom gives full legal assistance under the *Criminal Justice (International Co-operation) Act 1990* to foreign courts or prosecuting authorities. The United Kingdom Central Authority for mutual legal assistance has not received any requests for assistance from overseas authorities in connection with offences involving torture.

## **Article 10: Education and training of police, military, doctors and other personnel to prevent torture and other forms of ill-treatment**

235. The UK Government has noted the views of the UN Rapporteur of Torture in his paper [re E/CN.4/2006/6],<sup>27</sup> that the definition of torture [could] be extended to include a concept of powerlessness – especially in relation to women [and children]. The Government deplores the practices mentioned by the Rapporteur, which give rise to his suggestion. In the UK, rape and female genital mutilation are criminal offences under the *Sexual Offences Act 2003* and the *Female Genital Mutilation Act 2003* respectively.

236. Previous reports have outlined the general principles which underpin all training programmes for law enforcement personnel and medical personnel – respect for the individual, humanity, the need to act within the law and to uphold the law at all times. Recent developments are set out below.

## **POLICE OFFICERS**

### **Great Britain**

237. In January 2008, the Sector Skills Council for health<sup>28</sup> (commissioned by the Home Office) set out National Occupational Standards for healthcare professionals working in police establishments. These set out the competencies required to deliver appropriate and timely healthcare by each category of healthcare professional for detainees at police stations.

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<sup>27</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/G05/168/09/PDF/G0516809.pdf?OpenElement>

<sup>28</sup> [http://www.skillsforhealth.org.uk/component/docman/doc\\_download/175-functional-map-for-hpc-august-2007.html](http://www.skillsforhealth.org.uk/component/docman/doc_download/175-functional-map-for-hpc-august-2007.html)

238. From 1 April 2008, provisions in the *Mental Health Act 2007*<sup>29</sup> allow a person detained under section 136 of the *Mental Health Act 1983* (a person detained and taken to a place of safety for the purposes of assessment) to be taken from one place of safety to another before an assessment has been carried out. The primary reason of this change is to enable persons detained under section 136 and taken to a police station to be removed as early as possible to a more suitable place of safety (e.g. a hospital) for assessment purposes. The associated Code of Practice<sup>30</sup> and accompanying guidance makes clear that a police station is not an appropriate place to detain a person for this purpose and such a facility should only be used on an exceptional basis on the grounds that the person is violent or potentially violent and a danger to themselves or others around them.
239. PACE Code C and the Safer Detention and Handling of Persons in Police Custody<sup>31</sup> make clear the need to ensure that appropriate and respectful treatment is provided to all detainees and that any additional vulnerability of, or specific requirements for, a detainee is identified. Appropriate action must be taken to support the person and to help minimise any additional risk arising from their situation or vulnerability; and appropriate facilities or materials to meet any specific requirements based on ethnicity or religious grounds must be provided. In January 2008 a training package<sup>32</sup> accompanying the Safer Detention and Handling of Persons in Police Custody was published.

### **Scotland**

240. Guidance for police detention and custody in Scotland are contained the ACPOS document "Custody Manual of Guidance, 2008.

### **Northern Ireland**

241. Details of training and education for police officers in Northern Ireland are to be found at paragraphs 55 to 60 of the UK's 4<sup>th</sup> report.

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<sup>29</sup> [http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070012\\_en\\_1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070012_en_1)

<sup>30</sup> Code for England:  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_084597?IdcService=GET\\_FILE&dID=170799&Rendition=Web](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597?IdcService=GET_FILE&dID=170799&Rendition=Web)  
Code for Wales:  
<http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/gen-ld7209-e.pdf?langoption=3&ttl=GEN-LD7209%20-%20Mental%20Health%20Act%201983%3A%20Code%20of%20Practice%20for%20Wales>

<sup>31</sup> [http://police.homeoffice.gov.uk/publications/operational-policing/Safer\\_Detention\\_and\\_Handlin1.pdf](http://police.homeoffice.gov.uk/publications/operational-policing/Safer_Detention_and_Handlin1.pdf)

<sup>32</sup> Electronic link is not available. However hard copies are available from the Ministry of Justice.



242. In March 2008, the Northern Ireland Policing Board published a revised Code of Ethics<sup>33</sup> for PSNI. The Code draws widely on international human rights documents, including the United Nations Code of Conduct for Law Enforcement Officials.

## **PRISON OFFICERS**

### **England & Wales**

243. The National Offender Management Service (NOMS) for England and Wales is dedicated to treating prisoners with decency in a caring and secure environment, and prison officer training reflects this. Great emphasis is placed on interpersonal skills and building positive relationships with prisoners.
244. All newly recruited prison officers are required to complete a one-year foundation training programme, leading to a level 3 National Vocational Qualification in Custodial Care (CCNVQ). Training begins with an 8-week Prison Officer Entry Level Training (POELT) course, which provides new staff with a foundation level of training in all core skill areas and covers interpersonal skills, mental health awareness, race and diversity, violence reduction and safer custody, alongside the more traditional security awareness and practical skills needed to be a prison officer. Existing prison officers also have the opportunity to apply to undertake level 3 CCNVQ.
245. The principles of respect for human dignity and recognition of the rights of individuals underpin the POELT course. Interpersonal skills training introduces students to a range of communication skills (verbal, body language and listening) and team-working concepts, as well as giving students an understanding of different types of behaviour. Diversity is threaded throughout the POELT course, and there are two specific diversity sessions. The “Challenge it, Change it” learning programme, which tackle inappropriate behaviour across all diversity strands and is currently being rolled out across the NOMS estate, has been incorporated into the POELT course. The course also includes a race awareness session which stresses the need for officers to put themselves in the position of BME prisoners and see things from their perspective. Students are advised about techniques that can be used to develop this skill. In addition there are also sessions on the care of prisoners with specific needs, i.e. mental health, older prisoners, learning difficulties, those at risk of self harm/suicide, foreign nationals.
246. Existing operational staff, including senior managers, receive training specific to their role, and the appropriate and respectful treatment of prisoners is embedded in all learning programmes. The “Adjudication” learning package, which looks at the adjudication process, covers what

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<sup>33</sup> [http://www.nipolicingboard.org.uk/final\\_code\\_of\\_ethics-2.pdf](http://www.nipolicingboard.org.uk/final_code_of_ethics-2.pdf)

constitutes a legitimate punishment, ensuring the punishment is appropriate to the offence and prisoners are treated with decency and respect. The Prison Service Adjudications Manual and PSO 2000, Adjudications, support this training by providing clear instructions and guidance on adjudication procedures for prisoners alleged to have offended against prison discipline.

247. The NOMS Offender Management Model<sup>34</sup> ensures offenders are managed in a consistent, constructive and coherent way during their entire sentence, with the main agencies involved with offenders working together at different stages of the sentence (court, sentence, custody and community supervision). It is based on a thorough assessment from which a single sentence plan is developed in collaboration with the offender. The plan is reviewed and evaluated throughout the sentence and a core principle is to keep the offender central to the whole assessment, planning and supervision process.
248. Linked to this, offender management training stresses the importance of building positive relationships between prisoners and staff. Prison staff are trained to work with prisoners to address their risks and needs, which may include interventions such as offender behaviour programmes.
249. New prison officers receive 32 hours of Personal Safety and Control and Restraint training, which is assessed as part of their CCNVQ to ensure they demonstrate competence in both these areas. All of the training delivered adheres to the Control and Restraint Manual, and covers many situations with prisoners that an officer may encounter, from one to one situations (Personal Safety) to planned Control and Restraint removal employing a three officer team. During Control and Restraint training, newly recruited prison officers learn about the law that governs use of force, how to manage confrontational situations and conflict resolution strategies that enable them to consider every other option of de-escalating a situation without resorting to the use of force. There is specific reference to relevant legislation, including the *Human Rights Act 1998*, and articles 2, 3 and 8 of the European Convention on Human Rights. Following this initial training, all prison officers are required to undertake annual refresher training regarding the use of force.
250. All prison dog handlers and the dogs they use are trained to use the minimum force necessary to prevent escapes or respond to any violence shown to them or other people. Assessment and licensing procedures are in place to ensure that all dog teams are competent in this training requirement both on completion of initial training and annually thereafter.

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<sup>34</sup> <http://noms.justice.gov.uk/news-publications-events/publications/strategy/offender-management-model-1.1?version=1>

### **Scotland**

251. As stated in the 4<sup>th</sup> Report (paragraph 83), in Scotland all prison staff undertake human rights awareness training which was developed by the Scottish Prison Service College and is delivered by trained officers. The training is undertaken by existing prison staff and new recruits to the Scottish Prison Service.

### **Northern Ireland**

252. The Northern Ireland Prison Service has a comprehensive training programme that is designed to make all new staff fully aware of their responsibilities in relation to human rights. This includes role plays and simulations, some of which take place in a cell block under prison conditions.

253. The NIPS Strategic Efficiency & Effectiveness (SEE) Programme is due to be launched at the end of June 2011. This will be the vehicle by which the Prison Service will deliver transformational end-to-end change. Through the SEE Programme, the Service will endeavour to create leaner staffing structures, and a professionalised, flexible and well trained workforce with a culture of delivery, performance management, and accountability. Major work areas will include redefining the role of the Prison Officer and developing that of the Support Grade; the recruitment of additional support grades to offer greater flexibility, the development of a Competency Framework for staff to inform training, behaviour and standards; and a comprehensive review of training and delivery mechanisms.

254. The induction process for newly appointed managers contains a specific Human Rights module which is delivered by an in-house Human Rights adviser. Existing staff have been given awareness training and the Service is currently developing an interactive e-learning package which will be mandatory for all staff.

### **MEDICAL STAFF**

255. All registered health care staff working in prison have competencies of the same standard as those working in the National Health Service. Additionally these staff have access to the same NHS training programmes as part of their continuing professional development.

256. From April 2006 the responsibility for providing healthcare to prisoners was transferred to the NHS. The handover was phased over three financial years and primary care trusts (PCTs) became the commissioners of healthcare for any prison in their area.

257. In terms of medical staff working in prisons, PCTs undertake a health needs assessment to inform their commissioning policy. This will dictate what services are needed and the likely volumes required, which translates into skills and resources to support the requirement. The

guiding principle is that local PCT's should commission services which achieve the same standards as those set for the wider community.

258. Medical staff are aware that both the male and female prisoners have significantly increased healthcare needs for, in particular, Mental Health and Substance Misuse. Local PCT commissioning are sensitive to these particular service needs.

### **Northern Ireland**

259. In Northern Ireland, all medical staff undertake higher professional examinations for career development. These are overseen and maintained by the relevant Royal Colleges. Issues of probity and ethics are key components in the revalidation for General Practitioners who must demonstrate that they comply with the specific requirements of the Royal College of General Practitioners to ensure revalidation.
260. Medical staff employed through Health and Social Care Trusts must demonstrate to their employing authorities that they have undertaken to identify training requirements through the appraisal and job planning processes. Individual staff training requirements are reviewed annually.
261. All healthcare staff receive induction training that includes issues on Human Rights, Equality and Diversity, Disability Awareness and Bullying and Harassment. Healthcare staff complete Personal Development Plans that are reviewed at 6 and 12 months each year. Training requirements are identified, sourced and provided through appropriate organisations such as the Health and Social Care Trust and Beeches Management Centre.

### **Scotland**

262. In Scotland, medical services for the Scottish Prison Service in directly managed establishments are provided under a national contract. It is a condition of this contract that all doctors providing services are suitably qualified for prison work, are registered with the General Medical Council and hold a license to practise. There is a requirement for all doctors to undertake induction training and continuing professional development, and undertake specific prison training, including suicide risk management. This includes relevant training on ethical and moral issues which is also included in the training and learning strategy for prison nursing staff.

### **IMMIGRATION OFFICERS**

263. National training for new Immigration Officers includes sections on suicide awareness, equality and diversity, and safe and professional working practices. Information about the *Human Rights Act* forms an integral part of the training given to immigration caseworkers and operational staff. The background to the Human Rights Act (HRA) and the European Convention on Human Rights (ECHR) is explained, with particular focus on Articles 2, 3, 5, 8 12 and 14. Stand-alone sessions on

the HRA and ECHR are also delivered as required. An interactive e-learning facility is also available for all staff.

264. Medical and health care in removal centres is governed by the Detention Centre Rules, which came into force in April 2001 (as explained at paragraphs 95 and 96 of the UK's 4<sup>th</sup> Periodic Report).

## **MILITARY TRAINING**

### **Armed Forces custodial training**

265. In order to safeguard the rights of detainees, all personnel who are likely to be involved in custodial matters in an operational theatre are comprehensively trained before they begin to undertake these tasks. Personnel responsible for supervision of persons held in pre or post charge custody in the UK undertake mandatory training held at the Military Corrective Training Centre, Colchester.
266. All staff deploying to an operational theatre receive training on the Law of Armed Conflict and the standards of detainee treatment which must be met. Additional training is delivered to those who will be involved in the regular guarding and handling of prisoners. An eight-day course qualifies Non-Commissioned Officers to run and manage a unit custody facility and to act as their commander's adviser on custody at unit level.
267. All detention facilities overseas and in operational theatres are managed, maintained and inspected under the authority of the Provost Marshal (Army).

### **The Military Corrective Training Centre**

268. The Military Corrective Training Centre (MCTC) is the UK's defence corrective training centre. It is a military detention centre rather than a prison, and seeks to rehabilitate personnel to allow them to return to the Armed Forces or to civil society, after serving their sentences. The maximum sentence of military detention that may be awarded is two years. Sentencing regulations allow for those convicted of serious crimes to serve prison sentences in HM prison facilities. The MCTC is manned and run by the Military Provost Staff (MPS), who are the defence subject matter experts in custody and detention.
269. Service personnel wishing to transfer to the MPS must undertake three months of basic training on custodial matters, and subsequently undertake progressive career development courses approved and developed by the Home Office. Royal Navy and Royal Air Force personnel can also be temporarily attached to the MCTC. These personnel undertake a bespoke custody course.
270. In particular, all MCTC military staff involved in custodial duties are trained in the risk assessment of vulnerable detainees and suicide awareness.

### Ministry of Defence medical staff

271. All doctors in the Armed Forces are taught about the Laws of Armed Conflict and the Geneva Convention during their training. They are subsequently tested on this training; the exact procedures vary for the three different services.
272. All medical personnel are required to undertake Pre-Deployment Training prior to deploying to an operational theatre. This training is tailored to the operational theatre to which the personnel are being deployed. The training covers, *inter alia*, the rights of detainees, and the responsibilities of medical personnel providing medical care for detainees, including the importance of pre-detention medical examinations. The role of the International Committee of the Red Cross (ICRC) is also discussed.
273. The standards to which Armed Forces medical personnel are expected to comply are detailed in the Surgeon-General's policy letter which encompasses United Nations General Assembly Resolution 37/194 (1982)<sup>35</sup> on the protection of prisoners and refugees against torture and other cruel, inhuman or degrading treatment. It explicitly forbids medical personnel from being complicit in torture or inhuman/degrading treatment, and sets out the need for medical personnel to assess whether a sick detainee is well enough to be questioned. It further dictates that a medical officer with knowledge of psychiatry must be present at every detention facility to assess the mental state of those held.

### CROWN PROSECUTION SERVICE (CPS)

274. The Crown Prosecution Service's human rights legal guidance, available to all prosecutors and associated prosecutors refers to Article 3 of the European Convention on Human Rights ('Prohibition of torture and degrading treatment').
275. The CPS's Violence Against Women Strategy, which was published in April 2008, includes plans for future training for prosecutors and associate prosecutors on violence against women. This training will link to existing training programmes strands within the CPS.
276. Crimes against Humanity, War Crimes and allegations of torture are dealt with by the Counter Terrorism Division of the CPS. Prosecutors dealing with these cases receive specialist training and have internal guidance to assist them.

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<sup>35</sup> <http://www.un.org/documents/ga/res/37/a37r194.htm>

## **OTHER PERSONNEL – CONSULAR OFFICIALS**

277. Ensuring the welfare of British nationals detained abroad is one of the Foreign and Commonwealth Office's highest consular priorities. Any allegation of abuse is taken particularly seriously. If there is reason to believe that a British national is being mistreated in detention, UK policy is to try to stop it.
278. All consular staff are specifically trained on what action to take in response to any allegation of mistreatment. All our consular staff work under clear internal guidelines which cover the identification of possible signs of torture and mistreatment, as well as the procedures to be adopted in such circumstances.
279. Staff are instructed to ask prisoners whether they have suffered abuse or mistreatment, and to look for signs of mistreatment even where an individual does not raise it. The UK will follow up reports of mistreatment whether they come from the individual themselves, from their friends, family or representatives, or from other sources. The form this follow-up action will take depends on the circumstances of the individual case, and can include making representations overseas or to Embassies in London, Ministerial lobbying or co-ordinating international action. However, whatever action is taken, the objective remains the same: to end the mistreatment, and have the incident investigated.

## **OTHER PERSONNEL – INTELLIGENCE OFFICERS AND SERVICE PERSONNEL**

280. All UK intelligence officers and service personnel are given guidance about the standards that should apply during the detention and interviewing of detainees overseas, including how they should work with our intelligence liaison partners. In order to be as clear as possible about the standards under which the intelligence agencies and armed forces operate, the UK Government has published *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees*.<sup>36</sup>
281. The guidance sets out the standards under which intelligence agencies and armed forces operate, making clear that UK intelligence officers must operate in accordance with international and domestic law, including the Convention Against Torture and the *Human Rights Act 1998*. It stipulates that firstly, UK services must never take any action where they know or believe that torture will occur; secondly, if they become aware of abuses by other countries, they should report that to the UK Government so it can take the necessary action to stop it; and thirdly, in cases where UK services believe that there may be

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<sup>36</sup> [http://www.cabinetoffice.gov.uk/newsroom/news\\_releases/2010/100706-detainees.aspx](http://www.cabinetoffice.gov.uk/newsroom/news_releases/2010/100706-detainees.aspx)

information crucial to saving lives but where there may also be a serious risk of mistreatment, it is for UK Ministers to determine how to mitigate that risk.

282. The Intelligence and Security Committee, established through the Intelligence Services Act 1994, provides parliamentary oversight of the expenditure, administration and policy of the Intelligence and Security Agencies. Other oversight mechanisms, all established by statute, provide scrutiny of the policy and operations of the Agencies, which include the Intelligence Services Commissioner, the Intercept of Communications Commissioner and the Investigatory Powers Tribunal.

### **Article 11: Systematic review of rules, instructions, methods and practices to prevent torture and other forms of ill-treatment**

283. The Corporate Manslaughter and Corporate Homicide Act 2007 creates an offence whereby an organisation can be found guilty of “corporate manslaughter” if the way in which its activities were managed or organised causes a death and amounts to a gross breach of a relevant duty of care to the deceased. It will be possible to apply this offence in relation to deaths of persons held in custody once the relevant provisions (section 2(1)(d) of the Act) are commenced later this year. A wide range of custodial facilities will be covered, including prisons, private prisons, custody areas in police stations and courts, customs custody premises, service custody premises, and immigration removal centres (see section 2(2)).

### **OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE – UK NATIONAL PREVENTIVE MECHANISM (NPM)**

284. The United Kingdom ratified the Optional Protocol to the UN Convention Against Torture (OPCAT) in December 2003.
285. The UK’s National Preventive Mechanism was established on 31 March 2009. In the UK, the domestic requirements of OPCAT are fulfilled by the collective action of existing statutory bodies that are able to carry out unrestricted visits to places of detention without needing to give prior notice.
286. The Government is confident that the bodies<sup>37</sup> which have been formally designated to constitute the UK’s NPM individually and collectively meet the requirements of Articles 18 to 23 of OPCAT.

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<sup>37</sup> A list of the bodies included in the United Kingdom’s NPM can be found at: [http://www.ap.t.ch/index.php?option=com\\_k2&view=item&id=873:the-united-kingdoms-national-preventive-mechanism&Itemid=269&lang=en](http://www.ap.t.ch/index.php?option=com_k2&view=item&id=873:the-united-kingdoms-national-preventive-mechanism&Itemid=269&lang=en) and at Appendix 1



287. The UK's existing monitoring infrastructure is well established, comprehensive, and provides inspections in depth. There are over 20 different types of independent statutory inspection bodies currently operating within the UK. In England and Wales, for instance, there are independent inspectorates for prisons and youth detention centres, for police stations, for court cells and for psychiatric hospitals. Similar bodies exist in Scotland and in Northern Ireland. In all parts of the United Kingdom there are inspection mechanisms for immigration centres.
288. As well as diversification by geography, and by types of detention, there are also functional diversifications. For example, there are at least four levels of independent inspection for prisons in the UK, and each operates independently from the others:
- At local level, each prison has its own monitoring board. It is staffed by volunteers recruited from the general population, who carry out at least two or three visits per week on a continual basis.
  - At national level, there are the national Prison Inspectorates – one for England and Wales, one for Scotland, and the Chief Inspector of Criminal Justice for Northern Ireland. They carry out programmes of inspections for prisons, both announced and unannounced.
  - Also at national level, the national prison ombudsmen – one in England and Wales, and one Northern Ireland; and, in Scotland, the Independent Prisons Complaints Commissioner – investigate individual complaints from prisoners.
  - Finally the European Committee for the Prevention of Torture carries out periodic inspections on the regular running of prisons; or *ad hoc* inspections for special situations.
289. When the NPM was being set up, it became apparent that, although police forces are subject to regular inspection by Her Majesty's Inspectorate of Constabulary (HMIC), to ensure that they are properly run, there was no independent and appropriately resourced system focusing on torture prevention as envisaged by OPCAT.
290. As a result, Her Majesty's Inspectorate of Prisons (HMIP) and HMIC agreed to carry out a programme of joint inspections of police custody suites. In each inspection, the force-wide strategies, treatment, conditions and healthcare offered in police custody suites are examined.
291. Although resolution of this issue delayed the establishment of the UK NPM, it is an example of how early ratification had revealed a problem that might otherwise have taken much longer to reach a solution.
292. OPCAT section 23 implies that, once a year, the NPM should produce a report on its activities. Most, if not all, inspection bodies already produce annual reports. Due to the diversity of the monitoring procedures in the UK, the collation of those reports into a national report, even in a digest form, requires some kind of collating mechanism. The NPM bodies also

need to communicate effectively and efficiently with one another and the Subcommittee on Prevention, and to set up meetings of the NPM.

293. It was agreed by members of the NPM that Her Majesty's Inspectorate of Prisons for England and Wales (HMIP), would carry out that function, and it has been funded by Government to do so. The NPM's first annual report was published on 8 February 2011.<sup>38</sup>
294. On establishment of the NPM, there were some relatively small gaps in monitoring all types of detention in the UK, but it was decided that, rather than delaying establishment of the NPM to achieve perfection, these gaps could be addressed in time. Those gaps include the inspection of military facilities; and the inspection of court cells, court escort and holding areas. Negotiations are currently under way to include these in the UK NPM.

## **POLICE SERVICES**

### **Great Britain**

295. The existing framework of legal and other safeguards which govern the use of police powers in the United Kingdom can be found by reference to paragraph 77 of the UK's 4<sup>th</sup> report.
296. Standards for police detention take full account of the rules and principles set out in international standards and reports.

### **Northern Ireland**

297. A major review of the Police and Criminal Evidence (Northern Ireland) Order 1989 concluded in March 2007 with the introduction of amending legislation that made provision for the introduction of a number of new and amended police powers. The primary aim of the Review was to bring the Police and Criminal Evidence (PACE) legislation and associated statutory codes of practice in Northern Ireland more into line with the PACE provisions in England & Wales.
298. A further review of PACE (NI) commenced in July 2007. This led to the publication of a consultation paper entitled "Government proposals in response to a review of PACE in Northern Ireland" in January 2009. Progress on the review has been significantly delayed due to work associated with the Government's response to the decision of the European Court of Human Rights in the case of *S & Marper v the UK*. Responsibility for the future development of PACE in Northern Ireland now rests with the Department of Justice following the devolution of policing and justice powers from Westminster on 12 April 2010.

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<sup>38</sup> <http://www.justice.gov.uk/inspectorates/hmi-prisons/2536.htm>.

## Inspection

299. Her Majesty's Inspectorate of Constabulary (HMIC) and Her Majesty's Inspectorate of Prisons (HMIP) have worked together to develop a joint programme of inspection of police custody, based on an agreed framework. This is just one part of the joint programme of work being developed by criminal justice inspectorates. It is a programme of regular inspection, as part of the UK's obligations under the Optional Protocol to the UN Convention against Torture. This framework is based on the underlying principles of treating all detainees with respect whilst ensuring that they are safe from harm at all times. The framework draws on the knowledge and experiences of service users to understand what these principles mean in practice, as well as on the experience of inspectors from the healthcare, police and prison sectors.
300. The inspection process aims to provide a regime of planned inspections on the efficiency and effectiveness of police forces and provisions of custody facilities. At an average of 12 inspections per year, the programme is expected to take five to six years to deliver. Each year includes a mix of announced and unannounced inspections – with individual published reports for each inspection and periodic 'thematic reports' on emerging trends or findings of particular importance.
301. Under the *Police Act 1996*, HMIC has a statutory duty to report to the Home Secretary on the efficiency and effectiveness of the forty-three police forces in England and Wales. In Scotland, a separate HMIC, reporting to the Scottish Ministers, carries out a similar function under the *Police (Scotland) Act 1967*. The *Police (Northern Ireland) Act 2000* requires the Northern Ireland Policing Board to monitor the performance of the Prison Service of Northern Ireland in complying with the *Human Rights Act 1998*.
302. Section 51 of the *Police Reform Act 2002* provides for the independent custody visiting for places of detention. Every police authority is required to make arrangements for detainees to be visited by persons who are independent of the police and the police authority. The Home Office and the Association of Police Authorities work closely with the Independent Custody Visiting Association in the provision of national guidance, training and support materials for independent custody visitors and police authorities who administer the schemes in their area.

## REVIEW OF THE USE OF THE RIGHT TO SILENCE

### England and Wales

303. Details of the right to silence in England and Wales can be found at paragraph 89 of the 4<sup>th</sup> report.

### Scotland

304. A suspect is entitled to decline to answer any questions and no adverse inference can be drawn from such a silence.

### Northern Ireland

305. Details of the right to silence in Northern Ireland can be found at paragraph 89 of the 4<sup>th</sup> report. Revisions to PACE Code C (see Annex C) in March 2007 replaced the administrative arrangements that were put in place following the ECtHR judgment.

### REVIEW OF MEASURES TO PREVENT ETHNIC DISCRIMINATION

306. Information on measures to prevent ethnic discrimination can be found at paragraphs 92 to 94 of the UK's 4<sup>th</sup> report.

307. The Association of Chief Police Officers (ACPO) guide on identifying and combating hate crime (*Breaking the Power of Fear and Hate*) will be reviewed by ACPO later this year.

### DEATHS IN OR FOLLOWING POLICE CUSTODY

308. Since April 2004, the Independent Police Complaints Commission (IPCC) has published statistics relating to deaths in or during police custody. This function was previously carried out by the Home Office but transferred to the IPCC in view of the statutory requirement under the *Police Reform Act 2002* on police forces to report deaths and serious incidents to the IPCC.

309. Figures for deaths and suicides in or following police custody in the United Kingdom since 2004 are set out in the tables below. These figures include deaths of persons who have been arrested or otherwise detained by the police. It includes deaths which occur whilst a person is being arrested or taken into detention. The death may have taken place on police, private or medical premises, in a public place or in a police or other vehicle. The figures therefore include cases where a person becomes ill whilst in police custody and is transferred to a hospital where he or she subsequently dies.

#### England and Wales

| Year      | Total number of deaths | Deaths by suicide |
|-----------|------------------------|-------------------|
| 2004–2005 | 36                     | 3*                |
| 2005–2006 | 28                     | 1*                |
| 2006–2007 | 27                     | 2*                |
| 2007–2008 | 22                     | 0                 |
| 2008–2009 | 15                     | 2                 |

\* The term 'suicide' does not necessarily relate to a coroner's verdict as some may be pending at any given time. In these instances, the case is only included if, after considering the nature of death, the circumstances suggest that death was the intended outcome of a self inflicted act, for example hanging.

#### Scotland

| Year | Total number of deaths | Deaths by suicide |
|------|------------------------|-------------------|
| 2004 | 4                      | 0                 |
| 2005 | 7                      | 1                 |

|      |   |   |
|------|---|---|
| 2006 | 9 | 0 |
| 2007 | 3 | 0 |
| 2008 | 8 | 1 |
| 2009 | 3 | 0 |

#### Northern Ireland

| Year      | Total number of deaths | Deaths by suicide |
|-----------|------------------------|-------------------|
| 2004–2005 | 0                      | 0                 |
| 2005–2006 | 1                      | 1                 |
| 2006–2007 | 0                      | 0                 |
| 2007–2008 | 0                      | 0                 |
| 2008–2009 | 1                      | 0                 |
| 2009–2010 | 1                      | 1                 |

#### DEATHS BY ETHNIC ORIGIN

310. Since 1 April 1996, the police have recorded the ethnic origin of those who die in police custody. Statistics from each force, including the circumstances of the death, the cause of death, the ethnic origin of the deceased, and the inquest verdict, are published annually. Figures for England and Wales from 1999 are set out in the table below.

| Year      | Total | White | Black | Asian | Other |
|-----------|-------|-------|-------|-------|-------|
| 2004–2005 | 36    | 34    | 2     | 0     | 0     |
| 2005–2006 | 28    | 23    | 1     | 2     | 2     |
| 2006–2007 | 27    | 21    | 3     | 2     | 1     |
| 2007–2008 | 21    | 18    | 1     | 0     | 2     |
| 2008–2009 | 15    | 10    | 3     | 2     | 0     |

#### THE USE OF SPRAYS AND RESTRAINTS BY THE POLICE

311. Information on the review of the use of sprays was provided at paragraphs 127 and 128 of the UK's 4<sup>th</sup> Periodic Report.

312. In Northern Ireland restraints during police detention are only used where absolutely necessary and in circumstances where the detainee may be threatening their own safety or the safety of others. The use of restraint equipment is recorded in the detainee's police custody record along with a risk assessment. Particular care is taken when deciding whether to use restraints on a detainee who is deaf, mentally disordered or otherwise mentally vulnerable.

#### CS Spray

313. Details of reports and guidelines on the use of CS Spray can be found at paragraph 108 of the UK's 4<sup>th</sup> report.

### **Taser**

314. Taser is only deployed where there is a serious threat of violence and by officers who have been carefully selected and trained in its use. Taser is used to resolve potentially violent situations and provides the police with an additional tactical option that is less-lethal than conventional firearms. The UK Government have undertaken rigorous and unprecedented testing of Taser and submitted these devices for independent medical assessment.
315. The latest statement from the Defence Scientific Advisory Council's Sub-Committee on the Medical Implications of Less Lethal Weapons (DOMILL) states that the risk of death or serious injury from the use of Tasers within ACPO Guidance and Policy is very low. In addition DOMILL has examined all the available medical reports where Taser has been used. They are content that the medical issues and injuries attributable directly or indirectly to Taser use are not unexpected.
316. The experience of the use of Taser has shown:
- They have contributed to resolving incidents without injury where otherwise there would have been a real possibility of someone being shot and killed.
  - The device has significant deterrent value and on numerous occasions its deployment alone has been enough to stop potential offenders. This appears to be particularly marked where the red projected dot of the sight has been directed onto the person.
  - Where they have been fired the potential for serious and lasting injury to the subject can be less than if a gun or an impact round is used.
317. As of 1 November 2010 Taser has been used over 6,000 times since their introduction in April 2004.<sup>39</sup> There have been no serious injuries or deaths. In the vast majority of occasions where Taser is used, it is not discharged. In around two thirds of all cases, drawing, aiming, or red-dotting is sufficient to resolve and manage a violent incident (the red dot laser sight is activated and placed on a subject but the Taser is not fired).

### **Use of the Attenuating Energy Projectile**

318. The Report of the Independent Commission on Policing for Northern Ireland, the Patten Report,<sup>40</sup> was published in September 1999 and made, inter alia, two recommendations relating to the use of plastic baton rounds (PBR).

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<sup>39</sup> <http://tna.europarchive.org/20100413151426/http://scienceandresearch.homeoffice.gov.uk/hosdb/publications/police-weaponry/taser-quarterly-Sept09.html>

<sup>40</sup> [http://www.nio.gov.uk/a\\_new\\_beginning\\_in\\_policing\\_in\\_northern\\_ireland.pdf](http://www.nio.gov.uk/a_new_beginning_in_policing_in_northern_ireland.pdf)

319. Recommendations 69 and 70 stated that:
- “an immediate and substantial investment be made in a research programme to find an acceptable, effective and less potentially lethal alternative to the PBR” and “that the police should be equipped with a broader range of public order equipment than the RUC currently possess, so that a commander has a number of options at his or her disposal which might reduce reliance on, or defer resort to, the PBR”.
320. These recommendations triggered the formation of the UK Steering Group, to examine alternative policing approaches towards the management of conflict.
321. The broad objectives of the UK Steering Group’s work has been to establish whether acceptable and effective less potentially lethal alternatives to baton rounds are available; and to review the public order equipment which is presently available or could be developed in order to expand the range of tactical options available to operational commanders.
322. The Steering Group, currently chaired by the Home Office and drawn from across the United Kingdom, includes representatives from accountability bodies, senior police officers, practitioners and others who possess an extensive range of scientific, technical and operational experience in conflict management and issues associated with policing potentially violent incidents.
323. Part of the work of the Group is to consider and analyse the operational use of less lethal weapon systems and, looking ahead, to take forward any lessons learned from such analysis.
324. The Attenuating Energy Projectile (AEP) was introduced in June 2005 to all police forces in the United Kingdom as well as the army, and replaced the L21A1 baton round. A full evaluation of AEP was carried out by the Defence Scientific Advisory Council (DSAC) Sub Committee on the Medical Implications of Less Lethal Weapons (DOMILL), an independent medical committee, prior to introduction. The conclusion was that the AEP posed less risk of serious and life-threatening injury to vulnerable areas (such as the head and the chest) than the L21A1 baton round, which already had a low risk of such injury.
325. DOMILL’s statement on AEP can be found at Annex 3 of the Fifth Report of the UK Steering Group’s Research Programme into Alternative policing approaches towards the management of conflict.<sup>41</sup>
326. The AEP has not been designed as a crowd control technology but as a less lethal option in situations where officers are faced with individual

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<sup>41</sup> [http://www.nio.gov.uk/less\\_lethal\\_weaponry\\_steering\\_group\\_phase\\_5\\_report.pdf](http://www.nio.gov.uk/less_lethal_weaponry_steering_group_phase_5_report.pdf)

aggressors, acting either on their own or as part of a group. It is intended for use as an accurate and discriminating projectile and is deployed alongside conventional weapons, providing the police and army with an additional tactical option. The introduction of AEP represents a significant step in the government's efforts to retain effective systems that are considerably less likely to cause serious injury in the event of impacting upon vulnerable areas of the body.

327. Unlike predecessor rounds, the AEP is not a rigid baton and is therefore significantly safer should it inadvertently strike the most vulnerable part of the body (i.e. the head). It behaves differently from previous rounds and is both distinct and safer when compared to the L21A1; for example it attenuates its energy by reducing peak forces; extends the duration of impact; and spreads the area of contact.
328. UK-wide guidelines on the use of AEP include specific reference to Article 3C of the United Nations Code of Conduct for Law Enforcement Officers which states that every effort should be made to exclude the use of firearms, especially against children. The guidance states that every effort should be made to ensure that children or members of other vulnerable groups are not placed at risk by the firing of impact rounds. When making a decision to authorise the issue of AEP, commanders are required to give consideration to the possibility that children or members of other vulnerable groups may be present. The policy also requires AEP system commanders to conduct a dynamic risk assessment regarding the presence of children and members of other vulnerable groups at scenes of public disorder before authorising deployment and use of AEPs.
329. Strict accountability measures are in place and each specially trained officer who has the capacity to fire an impact round is accompanied by another officer who is responsible for keeping a record of the circumstances in which the round is fired. Each firing of an impact round must be proved to be measured and proportionate. In Northern Ireland the Police Ombudsman investigates every firing by a police officer, and reports his findings to the cross-community Policing Board.
330. The Government's approach to the use of AEP is in line with Articles 2 and 3 of the UN Basic Principles on the Use of Force and Firearms which state:
- Article 2:** Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearm.
- Article 3:** The development and deployment of non-lethal incapacitative weapons should be carefully evaluated in order to reduce the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.



## PRISON SERVICES

331. National Offender Management Service for England and Wales is kept under scrutiny through a variety of means. These include scrutiny by Parliament, external audit by HM Chief Inspector of Prisons and regular visits by the local community watchdog body, the Independent Monitoring Boards (formerly Board of Visitors). Prison Rules continue to provide a statutory framework for procedures and safeguards for prisoners.
332. The Scottish Prison Service is scrutinised regularly through a variety of means. These include external inspection by HM Chief Inspector of Prisons for Scotland and external monitoring by Visiting Committees for Scottish Penal Establishments. In addition the Scottish Public Service Ombudsman adjudicates on complaints from prisoners. Prison rules continue to provide a statutory framework for procedures and safeguards for prisoners.
333. The Northern Ireland Prison Service is scrutinised regularly by a range of organisations. These include a range of independent bodies including the Independent Monitoring Boards, the Prisoner Ombudsman for Northern Ireland, the Northern Ireland Human Rights Commission, the Criminal Justice Inspectorate for Northern Ireland and the Northern Ireland Commissioner for Children and Young Persons. Since the devolution of Justice in April 2010 the Northern Ireland Prison Service is now also accountable to the Justice Committee of the Northern Ireland Assembly. The Committee is made up of 11 Members of the Legislative Assembly (MLAs) and is currently chaired by Lord Morrow.

## HM Inspectorate of Prisons

334. The prisons inspectorate was established by the *Criminal Justice Act 1982*, as a response to criticism of the lack of independent scrutiny of prisons, which reached its apogee in the May Report (1979).
335. The post of HM Chief Inspector of Prisons was created as a Crown appointment rather than as a civil servant to emphasise independence from the Prison Department, and its successor, HM Prison Service. The post-holder was barred from having worked in that service.
336. In recent years, the Inspectorate has seen its role extend well beyond the boundaries of public and private sector prisons and young offender institutions in England and Wales. Under the *Immigration and Asylum Act 1999*, it was given statutory responsibility to inspect immigration removal centres across the United Kingdom and, in the *Immigration, Asylum and Nationality Act 2006*, this remit was extended to short-term immigration holding facilities at air and sea ports, and to immigration escort services. In addition, the Inspectorate has been invited to inspect prison in Northern Ireland, the Channel Islands, Isle of Man and some Commonwealth dependent territories.

337. *The Police and Justice Act 2006* confirmed the retention of an independent Inspectorate of Prisons. The same Act required the chief inspector to work with other chief inspectors of criminal justice to produce a joint inspection framework and annual programme of criminal justice inspections from 2008–9.
338. This emphasis on joint criminal justice system inspection has, for example, led the Inspectorate to carry with HM Inspectorate of Constabulary a programme of joint inspections of police custody suites (see paragraph 300 above). In each inspection, the force-wide strategies, treatment, conditions and healthcare offered in the police custody suites are examined.

### **HM Inspectorate of Prisons (Scotland)**

339. Section 7 of the Prisons (Scotland) Act 1989 (as amended) provides the statutory basis for Her Majesty's Chief Inspector of Prisons (HMCIP) for Scotland. The Chief Inspector operates independently and impartially from the Scottish Prison Service. The Chief Inspector is responsible for ensuring that a systematic programme of inspection is carried out and that findings are reported to the Minister for Justice. The Chief Inspector is directly accountable to the Scottish Ministers, which guarantees independence of inspection, review and reporting.

### **Criminal Justice Inspection (Northern Ireland)**

340. Criminal Justice Inspection Northern Ireland (CJI) is an independent, statutory inspectorate established in 2003 under s.45 of the Justice (Northern Ireland) Act 2002. It is a Non-Departmental Public Body (NDPB) in the person of the Chief Inspector and is an independent statutory inspectorate with responsibility for inspecting all aspects of the criminal justice system in Northern Ireland including prisons.

## **Independent Monitoring of Prisons**

### **England and Wales**

341. *The Prisons Act 1952* and the *Immigration and Asylum Act 1999* encourage every prison to be monitored by an Independent Board, appointed by the Secretary of State for Justice from among members of the community in which the prison is situated.
342. The Board is specifically charged to:
- Satisfy itself as to the humane and just treatment of those held in custody within its prison and the range and adequacy of the programmes preparing them for release.
  - Inform promptly the Secretary of State, or any official to whom he has delegated authority as it judges appropriate, of any concern it has.

- Report annually to the Secretary of State on how well the prison has met the standards and requirements placed on it and what impact these have on those in its custody.
- To enable the Board to carry out these duties effectively its members have the right of access to every prisoner and every part of the prison and also to the prison's records.

### **Scotland**

343. Section 8 of the *Prisons (Scotland) Act 1989* states that Prison Rules shall provide for the constitution of prison visiting committees. It goes on to say that Prison Rules shall prescribe the functions of visiting committees.
344. The arrangements for prison visiting committees are set out in Rules 154 to 164 of the *Prisons and Young Offenders Institutions (Scotland) Rules 2006*. The Rules provide that each visiting committee shall:
- Co-operate with Scottish Ministers and the Governor of the establishment it services in promoting the efficiency of the establishment;
  - Inquire, from time to time, into the state of the prison premises;
  - Hear and investigate any complaints from prisoners; and
  - Report to Scottish Ministers any matter which the committee thinks it expedient to report, and submit annual reports to Ministers.
345. Visiting committee members have the right to enter their establishment at any time and to have free access to all parts of the establishment and to every prisoner. Members may inspect prison records (apart from personnel and prisoners' records and papers having implications for security). To ensure that visiting committee duties are being carried out two or more members of a visiting committee must visit the establishment at least fortnightly and each committee must hold a meeting at its establishment at least once every three months.

### **Monitoring the use of restraints**

#### **Body Belts**

346. As stated in the 3<sup>rd</sup> Report, there are concerns about the use of body belts by the Prison Service in England and Wales. A body belt may be used as a last resort when all other options have failed or are considered unsafe in preventing a violent or refractory prisoner from harming him or herself or another person or damaging property. A body belt is not used as a punishment nor may it be used on a person under the age of 18 years. The body belt must be removed as soon as the reasons for its use no longer exist. The aim must be that the body belt is removed within minutes rather than hours.

347. The authority for the use of a body belt must come from the Governor-in-Charge/Controller or, in an emergency from the duty governor/Director who must then seek the authority of the Governor-in-Charge/Controller as soon as possible. In all cases, a doctor or nurse must assess the prisoner to determine whether there are any clinical indications as to why the body belt should not be used and, if any such indications exist may order the body belt's immediate removal.
348. At no time must a prisoner in a body belt be left alone and his or her continued location in a body belt must be assessed by a designated manager at least every hour. Every effort must be made to preserve the prisoner's dignity and he or she must be offered regular refreshment, especially water. A decision to use a body belt on a prisoner at risk of self harm must be informed by reference to the prisoner's *Assessment, Care in Custody and Teamwork (ACCT)* care map and must be subject to a case review chaired by the Governor-in-Charge/Controller within 60 minutes of the decision being made. There must also be a mental health assessment of the prisoner.
349. In Scotland there is provision within the Prisons and Young Offenders Institutions (Scotland) Rules 2006 (the Rules) for the use body belts. The Rules are currently under review and will be strengthened in relation the use of body belts. Body belts are however rarely used.
350. Body Belts are not used in Northern Ireland.

**Use of PAVA Incapacitant Spray in Northern Ireland**

351. The Northern Ireland Prison Service (NIPS) has a duty of care to protect the human rights and health and safety of all within its care. It must be prepared to deal with violent or potentially violent individuals and/or groups, who may be endangering themselves, or the rights and freedoms of others, by use of a flexible and graduated response.
352. To this end, the NIPS must have sufficient and adequate procedures to deal with a wide range of incidents in a proportionate and reasonable manner. Although the vast majority of incidents will be dealt with without recourse to the use of force, unfortunately sometimes this will be necessary.
353. A ruling of the European Court of Human Rights, (*Güleç v Turkey* (54/1997/838/1044) 27 July 1998), specifically criticised the state for not having access to a range of devices for use by security personnel in an environment where there may be been significant violence and civil unrest.
354. A wide reaching research programme was carried out, and it found that the most appropriate device for dealing with extreme violence in Northern Ireland is an incapacitant spray, of which there are several derivatives. The device recommended for NIPS use is PAVA Incapacitant spray. This is not a "pepper spray" but is made from a

stable, synthetic compound, which is registered as a foodstuff, and is present in a wide range of unregulated across-the-counter medical treatments.

355. A statement issued by the UK Department of Health's Committee on Toxicity, demonstrated that PAVA has no serious or long term effects, and some time ago Ministers approved the use of PAVA by police forces and HM Prison Services in England, Wales and Scotland. Approval was given subsequently, initially for a 12 month trial, for the use of PAVA in certain high risk instances, and under specific conditions within NIPS. This was subject to an open and transparent public consultation process in Northern Ireland, and all replies were addressed or commented on. The Prisoner Ombudsman for Northern Ireland has been appraised from the beginning of the process, and any authorisation for deployment or use will automatically be referred to the Ombudsman's office for examination of the systems and procedures followed.
356. During the trial, (which has been extended further due to no operational use of the device to May 2012), PAVA will only be used on the direct authority of the Director General or the Director of Operations, NIPS, based on the assessment and advice of the Control and Restraint Commander and Advisor at the scene. The device will only be applied for incidents where there is a "High Risk" of serious injury or worse to staff, prisoners or others. Any deployment of PAVA will be video recorded unless this would jeopardise the safe resolution of the incident.
357. Only currently certified NIPS Control and Restraint Instructors who have successfully passed a specific PAVA training course are authorised to use the device. In the past year, there have been two applications for issue of the device, and authority was granted on these occasions. The device was not used in either case, although its presence at the scene when communicated to the perpetrators was felt to have been a key factor in the peaceful resolution of both incidents, along with the professionalism and inter-personal skills of staff. Comprehensive reports and video material was sent to the Prisoners Ombudsman's Office who are currently completing their own independent report.
358. Stringent Health and Safety, storage, and use constraints must be met to ensure that the device is used in accordance with best practice and NIPS Policy. It is the NIPS view that PAVA spray is a necessary tool for the safe and successful management of actual or threatened violence: to deny access to it would place staff, prisoners or others, in unnecessary danger during violent incidents.

## **CONTRACTING OUT/PRIVATISATION OF PRISONS AND ESCORT SERVICES**

### **England and Wales**

359. The policy of private sector involvement in prison management has been under review since 1998. In February 2002 the Prison Service

commissioned the Carter Report,<sup>42</sup> which considered the contribution of the private sector in achieving the objectives of the Prison Service under the Private Finance Initiative. Its recommendations envisaged a continuing role for private sector management.

360. The National Offender Management Service (NOMS) is taking forward a comprehensive change programme that responds to the later Lord Carter Review<sup>43</sup> (published December 2007) which supersedes the earlier versions including the Carter Report of 2002. Additionally, this change programme continues to meet the recommendations from the Carter Report of 2002.
361. NOMS is developing clear specifications for each major service delivered across Prisons and Probation. This will provide clarity and consistency on what is delivered and will allow fair, objective benchmarking to challenge poor performance and improve service performance.
362. NOMS is putting in place mechanisms to ensure that the most efficient and effective providers are commissioned to deliver custodial and community services for offenders. Further, the Specification, Benchmarking and Costing Programme sets out mandatory minimum standards for the services NOMS procures to ensure that they are safe, decent and legal.
363. Private sector contracts are subject to a framework of safeguards, controls and accountabilities. Standard contracts require compliance with all relevant legislation including Prison Rules and Young Offender Institution Rules.
364. The new NOMS Agency framework states that NOMS is neutral on which sector delivers prison and probation services and is putting in place mechanisms to ensure that the most efficient and effective providers are commissioned to deliver services.
365. Each privately run prison is headed by a director who is an employee of the contractor and approved by the Secretary of State for Justice. All members of staff working with prisoners in privately run establishments and on escort contracts have to be certificated by the Secretary of State as prisoner custody officers. They are subject to the same standard of vetting as Prison Officers and must complete an initial training course of about eight weeks duration. A prisoner custody officers' certificate may be suspended by the controller/escort monitor and revoked by the Secretary of State if he or she is no longer considered a fit and proper person to carry out custodial duties.

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<sup>42</sup> [http://www.thelearningjourney.co.uk/Patrick\\_Carter\\_Review.pdf/file\\_view](http://www.thelearningjourney.co.uk/Patrick_Carter_Review.pdf/file_view)

<sup>43</sup> <http://www.justice.gov.uk/publications/securing-the-future.htm>

366. In common with public-sector prisons, each privately managed prison has an Independent Monitoring Board, and every prisoner has access to the Prisons Ombudsman and can be inspected by Her Majesty's Inspectorate of Prisons. The contractor is subject to scrutiny by Parliament and its Select Committees. At each private sector prison the Prison Service is represented by the Controller who, supported by a Deputy Controller, is on site daily to monitor contract compliance and to carry out those functions reserved to state servants (adjudicating disciplinary charges, investigating allegations against members of staff and authorising control and restraint).
367. Escorts of prisoners to and from courts and between prisons have been contracted out to private companies. The *Criminal Justice Act 1991*, as amended by the *Criminal Justice and Public Order Act 1994*, requires that all escort contracts are monitored by a Crown Servant. This is to protect prisoners and ensure that standards of care are maintained, as well as to monitor value for money and contract compliance. The escort monitor will investigate allegations by prisoners about any action by a contractor or member of their staff. In addition, volunteer members of the public (lay observers) are appointed under the terms of the Act to inspect and report on the conditions under which prisoners are transported and held. A panel of lay observers monitors each escort area and reports annually to the Secretary of State.

### **Scotland**

368. There are two private prisons in Scotland. HMP Kilmarnock was the first in Scotland and opened in 1999. HMP Addiewell opened in 2008. Each private prison is headed by a Director who is an employee of the Contractor. The Scottish Prison Service is represented by a Controller and Deputy Controller who are based at the prison. They are responsible for monitoring contractual compliance and carrying out those functions reserved to Scottish Ministers.
369. In April 2004 escorting of prisoners from police cells and prisons to court in Scotland, was contracted out to Reliance Custodial Services.
370. The position in relation to closed circuit television (CTV) link remains unchanged. A legal power for court proceedings to be conducted by way of a CTV link, between prisons and courts, was created under section 80 of the *Criminal Justice (Scotland) Act 2003*, which came into force in June 2003. A live television link between HM Prison Barlinnie and Glasgow Sheriff Court was successfully trialled with Airdrie, Hamilton and Paisley Sheriff Courts and came on line during the autumn of 2004.

### **Northern Ireland**

371. From 2004 until February 2007, a private sector contractor was responsible for prisoner supervision at Magistrates' Courts and for transporting some first committal prisoners from these courts to prison. Responsibility for prisoner supervision at Crown Courts and the movement of all other prisoners remained the responsibility of the

Prisoner Escort Group staffed by Prison Officers. On 5 February 2007 the establishment of the Prisoner Escorting and Court Custody Service (PECCS) amalgamated both arrangements to produce a single in-house Prison Service organisation to provide a fully integrated prisoner escorting and court custody service under a single management structure for the first time in Northern Ireland. PECCS is largely staffed by Prisoner Custody Officers. . The Service has recently been inspected by the Criminal Justice Inspectorate Northern Ireland (CJINI) and the report was published on 13 October 2010. CJINI recommended that the prisoner escorting services in Northern Ireland be subjected to a market testing exercise. The recommendation was accepted by the Minister, to be taken forward as part of the wider DOJ Reform Programme.<sup>44</sup>

### UK BORDER AGENCY (UKBA)

372. Immigration officers exercising any specified power to (a) arrest, question, search or take fingerprints from a person, (b) enter and search premises or (c) seize property found on persons or premises, must have due regard to the *Police and Criminal Evidence Act (PACE) 1984*. This requirement is contained in the *Immigration and Asylum Act 1999* paragraph 145.
373. Guidance for Immigration Officers on the use of PACE is set out in Chapter 37 of the Enforcement Instructions and Guidance.<sup>45</sup>
374. It is UKBA policy that all detainees should be treated with dignity and respect. Provision for the regulation and management of Immigration Removal Centres is laid down in the Detention Centre Rules 2001. Removal centres provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible consistent with the need to maintain safety and security.
375. Minimum auditable criteria for all aspects of life in removal centres are contained in a comprehensive set of operating standards, designed to underpin the statutory Rules.
376. Detained persons are individually assessed for special factors or risk on detention. There are systems in place to ensure the safety and security of all detainees. These include anti-bullying strategies and Assessment Care in Detention and Teamwork (ACDT), a care planning system whereby staff from all areas work together to create a safe and caring environment and provide individual care to detainees.

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<sup>44</sup> <http://www.cjini.org/getattachment/cc81a484-6109-4d33-95db-5b9d71df3883/Prisoner-Escort-and-Court-Custody-arrangements-in-.aspx>

<sup>45</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectione/chapter37?view=Binary>



377. Independent Monitoring Boards (IMBs) are appointed to all removal centres and members report regularly to the Home Secretary on the state of the premises, the administration of the centre and the treatment of detained persons.
378. HM Inspectorate of Prisons (HMIP) has a statutory role in relation to inspecting immigration detention facilities. The Inspectorate publishes reports of these inspections. UKBA and the management of the respective centres carefully consider any recommendations made and respond formally by way of action plans.
379. The decision on whether or not someone should be detained is made by an Immigration Officer, or an official acting on behalf of the Secretary of State, under powers contained in the *Immigration Act 1971*. Individuals may be detained: pending enquiries as to identity or basis of claim; to prevent absconding; as part of a fast-track asylum process; or to effect removal.
380. Detention is reviewed on a regular basis, in most cases, weekly within the first 28 days and monthly thereafter at increasingly senior levels within the UK Border Agency. The detainee is provided with written reasons for continued detention monthly.
381. In January 2002 the Government met its commitment to end the routine use of prison accommodation to hold immigration detainees. This was in large part made possible by the opening of three new removal centres at Dungavel, Harmondsworth and Yarl's Wood in late 2001. The current detention estate comprises 11 removal centres (10 in England and 1 in Scotland).
382. All UK immigration detention facilities are subject to independent inspection by HM Chief Inspector of Prisons and independent oversight by the Prisons and Probation Ombudsman, in relation to the investigation of deaths in custody and complaints. This will apply in the case of the short-term holding facility that is to be opened in Larne, Northern Ireland, in the summer of 2011.
383. Actions the UKBA and National Offender Management Service have taken since April 2006 to ensure that foreign national prisoners (FNPs) are not released without being considered for deportation has resulted in a number of FNPs being held beyond the end of their sentence whilst deportation is pursued. There are currently around 1,450 foreign nationals to whom this applies.
384. The majority of those FNPs who continue to be detained pending removal – around 900 – are transferred to immigration removal centres in the UKBA detention estate.
385. Current estimates are that up to 550 detainees are held in local prisons in England and Wales. These are people held either after the expiry of their prison sentence, in most cases because the nature of their offences

are too serious for the UKBA to accept them into their detention estate or whilst awaiting transfer to the UKBA detention estate, or because of security and control reasons in respect of the individuals concerned.

## **MILITARY**

### **Inspection of Military Detention Facilities**

386. All detention facilities undergo independent internal inspections as required by Statutory Instrument (SI) (The Service Custody and Service of Relevant Sentences Rules 2009). Under this SI the Secretary of State has appointed the three Services Provost Marshals (PM) to be Inspectors of Service Custody Premises, and each of them is under remit to report to the Defence Council on all service custody facilities at least once a year.
387. The Military Corrective Training Centre is inspected by HM Chief Inspector of Prisons who reports directly to Ministers and publishes his reports in the public domain.
388. Provost Marshal (Army) (PM(A)) conducts inspections of all operational detention facilities every 6 months. As a matter of policy, the Geneva Conventions are used as the baseline against which facilities are inspected. PM(A)'s staff conduct advisory sessions every three months, and PM(A)'s HQ is always available to be consulted if commanding officers of detention facilities need advice.
389. The UK ceased detention operations in Iraq from 1 January 2009. The International Committee of the Red Cross (ICRC) and the Iraqi Ministry of Human Rights had unfettered access to the UK's operational detention facilities at Shaibah and subsequently Basra Airfield. Both organizations visited the UK's facilities. In Iraq, detainees could raise complaints with either of these organizations, as well as with any of the UK personnel or with family members who visited them in the facilities. In Afghanistan, both the Afghan Independent Human Rights Commission (AIHRC) and the ICRC has unfettered access to the UK's detention facilities, although only the latter has conducted any visits to date. Detainees could raise a complaint with the ICRC or any UK personnel operating within the facilities. The UK takes any allegations of abuse seriously and any such allegations are investigated.

### **Operational doctrine and policy on inspections**

390. There are also a large number of operation doctrines and policies regulating inspections of military facilities. These are:

- JDP 1-10 (and subordinate publications 1-10.1 to 1-10.3) – Prisoners of War, Internees and Detainees.<sup>46</sup>
  - JSP 383 – Joint Service Manual of the Law of Armed Conflict (LOAC).
  - JSP 381 – Aide Memoir on the LOAC.<sup>47</sup>
  - Army Code 71130 – A Soldier’s Guide to the LOAC.
  - NATO Doctrine – Allied Joint Publication (AJP) 2.5(A) – Captured Persons, Material and Documents.
  - MOD Strategic Detention Policy
  - HM Government Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees
  - Standing Operating Instruction J3-9 Stop, Search, Question and Detention Operations in the HERRICK Joint Operating Area
391. During Module 4 of the Baha Mousa Public Inquiry (see Para 469), the Chairman examined in great detail the Doctrine, Policy and Training organization existing in 2010. The focus was on achieving better and clearer governance and oversight of the treatment of captured persons.

## DETENTION UNDER MENTAL HEALTH POWERS

392. Arrangements for monitoring detention under the *Mental Health Act 1983* in England and Wales, and comparable provisions in Scotland and Northern Ireland, were set out in paragraphs 83–95, 103 and 137–139 of the initial report, paragraph 760 of the 2<sup>nd</sup> Report, and paragraph 109 of the 3<sup>rd</sup> Report.
393. In April 2010 the functions of the Mental Health Act Commission (MHAC) transferred to the Care Quality Commission, a new single independent regulator for health and adult social services in England. In Wales, the functions transferred to Health Inspectorate Wales. Like MHAC previously, these bodies are now responsible for keeping under review the operation of detention under the *Mental Health Act 1983* by (amongst other things) visiting patients detained in hospital.
394. Separately, the *Mental Health Act 1983* has itself been amended and modernised in various respects by the *Mental Health Act 2007*. In the

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<sup>46</sup> [http://www.mod.uk/NR/rdonlyres/C20B9AB9-5F4C-465E-B14D-1660B318E247/0/jdp1\\_10.pdf](http://www.mod.uk/NR/rdonlyres/C20B9AB9-5F4C-465E-B14D-1660B318E247/0/jdp1_10.pdf)

<sup>47</sup> <http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/LegalPublications/LawOfArmedConflict/>

light of those changes, the Codes of Practice to the Act<sup>48</sup> which gives guidance to health professionals and others on the way the Act should be used, have been comprehensively revised.

395. In Scotland the *Mental Health (Care and Treatment (Scotland)) Act 2003*<sup>49</sup> implemented in October 2005, introduced improved rights for patients and a new Mental Health Tribunal which considers applications for, and appeals against, compulsion under the Act. The Act includes provisions which enable prisoners to be transferred to hospital to receive treatment for mental disorder while on remand and also after sentencing. A new Code of Practice<sup>50</sup> was issued to accompany the Act. The Mental Welfare Commission for Scotland has been given a specific role to monitor the operation of the Act.
396. In Northern Ireland the Mental Health (Northern Ireland) Order 1986 created provision for the Mental Health Commission for Northern Ireland to keep under review the care and treatment of all patients detained in hospital including the exercise of the powers and the discharge of the duties conferred or imposed by the Order. On 1 April 2009, under the Health and Social Care Reform (Northern Ireland) Act 2009 the functions of the Mental Health Commission (MHC) transferred to the Regulation and Quality Improvement Authority (RQIA) an independent health and social care regulatory body in Northern Ireland.
397. The Mental Health Review Tribunal for Northern Ireland, an independent judicial body, set up under the 1986 Order reviews the cases of patients who are compulsory detained or are subject to guardianship under the Order. The Tribunal's function is to provide mentally disordered patients with a safeguard against unjustified detention in hospital or control under guardianship by means of a review of their cases from both a medical and non medical point of view.

## CROWN PROSECUTION SERVICE (CPS)

398. Details of the Butler Review into the investigative processes of the Crown Prosecution Service were provided at paragraph 105 of the UK's 4<sup>th</sup> report. Following a further review the Attorney General produced a

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<sup>48</sup> Code for England:  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_084597?IdcService=GET\\_FILE&dID=170799&Rendition=Web](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597?IdcService=GET_FILE&dID=170799&Rendition=Web)  
Code for Wales:

<http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid/gen-ld7209-e.pdf?langoption=3&ttl=GEN-LD7209%20-%20Mental%20Health%20Act%201983%3A%20Code%20of%20Practice%20for%20Wales>

<sup>49</sup> [http://www.opsi.gov.uk/legislation/scotland/acts2003/asp\\_20030013\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030013_en_1)

<sup>50</sup> <http://www.scotland.gov.uk/Publications/2005/08/29100428/04289>  
<http://www.scotland.gov.uk/Publications/2005/09/16121646/16474>  
<http://www.scotland.gov.uk/Publications/2005/09/16121646/16474>

report in July 2003 which amended the level at which the decision to prosecute or not could be taken. The Butler review had recommended that the decision should be made at Senior Civil Service (SCS) level, however this was not practicable given the low numbers of SCS at the CPS Casework headquarters. The Attorney General's review recommended instead that the decision should be made by a suitably trained lawyer of level E or above so that cases would not be delayed unnecessarily. The Attorney General's review also recommended: increasing the number of meetings between families and CPS lawyers to increase transparency and openness; widening the pool of counsel; the introduction of a wide-ranging training programme; a more proactive case management system; a greater role for the Director of the CPS in reviewing decisions of lawyers; more community engagement; compilation of statistics; attendance of lawyers at relevant parts of the inquest; and the publication of a booklet to explain to families what is happening.

399. All these recommendations have since been put into practice.

## **CORONER SYSTEM**

400. A fundamental review of the coroner system in England, Wales and Northern Ireland was carried out and two reports produced in 2003. Ministers considered both reports and since then much work has been done to change the coronial and death certification systems in England and Wales to address weaknesses in the system, as highlighted by these reports.
401. As a result of this work, the Coroners and Justice Act 2009 was passed and received Royal Assent in November 2009. It is anticipated that most of the coroner reform provisions contained within the Act will have been largely implemented by April 2012. These reforms will improve the coroner service in England and Wales by building upon the best features of local service delivery on which the current system is based, with added focus on quality of service, training and improved liaison with local authorities and the police.
402. Under the Act new death certification procedures will be introduced, which will improve the quality and accuracy of death certification. Every death (approximately 500,000 each year) will be subject to scrutiny by an independent 'medical examiner' attached to the clinical governance team in a hospital or primary care trust. This will enable independent scrutiny and confirmation of the medical cause of death, in a way that is proportionate, consistent and transparent. The Department of Health will be responsible for overseeing these measures.
403. Also under the Act, coroners will be under a legal obligation to investigate the death of anyone who died while in custody, or otherwise in state detention, which will include prisons, young offenders institutions, and detention under the Mental Health Act or under asylum and immigration legislation, deaths as a result of military or terrorist

action. Coroners will also be required to investigate a death if the cause of death was violent and unnatural, or is unknown. Juries will be mandatory for investigations of deaths in custody of a violent, unnatural or unknown cause and for all deaths that occur during police operations. Post-mortem examinations and MRI scans will be authorised where appropriate. Guidelines will be issued and secondary legislation written to ensure all processes work effectively and that correct mechanisms are in place to reduce any such causes of death in the future.

### **Northern Ireland**

404. The principal purpose of the Coroners and Justice Act 2009 (“the 2009 Act”) was to reform coronial law in England and Wales and it applies primarily to that jurisdiction. The law governing coroners and inquest proceedings in Northern Ireland is still to be found in the Coroners (Northern Ireland) Act 1959 (“the 1959 Act”).
405. Two discrete amendments to the 1959 Act were, however, made by the 2009 Act. Firstly, the power of a coroner in NI to hold an inquest was extended in relation to deaths outside Northern Ireland where a body has been repatriated. Secondly, certain powers of the coroner under the 1959 Act were enhanced in relation to compelling witnesses to attend an inquest. Work is ongoing to scope operational implications in advance of any decision to commence these provisions.
406. A large amount of administrative reform to address the issues identified in the Luce Review<sup>51</sup> had already been made in Northern Ireland prior to the 2009 Act. In particular, the Coroners’ Service for Northern Ireland was established in 2006, with a High Court judge designated as Presiding Coronial Judge. A single coronial district, encompassing the whole of NI was also established.
407. It was also decided that it would be preferable for more fundamental legislative reform, in a manner similar to that in England & Wales, to be dealt with by locally accountable representatives in the Assembly, and in a manner tailored to this jurisdiction, instead of being dealt with through the 2009 Act.
408. As a result, the Department of Justice is currently liaising with the Northern Ireland Law Commission with a view to the Commission undertaking a review of the law and procedure in this area as part of its next programme of law reform. The Commission has indicated that it would be content, in principle, to do so.
409. As regards death certification, an inter-departmental working group was established in Northern Ireland in 2008 to review local processes and

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<sup>51</sup> Death Certification in England, Wales and Northern Ireland, Report of a Fundamental Review, Cm 5831, 2003 <http://www.archive2.official-documents.co.uk/document/cm58/5831/5831.pdf>

make recommendations for improvement. A joint public consultation was subsequently issued by the Department of Health, Social Services and Public Safety, the Department of Finance and Personnel and the Department of Environment in December 2010. The consultation period closed in March 2011 and responses are currently being considered.

## REGULATION OF THE PRIVATE SECURITY INDUSTRY

### Great Britain

410. The Security Industry Authority (SIA)<sup>52</sup> was established in April 2003 by Order of the Secretary of State and its remit was extended to Scotland in November 2007. The SIA aims to raise standards in the private security industry, regulating it appropriately by licensing the individuals who work within it. It introduced licensing for the different licensable activities on a phased basis between 2004 and 2008. The activities defined as licensable are contracted manned guards, in-house and contracted door supervisors (working on licensed premises), in-house and contracted vehicle immobilisers operating on private land and key holders.
411. Licence applications are judged on the basis of the applicant's criminal record, if any, identity checks, their right to work and on achieving the appropriate approved training qualification. Licences will only be granted to individuals who reach minimum levels of competency and are considered 'fit and proper' people to work in the industry (based on identity and criminal record checks on all applicants). The suitability of the applicant to work in the private security industry is assessed and they are granted or refused a licence, according to the defined criteria. By using the SIA as the regulating body, standards will automatically be made equal throughout the United Kingdom.
412. The SIA also run a voluntary Approved Contractor Scheme (ACS) for private security firms with aims of raising performance standards.
413. Under the *Private Security Industry Act 2001* it is a criminal offence to work in designated sectors of the private security industry without a licence from SIA. The Act applies to England, Wales and Scotland and will be extended to Northern Ireland shortly.

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<sup>52</sup> <http://www.the-sia.org.uk/home>

## **Article 12: Investigation of acts of torture and other forms of ill treatments**

### **INVESTIGATION OF DEATHS IN POLICE CUSTODY**

#### **England and Wales**

414. The Independent Police Complaints Commission (IPCC) was established by Part II of the *Police Reform Act 2002*, as an independent body in April 2004, replacing the Police Complaints Authority (PCA). The IPCC has wider powers than the PCA. It has responsibilities in respect of the police service in England and Wales. In April 2006, the IPCC's remit was extended to include the Serious Organised Crime Agency (SOCA) and Her Majesty's Revenue and Customs (HMRC) and in 2007, the UK Border Agency (UKBA). The IPCC is the statutory guardian of the police complaints system. Although funded by the Home Office, it is independent of the police and of government departments in fulfilling its remit.
415. The 15 IPCC Commissioners guarantee its independence, and by law can never have served as police officers or for HMRC. They are supported by more than 100 independent IPCC investigators plus casework managers and other specialists. Commissioners and staff are based in IPCC regional offices in Cardiff, Coalville, London and Sale with a sub office in Wakefield.
416. All cases of death or serious injury following contact with the police or those with the powers of the office of constable in SOCA and HM Revenue and Customs must be referred to the IPCC. The IPCC can recommend or direct that officers face disciplinary proceedings if none have already taken place. Where the alleged conduct would constitute a criminal offence, the CPS determines whether criminal charges should be brought. IPCC's investigations and decisions can be challenged only through its internal procedures and through the courts.

#### **IPCC Handling Procedures**

417. Cases received by the IPCC will be subject to varying processes and outcomes. The IPCC will decide whether it is necessary to investigate an incident, and depending on the circumstances of the case, will decide on the appropriate level of IPCC oversight.
418. Independent Investigations: Incidents that cause the greatest level of public concern, have the greatest potential to impact on communities or have serious implications for the reputation of the police service are likely to lead to an independent investigation conducted by IPCC staff. The only right of appeal in an independent investigation is to the administrative court.
419. Managed Investigations: When an incident, or a complaint or allegation of misconduct, is of such significance and probable public concern that



the investigation of it needs to be under the direction and control of the IPCC but does not need an independent investigation, a managed investigation is conducted by the police under the direction and control of the IPCC. The IPCC is responsible for setting the Terms of Reference for the investigation in consultation with the force. An IPCC Commissioner agrees the Terms of Reference and approves the choice of Investigatory Officer (IO) who is nominated by the force. The IPCC Regional Director or Investigator manages the investigation and receives regular progress reports. Responsibility for maintaining the record of decisions and for conducting a timely investigation rests with the IPCC. The only right of appeal in a managed investigation is to the administrative court.

420. Supervised investigations: When the IPCC decides that an incident or a complaint or allegation of misconduct is of less significance and probable public concern than for an independent or managed investigation, but oversight by the Commission is appropriate, a supervised investigation is conducted by the police. An IPCC Commissioner approves the choice of Investigator, and agrees the Terms of Reference and investigation plan; both are drafted by the force. An IPCC process for regular review including risk assessment may be agreed, depending on the nature and scale of the investigation, and included in the Terms of Reference. In these cases, changes should be recorded. Responsibility for maintaining the record of decisions and for conducting a timely investigation rests with the force. The complainant also has the right of appeal to the IPCC at the end of the investigation.
421. Local Investigations: A local investigation is appropriate where the IPCC concludes that none of the factors identified in terms of the seriousness of the case or public interest exist, and that the police have the necessary resources and experience to carry out an investigation without external assistance. The complainant has the right of appeal to the IPCC at the end of the investigation.
422. In some cases the IPCC may decide to refer back cases to the force concerned to be dealt with as they see fit. These cases may then be subject to a local resolution.
423. Local resolution: for less serious complaints, such as rudeness or incivility, a complainant may agree to local resolution. Usually this involves a local police supervisor handling the complaint and agreeing with the complainant a way of dealing with it. This might be: an explanation or the provision of information to clear up a misunderstanding; an apology on behalf of the force; and/or an outline of what actions are to be taken to prevent similar complaints occurring in the future.
424. In other instances, no further action may be taken:
  - Dispensation: in some cases there may be reasons not to take a complaint forward. Examples may include those complaints where

there is insufficient information, or which are vexatious, oppressive or an abuse of the complaint procedures. In such cases a police force can apply to the IPCC for a dispensation which if granted, means that no action needs to be taken with regard to the complaint.

- **Withdrawal:** no further action may be taken with regard to a complaint if the complainant decides to retract the allegation(s).
- **Discontinuance:** in some instances police forces may find it impractical to conclude an investigation. This may occur when a complainant refuses to cooperate, the complaint is repetitious or refers to an abuse of procedure, or the complainant agrees to local resolution. In such cases the police force can apply to the IPCC to discontinue the investigation.

### Appeals

425. If a person has made a complaint against the police and is unhappy with the way it has been dealt with then they may be able to appeal against the decisions made. There are three types of appeal. Each type applies at different stages of the complaints process, on different grounds, and with different consequences. The classes of appeal are:

- Appeals against the non-recording of a complaint.
- Appeals against the local resolution process.
- Appeals against the outcome of a police complaints investigation.

426. The table below sets out the number of deaths during or following police contact by type of fatality and investigation type for the year 2010/11.

| Type of investigation  | Road traffic fatalities |            | Fatal shootings |            | Death in or following Police custody |            | Apparent suicides following custody |            | Deaths during or following police contact |            |
|------------------------|-------------------------|------------|-----------------|------------|--------------------------------------|------------|-------------------------------------|------------|---|------------|
|                        | No.                     | %          | No.             | %          | No.                                  | %          | No.                                 | %          | No.                                       | %          |
| Independent            | 13                      | 54         | 2               | 100        | 16                                   | 76         | 3                                   | 7          | 44  | 100        |
| Managed                | 0                       | -          | 0               | -          | 0                                    | -          | 0                                   | -          | 0   | -          |
| Supervised             | 0                       | 0          | 0               | -          | 0                                    | -          | 1                                   | 2          | 0   | -          |
| Local                  | 10                      | 42         | 0               | -          | 1                                    | 5          | 18                                  | 39         | 0   | -          |
| Referred back to force | 1                       | 4          | 0               | -          | 4                                    | 19         | 24                                  | 52         | 0   | -          |
| <b>Total Deaths</b>    | <b>24</b>               | <b>100</b> | <b>2</b>        | <b>100</b> | <b>21</b>                            | <b>100</b> | <b>46</b>                           | <b>100</b> | <b>44</b>                                 | <b>100</b> |

Note: 1. Investigation type as reported on the IPCC Case Tracking Management System, April 2011.

2. Percentages are rounded and therefore may be greater than the sum of certain categories.

### Scotland

427. Details of procedures relating to deaths in custody in Scotland can be found at paragraphs 208–211 of the UK's 4<sup>th</sup> report. Figures for deaths in police custody in Scotland are shown at paragraph 290 of this report.

### Northern Ireland

428. Details of the remit and procedures of the Northern Ireland Police Ombudsman can be found at paragraphs 212 to 215 of the UK's 4<sup>th</sup> report. Figures for deaths in police custody in Northern Ireland are shown at paragraph 308 of this report.

## INVESTIGATIONS INTO DEATHS IN PRISON

### England and Wales

429. In England and Wales, all deaths in prison custody are the subject of an independent investigation carried out by the Prisons and Probation Ombudsman (PPO). This includes deaths from natural causes and self-inflicted deaths, homicides and accidental deaths. The PPO can also exercise discretionary powers to conduct investigations into deaths of prisoners who have been recently released from custody.
430. The PPO issues a report following every investigation. These reports often contain recommendations for the service where the death took place and identifies where the Ombudsman believes that lessons could be learned from the death. Recommendations may relate to a specific establishment or may have broader implications for policy and practice on a national level. The PPO's report is sent to the family of the person who has died, the Coroner, the service in remit and the Department of Health.
431. The PPO publish anonymised reports on their website, following the conclusion of the inquest into the death.
432. Any death in custody is the subject of a police investigation to establish what has happened and to ensure that no criminal activity has taken place. All deaths in custody are also reported to a Coroner. The Coroner, who is an independent judicial authority, will hold an inquest before a jury to establish the facts of the case. The Coroner's Inquest has been held to be an independent investigation under domestic and European law.

### Scotland

433. In Scotland, the Procurator Fiscal carries out an independent investigation into the circumstances of any death in prison. On conclusion of the Procurator Fiscal's investigation, a mandatory public inquiry under the provisions of the *Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976*<sup>53</sup> is held to look into the circumstances surrounding the death. Since the set up of the specialist Scottish

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<sup>53</sup> <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&PageNumber=0&NavFrom=0&parentActiveTextDocId=1241799&ActiveTextDocId=1241799&filesize=40984>

Fatalities Investigation Unit by COPFS in October 2010, all such deaths are reported to that Unit to ensure that a database of all investigated death cases is held, to monitor the progress of such cases and to provide access to expertise in the preparation of such inquiries as is appropriate. The Sheriff determines the cause of death and records whether or not there was anything that could have been done to prevent it. Any death that appears to have been self-inflicted is investigated by two members of the Prison Service's National Suicide Risk Management Group.

434. The Scottish Prison Service has introduced a learning lessons approach to critically analyse and review an apparent self-inflicted death in prison custody. This process, known as "SIDCAAR" (Self Inflicted Death in Custody: Analysis, Audit and Review) ensures a standardised practice when conducting apparent self inflicted death in custody reviews and also provides a structure for the critical review process. The SIDCAAR process ensures openness and transparency of practice and opinion, focuses on establishment experience, as well as providing a mechanism for wider learning, and for primary and secondary assurance with regards to aspects of prisoner management. In cases where the individual had a mental health problem, information is also shared with national health colleagues. The information obtained will also contribute to the development of national suicide risk management policies and procedures and offer a means of communicating areas of good practice. All deaths in legal custody are investigated by the Procurator Fiscal and a mandatory public inquiry held in terms of the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976.

### **Northern Ireland**

435. In Northern Ireland a Prisoner Ombudsman was appointed on 3 May 2005. In September 2005 the remit of the Prisoner Ombudsman was extended to investigate and report on the circumstances and events surrounding any deaths in custody. This remit is in addition to any investigations undertaken by the police and the Coroner. The Prisoner Ombudsman's reports are published.<sup>54</sup>

### **DEATHS IN IMMIGRATION CUSTODY**

436. Between 1989 and 2010 there have been 14 deaths in immigration custody, the last having occurred in October 2010. In that incident a detainee died in hospital after becoming unwell on board an aircraft whilst being escorted for removal from the UK. The cause of death has yet to be determined. The circumstances of the death are the subject of ongoing separate investigations by the police and the Prisons and Probation Ombudsman.

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<sup>54</sup> <http://www.niprisonerombudsman.gov.uk/publications.html>

437. All deaths are investigated by the Prisons and Probation Ombudsman and any recommendations are carefully considered to ensure any lessons learnt are applied across the UKBA detention estate to help minimise the risk of any future tragedies. The Police will be notified immediately and they will carry out their own investigation.
438. The issue of suicide and self harm is taken extremely seriously and staff at all centres are trained to help identify and prevent suicide and self harm. Notices in various languages are displayed around centres setting out that, where there is a concern about a fellow detainee, this should be brought to the attention of a member of staff. These procedures have proved to work well. Formal risk assessments on initial detention and systems for raising concerns at any subsequent point feed into established self-harm procedures in every immigration removal centre, which are in turn underpinned by the operating standard on the prevention of self-harm.

## INVESTIGATION IN THE MILITARY CONTEXT

439. Code C of the Service Police Codes of Practice (SPCoP)<sup>55</sup> provides direction on the treatment and questioning of all persons suspected of being involved in offences under the Service Discipline Acts, and ensures they are dealt with fairly and properly in accordance with the law.
440. When operating in a benign environment the Service Police conduct major investigations in accordance with Association of Chief Police Officers (ACPO) endorsed Core Investigative Doctrine, as laid out in the Major Incident Room Standardised Administration Procedures<sup>56</sup> and, if applicable, the ACPO Murder Investigation Manual. When carrying out investigations in an operational theatre it is occasionally impractical and sometimes impossible to follow these documents to the letter. This has been recognised by Her Majesty's Inspectorate of Constabulary. Nevertheless, the spirit of these documents are always followed as they represent best practice.
441. One of the fundamental principles underpinning the work of the Service Police is that all investigations are conducted independently from the chain of command and are totally impartial. The Service Police – including the Special Investigation Branch of the Royal Military Police, which undertakes the vast majority of investigations in operational theatres – therefore has a separate command structure.

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<sup>55</sup> <http://www.mod.uk/NR/rdonlyres/5A0855FD-CECC-4BF7-A466-61520CEE9AB3/0/JSP397.pdf>

<sup>56</sup> [http://www.roberthamillinqury.org/filestore/?f=/filestore/documents/evidence/Major\\_Investigation\\_Incident\\_Room\\_Standardised\\_Administrative\\_Procedures\\_\(10789\).pdf](http://www.roberthamillinqury.org/filestore/?f=/filestore/documents/evidence/Major_Investigation_Incident_Room_Standardised_Administrative_Procedures_(10789).pdf)

442. In line with their civilian counterparts, the Royal Military Police is inspected by Her Majesty's Inspectorate of Constabulary, and has been found fit for purpose.
443. No service personnel have been prosecuted or convicted of torture specifically. The "Breadbasket" incident on the 15 May 2003, which involved mistreatment and photographs of Iraqi looters led to an extensive investigation resulting in the court martial and conviction of four British soldiers for other offences.
444. The death of Baha Mousa while in custody of the 1<sup>st</sup> Battalion The Queen's Lancashire Regiment (1QLR) on 15 September 2003 in Basra resulted in the court martial of two officers and five soldiers, one of whom (Corporal Donald Payne) was found guilty of Inhuman Treatment of a prisoner and was sentenced to be dismissed from service, 12 months' imprisonment and to be reduced to the ranks.
445. Many of the claims of abuse in British custody in Iraq which allege criminal behaviour have arisen years after the event and present difficult investigative challenges. The Iraq Historic Allegations Team (IHAT), which was announced by the Secretary of State for Defence on 1 March 2010, was set up to commit additional resources to investigations and get to the bottom of the allegations more quickly (this approach was endorsed by the new government). The Head of the IHAT (Hd IHAT), a retired civilian senior police officer, was appointed on 6 September 2010 and he leads a team of Royal Military Police and civilian investigators.
446. The Hd IHAT is responsible to the Provost Marshal (Army) (PM(A)), as Chief Officer Royal Military Police, 'for the carrying out of their functions independently of the Secretary of State and the chain of command'. Hd IHAT is accountable for the leadership and conduct of the IHAT's inquiries and sets the strategic direction of the team in the manner best calculated to achieve its objectives. Therefore, Hd IHAT's first objective was to develop an Investigation Strategy, approved by the PM(A) that would enable the IHAT to deliver the outputs required of it. This strategy comprises of five main elements:
- **the search, recovery and preservation of evidence**, which involves the recovery of electronically stored data and other documentary material across Defence;
  - **information analysis**, in respect of each complaint;
  - **complainant interviews**, to obtain a statement of complaint;
  - **mature assessment**, in order to determine whether there should be further investigation; and
  - **investigations**.
447. The IHAT Terms of Reference state that the IHAT shall investigate all judicial review claims from Public Interest Lawyers, issued or notified by

way of a pre-action protocol letter as at 30 April 2010, and that other cases of alleged mistreatment notified to the Secretary of State after this date will be considered on a case-by-case basis and may be subject to investigation by the IHAT. The IHAT is currently expected to complete its investigations by November 2012. The IHAT is currently considering 102 separate cases involving 156 Iraqi complainants.

448. In a high court judgment in December 2010, the Court agreed the Secretary of State for Defence's decision not set up an immediate single public inquiry into all the allegations of abuse. The Court also endorsed the IHAT. Solicitors representing the Iraqi claimants have been granted permission to appeal. The hearing is scheduled for July 2011.

## **Article 13: Availability of complaints procedures for those suffering torture or other forms of ill-treatment**

### **POLICE DISCIPLINE AND COMPLAINTS**

#### **England and Wales**

#### ***Independent Police Complaints Commission (IPCC)***

449. The IPCC is the independent body which is the statutory guardian of the police complaints system. The IPCC sets standards for the way the police handle complaints and, when something has gone wrong, seeks to help the police learn lessons and improve the way they work. It has a duty to raise public confidence.
450. Complaints may arise either from the public or a matter relating to police conduct may come to light within a police force. Public complaints may be addressed through local resolution (with the complainant's agreement) or may be investigated by a police force under the supervision or management of the IPCC. Alternatively, the IPCC may appoint one of its own investigators to conduct the investigation.
451. Since April 2004 the IPCC has used its powers to begin 264 independent and 663 managed investigations into the most serious complaints against the police and other agencies. It has set new standards for police forces to improve the way the public's complaints are handled. The Commission also handles appeals by the public about the way their complaint was dealt with by the local force.
452. Details of the IPCC's handling procedures and appeals system are set out in the response to Article 12 above (paragraphs 417 to 424).

453. Since 2004 the IPCC has published annual Police Complaints statistics for England and Wales.<sup>57</sup> Annual figures on complaints against the police in England and Wales are set out below.

|                              | 2004–05 | 2005–06 | 2006–07 | 2007–08 | 2008–09 |
|------------------------------|---------|---------|---------|---------|---------|
| <b>Cases*</b>                | 22,898  | 26,268  | 28,998  | 28,963  | 31,259  |
| % change on previous year    | 44      | 15      | 10      | 0       | 8       |
| <b>Allegations Finalised</b> | 27,909  | 38,199  | 41,584  | 45,524  | 50,369  |
| % substantiated              | 13      | 12      | 11      | 11      | 10      |
| % unsubstantiated            | 87      | 88      | 89      | 89      | 90      |
| % withdrawn                  | 13      | 12      | 12      | 11      | 12      |
| % locally resolved           | 50      | 46      | 47      | 43      | 41      |
| % dispensation               | 17      | 14      | 10      | 11      | 10      |
| % discontinuance             | -       | -       | -       | 3       | 2       |

\* Each complaint 'case' may contain a number of individual allegations. Percentages do not add up to 100 due to rounding

### Scotland

454. Details of police complaints procedures in Scotland are to be found at paragraphs 208–211 of the UK's 4<sup>th</sup> report.
455. During 2009–2010 there were 766 complaints of criminal conduct against police officers in Scotland referred to the Procurator Fiscal. As a result 10 police officers were prosecuted.
456. In non-criminal cases the Deputy Chief Constable of the force decides whether a misconduct hearing or a warning from a senior officer is appropriate. Work is at an advanced stage to expand the range of options available to the Deputy Chief Constable or senior officer when considering an appropriate disposal to a complaint. Police authorities have a duty under section 40 of the *Police (Scotland) Act 1967* to remain informed as to how complaints about the police are being dealt with. Previously a complainant could seek the assistance of HMIC if they were dissatisfied with the manner in which their complaint had been dealt with by the police. This function is now the responsibility of the Police Complaints Commissioner for Scotland.
457. Schedule 1 to the Police (Conduct) (Scotland) Regulations 1996 details behaviour that constitutes misconduct. Scotland's eight forces have power to impose sanctions against officers found guilty of misconduct. Under the 1996 Regulations, misconduct hearings may be delegated to superintendents. Following a recommendation contained in a thematic report by Her Majesty's Inspectorate of Constabulary for Scotland (HMICS, 2000) entitled *A Fair Cop?*<sup>58</sup> that only trained officers chair

<sup>57</sup> <http://www.ipcc.gov.uk/index/resources/research/stats.htm>

<sup>58</sup> <http://www.scotland.gov.uk/hmic/docs/afcp-00.asp>



these hearings, forces have acted to ensure that there is now a national course available to address this need.

458. Outcomes of disciplinary hearings from in 2008–09 and 2009–10 are set out in the table below.

| <b>Number of On-Duty Allegations Disposed of by Category of Disposal</b> |                |                |                 |
|--|----------------|----------------|-----------------|
|  | <b>2008–09</b> | <b>2009–10</b> | <b>% Change</b> |
| Resolved by explanation to complainer                                    | 1,533          | 2,517          | 64              |
| Unsubstantiated by available evidence                                    | 2,129          | 1,820          | -15             |
| Leading to no proceedings by Procurator fiscal                           | 1,348          | 1,215          | -10             |
| Resulting in advice  | 455            | 601            | 32              |
| Withdrawn by complainer  | 855            | 463            | -46             |
| Resulting in misconduct procedures                                       | 120            | 146            | 22              |
| Abandoned due to lack of co-operation of complainer                      | 225            | 145            | -36             |
| Leading to criminal proceedings  | 15             | 15             | 0               |
| Leading to criminal convictions  | 10             | 9              | -10             |
| <b>Total</b>   | <b>6,690</b>   | <b>6,931</b>   | <b>4</b>        |

459. In June 2004, HMICS carried out a review of progress by the Scottish Police Service and other stakeholders into the recommendations made in *A Fair Cop*. The subsequent report; *A review of the investigation of complaints against the police in Scotland (2004)*,<sup>59</sup> found that the service generally responded well to recommendations and the report highlighted elements of good practice.
460. The then Scottish Executive established a new independent body, the Police Complaints Commissioner for Scotland (PCCS) on 1 April 2007. The PCCS has powers to examine the manner in which a relevant complaint had been handled. The PCCS was established under the *Police, Public Order and Criminal Justice (Scotland) Act 2006*.
461. The PCCS can review how complaints about the behaviour of an individual police officer or staff member have been handled, as well as the quality of service given by a police force, police authority or policing agency. The PCCS can tell a police force, police authority or policing agency to reconsider a complaint. The PCCS can also tell them who should carry out the reconsideration, and in some cases the PCCS may supervise this personally.
462. The PCCS does not have the relevant powers to investigate the substance of a complaint and will not look at complaints that are already being dealt with by courts or other complaints procedures. Any complaints referring to a criminal allegation will be passed to the Crown

<sup>59</sup> <http://www.scotland.gov.uk/Publications/2004/06/19502/38829>

Office and Procurator Fiscal Service. The PCCS will not deal with complaints about employment and staff issues relating to individuals who work with, or who have worked with the police.

### **Northern Ireland**

463. Details of police complaints procedures for Northern Ireland can be found at paragraph 799. Figures on police complaints from 6 November 2000 are set out below.

| <b>Date</b>            | <b>Number of Complaints</b> |
|------------------------|-----------------------------|
| 6 Nov 2000–31 Mar 2001 | 1,531                       |
| 1 Apr 2001–31 Mar 2002 | 3,600                       |
| 1 Apr 2002–31 Mar 2003 | 3,214                       |
| 1 Apr 2003–31 Mar 2004 | 2,979                       |
| 1 Apr 2004–31 Mar 2005 | 2,887                       |
| 1 Apr 2005–31 Mar 2006 | 3,140                       |
| 1 Apr 2006–31 Mar 2007 | 3,283                       |
| 1 Apr 2007–31 Mar 2008 | 2,994                       |
| 1 Apr 2008–31 Mar 2009 | 3,086                       |
| 1 Apr 2009–31 Mar 2010 | 3,528                       |
| 1 Apr 2010–31 Mar 2011 | 3,313                       |
| <b>Totals</b>          | <b>33,555</b>               |

## **PRISON DISCIPLINE AND COMPLAINTS**

### **England and Wales**

464. The prisoners' complaints system is set out in PSO 2510 Requests and Complaints Procedures.<sup>60</sup> These procedures provide clear instructions on how prisoners' complaints should be dealt with and include criteria for the conduct of investigations into allegations of misconduct by staff against prisoners. The National Offender Management Service does not hold detailed information centrally on the different types of complaints submitted. However, current policy guidance advocates that data is a useful tool for providing management information and analysing trends. The prison senior management team should use the data collated to indicate where there are particular problem areas and take remedial action but this is not a mandatory requirement.
465. Where an individual alleges to be a victim of misconduct a full investigation (PSO 1300 Investigations sets out the policy) will be carried out. Prisoners have a number of independent avenues of complaint; the Prison and Probation Ombudsman, Parliamentary and Health Service Ombudsman and Independent Monitoring Boards.

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<sup>60</sup> [http://pso.hmprisonservice.gov.uk/PSO\\_2510\\_prisoners\\_requests\\_and\\_complaints\\_procedures.doc](http://pso.hmprisonservice.gov.uk/PSO_2510_prisoners_requests_and_complaints_procedures.doc)

466. The staff disciplinary procedure for the public sector Prison Service is set out in Prison Service Order (PSO) 8460 Conduct & Discipline. The PSO outlines the steps to be followed where an allegation of misconduct has been made, including inappropriate treatment of/behaviour towards prisoners in custody.
467. The Governing Governor will put in place local arrangements which will dictate who has authority within the establishment to act as Commissioning Manager for an investigation. This task will not be delegated below a Prison Service Manager Level F.
468. The choice of Investigating Officer is at the discretion of the Commissioning Manager and will depend on the nature of the incident and whether any specialist skills or knowledge are required. The Investigating Officer is required to work impartially and without the undue influence of others. Investigating Officers must be of at least Principal Officer or Executive Officer grade and would normally be a substantive grade/rank higher than the person under investigation.
469. The Commissioning Manager should be satisfied that the Investigating Officer is competent to carry out the role. Competency can be demonstrated by training, proven record of managing investigations or conducting investigations or by demonstrating the necessary skills e.g. analytical skills, sound written communication, specialist knowledge or expertise.
470. Depending on the nature of the allegation, the Investigating Officer must determine whether or not other methods of investigation are necessary, such as referral to a forensic expert. Where allegations are of a potentially criminal nature, the matter will be referred to the Police and not investigated, in the first instance, by the Prison Service.
471. In some instances it may not be appropriate for a member of staff to remain on their normal duties or at their place of work pending an investigation into an allegation of misconduct. In such cases, the Governing Governor will arrange alternative duties or, in exceptional circumstances, suspension from duty until the investigation has been concluded. During this time, the member of staff under investigation will be advised that they should not, under any circumstances, discuss the allegation with anybody other than the investigating team or their appointed representative.
472. A central database which contains details of all proven cases of staff misconduct and the level of disciplinary award is maintained. This database includes information about cases involving mistreatment of prisoners.

### **Scotland**

473. Independently of the Scottish Prison Service, the Procurator Fiscal investigates allegations that a prison officer has committed a crime.

Additionally all allegations of staff on prisoner assault within an establishment, are reported to the Police and investigated in the same way as allegations against Police Officers.

**Northern Ireland**

- 474. In Northern Ireland the disciplinary procedure for operational Prison Service staff is set out in the Code of Conduct and Discipline (COCD). The COCD is not a legislative document. It is a policy document, but its genesis is in the Prison Act (NI) 1953. Paragraph 13(e) of the Act states ‘the Ministry may make rules to be styled “Prison Rules” for the conduct, duty and discipline of the staff of prisons.’
- 475. The COCD applies to all Governor grades and to Prison Officers of all classes and grades. It outlines the steps to be followed where an allegation of misconduct has been made, including inappropriate treatment of/behaviour towards prisoners in custody.
- 476. The COCD is currently being revised.

***The Prison and Probation Ombudsman***

- 477. The Ombudsman is appointed by the Secretary of State for Justice and is completely independent of the National Offender Management Service Agency (NOMS) and UK Border Agency (UKBA). He provides an independent point of complaint for prisoners, offenders under probation supervision and immigration detainees who have failed to obtain satisfaction from internal complaints systems. The Ombudsman also has responsibility for investigating all deaths occurring in prison, probation approved premises or immigration removal centres, whatever the cause of death.
- 478. During 2009–10 the Ombudsman completed 1,944 investigations into prisoner complaints and increase of 39% from the previous year. The number of complaints deemed eligible increased by 26% over the same period. Of the complaints investigated, 30% were either upheld or resolved locally, an increase of 1% on 2008–09.
- 479. The following table provides figures and analysis in relation to complaints investigations:

| <b>Prisoner complaints: analysis of complaints received, outcome and recommendations</b> |                |                |
|--|----------------|----------------|
|  | <b>2008–09</b> | <b>2009–10</b> |
| Complaints received  | 3,826          | 4,050          |
| Complaints deemed eligible   | 1,745          | 2,173          |
| Investigations completed   | 1,439          | 1,944          |
| Upheld/partially upheld  | 416            | 612            |
| Local resolution   | 113            | 172            |
| Positive outcome   | 416            | 586            |
| Recommendations to NOMS  | 146            | 266            |

|                                 |   |   |
|---------------------------------|---|---|
| <b>Recommendations rejected</b> | 0 | 3 |
|---------------------------------|---|---|

### ***The Parliamentary and Health Service Ombudsman***

480. The Parliamentary and Health Service Ombudsman (the Ombudsman) (PHSO) is a post which combines the two statutory roles of Parliamentary Commissioner for Administration (PCfA) and Health Service Commissioner for England (HSCE), whose powers are set out in the *Parliamentary Commissioner Act 1967* and the *Health Service Commissioners Act 1993* respectively.

481. The role of PHSO is to provide a service to the public by undertaking independent investigations into complaints that government departments, a range of other public bodies in the UK, and the National Health Service in England, have not acted properly or fairly or have provided a poor service.

### **Scotland**

482. Arrangements for complaints against prison officers and disciplinary proceedings in Scotland were set out in paragraphs 97–101 of the initial report and further details were provided at paragraphs 238–240 of the UK's 4<sup>th</sup> report.

483. In the year from 1 April 2009 to 31 March 2010, the Scottish Prison Service received 15,335 complaints, covering all aspects of prison life.

484. The following table provides figures on numbers of complaints received and recommendations made by the Scottish Prisons Complaints Commissioner in the last four financial years. The Scottish Prison Complaints Commission (SPCC) investigated complaints made by prisoners that have not been resolved through the internal complaints system of the Scottish Prison Service (SPS). The SPCC's functions were transferred to the Scottish Public Services Ombudsman with effect from 1 October 2010.

|                       | <b>2004–05</b> | <b>2005–06</b> | <b>2006–07</b> | <b>2007–08</b> |
|-----------------------|----------------|----------------|----------------|----------------|
| Complaints Received   | 388            | 460            | 403            | 324            |
| Within Jurisdiction   | 259            | 363            | 298            | 228            |
| Conciliated           | 58             | 127            | 145            | 68             |
| No Recommendation     | 178            | 189            | 89             | 89             |
| Formal Recommendation | 16             | 1              | 0              | 0              |
| Withdrawn             | 2              | 13             | 32             | 30             |
| Awaiting Outcome      | 5              | 37             | 32             | 41             |

### **Northern Ireland**

485. In Northern Ireland a Prisoner Ombudsman was appointed on 3 May 2005. Prisoners who have been unable to obtain a satisfactory outcome to their complaint using the internal complaints procedure now have recourse to the Prisoner Ombudsman. Since February 2010 the Ombudsman has also had the power to investigate complaints from

visitors to prison once the internal complaints procedure has been exhausted.

486. The following table provides the number of complaints received by the Prisoner Ombudsman's office since its establishment in May 2005 and their outcome.

|                            | <b>2005–2006</b> | <b>2006–2007</b> | <b>2007–2008</b> | <b>2008–2009</b> | <b>2009–2010</b> |
|----------------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Complaints received</b> | 368              | 275              | 207              | 338              | 493              |
| <b>Upheld</b>              | 50%              | 23.4%            | 18.7%            | 29%              | 62%              |
| <b>Local resolution</b>    | -                | 16.6%            | 43%              | 39%              | 16%              |
| <b>Not upheld</b>          | 50%              | 60%              | 38.3%            | 32%              | 22%              |

487. Since 2008/2009 The Prisoner Ombudsman has not designated complaints by held/not upheld/local resolution, which often does not do justice to investigation outcomes. The focus is, instead, on constructive outcomes and recommendations in 2010/2011. The Prisoner Ombudsman has received 717 complaints. 285 investigations were completed in the year 2010/11, and 235 recommendations were made. 90% were accepted.
488. Since the Office of Prisoner Ombudsman began investigating deaths in prison custody in September 2005 there have been a total of 29 deaths, the most recent of which occurred in May 2011. As a result of her investigation into each death in custody, the Prisoner Ombudsman produces a report with recommendations, which is usually published on the Office website. In response to that, the Prison Service develops a action plan setting out how it will take forward the recommendations. The Prisoner Ombudsman then monitors implementation of the recommendations.

## **MILITARY DISCIPLINE AND COMPLAINTS**

489. Any allegations of mistreatment are taken very seriously. In the first instance an investigation into allegations would be carried out by the Royal Military Police. The complainant may put in a personal injury claim. If a decision is made that the case should not be investigated, then a complainant can request the UK courts to judicially review the decision.

### **Northern Ireland**

490. The post of Independent Assessor of Military Complaints Procedures was abolished in 2007, with the repeal of Part VII of the *Terrorism Act 2000*. The repeal of this post reflected the comprehensive normalisation programme undertaken in Northern Ireland. Jim McDonald, the last

Assessor, presented his final report to government<sup>61</sup> covering the period up to July 2007.

491. This role was replaced by the Independent Reviewer of the *Justice and Security (Northern Ireland) Act 2007* who was appointed by virtue of section 40 of that Act. The Reviewer is responsible for reviewing the operations of the powers contained in the Act (sections 21–32) and the procedures adopted by the GOCNI (General Office Commanding Northern Ireland) for receiving, investigating and responding to complaints. The reviewer reports to the Secretary of State annually. The Independent Reviewer has made three reports to date.<sup>62</sup> His Reports provide a positive assessment of the procedures adopted by the military for dealing with military complaints in Northern Ireland. All recommendations the Reviewer has made have been accepted and implemented.

## IMMIGRATION SERVICES

492. The formal complaint procedures, set out in paragraphs 125–127 of the 3<sup>rd</sup> report, have now been revised and all complaints of this nature are now dealt with by a single team within UKBA. Complaints of serious misconduct e.g. alleged racism, are dealt with under these procedures, but allegations of physical violence are referred to the police to consider whether to undertake a criminal investigation. Detainees in Immigration Removal Centres may in addition complain to the visiting committees, known as Independent Monitoring Boards. Detainees also have the right to have any complaint reviewed by the Prisons and Probation Ombudsman.
493. Information on how to make a complaint is available in leaflets and on posters, and is also contained on the UKBA web site. The Complaints Audit Committee was replaced in 2008 by a permanent Chief Inspector of UKBA. This office monitors the complaint investigation process, by way of audit, to raise quality of service issues. In 2008, the Independent Police Complaints Commission was given statutory jurisdiction over the most serious complaints, incidents and misconduct matters involving UKBA officers exercising police-like powers. Complaints concerning maladministration may also be made via a Member of Parliament to the Parliamentary Commissioner for Administration (the Ombudsman).
494. *The Human Rights Act 1998* provides an avenue to pursue complaints through the court. Under the Act it is unlawful for any public authority to

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<sup>61</sup> [http://www.nio.gov.uk/final\\_report\\_of\\_the\\_independent\\_assessor\\_of\\_military\\_complaints\\_procedures.pdf](http://www.nio.gov.uk/final_report_of_the_independent_assessor_of_military_complaints_procedures.pdf)

<sup>62</sup> <http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-0031.pdf>,  
<http://www.parliament.uk/deposits/depositedpapers/2009/DEP2009-3130.pdf> and  
[http://www.nio.gov.uk/independent\\_reviewers\\_third\\_report.pdf](http://www.nio.gov.uk/independent_reviewers_third_report.pdf)

act in a way incompatible with the convention rights: if it does, the Act provides a new cause of legal action and remedy.

495. A complaint case may include one or more allegations and the UKBA is presently implementing a new centralised database to record complaints to better interrogate these and analyse trends. The most recent figures recorded by the Professional Standards Unit made by detainees in immigration removal centres and foreign nationals being removed from the UK are set out in the following table. The figures below show the total number of serious misconduct complaints received.

|      | Received | Substantiated |
|------|----------|---------------|
| 2009 | 152      | 20            |
| 2010 | 153      | 26            |

## Article 14: Compensation for and rehabilitation of victims of torture

### Baha Mousa

496. On 27 March 2008 the Secretary of State for Defence admitted substantive breaches of Article 2 (right to life) and 3 (prohibition of torture) of the European Convention on Human Rights (ECHR) in respect of Baha Mousa. He further admitted substantive breaches of Article 3 (prohibition of torture) ECHR in respect of nine individuals detained at the same time as Baha Mousa. The then Minister for the Armed Forces, Bob Ainsworth MP offered his sincere apologies and sympathy to the family of Mr Mousa and the other nine detainees.
497. It was accepted that these substantive breaches of the ECHR gave rise to compensation claims, which were settled (by mediation) at £2.83m in July 2008. The monies were paid shortly after settlement was reached.
498. On 14 May 2008, the Secretary of State for Defence ordered a public inquiry into the death of Baha Mousa to do everything possible to understand how Mr Mousa lost his life, and to learn all the lessons from this incident. The MoD and Army will continue to co-operate fully with the Inquiry. It is not possible to comment further on matters on which the Inquiry will want to reach its own conclusions.
499. Within the UK, the Criminal Injuries Compensation scheme provides arrangements for compensating victims of crime. Compensation is assessed under a tariff-based system on a scale of payments for injuries of comparable severity. Compensation is not available to victims of torture committed by another State in another part of the world where there is no suggestion of UK involvement. Article 14 provides that each State is required to ensure redress and a right to compensation for victims of torture. We interpret this as requiring redress and a right to compensation for victims of torture where committed within the UK's jurisdictions.



500. There are three organisations in the UK that provide generic support to victims of crime: Victim Support – which covers England and Wales – Victim Support Scotland and Victim Support Northern Ireland.

### **England and Wales**

501. In England and Wales the UK Government contributes £30 million funding a year to Victim Support. Additionally, in the last two years the UK Government has provided Victim Support with an additional £12.6m to roll out, across England and Wales, Victim Support Plus, which provides enhanced services to victims of crime. Through Victim Support Plus victims will receive a telephone call from a fully-trained Victim Care Officer within 48 hours of referral from the police. Using a new toolkit, victims will have their needs assessed before arrangements are made to provide the necessary support services. This will take the form of practical advice and support, and emotional support from volunteers with specialist training in supporting victims of serious and violent crime. Support services to victims are now faster and easier to access, more consistent and practical, and tailored to victims' needs.

### **Scotland**

502. In Scotland, the Scottish Government made available grant of around £4.2 million to Victim Support Scotland in 2008–09. This allowed Victim Support Scotland to continue to provide emotional and practical support to victims and witnesses, and to implement a new needs' assessment toolkit and an online user survey aimed at improving services to victims.

### **Northern Ireland**

503. The Northern Ireland Government provides funding of just over £2m per year to Victim Support Northern Ireland to provide support services to victims when a crime occurs, help to victims claiming Criminal Injuries Compensation and court support to victims and witnesses called to give evidence at court.

## **Article 15: Admissibility of confession evidence**

### **England and Wales**

504. As explained in paragraphs 121–123 of the initial report, under both statutory and common law, a confession that may have been obtained by oppression is inadmissible in the United Kingdom as evidence against the person who made that confession. When considering the admissibility of a confession the court must have in mind the provisions of sections 76 and 78 of the *Police & Criminal Evidence Act 1984*. Human Rights legislation (ECHR Article 3 as incorporated through the *Human Rights Act 1998*) also provides that the court may exclude a confession if it was obtained in violation of Convention rights.
505. This principle was further developed in the House of Lords case of *A v Secretary of State for the Home Department (No.2)* [2006]. The House

of Lords in this case made it clear that evidence obtained by torture is inadmissible in any legal proceedings. Furthermore for the purposes of criminal proceedings in England and Wales section 76 of the *Police and Criminal Evidence Act 1984* provides that a court shall not allow a confession to be given in evidence against an accused unless the prosecution have proven beyond reasonable doubt that it was not obtained by oppression or in consequence of anything said or done which was likely to render it unreliable. Section 76(8) of PACE makes it clear that “oppression” includes torture. Under section 78 of PACE a court may also refuse to allow evidence on which the prosecution seeks to rely if it appears to the court that the admission of the evidence would have such an effect on the fairness of the proceedings that the court ought not to admit it. Such exclusion would clearly apply to evidence obtained by torture. Similar provisions are provided for in Scotland and Northern Ireland.

#### **Scotland**

506. Although the PACE Act 1984 does not extend to Scotland, the same principle, that evidence of a confession obtained by oppression is inadmissible, also applies in Scotland.

#### **Northern Ireland**

507. The position for Northern Ireland was set out at paragraph 260 of the UK's 4<sup>th</sup> report.

### **Article 16: Other acts of cruel, inhuman or degrading treatment or punishment not amounting to torture**

#### **PRISON POPULATION**

##### **England and Wales**

508. The total prison population has increased significantly since the mid-1990s rising from 61,470 in June 1997 to 84,883 in April 2011. The current highest published figure is 85,495 on 01 October 2010.

509. The Ministry of Justice's last projections for the prison population (August 2010) indicated that it could rise to 92,000 by 2014. Additional prison capacity was being built to accommodate this and enable the closure of worn out and inefficient prison places that were no longer suitable.

510. However, two factors have changed the outlook. Prison population growth has been slower than this projection indicated and the Government set out a number of measures to reform sentencing in its Green Paper “Breaking the Cycle” which, if successful, would reduce future demand for prison places by the end of the SR period to about 82,000 or the level of the prison population in 2008. These measure include:

- reducing the numbers likely to be remanded in custody prior to trial, based on a proportion of those who are unlikely to receive a custodial sentence if found guilty or are likely to be found not guilty and some measures to reform recall;
  - introducing Conditional Cautions for some Foreign National Prisoners; and
  - liaison and diversion services to help support the diversion of offenders with mental health problems from custody into community mental health treatment services.
511. The Government has already started to take steps to reflect this new outlook. Where contracts had not been entered into for new capacity, decisions have already been made not to proceed, as with the planned prisons at Runwell and Maghull. And in the light of the surplus headroom that had developed in the prison estate by the beginning of this year, the Secretary of State for Justice announced the outright closure of two prisons in January (Ashwell and Lancaster Castle) as well as removing a third prison (Morton Hall) from the prison system and changing its function (or re-designating it) to an Immigration Removal Centre.
512. However, the Government is proceeding with the new prisons to which it is contractually committed. Construction has begun on building a new 900 place prison at Belmarsh West (London) and a 1,600 place prison Featherstone 2, in Staffordshire. This new accommodation will contribute to an overall upgrade of the prison estate allowing closure of worn out and inefficient places and, thereby, a more cost effective prison service.
513. The Government will continue to review future capacity requirements and decisions on possible future closures will be taken if similar robust operational cases are made, against projected prison population levels.

### **Scotland**

514. Scotland's prison population reached an all time high of 8,251 in July 2009. The average daily prison population in 2009–10 was 7,967. Prison numbers are projected to continue to rise.
515. Scotland has a design capacity of 7,577 prisoner places. New accommodation has been built at Edinburgh, Polmont, Perth and Glenochil to replace existing accommodation deemed not fit for purpose. HMP Addiewell opened in 2008. Redevelopment of HMP Shotts is also underway. An additional two new prisons have been commissioned, HMP Low Moss and HMP Grampian will provide more than 1,100 additional places.

### **Northern Ireland**

516. Since March 2002 there has been a steady increase in the prison population to the point where the figure reached a new high of 1594 on

26 September 2008. The table below outlines the maximum prison population on an annual basis from 2002 – July 2010.

| Year              | Maximum Prison Population |
|-------------------|---------------------------|
| 2002              | 1,085                     |
| 2003              | 1,245                     |
| 2004              | 1,352                     |
| 2005              | 1,389                     |
| 2006              | 1,494                     |
| 2007              | 1,509                     |
| 2008              | 1,594                     |
| 2009              | 1,542                     |
| 2010 (until July) | 1,502                     |

517. The current prison estate consists of three establishments as well as a separate Prisoner Assessment Unit, a training college and a Headquarters. Each of the three establishments currently holds a prisoner population for which they were not originally designed. As a result, each establishment has had to accommodate a wide range of categories of prisoners with a high level of complexity, particularly at Maghaberry. Further details of the Northern Ireland prison estate are set out in response to the Committee's concerns at paragraph 81.

## OVERCROWDING

518. There is no doubt that crowding places considerable pressure on prisons. The Government wishes to see a real change in approach so as to place rehabilitation genuinely at the centre of prisons that are truly fit for purpose and cost efficient.

519. Crowding is carefully managed. Operational Managers must ensure that each cell used for the confinement of prisoners has sufficient heating, lighting and ventilation and is of adequate size for the number of prisoners to be held in it.

520. The Government recognised that even if its sentencing and rehabilitation reforms are successful in reducing the prison population, it will not be possible to create enough prison places to fully address the problem of overcrowding.

521. In the meantime, the Government intends to meet prison capacity requirements more efficiently to improve value for money for the taxpayer and contribute savings to help reduce the budget deficit. It will consider a long term prison capacity strategy in the light of responses contained in the Green Paper *Breaking the Cycle*.

522. The table below shows national figures for overcrowding:

| Year    | Average number of prisoners in overcrowded accommodation | Average percentage of prison population in overcrowded accommodation |
|---------|--|--|
| 2004/05 | 18214  | 24.3%  |
| 2005/06 | 18356  | 24.0%  |
| 2006/07 | 19438  | 24.6%  |
| 2007/08 | 20377  | 25.3%  |
| 2008/09 | 20452  | 24.7%  |
| 2009/10 | 20234  | 24.1%  |

## DEATHS, VIOLENCE AND BULLYING IN PRISON CUSTODY

### England and Wales

523. The following table shows the number of deaths in prison custody in England and Wales since the 4<sup>th</sup> Report in 2003.

| Year | Population <sup>1</sup><br>(mid-year snapshot) | Self-inflicted deaths <sup>2</sup> | Deaths by natural/other causes <sup>3</sup> | Total | Number of self-inflicted deaths per 100,000 |
|------|--|------------------------------------|---|-------|---|
| 2004 | 74,488   | 95                                 | 113   | 208   | 128   |
| 2005 | 76,190   | 78                                 | 96  | 174   | 102   |
| 2006 | 77,982   | 67                                 | 86  | 153   | 86  |
| 2007 | 80,689   | 92                                 | 93  | 185   | 114   |
| 2008 | 83,326   | 60                                 | 105   | 165   | 72  |
| 2009 | 83,461   | 61                                 | 109   | 169   | 72  |

<sup>1</sup> Source: Ministry of Justice – Safety in Custody Statistics (Deaths: Table 1). The table here reflects the position at 21/7/2010. It shows one additional natural death in 2009 and one less in 2000 compared with the original tables which are updated once per year.

<sup>2</sup> All classifications of death are subject to confirmation at inquest. Numbers from earlier years may change.

524. Ministers, the Ministry of Justice and NOMS are committed to reducing the number of deaths in custody. Good care and support from staff save many lives, but such instances go largely unreported. Prisons successfully keep safe in any given month approximately 1,500 prisoners assessed to be at particular risk. The number and rates of self-inflicted deaths have been falling in recent years and prison staff have worked hard to achieve the improvements that the table indicates.

525. Almost half of all deaths in custody are a result of natural causes. The commissioning of prison health services by NHS local Primary Care Trusts has improved services to meet the needs of the prison population and so helping to prevent prison deaths from natural causes. Since 1995, there has been one death related to restraint in 2005.

526. Between 1 January 2000 and December 2009 there were fourteen suspected homicides (criminal convictions of 'homicide' have been recorded for 13 of these deaths, and one person was acquitted). Prison homicides in England and Wales are relatively rare events; the average since 1978 has been 1.7 per year.

527. Since 2004 investigations into deaths in prison custody and approved premises have been independently undertaken by the Prisons and Probation Ombudsman. The Government is committed to learning from every death in custody. Lessons are also learnt from Inquests, Coroner Rule 43 letters, HMCIP and IMB reports.
528. The Cell Sharing Risk Assessment (CSRA) process was mandated nationally in 2002 following the 2000 murder of Zahid Mubarek at Her Majesty's Young Offenders Institute Feltham and further improvements were made to the process in 2005 and 2008, taking account of experience and understanding gained from specific cases. A national strategy on Violence Reduction was introduced in 2004 and revised in 2007. The Prison Service Order (PSO 2750, Violence Reduction) incorporates the CSRA process along with some of the Mubarek Inquiry recommendations. This strengthens the CSRA process, which continues to be used as a national tool to assess all prisoners for their appropriateness to share cells as they enter custody and following significant events during their time in prison and has recently been revised. Its introduction has improved staff awareness of the issue of risk management when co-locating prisoners. A CSRA is carried out for all prisoners in closed prisons and should be referred to before they are allocated to a shared cell to ensure they have been risk assessed as safe to do so.
529. A national Violence Reduction Strategy has been in place since 2004, directing every public sector prison to have in place a local violence reduction strategy. A whole prison approach is encouraged, engaging all staff, all disciplines and prisoners in challenging unacceptable behaviour, problem-solving and personal safety. The strategy was refined in 2007 to take account of identified good practice, an operational review (including learning from Standards Audit Unit, Prisons and Probation Ombudsman, Independent Monitoring Board and HM Chief Inspector of Prisons reports) and the report of the inquiry into the death of Zahid Mubarek. The revised Prison Service Order (PSO) was implemented in June 2007 and integrates the previous anti-bullying strategy and cell-sharing risk assessment into one policy, making it easier and clearer for staff. Since June 2007 the strategy has been applicable to contracted prisons as well as public prisons. A further review of the strategy began in 2009 to ensure continuous improvement of both national and local violence reduction policies.
530. The national strategy on Violence Reduction requires every establishment to have a local strategy in place to promote the safety of prisoners, staff and others. Local strategies are expected to minimise the likelihood of violence, through the use of conflict resolution, problem-solving and effective risk management for particular individuals. A key performance indicator and key performance targets on serious assaults are in place to monitor levels of this type of violence across the prison estate.

531. Establishments continue to implement measures to deal with the perpetrators of anti-social behaviour and also recognise the need for victims to be protected and supported. The principal aims of the NOMS Violence Reduction team are to develop the violence reduction strategy. This includes the development of key performance indicators and key performance targets on assaults.

### Scotland

532. The following table shows the number of deaths in Scottish prisons since the 4<sup>th</sup> report.

| Year    | Average daily population | Self-inflicted deaths | Other deaths | Total | Number of self-inflicted deaths per 10,000 |
|---------|--------------------------|-----------------------|--------------|-------|--|
| 2004–05 | 6,779                    | 9                     | 9            | 18    | 13.3                                       |
| 2005–06 | 6,857                    | 10                    | 9            | 19    | 14.6                                       |
| 2006–07 | 7,183                    | 10                    | 17           | 27    | 13.9                                       |
| 2007–08 | 7,376                    | 11                    | 9            | 20    | 14.9                                       |
| 2008–09 | 7,835                    | 3                     | 14           | 17    | 3.8  |
| 2009–10 | 7,967                    | 5                     | 14           | 19    | 6.3  |

533. In 2000 the Scottish Prison Service introduced a new strategy to combat bullying between inmates. This policy addresses bullying by staff engaging with the bully. Through this direct involvement it is hoped that understanding of the issues is increased both by the bully and staff, thereby reducing the incidence of bullying. In 2009 the Scottish Prison Service published an Anti Violence policy which also aims to further tackle the incidence of bullying in prisons.

### Northern Ireland

534. The following table shows the deaths in Prisons in Northern Ireland since 2004.

| Year              | Average Daily Population | Self inflicted deaths | Other Deaths | Total     | Number of self inflicted deaths per 10,000 |
|-------------------|--------------------------|-----------------------|--------------|-----------|--|
| 2004–05           | 1,277                    | 1                     | 3            | 4         | 7.83                                       |
| 2005–06           | 1,328                    | -                     | 4            | 4         | 0  |
| 2006–07           | 1,455                    | 1                     | 4*           | 5         | 6.8  |
| 2007–08           | 1,473                    | 1                     | 3            | 4         | 6.8  |
| 2008–09           | 1,492                    | 1                     | 6            | 7         | 6.6  |
| 2009–10 (to date) | 1,449                    | 1                     | 3            | 4         | 6.9  |
| 2010–11           | 1,497                    | 2                     | 2            | 4         | 13.4                                       |
| 2011–12 (to date) | 1,662                    | 3                     | 0            | 3         | 18.1                                       |
| <b>Totals</b>     |                          | <b>10</b>             | <b>25</b>    | <b>36</b> |  |

To note: Deaths as a result of suspected drugs overdose have been recorded as "other deaths" unless a Coroner's court finding is suicide. \*Includes 2 deaths of prisoners "Unlawfully at Large"

535. "Challenging Anti-Social Behaviour" policies are in place in all Northern Ireland establishments. They seek to ensure a consistent, fair, and

proportionate approach to preventing, and responding to, all forms of anti-social behaviour toward staff, prisoners, visitors and others; to contribute to the reduction of re-offending of prisoners following release from custody, thereby protecting the public; to take account of, and respond to, the views of prisoners, staff, and strategic partners, on the benefits and effects of this policy and procedure; and ensure that NIPS complies with its obligations under the Human Rights Act (1998), and Section 75 of the Northern Ireland Act (1998).

### **Offender Health including Mental Health Services**

536. The Government is committed to improving the way offenders access treatment and are rehabilitated. Following Lord Keith Bradley's 2009 report,<sup>63</sup> the cross-departmental Health and Criminal Justice Programme was established and it is currently undertaking work programmes which support these outcomes.
537. The Department of Health is committed to ensuring that the health needs of offenders are reflected in emerging commissioning arrangements for the National Health Service (NHS), through the NHS Bill. Offender mental health needs are also being addressed through the Mental Health Strategy, focussing on improved mental health outcomes. Developing effective commissioning arrangements in the NHS Commissioning Board model will be key to improving drug, alcohol and mental health services for offenders.
538. The Government recognises the importance of developing treatment-based alternatives to custody for some offenders, e.g. for those offenders with a dual diagnosis of mental illness and substance misuse. Developing evidence of the effectiveness of treatment-based alternatives in diverting some offenders will establish routes to better mental health, and reduced re-offending for people who can benefit from them. The Government hopes to announce a development programme on these alternatives in due course. It is also committed to a roll out of diversion services in all policy custody suites and criminal courts by 2014, diverting offenders with mental illness or learning disability away from custodial settings and transferring them into secure psychiatric units.
539. The NHS has been responsible for commissioning health services in publicly run prisons in England since 2006, working in partnership with the Prison Service to ensure that prisoners are given a service similar to what they would receive if they were still living in the community.
540. All new offenders entering prison reception either on remand or under sentence, have an initial health assessment undertaken by a trained nurse or trained officer to ensure that any immediate health needs are

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<sup>63</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_098694](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098694)



identified on the first night, with a fuller comprehensive health assessment completed within five days of admission into custody. People identified as being at risk from a mental health problem, or vulnerable to suicide, are referred for a mental health assessment.

541. All prisons have access to an on-site health care team, who will be able to deal with most health problems. If a health problem cannot be dealt with fully at the prison where the sentence is being served, a prisoner may be moved to another prison where different facilities are available. Alternatively, a specialist may be called in or a prisoner may be taken to an outside NHS hospital. If a prisoner is taken to an outside hospital, they will remain in the custody of the Prison Service.
542. Mental health services in prison are provided through in-reach teams. Most mental health treatment and care is delivered in prison primary care settings, as is other NHS treatment (e.g. for prisoners with diabetes or heart disease) unless urgent treatment is needed, when prisoners can be transferred to secure NHS facilities outside of the Prison Service for treatment under the Mental Health Act

## **SUICIDE PREVENTION**

### **England and Wales**

543. Assessment, Care in Custody and Teamwork (ACCT,) is a broad, integrated and evidence-based care planning system for prisoners identified as being at risk of suicide or self harm. It was introduced across the prison estate in partnership with the Department of Health during 2005–07.
544. In 2005 NOMS committed to review ACCT once there had been opportunity to observe the system in operation across the entire prison estate, (at the time approving Prison Service Instruction 18/2005 which introduced ACCT). The last prison to introduce ACCT did so on 16 April 2007. The review of ACCT took place throughout 2008 through a wide range of consultation exercises and reported toward the end of 2009. NOMS are now progressing the recommendations made.
545. The instructions concerning the use of special accommodation were further consolidated in Prison Service Order (PSO) 2700<sup>64</sup> (Suicide and self-harm prevention) on 26 October 2007 and relevant changes to PSO 1700 announced via prison service instruction (PSI) 26/2009<sup>65</sup> in September 2009. NOMS currently undertakes stricter assessments of both the use of such accommodation and the screening of the individual

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<sup>64</sup> [http://pso.hmprisonservice.gov.uk/pso2700/PSO%202700\\_-\\_front\\_index\\_and\\_PSO\\_itself.htm](http://pso.hmprisonservice.gov.uk/pso2700/PSO%202700_-_front_index_and_PSO_itself.htm)

<sup>65</sup> [http://psi.hmprisonservice.gov.uk/psi\\_2009\\_26\\_amendments\\_to\\_pso\\_1700.doc](http://psi.hmprisonservice.gov.uk/psi_2009_26_amendments_to_pso_1700.doc)

prisoner. There is also a greater emphasis on returning the prisoners to normal location and conditions as soon as possible.

### **Scotland**

546. While suicide in the whole of Scotland has seen an overall rise in the past decade, the Scottish Prison Service (SPS) has noted a drop in its rate from a peak in the late 1990s. Since 2004–05 the rate has stabilised, which coincides with the introduction of the SPS revised suicide risk management strategy “ACT2Care”, in September 2005.
547. The SPS is committed to reducing suicide in prison and to improving care for those at risk. Its suicide risk management strategy, introduced in 1992 and revised in 1998 and 2005, accepts the need to change the culture and environment in prison to make it desirable and safe to seek help in times of crisis. The strategy involves multi-disciplinary team working, care planning and case conferencing, identification of risk, and the delivery of care-focussed support and intervention. All staff working in prisons are trained in the working of the strategy and in recognising the risk indicators. They receive annual refresher training.
548. The SPS has now revised its strategy, taking into account the findings of the research and its own experiences in operating the strategy. ACT2Care was introduced in September 2005, building on the successes of our multi-disciplinary and care planning approaches, aiming to move the SPS towards an improved person centred care approach by encouraging: improved family involvement; improved care planning and communication; less dependence on “anti-ligature” clothing and accommodation; improved recognition of a “safe environment”; more use of day care and a therapeutic regime; and an improved culture of contact and support. The SPS has also introduced a new approach to its annual refresher training by introducing a competency based e-learning programme, supported by a classroom based shared learning experience.

### **Northern Ireland**

549. Following a number of unnatural deaths in NI prisons, the NIPS commissioned Professor Roy McClelland to carry out a review of deaths in custody.<sup>66</sup> One of the main recommendations from that review was that the NIPS should review its procedures for managing prisoners considered as being at risk (Prisoner At Risk (PAR1)). Subsequently, the NIPS introduced the Supporting Prisoners At Risk (SPAR) procedures in December 2009. This process adopts a multi-disciplinary approach to the issues identified in each individual case, with a dedicated care plan developed to alleviate and reduce the levels of risk by putting in place support measures for the individual. Individual cases are considered at

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<sup>66</sup> <http://www.niprisonservice.gov.uk/module.cfm/opt/5/area/publications/page/publications/download/true/id/237>

regular case conferences, where care plans are reviewed and amended as required, in a process that involves the prisoner as well as prison staff, nurses, other professionals working in the prison, and where deemed necessary, the prisoners family.

550. NIPS has strong links with the Samaritans organisation for the provision of a peer support scheme known as Listeners. Listeners are prisoners, trained by the Samaritans in listening skills to offer confidential emotional support to those who wish to share their problems with someone who is not a member of prison staff, but is willing to listen.
551. On 10 February 2011 NIPS issued its revised Suicide and Self Harm Prevention Policy and Standard Operating Procedures, following a lengthy review of the processes that support the new SPAR procedures.

## EDUCATION IN PRISONS

552. The Department for Business, Innovation and Skills (BIS) is responsible for funding adult prisoners' learning in public sector prisons in England. The majority of funding is allocated to the Skills Funding Agency to ensure that the core curriculum is delivered in all prisons under the Offender Learning and Skills Service ('OLASS') provision. In 2006 new learning and skills delivery arrangements went live across England. There has been a significant improvement in the quality of learning and skills delivery, as assessed by independent inspection (initially by the Adult Learning Inspectorate and latterly by Ofsted). In 2002–03, just over three-quarters (78%) of prison Learning was assessed as inadequate. By 2008–09, just 6% was assessed as inadequate, with HMP Askham Grange being the first prison ever to achieve an overall 'Outstanding' assessment for the quality of the learning it delivers in association with the Manchester College. A new co-commissioning role has been established between the Skills Funding Agency and NOMS for the delivery of OLASS. A core curriculum which includes a significant focus on employability skills has been put in place in support of reducing re-offending through employment and skills agenda.
553. Although private prisons are not part of the OLASS arrangements, for funding purposes, those establishments do aim to deliver a learning service that meets the *Offender's Learning Journey*<sup>67</sup> requirement, and to link their learning activity with establishments from or to which prisoners are transferred.
554. The Ministry of Justice (MoJ) now holds full responsibility for funding education for those detained in youth detention accommodation, and this money is routed through the Young People's Learning Agency, who manage contracts with education providers in custody. Following the passage of the Apprenticeship, Skills, Children and Learning Act in

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<sup>67</sup> [http://www.niace.org.uk/exemplars/pdf/Offenders%20Learning%20Journey\\_Adult.pdf](http://www.niace.org.uk/exemplars/pdf/Offenders%20Learning%20Journey_Adult.pdf)

2009, local authorities are now responsible for securing suitable education and training for those held in youth detention accommodation.

555. In April 2009 the Welsh Assembly Government became responsible for funding adult prisoners' learning in public sector prisons in Wales. An investment of £2.6 million made this financial year to support the provision of learning and skills for adult offenders. The delivery of offender learning and skills has been commissioned from NOMS Cymru under the terms of a Memorandum of Understanding (MoU). A core curriculum is being developed which focuses on literacy, numeracy and employability skills.
556. Prior to the changes recently introduced, spending on offender learning in England and Wales for juvenile, young and adult offenders has increased almost threefold since 2001 rising to over £175 million in 2009–10. Since the new delivery arrangements went live in England in July 2006, the proportion of offenders in prison participating in learning and skills provision has risen from 30% to over 42%. In 2006–07, 82,290 learners engaged with learning which represented 53% of the total number of prisoners in custody during that year. Nearly 40% of prisoners in 2007–08 took part in training. Nearly 34,000 prisoners entered education, training or employment on release from prison in 2007–08.
557. In 2006 the £14.5 million for Custody to Work (C2W) was moved to establishments and placed in their budget baselines to fund resettlement activities which included accommodation and housing advice. This was undertaken as the C2W projects were embedded and the work of the C2W unit had been completed.
558. There has been evident increase in performance in learning and skills. During the 2007–08 academic year, prisoners enrolled for almost 148,000 skills for life courses, and the proportion enrolling for the higher level of courses (at Level 1 and Level 2) rose from 52% the previous year to 55%. Nearly 39,000 successfully achieved a qualification. As well as the OLASS provision, a range of vocational qualifications have been delivered to assist offenders in gaining employment in a range of industries offered in custody such as woodwork, engineering and catering.
559. Northern Ireland's policing and justice powers, including those relevant to prisons, were devolved from Westminster to the Northern Ireland Assembly in April 2010. The Minister for the Department of Justice is now responsible for the provision of learning and skills services in Northern Ireland's prisons, the budget for which in 2011/12 is c.£5.5million, primarily covering education and vocational training. A Learning and Skills Strategic Plan covering the period 2010–2013 has been developed and seeks to ensure that those services are designed to meet the strategic aims of the NI Prison Service, in preparing offenders for their return to the community and reducing the risk of their re-offending.

## YOUTH JUSTICE

### England and Wales

560. On taking office, the Coalition Government undertook a review of all arms length bodies as part of its pledge to reduce their number and cost and to increase accountability. In this context it has been decided that the leadership of youth justice and Youth Justice Board functions should move to the Ministry of Justice.
561. The views of young people are very important. They must be involved in developing local solutions in a way that lets them know their opinions are valued. In particular the Government wants to offer better support to all victims of youth crime, especially young victims who are the most vulnerable.
562. The Government is committed to increasing the participation of young people in the youth justice system and is currently developing a three-strand programme on participation that includes improving training materials available to youth justice practitioners; considering participation issues in the development of a new assessment and intervention framework; and improving communication to practitioners to improve awareness of the benefits of a more participative approach. This will build on the work already undertaken in Wales in developing a participative approach across both secure establishments and Youth Offending Teams (YOTs).
563. The Youth Rehabilitation Order was introduced in November 2009 and is the new generic community sentence for under-18s. It has consolidated nine previous community sentences into one order, making the Youth Rehabilitation Order more flexible and tailored to an individual's need.
564. The number of young people in custody has fallen significantly over the last few years. During 2009/2010, there was an average of 2,418 under-18 young people in custody at any one time compared to 3,029 during 2002/2003. The Government is currently working to refresh a strategy for the secure estate over the coming years. The aim is to ensure a secure, healthy, safe and supportive place for children and young people is provided however short or long their period in custody might be. A discrete estate for children and young people under-18 separate from adults has largely been developed and there have been a range of other improvements made including:
- Increasing the percentage of young people held on sites that are separate from the adult estate (in 2000 only 20% of young people were held in dedicated facilities within the secure estate but by 2011 this has increased to 80%);
  - Commissioning and developing several specialist units across Young Offender Institutions (YOI) for those who have been assessed as presenting risks or having needs that require more intensive support;

- Dedicated places for 17 year old females meaning that all young women are accommodated in dedicated units, rather than being spread amongst adult prisons
- New dedicated places for young women in secure training centres (STCs) including dedicated beds for mothers and babies or pregnant women;
- Dedicated substance misuse units across YOIs with each one providing group and one-to-one interview rooms, facilities for voluntary testing and accommodation for substance misuse staff;
- Over £10m in YOIs to improve safeguarding, providing reduced risk rooms, CCTV and data storage protocols, and cubicle showers;
- Safeguarding managers within YOIs to co-ordinate and champion safeguarding practice and strategy;
- Funding of an independent advocacy service to provide children and young people with assistance if they wish to make complaints or need advice;
- Developing policies and guidance in partnership with secure providers that specifically address the needs of young people, such as anti-bullying and violence reduction;
- Working with YOIs to introduce new staff posts including child protection co-ordinators, anti-bullying co-ordinators, and suicide and self-harm co-ordinators who act to help safeguard managers to raise the profile of safeguarding work;
- Working in partnership to improve the tools and guidance available to staff to manage young people. This includes issuing a Code of Practice on managing behaviour in the estate which for the first time sets a single statement of practice and standards for behaviour management across all sectors;
- Setting of requirements and targets for education and training for young people in custody and delivering an increase in education, training and development provision for young people in YOIs;
- Introducing revised principles governing the use of full searches in all secure establishments.
- Working with local authorities and others to develop new services to assist young people in the resettlement process.

### **Safeguarding and behaviour management**

565. It is recognised that the starting point for engaging children and young people in custody is to make them feel safe. Child safety and safeguarding is not only vital in its own right but is paramount to the success of any period in custody in terms of addressing offending behaviour and working constructively with young people.

566. The Government is committed to continuous improvement of behaviour management in the secure estate. Work is in progress to implement the recommendations arising from the *Independent Review of Restraint in Juvenile Secure Settings*<sup>68</sup> from 2008.
567. The co-chairs of the Review made safety their key consideration. They were also concerned to limit the use of restraint to the absolute minimum, by making sure that staff are fully trained in effective methods of de-escalating potential conflict. They recognised, however, that as the behaviour of young people in custody is often challenging and potentially dangerous, there will be some circumstances in which the use of restraint is unavoidable.
568. The co-chairs also concluded that a degree of pain compliance may be necessary in exceptional circumstances. This approach has been accepted by the Government, where the use of pain must only take place in exceptional circumstances, when all other approaches have been exhausted or would not work. In their March 2011 progress report, the co-chairs reiterated this conclusion on pain compliance stating that, “in effect, restraint techniques that incorporate pain compliance holds are a way of quickly and safely ending the need for a prolonged use of restraint techniques”. The use of pain-inducing techniques, as with the use of any restraint technique, must always be necessary, reasonable and proportionate.
569. The review made a series of recommendations, including that the Government should commission a new, simpler, safer and more effective system of restraint to replace the physical control in care restraint package. The new restraint system is currently being assessed by the recently established Restraint Accreditation Board, made up of leading medical and behaviour management experts. Its role is to make recommendations to ministers regarding the safety and appropriateness of any package of restraint techniques that is proposed for use in the under-18 secure estate. All secure establishments now have a restraint minimisation strategy and the Government has put in place a major programme of work to implement the recommendations of the Review. So far, almost two thirds of the 56 accepted recommendations have been implemented and good progress is being made on the remainder.

### **The Age of Criminal Responsibility**

570. The age of criminal responsibility in England and Wales is 10. The age was raised from 8 to 10 by the Children & Young Persons Act 1963. This means that anyone over the age of 10 can be prosecuted for a criminal offence. The Government is keen to ensure that children and young people are not prosecuted whenever a suitable alternative can be found.

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<sup>68</sup> [http://webarchive.nationalarchives.gov.uk/20110201125714/  
http://www.justice.gov.uk/publications/docs/restraint\\_review.pdf](http://webarchive.nationalarchives.gov.uk/20110201125714/http://www.justice.gov.uk/publications/docs/restraint_review.pdf)

Local multi-agency YOTs include social services and health professionals who can refer the child on to other statutory services for further investigation and support if appropriate. For example, this can include Children's Services departments or Child and Adolescent Mental Health Services (CAMHS). The majority of those who attend court receive a Referral Order – a first tier community penalty based on restorative justice principles under which the offender is referred to a youth offender panel and agrees a contract including reparative and rehabilitative elements.

571. The remainder are diverted from the criminal justice system or receive an out-of-court disposal, usually a reprimand or final warning and are the most likely responses to offending by this age group, with Warnings usually including interventions to tackle offending behaviour and underlying problems. Interventions for children of this age are designed to be rehabilitative not punitive. Having an age of criminal responsibility set at 10 allows early intervention to prevent further offending and to help young people develop a sense of personal responsibility for their behaviour. As of 1 May 2011 there were no children under the age of 12 in a secure estate establishment in England or Wales.

### **Northern Ireland**

572. Until 2005 the youth justice system in Northern Ireland dealt with 10–16 year olds, but from August of that year legislation arising from the Review of the Criminal Justice System extended the system to include 17 year olds. The past 10 years has seen significant changes to the youth justice system, with greater emphasis on diverting young people from crime and a reduction in the reliance on custody. Custody is now only used for the most serious and persistent young offenders and limitations have been placed on the use of custodial remands. Inter-agency schemes and partnerships continue to work closely to maintain and support young people in the community, and a range of community sentences have been developed to provide additional sentencing options for courts. In particular, the introduction of youth conferencing based on restorative justice principles has provided an inclusive process within which young people can take responsibilities for their actions, interventions can be tailored to their needs and victims can have a say.
573. Custodial arrangements have also been reformed with the introduction of determinate sentences ranging from six months to two years – half of which is served under supervision in the community. As a consequence, the numbers in custody have declined to the extent that the population of around 30 can now be located within a single juvenile justice centre.
574. A new state-of-the-art secure facility at Rathgael within which education and offending programmes could be delivered more effectively and family contact maintained and strengthened was completed in January 2007: Woodlands, a purpose-built facility, became fully operational providing the only Juvenile Justice Centre in Northern Ireland. The



building is safe and secure by design within a setting conducive to good childcare practice and efficient operation. Staff deliver a child centred regime focussed on education, offence based programme work, practical life skills and re-integration.

575. In addition, the Independent Review of Prisons has suggested in its interim report that the Youth Justice Review, currently under way, should explore ways of providing suitable accommodation for all children that meets the best interests of the child, on the Woodlands site, or elsewhere. The Review Team will return to the issue of provision for young adults in its final report. In the meantime NIPS recognise the importance of providing services tailored to the needs of young people and this is a priority at Hydebank Wood. In the period from 1 April 2010 to 31 March 2011 a total of 123 male inmates aged under-18 were committed to Hydebank Wood.
576. Following the withdrawal of the Government's reservation on Article 37(c) of the UNCRC, a strategic multi-agency group was established to review and develop custodial arrangements for young offenders under the age of 18. An outcome of this review has been the development of a case management system in Hydebank Wood based on individualised assessments, the 'best interests principle' and an inclusive approach facilitating, through agreement with the courts, the accommodation of more 17 years olds in Woodlands and enabling the Hydebank Wood regime to better meet the assessed needs of those who remain. This work continues and will take account of recommendations in the Review of the Northern Ireland Prison Service and those of the Youth Justice Review due to report in July 2011.

## **CARE AND PROTECTION OF CHILDREN**

577. The legislative framework established for the care and protection of children, and other measures to prevent abuse, was set out in paragraphs 133–139 of the 2<sup>nd</sup> Report. The Government continues to work to prevent abuse through a variety of programmes and projects. Particular emphasis is placed upon the training of doctors, nurses, social workers, and other health professionals likely to come into contact with children in child protection, and the recognition and handling of child abuse.
578. In October 1992, following its examination of the UK under the Convention on the Rights of the Child, the UN Committee on the Rights of the Child expressed concerns about the treatment of young offenders in the UK. In 2002 the Family Division of the High Court ruled that young people placed in YOIs are entitled to welfare provisions as stipulated under the Children Act 1989 (subject to the necessary requirement of imprisonment. In light of the Committee's concerns and the court judgment, the Youth Justice Board will be funding a number of dedicated social work posts in YOIs for 15–17 year olds. NOMS continues to work with the Youth Justice Board and other relevant government departments to develop a strategic approach to safeguarding young

people in custody. This includes facilitating effective working relationships locally between establishments and Local Safeguarding Children's Boards (LSCBs) and other relevant youth justice agencies.

## **CORPORAL PUNISHMENT IN SCHOOLS**

### **England and Wales**

579. Since September 1999, a new section 548 of the Education Act 1996 (as inserted by section 131 of the *School Standards and Framework Act 1998*) has outlawed corporal punishment for all pupils in maintained and independent schools, and for children receiving nursery education. As originally enacted (1996 Act), these provisions applied only to pupils attending maintained schools, pupils at independent schools receiving assistance with their fees from public funds and pupils being provided with education by local authorities, otherwise than at school. Corporal punishment was originally banned in maintained schools, special and some independent schools in 1986 (Education (No 2) Act 1986) following a case taken to the European Court of Human Rights.

### **Scotland**

580. In terms of section 48A of the *Education (Scotland) Act 1980* as amended by the section 294 of *Education Act 1993*, corporal punishment may not be administered to pupils attending state school or independent schools whose fees or costs are financed or supported by public funds. Section 48A further provides that corporal punishment generally may not be administered if the punishment is inhumane or degrading. The words "inhumane or degrading" follow wording in the European Convention on Human Rights.

581. Section 16 of the *Standards in Scotland's Schools etc Act 2000* extends the categories of establishment where corporal punishment is no longer allowed:

- Section 16(1)(a) covers school education provided by an education authority, whether at school or elsewhere, e.g. home or hospital;
- Section 16 (1)(b) covers independent schools including nursery classes at independent schools;
- Section 16 (1)(c) covers independent nurseries where they are in receipt of grant under the *Education (Scotland) Act 1996* and nursery schools where there is an arrangement within the education authority under section 35 of the Act. State nursery schools or nursery classes in state schools are covered by the definition of "school education" in section (1)(a);
- Section 16(2) covers corporal punishment at an educational establishment or extramurally such as on a school trip.

### **Northern Ireland**

582. Corporal punishment of pupils in grant-aided schools became unlawful on 15 August 1987 under the Education (Corporal Punishment) (Northern Ireland) Order 1987. Since 1 April 2003 corporal punishment has been unlawful in all schools as a result of Article 36 of the Education and Libraries (Northern Ireland) Order 2003. The 2003 Order also repealed the 1987 Order.

## **CORPORAL PUNISHMENT IN THE HOME**

### **England and Wales**

583. The Government has welcomed research in England and Wales that shows that fewer parents now choose to use physical punishment and that more parents use alternative approaches to discipline, hopes that trend will continue. However, it does not wish to criminalise parents for administering a mild smack. Its approach is to encourage the provision of evidence-based parenting programmes that promote alternatives to physical punishment to manage children's behaviour.
584. Section 58 of the *Children Act 2004* strengthened the protection of children in relation to physical punishment by limiting the use of the defence of reasonable punishment so that parents (and those acting in loco parentis) who cause physical injury to their children can no longer use the "reasonable punishment" defence where they are charged with assaults occasioning cruelty, actual or grievous bodily harm. The defence of "reasonable punishment" is only available to parents (or those acting in loco parentis) where the charge is one of common assault.

### **Scotland**

585. From 27 October 2003, in Scotland, it has been illegal under Section 51 of the Criminal Justice (Scotland) Act 2003, to punish children by shaking, hitting on the head, using a belt, cane, slipper, wooden spoon or other implement. The law was changed to improve protection of children and there are no plans to change the current law. Although the Scottish Government does not support the physical punishment of children, it does not want to criminalise parents who administer a mild smack.

### **Northern Ireland**

586. Section 58 of the Children Act 2004 (restriction of defence of reasonable punishment) has been replicated in Northern Ireland (Article 2 of the Law Reform (Miscellaneous Provisions)(Northern Ireland) Order 2006 refers). Northern Ireland is also undertaking work which is designed to promote positive parenting and the use of alternative forms of discipline. This includes the publication of booklets for parents and the availability of a parents' helpline which provides advice and support.

## SECTION III: GENERAL INFORMATION

### A. DEMOGRAPHIC, ECONOMIC, SOCIAL AND CULTURAL CHARACTERISTICS OF THE STATE

#### Land and People

587. Background statistical information on the United Kingdom, using the most up-to-date figures available, is as follows:

#### United Kingdom<sup>69</sup>

|   |  |
|---|--|
| Population Size <sup>70</sup>                         | 61,792,000   |
| Growth on previous year <sup>71</sup>                 | 0.60%  |
| Density <sup>72</sup> (People per sq km)              | 255  |
| Number of men per 100 women <sup>73</sup>             | 96.68  |
| Ethnic Groups <sup>74</sup>                           | White 92.1%, Mixed 1.2%, All Asian or Asian British 4.0%, Black or Black British 2.0%, Chinese 0.4%, Other ethnic groups 0.4% (April 2001).                |
| Percentage of population under 16 <sup>75</sup>       | 19%  |
| Percentage of population over 65 <sup>76</sup>        | 16% (65 and over)  |
| Percentage of population in urban areas <sup>77</sup> | 79.7% (April 2001)   |
| Religion <sup>78</sup>                                | Christian 71.8%, No religion 15.1%, Not stated 7.8%, Muslim 2.8%, Hindu 1.0%, Sikh 0.6%, Jewish 0.5%, Buddhist 0.3%, Any other religion 0.3% (April 2001). |

<sup>69</sup> Figures are for 2009 or mid-2008 unless otherwise stated.

<sup>70</sup> *Mid-2009 population estimates*, Office for National Statistics.

<sup>71</sup> *Mid-2009 population estimates*, Office for National Statistics.

<sup>72</sup> *Mid-2009 population estimates*, Office for National Statistics.

<sup>73</sup> *Mid-2009 population estimates*, Office for National Statistics.

<sup>74</sup> *Census*, April 2001, Office for National Statistics. More recent "experimental" figures released by the Office of National Statistics give the following breakdown of the population of England in mid-2007: White (88.2 %), Mixed (1.7 %), Asian or Asian British (5.7%), Black or Black British (2.8%), Chinese (0.8%), Other (0.7%).

<sup>75</sup> *Mid-2009 population estimates*, Office for National Statistics.

<sup>76</sup> *Mid-2009 population estimates*, Office for National Statistics.

<sup>77</sup> *Census*, April 2001, Office for National Statistics, using 2004 Urban / Rural classifications. Note that this figure is for England and Wales only.

<sup>78</sup> *Census*, April 2001, Office for National Statistics. Note that this figure is for Great Britain (England, Wales and Scotland) only.

|  |  |
|--|--|
| Infant Mortality Rate <sup>79</sup> – number of deaths of children aged under 1 year per 1,000 live births | 4.7 (UK 2008 figure)                                       |
| Birth Rate <sup>80</sup>   | 794,383 live births in 2008 (12.9 per 1,000 of population) |
| Death Rate <sup>81</sup> – per 1,000 population  | 9.4 (2008)   |
| Males  | 9.2  |
| Females  | 9.7  |
| Life Expectancy <sup>82</sup> – years at birth   |  |
| Men  | 77.4   |
| Women  | 81.6   |
| Total Fertility Rate <sup>83</sup> – children per woman  | 1.90 (2007) 1.96 (2008)                                    |
| Average household size <sup>84</sup>   | 2.4 people per household                                   |
| GDP <sup>85</sup>  | £1.3 trillion (2009)                                       |
| GDP per head   | £20,980 (2009)   |
| Inflation <sup>86</sup>  | 3.2% (June 2010)   |
| Government Deficit/Surplus <sup>87</sup>   | -£159.2 billion (equivalent to 11.4 per cent of GDP 2009)  |
| Government Debt <sup>88</sup>  | £950.4 billion, (equivalent to 68.1 per cent of GDP) 2009  |
| Employment rate <sup>89</sup>  | 72.3% (28.984 million) (March–May 2010)                    |
| Adult Literacy <sup>90</sup>   | 99.0% (2009)   |

<sup>79</sup> Population Trends 138 (2009), Office of National Statistics. This is based on registrations rather than occurrences.

<sup>80</sup> Annual Abstract of Statistics' publication, 2010 edition, Office of National Statistics.

<sup>81</sup> Annual Abstract of Statistics' publication, 2010 edition, Office of National Statistics. Figures are for England and Wales only.

<sup>82</sup> Population Trends 138 (2009), Office of National Statistics.

<sup>83</sup> Annual Abstract of Statistics' publication, 2010 edition Office of National Statistics. Table 2.2. Total Fertility Rate is the number of children that would be born to a woman if current patterns of fertility persisted throughout her childbearing life.

<sup>84</sup> Average household size in GB =2.4 people in 2009 (Q2, LFS) – sourced from Social Trends 40 (2009) Chapter 2.

<sup>85</sup> *UK GDP for 2010*, Office for National Statistics.

<sup>86</sup> Consumer Price Index (CPI). Office for National Statistics. July 2010.

<sup>87</sup> *UK Government Debt and Deficit*, Office for National Statistics, March 2010

<sup>88</sup> *UK Government Debt and Deficit*, Office for National Statistics, March 2010.

<sup>89</sup> *Labour Market Statistics*, Office for National Statistics. July 2010.

<sup>90</sup> CIA World Factbook, 5 March 2009.

**United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment**

| <b>Indicators on the political system</b>   |   |
|---|---|
| <b>Indicator</b>  | <b>Value</b>  |
| Number of recognised political parties at the national level  | 121 political parties (plus independent candidates) <sup>91</sup>   |
| Proportion of the population eligible to vote   | 78.8% (approximate) <sup>92</sup>   |
| Proportion of non-citizen population registered to vote   | Not available for parliamentary electors <sup>93</sup>  |
| Number of complaints about the conduct of elections registered, by type of alleged irregularity       | 2 petitions were issued challenging results at the 2010 General Election <sup>94</sup>  |
| Vote compared to seats at 2010 General Election   | Conservatives 36.1% and 306 seats (47%), Labour 29.0% and 258 seats (40%), Liberal Democrats 23.0% and 57 seats (9%), Others 11.9% and 29 seats (4%)  |
| Percentage of Women in Parliament   | 143 Female MPs elected – 22% of all MPs <sup>95</sup>   |
| Proportions of national and sub-national elections held on time (within the schedule laid out by law) | All elections (100%)  |
| Average voter turnouts in the national and sub-national elections by devolved administrations         | Westminster: 65.1% (2010), 61.4% (2005), 59.4% (2001), 71.4% (1997)<br>Northern Ireland Assembly: 62.3% (2007), 63.1% (2003), 68.8% (1998) <sup>96</sup><br>Scottish Parliament: 52.4% (2007), 49.4% (2003), 58.2% (1999) <sup>97</sup><br>Welsh Assembly: 43.5% (2007), 38.2% (2003), 46.3% (1999) <sup>98</sup> |

<sup>91</sup> Number of parties that stood at the 2010 General Election, not counting independent candidates, candidates who gave no description, and the Speaker.

<sup>92</sup> This figure is obtained from the estimated UK population aged 18 or over as of 1 December 2009, which was 48.7 million. The total UK population was 61.8 million. Please note this only gives a rough estimate of the proportion eligible to vote: the Franchise in the UK is that British Citizens, Irish Citizens resident in the UK and Commonwealth Citizens legally resident in the UK, who have attained the age of 18 can vote in all elections. EU nationals, resident in the UK, can vote in European Parliament and local elections but not in General Elections. The registered Parliamentary electorate as of 6 May 2010 was 45.6 million.

<sup>93</sup> See *HC Deb 16 January 2008 c1298-9W*. British citizens, Irish citizens resident in the UK and Commonwealth citizens legally resident in the UK who have attained the age of 18 can vote in General Elections. Voter registration information separately identifying Irish and Commonwealth citizens is not collected centrally.

<sup>94</sup> [http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0010/100702/Report-on-the-administration-of-the-2010-UK-general-election.pdf~page=34](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/100702/Report-on-the-administration-of-the-2010-UK-general-election.pdf~page=34)

<sup>95</sup> At 2010 General Election.

<sup>96</sup> Turnout at the last three Northern Ireland Assembly elections.

<sup>97</sup> Turnout at last three Scottish Parliament elections. These elections use the Additional Member System for electing members, thus include both a constituency and a regional ballot. The turnout figure recorded above is the higher of the turnout figures for the constituency and regional ballots.

<sup>98</sup> Turnout at the last three National Assembly for Wales elections. These elections use the Additional Member System for electing members. The turnout figure recorded above is the higher of the turnout figures for the constituency and regional ballots.

| <b>Indicators on crime and the administration of justice in England and Wales</b> |   |
|---|---|
| <b>Indicators</b>   | <b>Value</b>  |
| Percentage of crimes committed, classified as violent crimes                      | 22% (approximately 1/5 of all crime) <sup>99</sup>                |
| Trends in violent crime from 1995 to 2007/08 <sup>100</sup>                       | -41%  |
| Percentage of serious violence against the person <sup>101</sup>                  | 2% of total violence against the person offences                  |
| Persons at the most risk of violence <sup>102</sup>                               | Young men (aged 16–24)<br>Full-time students<br>Unemployed people |
| Number of violent crimes <sup>103</sup> recorded 2007/08 <sup>104</sup>           | 2,164,000   |
| Violent Crimes 2007/2008: <sup>105</sup>  |   |
| With injury   | 1,261,000   |
| Without injury  | 903,000   |
| Number of recorded crimes – all offences 2007/2008 <sup>106</sup>                 | 4,950,700   |
| Total sexual offences committed 2007/08 <sup>107</sup>                            | 53,500  |
| Number of recorded rape offences 2007/08: <sup>108</sup>                          |   |
| Rape of female  | 11,684  |
| Rape of male  | 1,006   |
| Detection of crime – by method of detection: <sup>109</sup>                       |   |
| Sanction Detections <sup>110</sup>  | 1,373,056   |
| Non-Sanction Detections   | 868   |
| All detections  | 1,373,933   |

<sup>99</sup> British Crime Survey 2007/08. Note these figures are only for England and Wales.

<sup>100</sup> 'Crime in England and Wales 2007/08: A Summary of the Main Figures' (Home Office) – figures based on trends in the British Crime Survey.

<sup>101</sup> Figures for England and Wales 2007/08 – British Crime Survey.

<sup>102</sup> British Crime Survey 2007/08; listed in 'Crime in England and Wales 2007/08: A Summary of the Main Figures' published by the Home Office.

<sup>103</sup> British Crime Survey Violence includes wounding, robbery, assault with minor injury and assault with no injury.

<sup>104</sup> Figures for England and Wales 2007/08 – British Crime Survey.

<sup>105</sup> Figures for England and Wales 2007/08 – British Crime Survey.

<sup>106</sup> 2007/2008. As recorded by the Home Office as Crime Statistics for England and Wales: <http://www.homeoffice.gov.uk/rds/pdfs08/hosb0708.pdf> Figure shown is crime recorded by the police.

<sup>107</sup> 2007/2008. As recorded by the Home Office as Crime Statistics for England and Wales: <http://www.homeoffice.gov.uk/rds/pdfs08/hosb0708.pdf>

<sup>108</sup> 2007/2008. As recorded by the Home Office as Crime Statistics for England and Wales: <http://www.homeoffice.gov.uk/rds/pdfs08/hosb0708.pdf>

<sup>109</sup> 2007/2008. As recorded by the Home Office as Crime Statistics for England and Wales only.

<sup>110</sup> Sanction detections are offences cleared up through a formal sanction, such as a police charge or summons to appear in court or giving a caution.

**United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment**

| <b>Indicators on crime and the administration of justice in England and Wales</b>                 |              |
|---|--------------|
| <b>Indicators</b>   | <b>Value</b> |
| Average Prison Population (2009) <sup>111</sup>   | 82,075       |
| Number of prisoners, by sex: <sup>112</sup>   |              |
| Male  | 77,812       |
| Female  | 4,263        |
| Deaths in police custody: <sup>113</sup>  |              |
| Number of deaths in police custody or otherwise (1999/00)   | 70           |
| % change from 1999/00   | + 4%         |
| Cause of death in police custody: <sup>114</sup>  |              |
| intoxicated by alcohol or controlled drugs  | 30           |
| resulted from motorcycle or car crashes   | 24           |
| resulted from deliberate self harm  | 14           |
| Applications for Criminal Legal Aid (2005/06): <sup>115</sup>                                     |              |
| Number received by the Crown Court Service <sup>116</sup>   | 20,975       |
| Number granted by the Crown Court Service   | 20,741       |
| Number received by the Magistrates Court Service <sup>117</sup>                                   | 572,965      |
| Number granted by the Magistrates Court Service   | 532,008      |
| Number of suspects provided with advice or assistance at police stations (2009/10) <sup>118</sup> | 853,086      |
| Expenditure on Criminal legal aid for: <sup>119</sup>   |              |
| 2000/01   | 872          |
| 2001/02   | 982          |
| 2002/03   | 1,096        |
| 2003/04   | 1,179        |
| 2004/05   | 1,192        |
| 2005/06   | 1,197        |

<sup>111</sup> Prison Population, January 2009 Ministry of Justice (England and Wales only) <http://www.justice.gov.uk/docs/population-in-custody-january09.pdf>

<sup>112</sup> Prison Population, January 2009 Ministry of Justice (England and Wales only) <http://www.justice.gov.uk/docs/population-in-custody-january09.pdf>

<sup>113</sup> Figures taken from 'Death in Police Custody: Statistics for England and Wales, April 1999 to March 2000'. <http://www.homeoffice.gov.uk/rds/pdfs/deaths2000.pdf>

<sup>114</sup> Figures taken from 'Death in Police Custody: Statistics for England and Wales, April 1999 to March 2000'. <http://www.homeoffice.gov.uk/rds/pdfs/deaths2000.pdf>

<sup>115</sup> Based on figures of applications to the court. Official Report (Hansard) 27 February 2007: Column 1252W.

<sup>116</sup> Based on the calendar year 2007. Source: HMCS CREST System.

<sup>117</sup> Based on 2007-08 financial year. Source: Legal Services Commission.

<sup>118</sup> [http://www.legalservices.gov.uk/docs/about\\_us\\_main/LSC\\_AR\\_FINAL\\_\(web\)\\_-\\_0575.pdf](http://www.legalservices.gov.uk/docs/about_us_main/LSC_AR_FINAL_(web)_-_0575.pdf)

<sup>119</sup> Figures in £ millions.



## **B. CONSTITUTIONAL, POLITICAL AND LEGAL STRUCTURE**

### **Government**

588. The system of parliamentary government in the United Kingdom is not based on a codified written constitution, but is the result of a gradual evolution spanning several centuries. The essence of the system today, as it has been for more than two centuries, is that by convention the political leaders of the executive are members of the legislature and are accountable to an elected assembly, the House of Commons (part of the Westminster Parliament), which presently comprises members from constituencies in England, Scotland, Wales and Northern Ireland. The Government's tenure of office depends on the support of a majority in the House of Commons, where it has to meet informed and public criticism by an Official Opposition.
589. The Westminster Parliament is made up of three elements – the Queen and the two houses of Parliament (the House of Lords and the elected House of Commons) – which are outwardly separate. They are constituted on different principles and they meet together only on occasions of symbolic significance such as a coronation, or the State opening of Parliament when the Commons are summoned by the Queen to the House of Lords. As a law-making organ of State, however, Parliament is a corporate body and with certain exceptions (see below) cannot legislate without the concurrence of all its parts.
590. *The Parliament Act 1911* fixed the maximum life of a Parliament at five years, although a Parliament may be dissolved and a general election held before the expiry of the full term. Because it is not subject to the type of legal restraints imposed on the legislatures of countries with formal written constitutions, Parliament is free to legislate as it pleases: to make, unmake, or alter any law.

### **The Crown and Parliament**

591. Constitutionally, the legal existence of Parliament depends upon the exercise of the royal prerogative (broadly speaking, the collection of residual powers left in the hands of the Crown). However, the powers of the Crown in connection with Parliament are subject to limitation and change by legislative process and are always exercised through and on the advice of ministers responsible to Parliament.
592. As the temporal “governor” of the established Church of England, the Queen, on the advice of the Prime Minister, appoints the archbishops and bishops, some of whom, as “Lords Spiritual”, form part of the House of Lords. As the “fountain of honour”, she confers peerages (on the recommendation of the Prime Minister who usually seeks the views of others); thus the “Lords Temporal”, who form the remainder of the upper House, have likewise been created by royal prerogative and their numbers may be increased at any time.

593. Parliament is summoned by royal proclamation, and is prorogued (discontinued until the next session) and dissolved by the Queen. At the beginning of each new session the Queen opens Parliament. At the opening ceremony the Queen addresses the assembled Lords and Commons; the Queen's speech is drafted by her ministers and outlines the Government's broad policies and proposed legislative programme for the session.
594. The Sovereign's assent is required before any legislation can take effect: Royal Assent to bills is now usually declared to Parliament by the speakers of the two houses. The Sovereign has the right to be consulted, the right to encourage and the right to warn, but the right to veto legislation has long since fallen into disuse.

### **Parliamentary Sessions**

595. The life of a Parliament is divided into sessions. Each session usually lasts for one year and is usually terminated by prorogation, although it may be terminated by dissolution. During a session either house may adjourn itself, on its own motion, to whichever date it pleases.
596. Prorogation at the close of a session is usually effected by an announcement on behalf of the Queen made in the House of Lords to both houses, and operates until a fixed date. The date appointed may be deferred or brought forward by subsequent proclamation. The effect of a prorogation is at once to terminate nearly all parliamentary business. This means that all public bills not completed in the session lapse, and have to be reintroduced in the next session unless they are to be abandoned or an agreement has been reached for the bill to be 'carried over' to the next session.
597. Currently Parliament is usually dissolved by proclamation either at the end of its five-year term or when the Prime Minister requests a dissolution before the terminal date. In modern practice, the unbroken continuity of Parliament is assured by the fact that the same proclamation which dissolves the existing Parliament orders the issue of writs for the election of a new one and announces the date on which the new Parliament is to meet.
598. An adjournment does not affect uncompleted business. The reassembly of Parliament can be accelerated (if the adjournment was intended to last for more than 14 days) by royal proclamation, or at short notice, if the public interest demands it, by powers conferred by each house on its speaker.

### **Devolution**

599. In the United Kingdom, devolved government was introduced following simple majority referendums in Wales and Scotland in September 1997

and in Northern Ireland<sup>120</sup> in May 1998. A referendum on a directly elected Mayor for London and Greater London Assembly also took place in May 1998. In 1999, the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly took on their full powers – as set out in each respective Act of Parliament – followed by the London Assembly in May 2000. The purpose of devolution is to decentralise power: to enable executive decision-making on matters (such as health, education and the environment) that have been transferred to the devolved legislatures and administrations. The UK Parliament remains sovereign and retains the right to legislate on all matters. As a consequence of devolution, the UK Parliament has recognised that in devolved matters, it is for the devolved parliament and assemblies to legislate in relation to matters within their own competence, although it retains the right to legislate if it wishes. The UK Parliament has however, retained control of issues including foreign affairs, defence and national security, macro-economic and fiscal matters.

600. Following the *Scotland Act 1998*, the Scottish Parliament was established with 129 members elected every four years on the Additional Member System of proportional representation.
601. The Scottish Parliament operates broadly on the Westminster model, electing a First Minister who heads an Executive (the Scottish Government). The Scottish Parliament and Executive have responsibility for most aspects of domestic, economic and social policy. Matters which are “reserved” to the UK Parliament and as such, the responsibility of the UK Government, are listed in the *Scotland Act 1998*. All matters not listed are considered to be devolved. The Scottish Parliament is funded by a block grant from the UK Government.
602. Following the *Government of Wales Act 1998*, the National Assembly for Wales was established with 60 members, 40 elected on the ‘first past the post’ system and 20 regional members elected by the Additional Member System of proportional representation. (The *Government of Wales Act 2006* ended dual candidacy for Assembly elections, whereby candidates could stand under both systems.)
603. Under the *Government of Wales Act 1998*, the National Assembly for Wales did not have the power to make primary legislation, but was given extensive executive powers and could make secondary legislation (i.e. orders and regulations). Its responsibilities were not as wide as those of the Scottish Parliament (the UK Government retained responsibility for the police and the legal system). The *Government of Wales Act 2006* formally separated the National Assembly as a legislature and the Welsh Assembly Government as an executive along the lines of the Westminster model. The Welsh Government carries out the executive functions which had been given to the original National Assembly. As a

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<sup>120</sup> Following the Belfast Agreement in April 1998.

result of the 2006 Act, the new National Assembly had the power to pass legislation (known as Assembly Measures) on specific matters which are devolved to it within the “fields” where the Welsh Ministers have functions. Following a ‘yes’ result in a referendum on enhanced law-making powers, held in March 2011, the Assembly assumed powers to pass laws in all the devolved areas as set out in the 2006 Act. Parliament remains responsible for legislating in areas which are non-devolved. The Assembly is funded by a block grant and has no powers of taxation.

604. The Belfast Agreement opened the way for the devolution of power to Northern Ireland through the *Northern Ireland Act 1998*. An Assembly of 108 members with a range of legislative and executive powers was established and power was devolved in December 1999.
605. The Northern Ireland Executive comprises a First Minister and deputy First Minister, and 11 Ministers, all allocated in proportion to party strengths represented in the Assembly under the d’Hondt system, except for the Justice Minister who is directly elected by the Assembly. The Northern Ireland devolution settlement, provided for in the Northern Ireland Act 1998, establishes three categories of legislative competence. “Excepted” matters (listed at Schedule 2 to the Act) are matters of national importance which remain the responsibility of the UK Government and on which legislation can only be taken forward at Westminster. “Reserved” matters (at Schedule 3 to the Act) are UK-wide issues on which the Assembly may legislate, but only with the consent of the Secretary of State. “Transferred” (or “devolved”) matters (anything not listed in Schedules 2 and 3) are those matters on which the Assembly has full legislative competence. Transferred matters in Northern Ireland include agriculture, education, housing, employment, health and, since April 2010, policing and justice matters.

### **The European Community**

606. The United Kingdom acceded to the European Community in 1973, applying the Treaty of Rome by the *European Communities Act 1972*. Special parliamentary procedures keep members of both Houses of the Westminster Parliament informed about developments within the European Union. These take the form of parliamentary scrutiny of EU legislative proposals whereby the Government deposits new EU proposals in Parliament accompanied by explanatory memoranda (which cover, for example, the principle of subsidiarity, the legal basis of the proposals and their impact on fundamental rights, as well as broader policy and financial implications for the UK).

### **The composition of Parliament**

607. The two-chamber system is an integral part of British parliamentary government. The House of Lords (the upper house) and the House of Commons (the lower house) sit separately and are constituted on entirely different principles. The process of legislation involves both houses.

608. Since the beginning of Parliament, the balance of power between the two houses has undergone a complete change. The continuous process of development and adaptation has been greatly accelerated during the past 75 years or so. In modern practice the centre of parliamentary power is in the popularly elected House of Commons, but until the twentieth century the Lords' power of veto over measures proposed by the Commons was, theoretically, unlimited. Under the *Parliament Acts 1911* and *1949* certain bills may become law without the consent of the Lords. The 1911 Act imposed restrictions on the Lords' right to delay bills dealing exclusively with expenditure or taxation and limited their power to reject other legislation. Under the 1911 Act the Lords were limited to delaying bills for two years. This was reduced to one year by the 1949 Act.
609. These limitations to the powers of the House of Lords are based on the belief that the principal legislative function of the modern House of Lords is revision, and that its purpose is to complement the House of Commons, not to rival it.

### House of Commons

610. The House of Commons is a representative assembly elected by universal adult suffrage, and consists of men and women (members of Parliament, "MPs") from a diverse range of backgrounds. There are presently 650 seats in the House of Commons representing the United Kingdom as a whole; this will be reduced to 600 at the scheduled 2015 general election.
611. Members of the House of Commons hold their seats during the life of a Parliament. They are elected either at a general election, which takes place after a Parliament has been dissolved and a new one summoned by the Sovereign, or at a by-election, which is held when a vacancy occurs in the House as a result of the death, disqualification otherwise.

### House of Lords

612. The House of Lords currently has seven hundred and thirty-eight members.<sup>121</sup> The *House of Lords Act 1999* reformed the composition of the chamber by providing for the removal of the sitting and voting rights of most hereditary peers. As a result of this evolution, those holding the majority of seats in the House of Lords are now 'life-peers'; individuals who are appointed under the *Life Peerages Act 1958*. Life Peers hold approximately 600 seats. In addition, ninety-two hereditary peers currently remain and twenty-six Archbishops or Bishops of the established Church of England also hold seats.

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<sup>121</sup> November 2010: <http://www.parliament.uk/mps-lords-and-offices/lords/lords-by-type-and-party/>

613. The *Constitutional Reform Act 2005* eliminated the judicial function of the House of Lords by providing for a Supreme Court of England and Wales. The Supreme Court, took over the House of Lords role in October 2009 as the final court of appeal for all matters in the whole of the United Kingdom except Scotland. The High Court of Judiciary will remain the supreme court for criminal matters in Scotland.
614. The Government has published a White paper and a draft Bill setting out its proposals for a wholly or mainly elected upper chamber on the basis of proportional representation.

### **Parliamentary elections**

615. The law relating to Parliamentary elections is primarily contained in the Representation of the People Acts. Under their provisions election to the House of Commons is decided by secret ballot. British citizens, citizens of other Commonwealth countries and citizens of the Irish Republic resident in the United Kingdom are entitled to vote provided they are aged 18 years or over and not legally disqualified from voting. Persons not entitled to vote in a Parliamentary election include: peers who are members of the House of Lords; convicted offenders detained in custody; and anyone convicted within the previous five years of corrupt or illegal election practices. In most cases, to be able to vote in the constituency where they reside an elector must be registered to vote with the relevant local authority. In Great Britain the electoral register is compiled by local electoral registration officers who conduct an annual canvass of households in the local authority area for which they are responsible. In addition, under “rolling registration” arrangements introduced in 2000, individuals may apply at other times to have their names added to the electoral register. This caters for individuals who move house during the course of the year. Under more recent changes to electoral law, prior to an election, eligible persons may now register to vote up until 11 days before polling day throughout the UK.
616. A different system of voter registration exists in Northern Ireland where individual (rather than household) registration has been in place since 2002. The Government has announced that Individual Electoral Registration will be implemented in Great Britain in 2014 and on 30 June 2011 published a White Paper and draft legislation setting out the proposals for implementation which will be subject to pre-legislative scrutiny. In Northern Ireland, individual registration means that in order to register, every eligible elector must complete their own registration form and provide their signature, date of birth and national insurance number. The Chief Electoral Officer for Northern Ireland may check entries on the register with other public authorities and against the Department of Work and Pensions database to ensure that they are correct. This system of individual registration was originally introduced to address perceptions of electoral fraud and it has contributed significantly to ensuring a high level of accuracy in the register. Therefore in 2006 the requirement for an annual canvass in Northern Ireland was removed.

617. Voting is not compulsory. Electors may vote in person at polling stations especially established for the purpose. Alternatively, electors may apply for a postal vote or appoint a proxy to vote on their behalf.
618. The system of voting used is the “first past the post” system: in each constituency, the candidate that receives the highest number of votes is elected. On 22 July 2010, the Coalition Government presented the Parliamentary Voting System and Constituencies (PVSC) Bill which received Royal Assent on 16 February 2011. The PVSC Act made provision for a UK referendum on the voting system for parliamentary elections which was held on 5 May 2011. Voters were asked whether the alternative vote system should be used instead of the first past the post system to elect MPs to the House of Commons. The outcome of the referendum favoured retention of the existing system over the introduction of the alternative vote.
619. At Parliamentary elections, the United Kingdom is divided into geographical areas known as constituencies, each with one member in the House of Commons.
620. The Parliamentary Voting System and Constituencies Act, which received Royal Assent on 16 February 2011 creates new rules for the redistribution of seats which will require 600 constituencies in the Commons rather than the current 650. The rules will give priority to numerical equality as a principle, in that there will be a uniform electoral quota for UK constituencies number of seats are not to vary by more than 5 per cent from the quota, with some limited exceptions. The Parliamentary Boundary Commissions are to conduct a review by the end of September 2013 with subsequent reviews every five years.
621. Any person who is a British citizen, a qualifying citizen of another Commonwealth country or a citizen of the Irish Republic, who has reached the age of 18 and is not otherwise disqualified may stand as a candidate at a Parliamentary election. Those disqualified from standing as a candidate include: undischarged bankrupts; persons sentenced to more than one year’s imprisonment while detained; peers who are members of the House of Lords; a person convicted of or reported to an election court for corrupt or illegal practice (the disqualification lasts for five years for the former and 3 years for the latter) and those precluded under the House of Commons Disqualification Act 1975 – for instance, holders of judicial office, civil servants, members of the regular armed forces or the police service, or British members of the legislature of any country or territory outside the Commonwealth. A candidate usually belongs to one of the main national political parties, although smaller parties or groupings also nominate candidates, and individuals may stand without party support as “Independent” candidates. A candidate’s nomination for election must be signed by two electors as proposer and seconder, and by eight other electors registered in the constituency.

### **The Party System**

622. The existence in the United Kingdom of organized political parties, each laying its own policies before the electorate, has led to well-developed political groupings in Parliament.
623. Since 1945 the Conservative Party and the Labour Party have each won nine of the eighteen general elections, and the great majority of members of the House of Commons have represented one or other of these two parties. Following the general election of May 2010 a coalition Government was formed by the Conservative and Liberal Democrat parties.

### **Government and Opposition**

624. The leader of the party which wins the most seats (but not necessarily the most votes) at a general election, or which has the support of a majority of members in the House of Commons, is by constitutional convention invited by the Sovereign to form a government and is appointed Prime Minister. On occasions when no party succeeds in winning an overall majority of seats, a coalition or minority government may be formed.
625. The Prime Minister chooses a team of ministers, including a Cabinet of about 20 members, whom he recommends to the Sovereign for appointment as Ministers of the Crown. Together they form Her Majesty's Government.
626. The party with the next largest number of seats is officially recognised as "Her Majesty's Opposition" (or "the Official Opposition"), with its own leader and its own "shadow cabinet", whose members act as spokesmen on the subjects for which government ministers have responsibility. Members of any other parties and any independent MPs who have been elected support or oppose the Government according to their own party policies or their own views.
627. The Government has the major share in controlling and arranging the business of the two houses. As the initiator of policy, it indicates which action it wishes Parliament to take, and explains and defends its position in public debate. Most present-day Governments can usually count on the voting strength of their supporters in the House of Commons and, depending on the size of their overall majority, can thus secure the passage of their legislation substantially in the form that they originally proposed. This is the result of the growth of party discipline, and has strengthened the hand of the Government, but it has also increased the importance of the Opposition. The greater part of the work of exerting pressure through criticism now falls on the Opposition, which is expected and given the opportunity, according to the practice of both houses, to develop its own position in Parliament and state its own views.



### **Parliamentary Control of the Executive**

628. Control of the Government is exercised finally by the ability of the House of Commons to force the Government to resign, by passing a resolution of “no confidence”; or by rejecting a proposal which the Government considers so vital to its policy that it has made it a matter of confidence; or ultimately by refusing to vote the money required for the public service. The House of Lords also performs an important role as a revising chambers, carefully scrutiny legislation and proposals put forward by the Government.
629. The Fixed-term Parliaments Bill is expected to receive Royal Assent before the summer recess. In summary, the Bill will provide for five-year fixed-terms, with general election scheduled to be held on the first Thursday in May every five years (the next scheduled election being 7 May 2015). The Bill will provide that Parliament can only be dissolved early if at least two thirds of MPs vote for dissolution or if a Government is unable to secure the confidence of the House of Commons within 14 days of a no-confidence vote. The House of Commons will still have the power to pass a vote of no confidence in the Government, with a simple majority. This important part of the way the Commons holds the Government to account will be enshrined in law. Fixed-terms will mean that governments can no longer decide the timing of elections in order to suit their own political ends and will provide greater certainty as the public will know when general elections are scheduled to take place.
630. As a representative of the ordinary citizen, an MP may challenge the policy put forward by a minister: (i) during a debate on a particular bill, when he or she may object to its broad principles at the second reading or, as regularly happens, may put forward amendments at committee stage; (ii) through the institution of parliamentary questions and answers; (iii) during adjournment debates; or (iv) during the debates, on “Opposition days”. In addition, the expenditure, administration and policy of the principal government departments is closely scrutinised by parliamentary committees.

### **Question Time**

631. Question Time in the House of Commons is regarded as the best means of eliciting information (to which members might not otherwise have access) about the Government’s intentions, as well as the most effective way of airing, and possibly securing some redress of, grievances brought to the notice of MPs by their constituents. Ministers may also make public statements by submitting a Written Ministerial Statement or making oral statements to Parliament, both of which may trigger a debate.
632. The conventions governing admissible questions have been derived from decisions taken by successive speakers in relation to individual questions. Practice and procedure of Question Time is also reviewed from time to time by the House of Commons Select Committee on procedure.

### Non-governmental Organisations

633. A number of human rights non-governmental organisations operate in the UK. For tax purposes, non-governmental organisations mainly take the form of a charity. There is no unified system under which charities are governed in the UK. The operation of charities in England and Wales, Scotland and Northern Ireland are each governed by different law.
634. Being defined as a charity in the UK results in a number of tax benefits. In general, UK charities can claim tax relief from most income or gains and also on profits from some activities. Furthermore, charities are also entitled to claim tax repayments on income received on which tax has already been paid.
635. In England and Wales, bodies wishing to benefit from “charitable” status must be registered as “charities”, a process overseen by the Charity Commission. Apart from a number of exceptions, the registration procedures must take place in accordance with the *Charities Act 1993* (as amended by the *Charities Act 2006*).
636. In Scotland, the operation of charities is also overseen by a supervisory body: the Office of the Scottish Charity Regulator. In order for the body concerned to be deemed “charitable”, it must comply with the provisions laid down by the *Charities and Trustee Investment (Scotland) Act 2005* and then be registered in the Scottish Charity Register.
637. In Northern Ireland, the law relating to charities is distinctly different because charities do not have to undertake compulsory registration. They mainly carry out their functions under the *Charities Act (Northern Ireland) 1964* and the *Charities Act (Northern Ireland) Order 1987*. The operation of charities is overseen by the Department for Social Development.<sup>122</sup>

## The Law

### Administration

638. The UK does not have a unified judicial system, excepting a small number of UK wide tribunals.<sup>123</sup> The judicial branch of state in each of the UK jurisdictions (England and Wales, Scotland and Northern Ireland) is independent of the executive. The Supreme Court of the United Kingdom is the highest court of appeal for civil cases in the UK, and criminal cases from England, Wales and Northern Ireland. The most senior judicial appointments are made by Her Majesty the Queen on the recommendation of the Prime Minister. The Lord Chief Justice of England and Wales is independently appointed by a special panel

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<sup>122</sup> [www.dsdni.gov.uk](http://www.dsdni.gov.uk)

<sup>123</sup> The Asylum and Immigration Tribunal’s jurisdiction covers the whole of the UK. England, Scotland and Wales have a single Employment Tribunal System.

convened by the Judicial Appointments Commission of England and Wales. Most other judicial appointments are made by Her Majesty the Queen on the recommendation of the relevant Minister (following selection by the respective judicial appointments commissions in each jurisdiction).

### **England and Wales**

639. In the *Constitutional Reform Act 2005*, judicial independence in England and Wales was set out in legislation for the first time. This Act replaced the Lord Chancellor as head of the judiciary in England and Wales with the Lord Chief Justice of England and Wales, who also holds office as the President of the Courts of England and Wales.
640. The Act also established a new UK Supreme Court; imposed a statutory duty on the Government to safeguard the independence of the judiciary; established the Judicial Appointments Commission (JAC); and established the Judicial Appointments and Conduct Ombudsman (JACO).
641. Although the Act did not abolish the role of Lord Chancellor, the transfer of his judicial functions to the Lord Chief Justice reinforces intentions to preserve the independence of the judiciary in the UK. As head of the judiciary, the Lord Chief Justice has some 400 statutory responsibilities,<sup>124</sup> central to which are the deployment of the judiciary, the allocation of work to and training of the judiciary and acting as representative of judicial opinion to the executive and legislator.
642. The Judicial Appointments Commission consists of fifteen individuals, twelve of whom (including the Chairman) are appointed for a term of five years by open competition. Alongside having responsibility for recommendations for the appointments of judicial office holders, the JAC also has the remit to have regard for the diversity of those eligible for appointment to the judiciary in England and Wales.
643. The Office for Judicial Complaints (OJC) under joint responsibility of both the Lord Chancellor and the Lord Chief of Justice, ensures that all complaints about the conduct of individual members of the judiciary in England and Wales are dealt with fairly and that judicial discipline is consistent and effective. The OJC is an associated office in the Ministry of Justice; the Central Government Department responsible for support of the judiciary in England and Wales. Working separately to the OJC, the Judicial Appointments and Conduct Ombudsman (JACO) has the responsibility for dealing with complaints about the appointment of members of the judiciary or of the handling of judicial discipline or conduct. Although the OJC and the JACO are associated offices of the

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<sup>124</sup> Set out in *Constitutional Reform Act 2005*.

Ministry of Justice they work completely autonomously of both the judiciary and the Government.

644. There are about 1,448<sup>125</sup> full-time (salaried) judges in England and Wales. In addition to these full-time judges, there are about 1,233<sup>126</sup> recorders. These are practising lawyers sitting on a part-time (fee-paid) basis in the Crown Court and county courts. Some lawyers also sit from time to time as Deputy High Court Judges, and others sit part-time in the county court as Deputy District Judges. There are also approximately 30,000 magistrates who sit in magistrates' courts. These are ordinary citizens who give up some of their time to administer local justice (without remuneration). They usually sit in benches of three with a legally qualified clerk to advise them on points of law. Thus, a notable feature of the administration of justice is that a small number of professional judges are supplemented by a large number of magistrates who dispose of the vast majority of minor criminal trials.
645. It is a cardinal principle that, in the exercise of their judicial function, all judges are completely independent. It is inevitable and proper that the law, and the operation of the law in the courts, should be scrutinised by Parliament and the executive. However, it is a generally accepted convention that members of Parliament and politicians should not criticise particular judicial decisions, albeit that Parliament has the power to reverse their general effects by legislation. As Parliament and the executive are not expected to interfere in the judicial sphere, so judges are expected to distance themselves from politics. Full-time judges are disqualified from being members of the House of Commons, and Lords of Appeal in Ordinary and other senior judges who are members of the House of Lords do not usually take part in its proceedings except when they relate to legal matters. Under the *Constitutional Reform Act 2005*, the judges of the Supreme Court will be barred from sitting or voting in the House of Lords, in a committee of that house, or in a joint committee of both houses.
646. The Attorney General and the Solicitor General are the Government's principal advisers on English law, and represent the Crown in appropriate domestic and international cases. They are senior barristers, elected members of the House of Commons, and hold ministerial posts. The Attorney General also holds the position of Advocate General for Northern Ireland because, since devolution of policing and justice in April 2010, Northern Ireland now has its own Attorney General. As well as exercising various civil law functions, the Attorney General has final responsibility for enforcing the criminal law: the Director of Public Prosecutions (see paragraph 660 below) is subject to the Attorney General's superintendence. The Attorney General is concerned with

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<sup>125</sup> Figures relate to judges in the Court system. Taken from; 'Statistics – Monthly Judicial Statistics Overview' (April 2008) produced by the Judiciary of England and Wales.

<sup>126</sup> <http://www.judiciary.gov.uk/publications-and-reports/statistics/judges/judicial-statistics>

instituting and prosecuting certain types of criminal proceedings, but must exercise an independent discretion and must not be influenced by government colleagues. The Solicitor General is, in effect, the deputy of the Attorney General.

### **Scotland**

647. The Scottish legal system is separate from that of the rest of the United Kingdom. Most aspects of it are devolved to the Scottish Parliament under the Scotland Act 1998. Accordingly, the Scottish Government (the executive arm of devolved government in Scotland) is responsible for civil and criminal law and justice, criminal justice, social work services, police, prisons, courts administration, legal aid and liaison with the legal profession in Scotland.
648. *The Judiciary and Courts (Scotland) Act 2008* made significant changes to the legal system in Scotland. It created a statutory guarantee of judicial independence; it put the judicial appointments system on a statutory footing; it made the Lord President (the most senior judge in Scotland) the Head of the Scottish judiciary and as such responsible for the efficient disposal of the business of the Scottish courts; and it established the Scottish Court Service as a non-Ministerial Department, chaired by the Lord President of the Court of Session, with a principal function of providing the property, staff and other resources necessary for the running of the courts.
649. The High Court of Justiciary is Scotland's supreme criminal court and is presided over by the Lord Justice General and the Lord Justice Clerk, who usually sit as chairpersons in the courts of criminal appeal. The High Court also sits as a court of first instance in serious criminal matters. The Court of Session determines important civil matters at first instance and on appeal. The same judges sit in the High Court and the Court of Session. The next level is the sheriff court, which functions as an intermediate level court in criminal business and deals with all civil business below the level of the Court of Session. Low level criminal matters are adjudicated on by justices of the peace (lay judges) in the Justice of the Peace Court.
650. Judges and sheriffs are appointed by the Queen on the advice of the First Minister (on recommendation of the independent Judicial Appointments Board for Scotland). Justices of the Peace are appointed on behalf of and in the name of the Queen by the Scottish Ministers.
651. The Lord Advocate is the chief legal adviser to the Scottish Government. She is the chief legal officer of the Government and the Crown on civil and criminal law in Scotland, except reserved matters. She is also responsible for the provision of Scottish legal advice to the UK Government.
652. The Lord Advocate is the head of the system of prosecution and investigation of deaths in Scotland and acts independently in this role

from the other Scottish Ministers and any other person. This independence is enshrined in law. The Solicitor General is the Lord Advocate's deputy. The Crown office and Procurator Fiscal Service forms the prosecution service in Scotland. Procurators Fiscal are subject in their duties to the instruction of the Lord Advocate.

### **Northern Ireland**

653. In Northern Ireland, responsibility for Policing and Justice (including courts) was devolved to the Northern Ireland Assembly on 12 April 2010. The Northern Ireland Minister for Justice is responsible for the substantive criminal law and policing matters in Northern Ireland and discharges his responsibilities through the Northern Ireland Department of Justice. The Northern Ireland Courts and Tribunals Service is responsible for the administration of the courts and a number of tribunals in Northern Ireland. There are 67 full time and two part time members of the judiciary across the various judicial tiers and about 224 Lay Magistrates. Panels of deputy judges are also assigned to court hearings as business needs arise. In addition, there are presently five salaried tribunal office holders and approximately 320 fee paid tribunal members.
654. The Northern Ireland Judicial Appointments Commission is sponsored by the Office of the First and Deputy First Ministers. The Commission is an independent public body which selects and recommends candidates for appointment to judicial office in Northern Ireland. The Commission also makes appointments to some judicial offices (such as tribunal judiciary and deputy judges) All appointments are made solely on the basis of merit. However, the Commission is however also under a duty to have a programme of action to ensure so far as reasonably practicable that those appointed to judicial office are reflective of the community in Northern Ireland and that the pool of candidates for judicial office is also reflective of the community. The Lord Chief Justice of Northern Ireland is the Chair of the Commission.
655. The Judicial Appointments Ombudsman is an independent public office holder who is responsible for investigating complaints into the judicial appointment process. This office was created under the Constitutional Reform Act 2005 and is sponsored by the Courts and Tribunals Service.
656. The *Constitutional Reform Act 2005* appointed the Lord Chief Justice of Northern Ireland as head of the judiciary in Northern Ireland and further underpinned judicial independence. As head of the judiciary, the Lord Chief Justice has numerous statutory responsibilities including responsibility for the deployment of the judiciary, their training and guidance, and judicial discipline. He is also responsible for representing the views of the judiciary to Parliament, the Northern Ireland Assembly and Ministers generally.
657. The Attorney General for Northern Ireland was appointed by the First and Deputy First Minister on the devolution of responsibility for justice matters to the Northern Ireland Assembly in April 2010. He is the chief

legal adviser to the Northern Ireland Executive. The Attorney General for England and Wales also has some responsibilities as Advocate General for Northern Ireland.

### **The criminal law**

658. In England and Wales the initial decision to begin criminal proceedings in minor offences lies with the police; otherwise the decision to bring a criminal charge lies with the independent Crown Prosecution Service. In Scotland public prosecutors (procurators fiscal) decide whether or not to initiate proceedings, in Northern Ireland it is the Director of Public Prosecutions. In England and Wales (and exceptionally in Scotland) a private person may institute criminal proceedings. Crown Prosecutors in England and Wales can issue conditional cautions in certain types of cases. Police may issue simple cautions, and in Scotland the procurator fiscal has a number of alternatives to prosecution, including warnings and referrals to the Social Services Department.
659. In April 1988 the Serious Fraud Office, a government department, was established to investigate and prosecute the most serious and complex cases of fraud in England, Wales and Northern Ireland. A similar unit, the Crown Office Fraud and Specialist Services Unit, investigates such cases in Scotland.

### **England and Wales**

660. The Crown Prosecution Service (CPS) was established in England and Wales by the *Prosecution of Offences Act 1985*. The Director of Public Prosecutions is the head of the Service, which is responsible for the prosecution of most criminal offences in magistrates' courts and the Crown Court. The Director of Public Prosecutions is answerable to Parliament for the Service through the Attorney General. CPS lawyers prosecute cases in the magistrates' and some cases in the Crown courts. The CPS also briefs barristers from the private bar to appear in the Crown Court on its behalf. Although most cases are dealt with in the regional area where they arise, some cases are dealt with by the Serious Crime Division; these include cases of national importance, exceptional difficulty, or great public concern, and those which require that suggestions of local influence be avoided. Such cases might include terrorist offences, breaches of the Official Secrets Acts, corruption cases, and some prosecutions of police officers. Allegations of torture and deaths in custody come within the remit of the Central Casework Divisions.

### **Scotland**

661. In Scotland, the Lord Advocate is the head of the system of criminal prosecution, and investigations of deaths. The Procurator Fiscal Service is the prosecution service in Scotland. Procurators Fiscal are subject in their duties to the instructions of the Lord Advocate. Prosecution is undertaken in the local sheriff and Justice of the Peace courts by Procurators Fiscal. Prosecution in the High court is undertaken by the

Lord Advocate, Solicitor General and the Advocate Deputes who are collectively known as Crown Counsel.

662. Under the *Criminal Procedure (Scotland) Act 1995* a procurator fiscal may make a conditional offer of a fixed penalty to an alleged offender in respect of certain minor offences as an alternative to prosecution: the offender is not obliged to accept an offer but if he or she does so the prosecution loses the right to prosecute. The procurator fiscal can also issue other alternatives to prosecution, such as a Fiscal Compensation Order, and a warning letter.

### ***Northern Ireland***

663. The Criminal Justice System of Northern Ireland comprises seven organisations, each of which take responsibility for various areas of criminal justice including the prison service, the probation service, the police, youth justice, the court service and the public prosecution service.
664. The Public Prosecution Service for Northern Ireland (PPS) is the prosecuting authority for Northern Ireland. It is independent from the police and from Government. Whereas police are responsible for the investigation of criminal cases, the PPS makes prosecution decisions in all cases and has responsibility for the presentation of cases in court. PPS also provides prosecutorial advice to police upon request, and authorises charges.
665. The PPS is headed by the Director of Public Prosecutions. There is also a Deputy Director. Both these posts are public appointments made by the Attorney General for Northern Ireland. A new post has recently been created as a consequence of the devolution of policing and justice in April 2010. The new arrangements are that the Director's relationship with the Attorney General for Northern Ireland is one of consultation, the Director having full independence in matters pertaining to individual cases or policy. The Director is accountable to the Northern Ireland Assembly regarding finance and administration.

### **The criminal courts**

#### ***England and Wales***

666. In England and Wales, criminal offences may be grouped into three categories. Firstly, offences triable only on indictment – the very serious offences such as murder, manslaughter, rape and robbery – are tried only by the Crown Court presided over by a judge sitting with a jury. Secondly, summary offences – the least serious offences and the vast majority of criminal cases – are tried by unpaid magistrates or paid district judges sitting without a jury. The third category consists of offences such as theft, burglary or malicious wounding (known as “either way” offences) which can be tried either by magistrates or by the Crown Court depending on the circumstances of each case and the wishes of the defendant.



667. The Crown Court deals with trials of the more serious cases, the sentencing of offenders committed for sentence by magistrates' courts, and appeals from magistrates' courts. It sits at about 78 centres. All contested trials take place before a judge who might be a High Court judge circuit judge or a recorder, and a jury of twelve people.
668. Magistrates' courts deal with summary offences, and with "either way" offences which they consider suitable and where the defendant consents to summary trial. Magistrates' courts also send indictable-only cases to the Crown Court, and commit for trial those either-way offences which they decide should be tried in the Crown Court, or where the defendant elects Crown Court trial. Where a defendant in an "either way" case has been convicted in the magistrates' court (either on a plea of guilty or after a summary trial) the magistrates' court may decide to commit him or her to the Crown Court for sentence.
669. In addition, District Judges (Magistrates Courts), of whom there are about 136, deal with the more complex or sensitive cases. These judges are required to have at least seven years experience practice as a Solicitor or Barrister and an additional two years fee-paid experience.
670. People under 18 who are charged with a criminal offence are generally dealt with in youth courts.<sup>127</sup> These are specially constituted magistrates' courts which either sit apart from other courts or are held at a different time. Only limited categories of people may be present and media reports must not identify any young person appearing either as a defendant or a witness. Where a young person under 18 is charged jointly with someone of 18 or over, the case is heard in an ordinary magistrates' court or the Crown Court. If the young person is found guilty, the court may transfer to a youth court for sentence unless satisfied that it is undesirable to do so.
671. A person convicted by a magistrates' court may appeal to the Crown Court against the sentence imposed if he has pleaded guilty, or against the conviction or sentence imposed if he has not pleaded guilty. Where the appeal is on a point of law or jurisdiction, either the prosecutor or the defendant may appeal from the magistrates' court to the High Court. Appeals from the Crown Court, either against conviction or against sentence, are made to the Court of Appeal (Criminal Division). The Supreme Court, [which consists of 11 Lords of Appeal in Ordinary (the Law Lords)] is the final appeal court for all cases, from either the High Court or the Court of Appeal. Before a case can go to the Supreme Court, the court hearing the previous appeal must certify that it involves a point of law of general public importance, and either that court or the Supreme Court must grant leave for the appeal to be heard.

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<sup>127</sup> Except in cases in which a person under 18 is being tried as an adult, or being jointly tried with an adult or alternatively if it is a rape or manslaughter case.

672. Where a person has been tried on indictment and acquitted (whether on the whole indictment or some counts only), the Attorney General may refer to the Court of Appeal for its opinion on any point of law which arose in the case. Before giving its opinion on the point referred, the Court must hear argument by or on behalf of the Attorney General. The person acquitted also has the right to have counsel to present argument on his behalf. Whatever the opinion expressed by the Court of Appeal, the original acquittal is unaffected. By making a reference, the Attorney General may obtain a ruling which will assist the prosecution in future cases, but he cannot ask the court to set aside the acquittal of the particular accused whose case gave rise to the reference. The point may also be referred to the House of Lords if it appears to the Court of Appeal that it ought to be considered by the Law Lords.
673. The Attorney General may also refer a case to the Court of Appeal if it appears to him that the sentence passed by the judge in the Crown Court was unduly lenient or illegal. His power applies to indictable only offences and certain specified "either way" offences sentenced in the Crown Court. The Court of Appeal must give leave to refer the sentence. The Court of Appeal may quash any sentence and replace it with a greater or lesser sentence which is deemed appropriate for the case, provided that this would have been within the power of the Crown Court judge who imposed the original sentence. In general the double jeopardy rule means that once a person has been acquitted of an offence they cannot be prosecuted a second time. However, under Part 10 of the *Criminal Justice Act 2003*, it is now possible for re-trials to take place in respect of certain very serious offences, where the Court of Appeal finds that there is new and compelling evidence, which has come to light since the acquittal.

### **Scotland**

674. In Scotland the High Court of Justiciary tries all serious crimes such as murder, treason and rape; the Sheriff Court is concerned with less serious offences and the Justice of the peace court with minor offences. Criminal cases are heard either under solemn procedure, when proceedings are taken on indictment and the judge sits with a jury of 15 members, or under summary procedure, when the judge sits without a jury. All cases in the High Court and the more serious ones in sheriff courts are tried by a judge and jury. Summary procedure is used in the less serious cases in the sheriff courts, and in all cases in the district courts. Maximum sentencing powers vary.
675. In Scotland, children under 16 who have committed an offence or offences or are for any other reasons specified in statute considered to need compulsory measures of care or protection would normally be brought before a children's hearing. The hearing comprises three members drawn from a panel of volunteers who have been appointed by the Secretary of State. Both sexes must be represented at each hearing. Following a hearing, the child or parents may appeal against any decision, but must do so within 21 days. This appeal is also brought

before a sheriff. A small number of children who have committed serious crimes may still be dealt with in the adult criminal justice system and currently a pilot Youth Court scheme is being run to deal with persistent young offenders.

676. Scotland's six sheriffdoms are further divided into sheriff court districts, each of which has one or more sheriffs, who are the judges of the court. The High Court of Justiciary, Scotland's supreme criminal court, is both a trial and an appeal court. Any of the following judges is entitled to try cases in the High Court: the Lord Justice General (the head of the court), the Lord Justice Clerk (the judge next in seniority) or one of the Lord Commissioners of Justiciary.
677. All appeals are dealt with by the High Court. In both solemn and summary procedure, an appeal may be brought against conviction, or sentence, or both. The Court may authorize a retrial if it sets aside a conviction. There is no further appeal to the House of Lords. In summary proceedings the prosecutor may appeal on a point of law against acquittal or sentence. The Lord Advocate may seek the opinion of the High Court on a point of law which has arisen in a case where a person tried on indictment is acquitted. The acquittal in the original case is not affected.

### ***Northern Ireland***

678. The structure of Northern Ireland courts is broadly similar to that in England and Wales. The day-to-day work of dealing summarily with minor cases is carried out by magistrates' courts presided over by a full-time, legally qualified person, termed a District Judge (Magistrates' Court).
679. The Crown Court deals with criminal trials on indictment. It is served by High Court and county court judges. Proceedings are generally heard before a single judge, and all contested cases, (other than those which have been certified by the Director of Public Prosecutions as being suitable for non-jury trial), take place before a jury.
680. Children under 18 are dealt with by the Youth Court consisting of a District Judge (Magistrates' Court) and two lay members (at least one of whom must be female) who are specially trained in youth justice matters. As in England and Wales, reporting restrictions apply to cases in the Youth Court preventing the publication of the offender's name or picture. Appeals from magistrates' courts (including youth courts) are heard by the county court.
681. During the period of sectarian violence and Terrorism from the 1970s, the hearing of cases arising under emergency legislation by a judge sitting without a jury ("the Diplock system") became necessary because jurors were being intimidated. The Diplock system was repealed on 31 July 2007 and replaced with a new system of non-jury trial under the *Justice and Security (Northern Ireland) Act 2007*. The new system

focuses on the circumstances of the offence, not the offence itself, and requires an assessment of the risk that the administration of justice might be impaired. There is now a presumption for jury trial in all cases subject to the Director of Public Prosecution's decision to certify cases as being suitable for non-jury trial.

682. Appeals from the Crown Court against conviction or sentence are heard by the Northern Ireland Court of Appeal. Procedures for a further appeal to the Supreme Court are similar to those in England and Wales.

### **Criminal proceedings**

#### ***Trial***

683. Criminal trials in the United Kingdom take the form of a contest between the prosecution and the defence. Since the law presumes the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant (in Scotland, called an accused) has the right to employ a legal adviser and may be granted legal aid from public funds. If remanded in custody, the person may be visited by a legal adviser to ensure a properly prepared defence.
684. In England and Wales the prosecution has a statutory duty to disclose to the defence in advance of the trial the evidence on which it intends to prosecute the charges, and also any relevant exculpatory material. In Crown Court cases the defence must then provide a statement setting out the nature of the accused's defence. This statement is voluntary in magistrates' courts. The prosecution is under a continuing duty, in particular following receipt of a defence statement, to keep under review the question of whether there is any previously relevant undisclosed material in its possession. Additionally before the trial the accused is required to provide details of witnesses that he intends to call.
685. In England, Wales and Northern Ireland during the preparation of the case, with the exception of minor charges, the prosecution, with the exception of minor charges, is required either automatically or on request to disclose to the defence all evidence against the accused on which the prosecution propose to rely. In addition, the prosecution is required to disclose any material not previously seen by the accused that may undermine the prosecution's case or assist the case of the accused. However present law permits certain unused material to be withheld if a court rules that there is a stronger public interest in preserving confidentiality (and disclosure is not necessary for a fair trial).
686. Since the case of *Sinclair v HMA* in 2005, the Crown has been obliged to disclose the police statements of witnesses to the defence. The Crown now has an obligation to disclose all material information for or against an accused to the defence.

687. The defence or prosecution may suggest that the defendant's mental state renders him or her unfit to be tried. If the judge decides that this is so, the defendant is admitted to a specified hospital.

### **Jury**

688. In jury trials the judge decides questions of law, sums up the evidence for the jury and instructs the jury on the relevant law, and discharges the accused or passes sentence. Only the jury decides whether the defendant is guilty or not guilty. In England, Wales and Northern Ireland, if the jury cannot reach a unanimous verdict, the judge may direct it to bring in a majority verdict provided that, in the normal jury of 12 people, there are not more than two dissentients. In Scotland, where the jury consists of 15 people, the verdict may be reached by a simple majority, but no person may be convicted without corroborated evidence. If the jury returns a verdict of "not guilty", (or, in Scotland "not proven", which is an alternative verdict of acquittal), the prosecution has no right of appeal and the defendant cannot be tried again for the same offence. In the event of a "guilty" verdict, the defendant has a right of appeal to the appropriate court.
689. A jury is completely independent of the judiciary. Any attempt to interfere with a jury once it is sworn in is punishable under the *Contempt of Court Act 1981*.
690. The prosecution and defence have a right to challenge potential jurors by giving reasons where they believe an individual juror is likely to be biased. There is no automatic right of challenge without giving a reason. In addition, the prosecution can also exercise the right to request stand-by of a juror, or the judge can use his discretionary powers to discharge a juror should the circumstances warrant that. The *Criminal Justice (Scotland) Act 1995* abolished the right of peremptory challenge in Scotland.
691. People between the ages of 18 and 70 whose names appear on the electoral register and who have lived in the UK for a continuous period of at least five years since the age of 13, are liable for jury service, unless they are ineligible or excused. Persons ineligible for jury service include: those who have been sentenced in the UK to five years or more of imprisonment; those who have been sentenced in the previous ten years to a term of imprisonment, detention or youth custody, have received a suspended sentence or have been subject to a community order; and if they are regularly receiving treatment by a medical practitioner or are resident in a hospital or similar institution for any form of mental disorder.

### **The investigation of deaths**

692. In England, Wales and Northern Ireland, coroners investigate violent and unnatural deaths or sudden deaths where the cause is unknown. Deaths may be reported to the local coroner (who is either medically or legally qualified, or both) by doctors, the police, the registrar, public authorities or members of the public. If the death is sudden and the cause

unknown, the coroner need not hold an inquest if, after a post-mortem examination has been made, he or she is satisfied that the death was due to natural causes. Where there is reason to believe that the deceased died a violent or unnatural death, or if they died in prison or in other specified circumstances, the coroner must hold an inquest, and it is the duty of the coroner's court to establish how, when and where the deceased died. A coroner may sit alone or, in certain circumstances, with a jury. Neither the coroner nor the coroner's jury may express any opinion on questions of criminal and civil liability, which fall to other courts to determine.

693. In Scotland the local procurator fiscal investigates all sudden and suspicious, accidental, unexpected and unexplained deaths, and may report the findings to the Crown Office for Crown Counsel's instructions in relation to further investigations and whether criminal proceedings should be instigated or whether a fatal accident inquiry should be instructed. Under the Fatal Accident and Sudden Deaths Inquiry (Scotland) Act 1976 a fatal accident inquiry, which is a public inquiry held at the request of the Procurator Fiscal before the sheriff must be held in cases where the deceased died whilst in legal custody. In a minority of cases a fatal accident inquiry may be held before the sheriff. For certain categories (such as deaths in custody) a fatal accident inquiry is mandatory. In addition, the Lord Advocate has discretion to instruct an inquiry in the public interest in cases where the circumstances give rise to public concern.

### ***The civil law***

694. The main subdivisions of the civil law of England, Wales and Northern Ireland are: family law, the law of property, the law of contract and the law of torts (covering injuries suffered by one person at the hands of another irrespective of any contact between them and including concepts such as negligence, defamation and trespass). Other branches of the civil law include constitutional and administrative law (particularly concerned with the use of executive power), industrial, maritime and ecclesiastical law. Scottish civil law has its own, largely comparable, branches.
695. Unified procedural rules for the County Court and High Court, the 'Civil Procedure Rules', to ensure that the Courts deal with cases justly, were introduced in 1999. The Civil Justice Council was also established to oversee and co-ordinate the modernisation of the Civil Justice System in England and Wales. Its main role is to review the system constantly and reform it accordingly.

### **The civil courts**

#### ***England and Wales***

696. In England and Wales, civil cases may be heard in magistrate courts, county courts and the senior courts up to the Supreme Court.

697. The Civil jurisdiction of Magistrates courts is limited. It includes certain family law proceedings, nuisances under public health legislation and the recovery of taxes. It also acts as an appellate court in respect of decisions taken by local licensing committees to license public houses, betting shops and clubs.
698. The jurisdiction of the county courts covers actions founded upon contract and tort (with minor exceptions), trust and mortgage cases and actions for the recovery of land. Cases involving claims exceeding set limits may be tried in a county court by consent of the parties or, in certain circumstances, on transfer from the High Court.
699. Other matters dealt with by the county courts include hire purchase, the Rent Acts, disputes between landlord and tenant, and adoption cases. Divorce cases are determined in those courts designated as divorce county courts and, outside London, bankruptcies are dealt with in certain county courts. The courts also deal with complaints of race and sex discrimination. Where small claims are concerned (especially those involving consumers), there are simplified procedures.
700. The High Court of Justice is divided into the Chancery Division, the Queen's Bench Division and the Family Division. Its jurisdiction is both original and appellate and covers civil and some criminal cases. Particular types of work are assigned to each division. The Family Division is concerned with all jurisdiction affecting the family, including that relating to adoption and guardianship. The Chancery Division deals with the interpretation of wills and the administration of estates. Maritime and commercial law are the responsibility of admiralty and commercial courts of the Queen's Bench Division.
701. In England and Wales, the Family Division of the High Court hears appeals in matrimonial, adoption and guardianship proceedings heard by magistrates' courts. Appeals from the High Court and county courts are heard in the Court of Appeal (Civil Division), consisting of the Master of the Rolls and 35 Lords Justice of Appeal, and may go on to the Supreme Court, the final court of appeal in civil and criminal cases, presided over by 12 independently appointed judges known as justices of the Supreme Court.

### **Scotland**

702. The main civil courts in Scotland are the sheriff courts and the Court of Session. The civil jurisdiction of the sheriff court extends to most kinds of action and is normally unlimited by the scale of the case, the sheriff having a jurisdiction in virtually all matters of civil law and all types of procedure with the exception of certain statutory appeals and applications to the Court of Session. Much of the work is done by the sheriff, against whose decision an appeal may be made to the sheriff-principal or directly to the Court of Session. The sheriff also hears a number of statutory appeals and applications such as appeals from the decisions of Licensing Boards.

703. The Court of Session sits only in Edinburgh, and in general has jurisdiction to deal with all kinds of action. The main exception is an action exclusive to the sheriff court, where the value claimed is less than a set amount. The Court of Session has a number of special procedures for particular types of action notably commercial cases and actions for damages for personal injuries and death. It has exclusive jurisdiction in certain international cases, notably under international conventions dealing with child abduction and custody. Appeals in civil cases can be taken from the Inner House to the UK Supreme Court, which is the final civil court of appeal for Scotland.
704. The Scottish Land Court is a special court which deals exclusively with matters concerning agriculture. Its chairman has the status and tenure of a judge of the Court of Session and its other members are lay specialists in agriculture. Appeals in civil cases can be taken from the Inner House to the UK Supreme Court, which is the final civil court of appeal for Scotland.

### ***Northern Ireland***

705. Minor civil cases in Northern Ireland are dealt with in county courts, though magistrates' courts also deal with certain classes of civil case. The superior civil law court is the High Court from which an appeal may be made to the Court of Appeal. These two courts, together with the Crown Court, comprise the Court of Judicature of Northern Ireland and their practice and procedure are similar to those in England and Wales. The UK Supreme Court is the final civil appeal court.

### **Civil proceedings**

#### ***England and Wales***

706. In England and Wales civil proceedings are instituted by the aggrieved person, who is referred to as the "claimant". No preliminary inquiry on the authenticity of the grievance is required. The usual way to commence civil proceedings, in both the High Court and the County Court, is by issuing a document known as the "claim form. The early stages of civil proceedings are dominated by the exchange of formal statements of case by the respective parties.
707. Civil proceedings, can usually be abandoned or ended by compromise at any time. Actions brought to court are usually tried by a judge without a jury. However, subject to the court's agreement there is a right to trial by jury in actions involving claims for deceit, libel, slander, malicious prosecution and false imprisonment. The jury decides questions of fact and damages awarded to the injured party. Verdicts should normally be unanimous, but if a jury cannot agree then majority verdicts may be accepted.
708. If a party refuses to comply with a judgment or order of court, a range of enforcement procedures are available. Where the judgments is for a sum of money, the most common method of enforcement is either by



seizure of the debtor's goods or by an attachment of earnings order. If the judgment takes the form of an injunction, a refusal to obey the injunction may result in imprisonment for contempt of court. Normally the court orders the costs of an action to be paid by the losing party, but in small claims parties are normally expected to pay their own costs, though they can usually recover court fees from the loser. This reflects the fact that small claims procedures are designed so that parties can deal with matters without using lawyers.

### **Scotland**

709. In Scotland, civil proceedings in the Court of Session or ordinary actions in the sheriff court are initiated by serving the defender with a summons. A defender who intends to contest the action must inform the court; if he or she does not appear, the court grants a decree in absence in favour of the pursuer. For ordinary actions in the sheriff court the case is initiated by initial writ, and the defender has to lodge a notice of intention to defend and thereafter submit defences followed by an options hearing. In family actions the parties attend the options hearing, and the court can send cases for mediation. After the options hearing, cases go to debate on legal issues or proof.
710. In summary causes (involving actions of value from £750 to £1,500) in the sheriff court the statement of claim is incorporated in the summons. The procedure is designed to enable most actions to be carried through without the parties involved having to appear in court. Normally they (or their representative) need appear only when an action is defended. These summary causes proceed on a fixed timetable and involve minimum written pleading and cover certain classes of payment action and actions for repossession of heritable property.
711. A small claims procedure was introduced into Scotland in 1988, which provides for all cases of up to £750 to be initiated in a form similar to that available for summary cause. Where the pursuer in the action does not have legal representation, the court will assist in completing and serving the summons. Although similar to summary cause, the procedure in small claims is designed to be very informal, and the court is encouraged to adopt less strict rules of procedure and evidence at proof. Legal aid is not available for small claims, and the expenses are strictly limited.

### **Northern Ireland**

712. Proceedings in Northern Ireland are similar to those in England and Wales. County court proceedings are commenced by a civil bill served on the defendant. Judgements of civil courts are enforceable through a centralised procedure administered by the Enforcement of Judgments Office.

### **Restrictive Practices Court**

713. The Restrictive Practices Court is a specialised United Kingdom court which deals with monopolies and restrictive trade practices. It comprises five judges and up to ten other people with expertise in industry, commerce or public life.

### **The Tribunals Service**

714. Tribunals deal with a wide range of disputes, mostly between individuals and the state, and were traditionally sponsored by the same government department whose decisions they were reviewing. The need to reform the Tribunals system was first set out in Sir Andrew Leggatt's review 'Tribunals for Users – One System, One Service'. The Government accepted his proposals and the Tribunals Service, formed out of over 16 existing tribunals, was created on 3 April 2006 as an executive agency of the Ministry of Justice (MoJ). It reflected the most radical change to this part of the justice system for 50 years.

715. The *Tribunals, Courts and Enforcement Act 2007*, created a First-tier Tribunal and an Upper Tribunal on 3 November 2008. The First-tier Tribunal is the first instance tribunal for most jurisdictions. The Upper Tribunal mainly, but not exclusively, reviews and decides appeals from the First-tier Tribunal. It also has the power to deal with judicial review work delegated from the High Court and Court of Session. Both Tribunals are administered by the Tribunals Service.

716. Both the First-tier Tribunal and Upper Tribunal are divided into chambers grouping together jurisdictions dealing with like subjects or where individual panels need the same types of members. Because the structure is flexible, in the future, if Parliament decides to create a new appeal right or jurisdiction, it will not be necessary to create a new tribunal to administer it.

717. The first phase of the Act's implementation was completed in November 2008. The new system created two tiers (layers) of Tribunal; a First-tier Tribunal and an Upper Tribunal. Within each tier, separate "chambers" were established to deal with similar types of appeals as follows:

#### **Upper Tribunal**

- Administrative Appeals Chamber

#### **First-tier Tribunal**

- Social Entitlement Chamber
- Health, Education and Social Care Chamber
- War Pensions and Armed Forces Compensation Chamber

718. The responsibilities of the Senior President of Tribunals include responsibility for representing the views of the tribunal judiciary to Ministers, Parliament and for training, guidance and welfare. In addition, the Lord Chief Justice has delegated to the Senior President certain of

his powers under the *Constitutional Reform Act 2005*, particularly in relation to judicial discipline of most tribunal judges and members.

### **The Administrative Justice and Tribunals Council**

719. The Administrative Justice and Tribunals Council (AJTC) is an advisory non-departmental public body. It is the successor body to the Council on Tribunals. In addition to taking on the Council of Tribunals' previous role in respect of tribunals and inquiries, it keeps under review the administrative justice system as a whole with a view to making it accessible, fair and efficient. It also advises Ministers and the Senior President on the development of the new system and refers proposals for change to them. The AJTC seeks to ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers reflect the needs of users. The AJTC has a statutory seat on the Tribunal Procedure Committee ensuring it is at the centre of the rule making process for tribunals.

### **Prisons, Probation, Parole**

720. In England and Wales, the commissioning and delivery of adult offender management services in custody and the community in England and Wales is the responsibility of the National Offender Management Service (NOMS) Agency (an executive agency of the Ministry of Justice).

721. In Scotland responsibility for prisons lies with the Scottish Prison Service, an Executive Agency of the Scottish Government. Primary responsibility for probation and post-release services in Scotland lies with local authorities.

722. In England and Wales, the Secretary of State for Justice appoints to each prison establishment an Independent Monitoring Board representing the local community, to provide an independent view on the standards of fairness and humanity with which those placed in custody are treated and on the range and adequacy of the programmes preparing them for release. The Board inform the Secretary of State of any concerns they have, and report annually to the Secretary of State on how well the prison has met the standards and requirements placed on it and what impact these have had on those in its custody. In Scotland, equivalent activities are conducted by visiting committees for each establishment.

723. Prisons in England and Wales are subject to inspection by Her Majesty's Chief Inspector of Prisons who is appointed by the Queen and reports directly to the Secretary of State. The effectiveness of probation work in England and Wales is inspected by Her Majesty's Chief Inspector of Probation, who is appointed by, and reports directly to the Secretary of State. In Scotland, prisons are inspected by HM Prisons Inspectorate for Scotland and criminal justice social work services are inspected by the Social Work Inspection Agency, an independent Government Agency.

724. In England and Wales, the Secretary of State for Justice also appoints the Prisons and Probation Ombudsman. The Ombudsman's role is to investigate and make recommendation relating to individual complaints from prisoners, offenders under probation supervision, and immigration detainees. The Ombudsman is also responsible for investigating any deaths occurring in prisons, approved premises and immigration detention facilities. They report annually to the Secretary of State.
725. A special Parole Board advises the Secretary of State for Justice on the release of prisoners on licence.
726. In Scotland, complaints by prisoners that have not been resolved through the Scottish Prison Service's complaints procedure are investigated by the independent Scottish Prisons Complaints Commission. Complaints about criminal justice social work services such as parole can be considered by the independent Scottish Public Services Ombudsman.

#### **Prisoners' Health**

727. Responsibility for commissioning prison health services in the publicly-run prisons in England lies with the NHS Primary Care Trusts (PCTs). Proposals to replace Primary Care Trusts, with an independent NHS Commissioning Board as set out in the Department of Health's 2010 White Paper consultation exercise for the NHS.
728. In Scotland, medical services in establishments managed by the Scottish Prison Service are provided under a national contract. It is a condition of this contract that all doctors providing services are suitably qualified for prison work and registered with the General Medical Council. All doctors are required to undertake induction training and continuing professional development, and undertake specific prison training, including suicide risk management. Ethical and moral issues are included in the training and learning strategy for prison nursing staff.

#### **Pardons**

729. The Secretary of State for Justice is responsible for advising the Queen on whether in England and Wales there are exceptional grounds for exercising the royal prerogative of mercy, such as in the absence of a court-based remedy, to pardon a person convicted of an offence, or to remit all or part of a penalty imposed by a court.
730. The Cabinet Secretary for Justice in the Scottish Government has similar responsibilities in Scotland. The Minister of Justice in the Northern Ireland Executive deals with applications for the exercise of the Royal Prerogative of Mercy in relation to non-terrorist offences in Northern Ireland, and the Secretary of State for Northern Ireland deals with applications arising from terrorism-related offences.

## **GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

### **C. ACCEPTANCE OF INTERNATIONAL HUMAN RIGHTS NORMS**

731. The UK has ratified the following major United Nations human rights instruments:
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
  - The International Covenant on Civil and Political Rights (ICCPR)
  - The International Covenant on Economic, Social and Cultural Rights (ICESCR)
  - Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
  - Convention on the Rights of the Child (CRC)
  - Convention on the Elimination of Discrimination Against Women (CEDAW)
  - Convention on the Rights of Persons with Disabilities (CRPD).
732. It has also ratified Optional Protocols to CAT, CEDAW, CRC and the CRPD.
733. The UK's Universal Periodic Review took place in April 2008.
734. The United Kingdom is also party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in the UK on 1 February 1989 and the European Convention on Human Rights (ECHR), which the UK ratified in 1951.
735. International treaties ratified by the United Kingdom are not usually directly incorporated into UK law. In general, the UK complies with its international obligations by enacting or amending domestic legislation to ensure compatibility with its treaty obligations. The Government normally takes such measures as are necessary, following normal parliamentary procedures, before it becomes a party to the treaty. The United Kingdom will not ratify a treaty unless the Government is satisfied that domestic law and practice enable it to comply. In the case of the European Convention on Human Rights, this approach was followed initially from signature of this Convention in 1951 until 2000 with the coming into force of the Human Rights Act 1998. The Act gives further effect in the UK law to the rights in the Convention, and makes the Convention rights directly enforceable in UK courts.

736. The derogations, reservations and declarations that the UK has in place with regards to these international instruments are summarised on the website of the United Nations Treaties Collection.<sup>128</sup>

### **Convention Against Torture**

737. The UK's obligation under Article 4 of the Convention Against Torture, to make torture a criminal offence in its domestic legislation, is given effect by s.134 of the *Criminal Justice Act 1988*. Section 134 makes torture, wherever committed, by anyone of any nationality, a criminal offence. The first prosecution under Section 134 of the *Criminal Justice Act*, giving effect in the UK to Article 7 of the Convention, was brought to a conclusion in July 2005, with the conviction of the former Afghan warlord, Faryadi Zardad.

## **D. LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS AT A NATIONAL LEVEL**

### **The European Convention on Human Rights and the Human Rights Act**

738. The UK does not have a written Constitution as part of its national law. People in the UK have long enjoyed a strong tradition of individual liberties but it has not always been easy to say precisely what was involved – or what to do when unwritten liberties conflict with other laws.

739. The European Convention on Human Rights (ECHR), which the UK ratified in 1951, enshrines fundamental civil and political rights. Although the UK was bound to comply with its obligations under the ECHR as a matter of international law from ratification, the ECHR was not directly incorporated into UK law and Convention rights were not directly enforceable before UK courts. The UK Government introduced the Human Rights Act 1998 (“the Act”) to give further effect to the rights in the ECHR. This Act came into force on 2 October 2000.

740. The Act enables victims of a breach of Convention rights to complain directly to a UK court and receive a remedy including damages if a breach is found. It ensures that Convention rights, and the supporting judgments of the European Court of Human Rights, are fully available to UK courts. It also ensures that Parliament has to reflect carefully, in considering proposed legislation, on the difficult question of where the balance lies between the individual's rights and the needs of the wider community. The key principle of the Act is that wherever possible there should be compatibility with Convention rights and it provides a clear legal statement of their basic rights and fundamental freedoms.

741. The Act requires our courts to respect laws passed by Parliament. However, it allows a higher court to declare that a law cannot be given a meaning compatible with the Convention rights. Parliament can then

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<sup>128</sup> <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

decide whether and how to amend the law. In this way, the Act balances the rights and responsibilities of the law-making and judicial parts of our Constitution, leaving the final word to the democratic process.

742. The Act represents a major shift in the UK political and legal system works. Before the Act, UK law did not spell out that public authorities and courts had to respect ECHR rights; and the courts would only look at the ECHR in exceptional cases, for example if UK legislation was unclear.
743. The Act means all core public authorities (such as central and local government, the army, the police etc) must ensure that everything they do is compatible with Convention rights unless an Act of Parliament makes that impossible.
744. The *Human Rights Act* works in three main ways. First, it requires all legislation to be interpreted and given effect as far as possible compatibly with the Convention rights. Where it is not possible to do so, a court may quash or disapply subordinate legislation (such as Regulations or Orders) or, if it is a higher court, make a declaration of incompatibility in relation to primary legislation. This triggers a power that allows a Minister to make a remedial order to amend the legislation to bring it into line with the Convention rights.
745. To date, on every occasion when the courts have declared legislation to be incompatible with the Convention rights (and where this has not been overturned on appeal), the Government has either referred the incompatibility to Parliament to achieve a legislative remedy or is preparing to do so.
746. Second, it makes it unlawful for a public authority to act incompatibly with the Convention rights and allows for a case to be brought in a UK court or tribunal against the authority if it does so. However, a public authority will not have acted unlawfully under the Act if as the result of a provision of primary legislation (such as another Act of Parliament) it could not have acted differently.
747. The Courts will look, with “anxious scrutiny”, to see if the interference with the right in question was really necessary to achieve one or more of the stated aims recognised by the Convention. If the answer is no, the Courts will find that the public authority has acted unlawfully. The Courts will not, however, simply replace the decision maker’s view with their own, and so their role is still one of “review” rather than a full redetermination of the original decision. It is just that the nature of the review is now more intensive.
748. Third, UK courts and tribunals must take account of Convention rights in all cases that come before them. This means, for example, that they must develop the common law compatibly with the Convention rights. They must take account of Strasbourg caselaw. For example, the *Human Rights Act* has been relied on to determine cases involving the competing interests of privacy and freedom of expression.

749. The *Human Rights Act* also imposes a duty on Government Ministers when introducing new legislation. Under the Act, the Minister in charge of any proposed primary legislation has to give a statement to Parliament about the compatibility of the Bill's provisions with the Convention rights. This ensures that the Government considers the impact of the legislation on human rights before the Bill is debated in Parliament, and assists Parliament in its task of scrutiny.
750. In the explanatory notes accompanying the Bill, the Government also draws attention to the main human rights issues arising from the Bill. In the course of going through Parliament, most Bills are considered by the Joint Parliamentary Committee on Human Rights, which may make proposals on how a Bill can be made more consistent with the Convention or with other human rights instruments.
751. Since 2000, only once has a Bill been presented to Parliament with a statement that it could not be certified as being compatible with the Convention rights. This was the Bill that became the *Communications Act 2003*, which dealt with restrictions on funding for political advertising. This approach was supported at the time by the Joint Parliamentary Committee on Human Rights and was endorsed by Parliament, which passed the legislation. The legislation has subsequently been tested in the High Court and the House of Lords and has been upheld. The specific case will be considered by the European Court of Human Rights.
752. Section 1(2) of the Act provides that Convention rights take effect in domestic law subject to any designated derogation or reservation. Under Article 15 of the Convention, the UK has the right to derogate from its obligations in exceptional and prescribed circumstances. Section 14 of the Human Rights Act preserves this right of derogation in domestic law to ensure consistency with the UK's derogations under international law. Similarly, under Article 57 of the Convention, the UK has the right in prescribed circumstances to enter a reservation in relation to its Convention obligations. Section 15 of the Act ensures that these reservations apply to domestic law to ensure consistency with the UK's reservations under international law. At present, the UK has entered one reservation to the Convention, this being Article 2 of the First Protocol. Section 15 expressly maintains this reservation and invests the Secretary of State with power to designate further reservations from the Convention which the UK may enter in the future.
753. The Human Rights Act applies to the Devolved Administrations and legislatures as public authorities, but they are also subject to additional legal requirements to comply with the ECHR. *The Scotland Act 1998*, which created the Scottish Parliament and the Scottish Executive, requires the Scottish Ministers to act in compliance with the ECHR rights and provides that any acts by them that contravene the ECHR are ultra vires. It also provides that any legislation passed by the Scottish Parliament that is incompatible with the ECHR would be outwith the Parliament's legislative competence and thus invalid. This allows



domestic courts to strike down any Scottish legislation that is not in compliance with ECHR. The *Northern Ireland Act*, which created the Northern Ireland Assembly, similarly requires Northern Irish Ministers to act in compliance with the ECHR rights and deems law contravening the rights contained in the ECHR to be ultra vires.<sup>129</sup> A similar provision applies to the Welsh Assembly under the Government of Wales Act 1998.

754. The 1998 Belfast Agreement tasked the Northern Ireland Human Rights Commission with advising the Secretary of State for Northern Ireland on “the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland”. Following the October 2006 St Andrews Agreement, a Bill of Rights Forum was established to assist this process. On 31 March 2008 the Forum presented recommendations to the Northern Ireland Human Rights Commission who, having considered the Forum’s report, presented its advice to Government on 10 December 2008. On 30 November 2009, the then Government launched a consultation on “A Bill of Rights for Northern Ireland: Next Steps” which ended on 31 March 2010. This revealed deep divisions and a lack of agreement on the way forward. The current Government will engage with the Northern Ireland Executive, political parties in Northern Ireland and others on how best to reach the necessary consensus to resolve this issue finally.
755. Following the General Election of May 2010, the Government made the following commitment: we will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties. We will seek to promote a better understanding of the true scope of these obligations and liberties.
756. The United Kingdom Ministry of Justice has policy responsibility for the proposed Commission. Decisions on precise timing, scope and membership of the Commission will be made in due course.

#### **Rights of Children and Young Persons (Wales) Measure 2011**

757. The Rights of Children and Young Persons Measure received Royal Assent in March 2011. The Measure imposes a duty upon the Welsh Ministers and the First Minister to have due regard to the rights and obligations in the United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols, when making policy decisions of a strategic nature.

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<sup>129</sup> s.6(2)(c) Northern Ireland Act 1998.

758. The Measure will require the Welsh Ministers to prepare a children's scheme and to produce reports about compliance with the duty to have due regard to the UNCRC and its Optional Protocols, along with promoting understanding of the UNCRC and amending legislation to give better effect to the UNCRC and its Optional Protocols.
759. The Measure aims to embed the principles of the United Nations Convention on the Rights of the Child into law on behalf of Welsh children.

### **The Freedom Bill**

760. The Government has also made a commitment to introduce a Freedom Bill. This Bill is expected to include provisions to introduce safeguards against the mis-use of counter-terrorism legislation, to further regulate Closed-circuit television, and adopt new protections for a national DNA database. The Bill is expected to be introduced into Parliament by 2011.

### **Legal assistance, compensation and rehabilitation**

#### ***Legal aid***

761. In all three jurisdictions of the UK there is a comprehensive system whereby a person in need of legal advice or representation in court may receive financial assistance out of public funds. These schemes are referred to as "Legal Aid" and are fundamental to the realisation of each individual's legal rights. Legal aid is aimed at those on low and modest incomes and may be granted in full, or subject to financial contribution by the individual. If legal aid is granted, the case is conducted in the normal way, except that no money passes between the individual and their solicitor: all payments are made through the legal aid fund. Ministerial responsibility for legal aid in England and Wales rests with the Lord Chancellor and with Scottish Ministers in Scotland.
762. In England and Wales, the Legal Services Commission administers legal aid, which falls under the two distinct heads of the Community Legal Service (for civil cases) and the Criminal Defence Service.
763. Under the Community Legal Service, a network of contracted organisations provide civil legal services. The rules relating to the provision of civil legal aid are principally set out in the Access to Justice Act 1999 and the Funding Code created under that Act. An individual will only be granted financial assistance if their case is within the scope of the scheme and passes the means and merits tests. In addition to face-to-face legal assistance the Legal Services Commission runs a helpline that provides free, confidential and independent legal advice.
764. The Criminal Defence Service provides criminal legal aid to assist individuals who are under investigation or facing criminal charges. Eligibility for criminal legal aid will be determined firstly by the court in which the case is being heard. In the Magistrates Court, a defendant will only qualify if they pass a financial means test and satisfy the "interests

of justice” test. In the Crown Court, defendants awaiting trial automatically satisfy the “interests of justice” test. While all defendants qualify for legal aid, they are subject to a means test and may be required to contribute towards the costs of their case from income and /or capital. Defendants who have made contributions and are then subsequently acquitted, will have those contributions refunded with interest.

765. In Scotland legal aid is managed by the Legal Aid Board. The Board provides legal advice and assistance and deciding who should receive financial assistance. As in England and Wales, the scheme is divided under two heads; Civil Legal Assistance and Criminal Legal Assistance. To be eligible for civil legal aid an individual must qualify financially, have a legal basis for their case, and must not have financial assistance available elsewhere. To be eligible for criminal legal aid an individual must demonstrate that their income and capital are within the current financial limits set by Parliament.
766. In Northern Ireland, the provision of legal aid is the responsibility of the Northern Ireland Legal Services Commission. Eligibility for legal aid in civil or criminal matters is determined by a means and merits test.
767. If a person feels that their rights under the European Convention on Human Rights have been violated and intend to bring their case before the European Court of Human Rights there are number of schemes available to provide them with legal advice and assistance. Under the legal help scheme, a person may be assisted by an experienced solicitor or legal advisor in the preliminary stages of their application. If the European Court of Human Rights in Strasbourg declares an application admissible, an applicant may get financial assistance directly from Strasbourg. Eligibility is determined on the basis of whether or not an applicant would be eligible for domestic legal aid.
768. In a number of urban areas, law centres provide legal advice and representation which may be free depending on means. Law centres, which are financed from various sources, often including local government authorities, usually employ full-time salaried lawyers; but many also have community workers. Much of their time is devoted to housing, employment, social security and immigration problems. Free advice is also available in Citizens Advice Bureaux, consumer and housing advice centres and in specialist advice centres run by various voluntary organisations. The Refugee Legal Centre and the Immigration Advisory Service, both of which receive government funding, provide free advice and assistance to asylum seekers, and the Immigration Advisory Service also provides free advice and assistance to persons with immigration rights of appeal.

***Victims of crime***

769. The courts may order an offender, on conviction, to pay compensation to the victim for personal injury, loss or damage resulting from an offence.

In England and Wales the courts are obliged to consider compensation in every appropriate case and to give reasons where no compensation is awarded. Compensation for a victim must come ahead of a fine if the court is considering both, and the recovery of amounts awarded in compensation must be put ahead of recovery of fines.

770. Where the Crown Prosecution Service declines to prosecute, victims may prosecute privately in England and Wales, but in practice seldom do so. Victims may also sue for damages in the civil courts. Court procedure has been simplified so that persons without legal knowledge can bring small claims for loss or damage.
771. Victims of any nationality who suffer injury as a result of violent crime in England, Wales or Scotland may apply for compensation from public funds under the Criminal Injuries Compensation Scheme. Compensation is based on a tariff of awards, and payments range from £1,000 to £500,000 for the most seriously injured victim.
772. Separate arrangements exist in Northern Ireland, where compensation can in certain circumstances be paid from public funds for criminal injuries, and for malicious damage to property, including the resulting loss of profits.
773. There are three organisations in the UK that provide generic support to victims of crime: Victim Support – which covers England and Wales – Victim Support Scotland and Victim Support Northern Ireland. These receive funding from the government.
774. In June 1996 the Government published a new Victim's Charter which was subsequently made a statutory requirement through the Victims Code of Practice in April 2006. Victims now have the legal right to a high quality of service from the criminal justice agencies. The code also tells victims how to complain if they do not receive a high quality of service. The introduction of the Witness Charter gave witnesses a similar, but non-statutory, set of standards of service. A separate Code of Practice for victims of crime has been published in Northern Ireland, which sets out the standards of service which victims should receive during their contact with the NI criminal justice system and how to make a complaint. All victims of reported crime are given a "Victims of crime" leaflet which gives practical advice about what to do in the aftermath of a crime. It explains simply the police and court processes, how to apply for compensation and what further help is available.

***Compensation for wrongful conviction***

775. Cases of alleged wrongful conviction are investigated and considered by the Criminal Cases Review Commission (CCRC).<sup>130</sup>

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<sup>130</sup> Established by the Criminal Appeal Act 1995, and became operational in 1997.

776. Under *section 133 of Criminal Justice Act 1988*, a person convicted of a criminal offence which has been quashed by the appeal court following an out of time appeal or following a reference by the CCRC, can apply to the Secretary of State for payment of compensation. If the person concerned has died, his or her personal representative may submit an application.
777. In determining whether compensation should be paid under the 1988 Act, the Secretary of State will consider whether the decision of the appeal court to quash the conviction or the grant of a pardon, was due to new or newly discovered facts showing beyond reasonable doubt that there was a miscarriage of justice. In reaching a decision on whether compensation is payable the Secretary of State will also take into account whether the previous non-disclosure of the new fact was wholly or partly attributable to the person applying for compensation.
778. If the Secretary of State considers that payment of compensation is justified under the *Criminal Justice Act 1988*, the amount is determined under that legislation by an independent assessor.

### **National Machinery for the implementation of human rights**

#### ***Joint Committee on Human Rights***

779. As an aid to oversight of progress on the promotion and protection of human rights in the United Kingdom, a specialist Parliamentary Committee – the Joint Committee on Human Rights – undertakes inquiries on human rights issues and reports its findings and recommendations to Parliament.
780. The Committee consists of twelve members appointed from all parties and from both Houses of Parliament. The Committee scrutinises all Government Bills and selects those with significant human rights implications for further examination. Although it cannot take up individual cases, the Committee looks at Government action to deal with judgments of the UK courts and the European Court of Human Rights where breaches of human rights have been found. As part of this work, the Committee looks at how the Government has used remedial orders to amend legislation following a finding by the Courts of an incompatibility with the Convention rights.

#### ***Human Rights Commissions***

781. There are three independent national human rights commissions in the United Kingdom: the Commission for Equality and Human Rights (EHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC). All are publicly funded, but are independent of government.
782. The EHRC was established on 1 October 2007. Its remit is to champion equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights, and build good relations

between communities, ensuring that everyone has a fair chance to participate in society. Its remit extends to England and Wales and Scotland. The EHRC brings together the work of Great Britain's three previous equality commissions (for racial equality, gender equality, and the rights of disabled people) and also takes on responsibility for new strands of discrimination law (age, sexual orientation and religion or belief), as well as human rights. It has powers to enforce equality legislation, and has a mandate to encourage compliance with the HRA.

783. The NIHRC is an independent statutory body set up in 1999. Its role is to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice, and to advise government on what steps need to be taken to protect human rights in Northern Ireland. It is able to conduct investigations, to assist individuals when they are bringing court proceedings, and to bring court proceedings itself.
784. The Scottish Human Rights Commission (SHRC) was created by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The SHRC's main purpose is to promote human rights and to encourage best practice in relation to human rights (its remit does not extend to equality legislation, as that is outside the Scottish Parliament's remit). It is also able to review and recommend changes to Scots law and to the policies and practices of Scottish public authorities. It has legal powers to obtain information and enter places of detention, and is able to intervene in legal proceedings in human rights cases.

#### ***The Children's Commissioner***

785. The UK has established an independent Children's Commissioner in each of the UK jurisdictions. The remit of the Children's Commissioner for Wales, the Commissioner for Children and Young People for Northern Ireland, and Scotland's Commissioner for Children and Young People, is to safeguard and promote children's rights.
786. This is different to the current function of the Children's Commissioner for England, whose role is to promote awareness of the views and interests of children in England. However, following an independent review of the Children's Commissioner for England, the Government has accepted, in principle, all its recommendations. As well as giving the Children's Commissioner greater independence, it will also amend the Children's Commissioners remit so that it too focuses on promoting and protecting the rights of children, in line with the UNCRC.

#### ***Data Protection and Freedom of Information***

787. The *Freedom of Information Act 2000* (FOIA), which came into force in January 2005, gives anyone the right to access information held by public authorities. The FOIA applies to recorded information held by public authorities in England, Wales and Northern Ireland. Scotland has

its own equivalent legislation: the *Freedom of Information (Scotland) Act 2002*.

788. The public sector outside central government bodies receives at least 87,000 FOI requests per year. In 2009, central government received over 40,000 FOI and EIR requests. In 2009, 58% of resolvable requests to central government were met in full. A further 23% were withheld in full. If a requester is not content with a public authority's decision on access to information, they can ask the public authority to conduct an internal review. If they are still not satisfied, they may complain to the independent Information Commissioner, and subsequently to the independent Information Tribunal.
789. The Government is committed to ensuring that information sharing is undertaken in a secure and controlled manner, recognising that legal and process controls must be in place to ensure that information is not shared inappropriately or disproportionately.
790. The processing of personal data is regulated by the *Data Protection Act 1998* (DPA), which came into force in March 2000 (replacing the Data Protection Act 1984). Under the DPA organisations and individuals must comply with data protection principles. These principles include ensuring that data processing is fair and lawful; that data is processed only for specified and lawful purposes; and that data is accurate.
791. The Information Commissioner is an independent supervisory authority responsible for the enforcement of legislation relating to freedom of information and data protection. The Information Commissioner's Office also promotes good practice on access to official information and the protection of personal information by ruling on eligible complaints, providing information and guidance to individuals and organisations, and taking appropriate action when the law is broken.

### ***Complaints against the Executive***

792. Members of the public who believe that they have been treated unjustly as a result of maladministration can have their complaints investigated by the office of the Parliamentary Commissioner for Administration (PCA) – often referred to as the “Ombudsman” – established by the *Parliamentary Commissioner Act 1967*.
793. The PCA can investigate actions taken “in the exercise of administrative functions” by or on behalf of the departments of central Government. A complaint must be taken initially to a Member of Parliament who will decide whether to refer it to the PCA. The PCA is independent of Government, and reports to a committee of the House of Commons. Its reports are published.
794. A number of other “Ombudsmen” have also been established, for local government, for the National Health Service and the Legal Services Ombudsman.

795. There are separate independent ombudsmen for Scotland, for Wales and for Northern Ireland. Under the *Scottish Public Services Ombudsman Act 2002*, the Scottish Government is legally required to co-operate with investigations by the Ombudsman and to make reports available for scrutiny. The *Public Services Ombudsman (Wales) Act 2005* established the Public Services Ombudsman for Wales to provide an independent and impartial investigation into alleged malpractice in the administration of public services in Wales. The *Parliamentary Commissioner Act (NI) 1969* (superseded by the *Ombudsman (NI) Order 1996*) provides for an Ombudsman to oversee the work of Northern Ireland government departments. The *Commissioner for Complaints Act (NI) 1969* (superseded by the *Commissioner for Complaints (NI) Order 1996*) provides for similar oversight of the wider public sector in Northern Ireland.

### **Police Complaints**

796. In England and Wales, complaints against the police are dealt with by the Independent Police Complaints Commission (IPCC), which came into operation on 1 April 2004, replacing the former Police Complaints Authority.
797. The IPCC has responsibility for ensuring that there are adequate arrangements in place for dealing with complaints or allegations of misconduct by any police officer or member of police staff. It also has authority to carry out independent investigations into complaints in more serious incidents. The IPCC was created to ensure greater confidence in the complaints system, and to promote respect for the human rights of individuals by ensuring that complaints could be independently investigated.
798. In 2008–09 the IPCC received 31,259 complaints (an increase of 8% over 2007–08). These comprised 53,534 allegations, of which 18,137 (36%) were investigated (by the police and by the IPCC combined). Of the completed investigations, 1,810 (10%) were substantiated.
799. In Scotland, complaints against the police are dealt with in the first instance by the police force concerned. If a complainant is not satisfied with how that complaint has been dealt with he or she can refer the matter to the Police Complaints Commissioner for Scotland (PCCS), whose post was established by the *Police, Public Order and Criminal Justice (Scotland) Act 2006*. In 2007/08, the Commissioner received 325 enquiries and in 2008/09 375 enquiries were received.
800. The *Police (Northern Ireland) Act 1998* established the Police Ombudsman for Northern Ireland, an independent body charged with investigating complaints about the police. The Ombudsman has independent control of the police complaints system and all complaints about the police must be referred to his office. Where the Ombudsman believes a criminal offence has been committed he passes the outcome of his investigations, with recommendations, to the Director of Public



Prosecutions for his consideration. Where it is believed a disciplinary offence has been committed the matter is referred with recommendations to the Chief Constable or Policing Board, depending on the seniority of the officer. In the 9 years since the office was established, almost 30,242 complaints have been dealt with (as at 31 March 2010).

## **E. FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROMOTED AT A NATIONAL LEVEL**

### **The role of national parliament and human rights institutions:**

801. Nationally, the Human Rights Commissions have a key role to play in the promotion and protection of human rights throughout the UK; this being one of their central responsibilities. Equally, the Joint Committee on Human Rights (JCHR) also acts as a key contributor. By scrutinising the work of Government and consequently, holding the executive to account they provide a competent system of checks and balances. Furthermore, the JCHR also ensures that there is positive progression in promotion of human rights generally.

### **Judicial, legal and official training and education in human rights**

802. The passage of the *Human Rights Act 1998* required a major training programme for all those working in the legal system. Although the Act was approved by Parliament in 1998, it was not brought into force until October 2000, in order to allow time for legal professionals to be re-trained.
803. Between January and October 2000, the Judicial Studies Board co-ordinated training in the *Human Rights Act* for all judges. Training was by seminars, consisting of introductory lectures, case studies and plenary sessions. Speakers included Sir Nicholas Bratza, the UK judge on the European Court of Human Rights, and Judge Luzius Wildhaber, previously President of the European Court of Human Rights.
804. From September 1999 onwards, training along similar lines was provided for magistrates' legal advisers – justices' clerks and court clerks – with a refresher day in the early autumn of 2000, immediately ahead of the implementation of the Act. Training for magistrates was then organised and delivered by the legal advisers.
805. The Bar Council of Great Britain provided formal training in human rights for some 6,000 barristers. The Crown Prosecution Service provided three days training for all prosecutors, and issued a manual of guidance to its staff listing all relevant European cases, with legal updates on new case law every fortnight.
806. Education on human rights was integrated into the curriculum for the Qualifying Law Degree in all UK universities, and also pervades the vocational courses for barristers and solicitors.

807. Nevertheless, in its 2006 *Review of the Implementation of the Human Rights Act*, the Government recognised that there was widespread misunderstanding of the Act amongst officials working in the public sector, and the review recommended an urgent programme of training and awareness raising to ensure a correct understanding of and application of the Human Rights Act. As a result, the Ministry of Justice has distributed over 118,000 copies of a handbook, *Human Rights: Human Lives*, to other government departments, their sponsored bodies, and other organisations in the wider public sector. The handbooks are intended to improve the understanding of and the operation of domestic human rights policy particularly, but not exclusively, among public authorities. For the general public and non-experts, there are two main publications available: *Human Rights Act – an Introduction* and a third edition of the well received, *A Guide to the Human Rights Act 1998*. Each of these publications is available on-line, as well as in hard-copy format which will be supplied on request.
808. Nominated senior officials within Government Departments have provided leadership to mainstreaming human rights within their Departments and sponsored bodies through a Senior Human Rights Champions network. This network continues to meet every three months and provides an opportunity for departments to share expertise, information and good practice. Through sharing good practices the Ministry of Justice is providing leadership to other Government Departments in taking forward their training and other initiatives to ensure that the human rights framework is being used both within their department and by their sponsored bodies.
809. In March 2007 the Department of Health (DoH) launched *Human Rights in Healthcare – A Framework for Local Action* project. The project aimed to deliver a suite of human rights products that can be used by trusts across the National Health Service (NHS); a series of human rights learning events; and a robust business case for developing human rights-based approaches, and identifying key success factors. In January 2009 DoH published the first NHS Constitution for England,<sup>131</sup> which sets out the standards, values and principles that guide the NHS. This includes as a first principle that the NHS provides a comprehensive service, available to all, and that “*it has a duty to each and every individual that it serves and must respect their human rights.*” This is underpinned by the ‘Handbook to the NHS Constitution’, which explains what human rights legislation means in practice for the NHS.
810. In 2009 a human rights guide was produced for Inspectorate, Regulatory and Ombudsman bodies. The guide highlights that by using a human rights framework in the design, interpretation and application of regulatory and inspection practices, bodies working in the field can

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<sup>131</sup> [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_113613](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113613)

benefit from improved coherence and assist in providing for protection of human rights at all levels within their organisation. These organisations have an important role to play in promoting human rights in public services, not only through ensuring that public authorities take account of human rights, but also through providing guidance, disseminating best practice and involving service users in monitoring standards.

811. For training public officials in human rights, the Government launched an e-learning package in March 2008. The electronic training is designed to raise awareness and understanding of human rights and also promote a 'human rights culture' throughout the public sector. The package is composed of a number of case studies, on completion of which an individual will have a greater understanding of the application of human rights to their work. The package is available to all public authorities (and the wider public) through the National School of Government's 'Virtual School' and is promoted widely by the MoJ and the National School of Government.

***Education in human rights among wider society***

812. In July 2008, the Government published a new Key Stage 3 (11–14 year olds) resource for teachers in England called *Right Here, Right Now: Teaching Citizenship through Human Rights*. The resource formed part of the Human Rights in Schools project, a partnership between the Ministry of Justice and the British Institute of Human Rights, also involving the Department for Children, Schools and Families, Amnesty International and a number of other governmental and non-governmental organisations. Through its 12 lesson plans, the resource aims to link the concepts of universal human rights with everyday experience, focusing on what human rights mean in practice. Its aim is to bring human rights to life within the classroom, to form the basis of fresh discussion and debate, and to ensure everyone within a school understands their rights and the rights of all those around them. The resource is freely available to download.<sup>132</sup>
813. The Government has taken forward a programme of work to raise awareness of human rights within the UK private sector, and to encourage private sector organisations to adopt a human rights based approach in their activities. The programme has included an initial scoping study to gain an understanding of how UK companies engage with human rights, and the development of an online information portal, including a human rights guide for businesses and mapping of the roles and responsibilities of organisations in the business and human rights arena.

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<sup>132</sup> <http://www.teachernet.gov.uk/teachingandlearning/subjects/citizenship/rhrn/>

***Dissemination of human rights instruments nationally***

814. There are various methods through which materials relating to international human rights instruments are disseminated throughout the United Kingdom. Those UN Instruments signed by the UK, are published by Her Majesty's Stationery Office, (on behalf of the Government), presented to Parliament and made available in libraries and for purchase. Reports concerning compliance with international obligations under UN human rights instruments are both prepared and made available to Parliament, interested bodies and members of the public by the Government. Furthermore, the individual Government Department responsible for oversight of implementation (and compliance with) UN human rights instruments also lead on their dissemination. The same principle applies in the case of domestic human rights legislation where the leading Department will also be in charge of disseminating the content of the proposals.

815. As a result of their specific remit in the field of human rights at domestic and international level, both the Ministry of Justice and the Foreign and Commonwealth Office have dedicated human rights pages on their websites:

- **Ministry of Justice:** Human rights:  
<http://www.justice.gov.uk/about/human-rights.htm>
- **Foreign and Commonwealth Office:** Government international human rights strategy: <http://www.fco.gov.uk/en/global-issues/human-rights/>

**Partnership with International Organisations and Organised Civil Society:**

***Non-Governmental Organisations***

816. Civil Society Organisations have a key role to play in the protection, promotion and advancement of human rights in the UK. The Government sees benefit in close working relations with them in the formulation of domestic human rights policy and furthermore, consulting these bodies prior to Inter-Governmental meetings. Civil Society Organisations also have a key role to play in the provision of human rights training amongst Government officials and also, in raising public awareness on key human rights issues.

***Pledges***

817. The United Kingdom is deeply committed to the work of the United Nations to increase respect for human rights throughout the world. Accordingly it has pledged to work in partnership with the Human Rights Council to reinforce human rights at the heart of the UN; to continue to support UN bodies; to work for progress on human rights internationally; and to uphold the highest standards of human rights at home.

### **International initiatives**

818. As well as upholding human rights at home, the UK is committed to their promotion and protection internationally. Her Majesty's Government works on human rights around the world through bilateral contacts; membership of international organisations; through development aid and assistance; and in partnership with civil society.
819. Within the United Nations, the UK actively participated in establishing the Human Rights Council as a founding member and is now focused on making the body as effective as possible. In addition, the UK is committed to seeing the UN General Assembly's Third Committee deliver results in co-ordination with the work done by other parts of the UN human rights framework. An important part of the framework is the valuable work done by the Office of the UN High Commissioner for Human Rights (OHCHR). The UK currently gives the OHCHR £2.5 million annually as a voluntary contribution, in addition to our regular budget contribution to the UN.
820. The UK co-operates fully with the UN's human rights mechanisms, and welcomes visits from all Special Procedures. In September 2007, the UK was the main sponsor of an initiative that successfully established a new Special Rapporteur on Contemporary Forms of Slavery.
821. The UK encourages the ratification of UN human rights instruments and, through development and other assistance programmes, works to ensure they are successfully implemented. For example, over the past five years the UK has lobbied globally to encourage the ratification of the Convention Against Torture and its Optional Protocol and has provided practical technical assistance where this was useful. Furthermore, the UK also actively supports the work of Action 2, a UN Programme to mainstream, strengthen and streamline UN human rights work at country level.
822. In addition to the UN, the UK actively engages on a full range of human rights issues with other international and regional organisations, such as the European Union, G8, OSCE, the Commonwealth, the Council of Europe, the World Bank and many others. The UK Government aims to promote the better integration of human rights in the international system as a whole and to ensure that human rights are central to the full range of work done by international bodies.
823. The UK recognises that development and human rights are inter-linked and mutually reinforcing and consequently supports country-led development strategies that integrate human rights. The Department for International Development works to support partner governments in fulfilling their human rights obligations, and strengthening the ability of people to claim their rights.
824. The UK is committed to developing effective partnerships with other governments. This is achieved through shared commitment to three

objectives: poverty reduction and reaching the Millennium Development Goals; respecting human rights and other international obligations; and strengthening financial management and accountability.

825. The UK puts these policies into practice through a range of interventions. For example, on the *right to education*, the UK has committed to prioritise aid spending on programmes to ensure that everyone has access to education.
826. In implementing its commitment to human rights globally, the UK acts in a spirit of consultation, openness and accountability. Through its membership of a wide number of international bodies, and through its global network of overseas embassies, the UK works to support the desire of everyone to realise the full range of their individual human rights.

## **F. REPORTING PROCESS AT NATIONAL LEVEL**

827. The following table identifies the leading Government Department for the reporting process under the six main UN instruments ratified by the UK and the Universal Periodic Review (UPR).

| <b>UN Instrument</b> | <b>Lead Government Department</b> | <b>Co-ordination with Crown Dependencies</b> | <b>Co-ordination with Overseas Territories</b> |
|----------------------|-----------------------------------|--|--|
| ICERD                | Communities and Local Government  | Ministry of Justice                          | Foreign and Commonwealth Office                |
| ICCPR                | Ministry of Justice               | Ministry of Justice                          | Foreign and Commonwealth Office                |
| ICESCR               | Ministry of Justice               | Ministry of Justice                          | Foreign and Commonwealth Office                |
| CEDAW                | Government Equality Office        | Ministry of Justice                          | Foreign and Commonwealth Office                |
| CAT                  | Ministry of Justice               | Ministry of Justice                          | Foreign and Commonwealth Office                |
| CRC                  | Department for Education          | Ministry of Justice                          | Foreign and Commonwealth Office                |
| CRPD                 | Department for Works and Pensions | Ministry of Justice                          | Foreign and Commonwealth Office                |
| UPR                  | Ministry of Justice               | Ministry of Justice                          | Foreign and Commonwealth Office                |

828. The United Kingdoms reports comprise contributions from across government. Reports are shared in draft with relevant stakeholders, including Non Governmental Organisations and national human rights bodies, to seek their views, prior to finalising reports and submitting them to the United Nations.

## INFORMATION ON NON-DISCRIMINATION AND EQUALITY AND EFFECTIVE REMEDIES

### United Kingdom

829. The table below summarises the legislation enacted since 1998 to guarantee equality before the law, equal protection under the law and to prohibit discrimination.
830. One of the main conventions, on which the UK's unwritten constitution operates, is the 'rule of law'. This is the belief that all persons and authorities are equal before the law. Not only does this convention reinforce the concept of checks and balances inherent to any democratic society but also, the idea of legal equality. The operation of this rule, without exception or qualification, indicates that the idea of equality is of great constitutional significance within the UK. Its continuing importance in the UK today is well illustrated by s.1 of the Constitutional Reform Act 2005 which states that:
- 'This Act does not adversely affect—
- (a) the existing constitutional principle of the rule of law, or
- (b) the Lord Chancellor's existing constitutional role in relation to that principle.'
831. In Great Britain, several pieces of legislation to prohibit discrimination have been enacted over the past 40 years. The first was the *Race Relations Act 1965* (now repealed and replaced by the *Race Relations Act 1976*), followed by the *Equal Pay Act 1970*, and the *Sex Discrimination Act 1975*. The *Disability Discrimination Act* (DDA) was introduced in 1995. Further legislation was introduced in 2003 and 2006 to prohibit discrimination on grounds of sexual orientation, religion or belief and age in employment and vocational training, in order to implement the European Framework Directive. Discrimination on grounds of religion or belief and sexual orientation outside the workplace was prohibited in 2007. All these pieces of legislation were subsequently incorporated into the Equality Act 2010, which was enacted in April 2010 and the majority of whose provisions came into force on 1 October 2010. This means that the previous anti-discrimination laws are now repealed except for a number of provisions which remain in force on a transitional basis.
832. The DDA is the only UK-wide piece of anti-discrimination legislation. Other discrimination law described here applies to Great Britain. Northern Ireland legislation prohibiting discrimination broadly accords with Great Britain's legislation.
833. Great Britain's anti-discrimination legislation in the form of the Equality Act 2010 prohibits direct discrimination, indirect discrimination, victimisation and harassment in employment (and employment-related areas), vocational training (including further and higher education), education in schools and in further and higher education institutions,

the provision of goods, facilities and services, private members' clubs, the disposal and management of premises, and the exercise of public functions. One of the two main purposes of the Equality Act 2010 was to streamline and simplify the law, bringing it together and making it more consistent. The other main purpose was to strengthen the law in a number of ways, including more protection for disabled people and for people like carers who might be discriminated against because of their association with an older or disabled person.

834. Amongst other things, the Equality Act 2010 consolidates and expands the existing duty on public authorities to think about the implications of their programmes and policies from the perspective of race, gender and disability. The Act requires public authorities to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations in respect of the “protected characteristics” of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. This ‘positive duty’ model requires public authorities proactively to factor equality considerations into the design and delivery of their policies and services, and in their capacity as employers.
835. In Northern Ireland, additional protections have been established to promote equality. The Equality Commission for Northern Ireland (ECNI) was created following the 1998 Belfast Agreement. Its functions include the promotion of equality of opportunity; affirmative action; and good relations between people of different racial groups. The Commission also oversees the effectiveness of anti-discrimination and equality legislation; and the statutory equality duty put in place by section 75 of the *Northern Ireland Act 1998*, including investigatory powers to ensure compliance.
836. The *Government of Wales Act* contains provisions designed to promote equality and protect rights. In particular, Welsh Ministers must make arrangements to ensure that the Welsh Assembly Government operates “with due regard to the principle that there should be equality of opportunity for all people”.

### **Practical Measures**

837. *The Equality Act 2006* introduced a number of practical measures aimed at strengthening equality in the UK. The Act not only provided for the establishment of the Commission for Equality and Human Rights but also empowers this body to act as an independent advocate for equality and human rights in the UK.
838. The Coalition Government’s commitment to equality was set out in the Coalition Programme for Government which commits to tearing down barriers to social mobility and equal opportunities. The Government Equalities Office (GEO) has responsibility for the Government’s overall strategy and priorities on equality as they lead on equality policy and legislation. Working across Government, the GEO ensures that equality



policy is firmly integrated into the Government's approach and oversees that it is delivered and implemented effectively.

839. Measures tackling inequality in society has been a high priority on the Government's agenda and the focus of Government policy has not only been aimed at those disadvantaged by low income. The Government approach is wider, aimed at tackling the combined linked causes (and consequences) of being socially excluded. The Social Exclusion Task Force (SETF) lead on this area, identifying Government priorities, testing solutions and facilitating policy implementation across Government and consequently, from Government into society. Measures taken include schemes focused on community regeneration; programmes aimed specifically at increasing the health and well-being of children in deprived areas; increasing funding and the performance management of poor service; and schemes and incentives focused on getting the disadvantaged back into employment.

| <b>Legislative or other measures (with year of adoption)</b>                  | <b>Main subject area</b>  |
|---|---|
| Human Rights Act 1998   | Making the ECHR directly enforceable in domestic courts. Individuals retain the right to appeal to the ECtHR providing they have exhausted all domestic remedies. |
| Sex Discrimination (election candidates) Act 2002                             | Fighting discrimination based on gender in the electoral process.   |
| Employment Equality Regulations 2003 (sexual orientation, religion or belief) | Fighting discrimination based on sexual orientation or religion and belief at work.   |
| Civil Partnership Act 2004  | Civil recognition of same-gender partnerships.  |
| Employment Relations Act 2004   | Protection of employees from dismissals and procedures for industrial action.   |
| Gender Recognition Act 2004   | Civil recognition of transsexual people in their acquired gender.   |
| Children Act 2004   | Protection of children from abuse   |
| Domestic Violence, Crime and Victims Act 2004                                 | Increased penalties in domestic violence cases and support for the victims  |
| Disability Discrimination Act 2005  | Strengthening provisions to fight discrimination of persons with a disability.  |
| Electoral Administration Act 2006   | Improving engagement to voting and confidence in the electoral process.   |
| Equality Act 2006   | Establishment of the EHRC and promotion of human rights.  |
| Work and Families Act 2006  | Fairer balance of rights and responsibilities for employers and employees, particularly in the case of pregnant workers   |
| Employment Equality Regulations 2006  | Fighting discrimination based on age at work.   |
| Scottish Commission for Human Rights Act 2006                                 | Establishment of Human Rights Commission in Scotland.   |

## PART 2: UNITED KINGDOM CROWN DEPENDENCIES

### I. GENERAL INFORMATION

1. This is a compilation of reports by the Governments of the United Kingdom Crown Dependencies (Guernsey, Jersey and the Isle of Man). It forms the fourth report for the United Kingdom Crown Dependencies pursuant to article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Previous reports by the Crown Dependencies have been included in the UK's periodic reports.
2. Updates since the last report against each of the relevant articles for each of the Crown Dependencies are listed below.

#### Guernsey

3. The position detailed in the Bailiwick of Guernsey's initial report on the implementation of the Convention remains largely unchanged.
4. The Bailiwick of Guernsey's authorities continue at all times to seek to ensure that the requirements of the Convention are scrupulously observed.
5. The States of Guernsey, States of Alderney and Chief Pleas of Sark<sup>133</sup> have enacted the *Human Rights (Bailiwick of Guernsey) Law 2000* which has received Royal Sanction and came into force on 1 September 2006. This legislation is very similar to the United Kingdom's *Human Rights Act*. Article 3 of Schedule 1 provides that no one shall be subjected to torture or inhuman or degrading treatment or punishment, and the Law further strengthens the remedies open to individuals who consider that their rights in this respect have been violated.

#### Jersey

6. The States of Jersey Government continues at all times to seek to ensure that the requirements of the Convention are fully observed. Accordingly, the information provided in this report is supplementary to that provided in the previous reports. All Jersey's legislation can be viewed online at [www.jerseylaw.je](http://www.jerseylaw.je)
7. *The Human Rights (Jersey) Law, 2000* received Royal Assent on 17 May 2000 and came into force on 10 December 2006. As a result, Articles 2 to 12 inclusive and Articles 14, 16, 17 and 18 of the European Convention on Human Rights (ECHR), Articles 1, 2 and 3 of the First

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<sup>133</sup> Chief Pleas is the Island's legislative body.

Protocol, Articles 1 and 2 of the Sixth Protocol and Article 1 of the Thirteenth Protocol thereto have been incorporated into the domestic law of the Island. The incorporation of Article 3 of the Convention gives further effect to the existing domestic law, which safeguards against and punishes the use of torture, cruel or other inhumane or degrading treatment or punishment.

### **Isle of Man**

8. In its conclusions and recommendations on the United Kingdom's fourth periodic report (CAT/C/CR/33/3, published 10 December 2004) the Committee noted the enactment of the Isle of Man's *Human Rights Act 2001* (paragraph 3(h)). This Act was brought fully into force on 1 November 2006. The Act gave further effect in Isle of Man law to the substantive rights and freedoms contained in the European Convention for the protection of Human Rights and Fundamental Freedoms. As Article 3 of the European Convention provides that no one shall be subjected to torture or inhuman or degrading treatment or punishment, this represented a further strengthening of the remedies open to individuals who consider that their rights in this respect have been violated.
9. In paragraph 3(i) of the conclusions and recommendations the Committee noted the United Kingdom's early ratification of the Optional Protocol to the Convention Against Torture. The Isle of Man Government has asked the United Kingdom Government to extend the scope of its ratification to include the Isle of Man.

## **II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION**

### **Articles 2 and 4**

#### **Guernsey**

##### ***Access to legal assistance***

10. In the Bailiwick, section 66 of the *Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003* (PPACE) provides that where a person is arrested and held in custody, he may consult an Advocate at any time. However, this right can be withheld from that person if he is detained although not charged with a serious arrestable offence (which includes murder, manslaughter and rape) but only if an officer of the rank of Chief Inspector or above has reasonable grounds to believe that access to legal advice might:
  - Lead to interference with or harm to evidence;
  - Lead to interference with or physical injury to other people;
  - Alert others suspected of having committed such an offence but not yet under arrest, or hinder the recovery of property; or

- Hinder the recovery of the value of the detained person's proceeds of drug trafficking (where the offence is a drug trafficking one), or of the value of the property obtained or the pecuniary advantage derived by the detained person.
11. In such a case, contact with a legal advisor may only be delayed whilst these grounds are operative and in any event for no longer than 36 hours from the time of arrival of the detained person at the police station.
  12. The States have sought to protect the position of inmates who take legal advice through the provisions of the *Prison Administration (Guernsey) Ordinance 1998*. Under the current framework, confidentiality is maintained by the provision of facilities for a prisoner to consult with his legal advisors in sight but out of the hearing of prison officers regarding civil or criminal legal proceedings. Furthermore, he has an unrestricted ability to correspond with his legal advisors. Prisoners also benefit from the general non-statutory legal aid scheme which exists in Guernsey.
  13. Although legislation in respect of a statutory legal aid scheme was passed in 2003 (*Legal Aid (Bailiwick of Guernsey) Law, 2003*) and significant portions of that Law are in operation, the Part introducing the scheme has not yet been brought into force. As a result, the Legal Aid Administrator continues to operate the non-statutory scheme under which public funds are provided to maintain a rota of lawyers.

### ***Police Service***

14. The PPACE closely mirrors the *Police and Criminal Evidence Act 1984*. Interviews in places of detention continue to be audio recorded. Developments in video recording will be monitored and consideration given to its introduction.
15. Since August 2003 ten arrests have been made within the Bailiwick for offences relating to the *Terrorism and Crime (Bailiwick of Guernsey) Law 2003*. Seven were made under Section 15 of Schedule 8 in which an individual arriving or departing from one of the ports either refused to complete an embarkation card or supplied false details. The other three offences related to hoax bomb calls. In each case no connection with terrorist activity was identified and the offenders were detained in police custody for relatively short periods of time. Access to legal advice was accorded in compliance with PPACE.
16. Free legal aid continues to be offered to persons detained in police custody, in accordance with *The Legal Aid (Bailiwick of Guernsey) Law, 2003*. Running alongside this is a non-statutory lay visitor scheme in which independently appointed persons have unqualified access to the police custody area at all times to ensure that detained persons rights are being adhered to.

***Guernsey Border Agency (formerly known as the Customs and Immigration Service***

17. The PPACE came into force in 2004. All actions under this Law are covered by the PPACE Codes of Practice. All persons arrested are entitled to free legal advice which is provided through a free Legal aid scheme, which has a statutory basis.

**Jersey**

***Police Service***

18. Prior to the coming into force of the *Human Rights (Jersey) Law, 2000* on 10 December 2006, all relevant departments, including the States of Jersey Police, completed a review and audit of all internal policies, practices and procedures to ensure that they were compliant with the ECHR.
19. *The Police Procedures and Criminal Evidence (Jersey) Law, 2003* received Royal Assent on 17 December 2002. Parts 4 and 6 deal with the detention, treatment and questioning of persons by police officers and came into force on 1 December 2004.
20. The Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004 also came into force on 1 December 2004. Code C sets out the Code of Practice relating to the detention, treatment and questioning of detainees. Code C contains, at section 6, provisions on access to legal advice. Section 7 confers additional rights on a foreign national to communicate with their High Commission, Embassy or Consulate.
21. The Prison (Jersey) Rules, 2007 came into force on 31 January 2007 and set out the rules relating to prisoners held on remand or serving a prison sentence. The Rules include specific provisions applicable to young offenders.
22. *The Torture (Jersey) Law, 1990* continues to criminalise torture under Jersey law. A person who commits the offence of torture is liable to life imprisonment (Article 1(6)).
23. Inchoate accomplice offences may be charged as offences under customary law, even though the principal offences to which they relate may be statutory offences – *Martins & Martins v AG* [2008] JCA 082.

**Isle of Man**

24. As noted in paragraph 8 above, the Isle of Man Government has brought the *Human Rights Act 2001* into operation. The Act requires legislation to be read and given effect, as far as possible, in a way which is compatible with the rights under the European Convention on Human Rights, including the prohibition of torture or other forms of inhuman or degrading treatment. Other than in limited circumstances, public authorities will also be required to act in a way which is compatible with

the Convention rights. On finding that a public authority has acted unlawfully, a Court or Tribunal will be able to provide any remedy available to it and which it considers just and appropriate.

### **Article 3**

#### **Guernsey**

25. The Immigration and Asylum Act 1999 was extended to the Bailiwick of Guernsey by the Immigration and Asylum Act 1999 (Guernsey) Order 2003 (UK Statutory Instrument 2003 No. 2900), which came into force on 11 December 2003. The Order extended, with modifications, relevant provisions of the Act and also varied the Immigration (Guernsey) Order 1993 that consolidated the extension of previous legislation on immigration to the Bailiwick of Guernsey.
26. Extradition is still governed by the UK Extradition Act 1989, Parts I to V of which are expressed by section 29(1) to have effect as if the Bailiwick were part of the UK, and remain in force in the Bailiwick despite their repeal in the UK by reason of the Extradition Act 2003 (Commencement and Savings) Order 2003; in Bailiwick law, the subject of an extradition request is accordingly still afforded the protections contained in that Act. Further, under the Human Rights (Bailiwick of Guernsey) Law, 2000 public authorities are required to act compatibly with ECHR rights, including Article 3 thereof.
27. The Bailiwick has not introduced any specific formal system of appeals against immigration decisions, the authorities being satisfied that there are sufficient remedies available through the process of Judicial Review and the Human Rights (Bailiwick of Guernsey) Law, 2000.

#### **Jersey**

28. *The Extradition Act 1989* has been replaced in Jersey by the *Extradition (Jersey) Law 2004*, which came into force on 1 October 2004.
29. Under Article 24 of the 2004 Law, the Magistrate is required to discharge a person where the Magistrate decides a person's extradition would be incompatible with the ECHR. This would include where extradition were incompatible with Article 3 of the ECHR because of a danger of torture. In deciding whether an extradition would be incompatible with the ECHR the Magistrate will take into account all relevant considerations.

#### **Isle of Man**

30. There have been no changes to the Island's extradition legislation since the previous report. However, an Extradition Bill is included in the Isle of Man Government's legislative programme. The purpose of the Bill will be to ensure that the Island has a modern legislative framework for extradition that meets relevant international standards. Under the Bill the court hearing an extradition application must consider whether a person's extradition would be compatible with the Convention rights

within the meaning of the Human Rights Act 2001, and if the court decides that it is not compatible the person must be discharged.

31. No requests for extradition arising from claims of torture have been received by the Attorney General during the period under review.

## Article 5

### Guernsey

32. Prosecutions for the offence of torture under section 11 of the Administration of Justice (Bailiwick of Guernsey) Law 1991 (*erroneously dated 1996 in the previous report*) can still be brought in the Bailiwick regardless of the nationality of the victim, and whether the conduct took place in the Bailiwick or elsewhere. Extraterritorial jurisdiction is also available under the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended. If extradition for such an offence were refused for good reason in accordance with the 1989 Extradition Act, the Bailiwick authorities could take over and prosecute the suspect within the Bailiwick.
33. The amendments made to the Geneva Conventions Acts by the Geneva Conventions and United Nations Personnel (Protocols) Act 2009 have been extended to the Bailiwick by Order in Council.

### Jersey

34. The second periodic report referred to the enactment of the *Torture (Jersey) Law 1990*, which enabled ratification of the Convention on behalf of Jersey. The position under Article 1 of that Law remains unchanged. Cases involving torture can be tried in the Bailiwick whether the offence is alleged to have taken place in the Bailiwick or elsewhere, irrespective of the nationality of the offender.
35. Protocols 1 and 2 to the Geneva Conventions continue to be given effect to in Jersey by the extension of the *Geneva Conventions (Amendment) Act 1995* to Jersey by the Geneva Conventions Act (Jersey) Order 1999.

### Isle of Man

36. There have been no changes since the previous report.

## Articles 6 and 7

### Guernsey

37. The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 received Royal Assent on 8 October 2003 and came into force on 5 April, 2004.
38. The Police Powers and Criminal Evidence (Codes of Practice) (Bailiwick of Guernsey) Order, 2004 came into force on the same date. Code C of

the Code of Practice relates to detention, treatment and questioning of persons by police officers.

39. Sections 3.3 and 7.1 to 7.5 of Code C of The Police Powers and Criminal Evidence (Codes of Practice) (Bailiwick of Guernsey) Order, 2004, details the rights of Foreign Nationals to have contact with and be visited by Consular or Embassy officials. The detainee must be informed of this right as soon as possible and a request acted upon as soon as practicable,
40. Consular officers may visit one of their nationals who is in police detention to talk to that person and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.
41. If extradition for an offence of torture, or under relevant provisions of the Terrorism and Crime Law, were not sought or were refused for good reason in accordance with the 1989 Extradition Act, the Bailiwick authorities could prosecute the suspect within the Bailiwick; in such a case the Law Officers would decide, as in the case of any serious offence, in accordance with the usual considerations of sufficiency of evidence and public policy, and the defendant would have the same guarantees as any other.

### **Jersey**

42. The Police Procedures and Criminal Evidence (Jersey) Law, 2003 received Royal Assent on 17 December 2002. Parts 4 and 6 deal with the detention, treatment and questioning of persons by police officers and came into force on 1 December 2004.
43. The Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004 came into force on the same date. Code C sets out the Code of Practice relating to the detention, treatment and questioning of detainees.
44. Section 7 of Code C confers additional rights on a citizen of an independent Commonwealth country or a national of a foreign country (including the Republic of Ireland) to communicate at any time with his or her High Commission, Embassy or Consulate. The person must be informed of this right as soon as possible. Such a request should be acted upon as soon as practicable.
45. Consular officers may visit one of their nationals who is in police detention to talk to that person and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.
46. It remains the case that at present there have been no prosecutions for torture in Jersey. However, any prosecutions or criminal proceedings would be dealt with in the same manner as any serious offence and the usual rules of evidence would apply. A person against whom



proceedings were brought would be guaranteed fair treatment at all stages of the proceedings.

### Isle of Man

47. The Codes of Practice under the Police Powers and Procedures Act 1998 (an Act of Tynwald) which were referred to in the previous report are presently being updated in line with those currently in operation in the United Kingdom. The new Codes have been drafted and await the additional vires to be provided by the Criminal Justice (Miscellaneous Provisions) Bill to allow them to be made.

### Article 8

#### Guernsey

48. Extradition is still governed by the UK Extradition Act 1989, Parts I to V of which are expressed by section 29(1) to have effect as if the Bailiwick were part of the UK, and remain in force in the Bailiwick despite their repeal in the UK by reason of the Extradition Act 2003 (Commencement and Savings) Order 2003; in Bailiwick law, the subject of an extradition request is accordingly still afforded the protections contained in that Act. Torture carries a maximum sentence of life imprisonment and is accordingly an extraditable offence. Prosecutions for the offence of torture can be brought in the Bailiwick regardless of whether the conduct took place in the Bailiwick or elsewhere.

#### Jersey

49. Extradition is not conditional on the existence of a treaty but governed by the *Extradition (Jersey) Law, 2004*. Article 3 of the Law sets out what constitutes an “extradition offence” where the person has yet to be sentenced and Article 4 defines “extradition offence” in respect of a person who has been sentenced. In both cases the conduct of the individual accused or convicted has to constitute an offence under the law of Jersey, punishable with imprisonment or another form of detention for a term of 12 months or more. As torture attracts life imprisonment under the *Torture (Jersey) Law, 1990* it would satisfy that criterion. Under Articles 3(3)(c) and 4(3)(c) *Extradition (Jersey) Law 2004*, conduct also constitutes an extradition offence in relation to a territory if in corresponding circumstances, equivalent conduct would constitute an extra-territorial offence under the law of Jersey punishable with imprisonment or another form of detention for a term of 12 months or a greater punishment. This is the case in respect of torture by virtue of the extra-territorial application of Article 1 of the *Torture (Jersey) Law, 1990*.

### Isle of Man

50. There has been no change since the previous report. However, an Extradition Bill is included in the Isle of Man Government’s legislative programme. The purpose of the Bill will be to ensure that the Island has a modern legislative framework for extradition that meets relevant international standards.

## Article 9

### Guernsey

51. The 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Matters was extended to the Bailiwick on 20 January 2003.
52. Mutual legal assistance is provided by the Attorney General (H.M. Procureur) under a range of Guernsey Laws which provide inter alia for obtaining evidence, restraining assets, and enforcing confiscation orders made overseas. With specific reference to civil proceedings, the Forfeiture of Money etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 provides for the making of orders to produce material, provide customer information, monitor accounts in connection with overseas civil forfeiture investigations, and for the enforcement of overseas civil forfeiture orders.

### Jersey

53. It remains the case that mutual legal assistance can be offered at both the investigative and evidential stage in criminal proceedings under the *Criminal Justice (International Co-operation) (Jersey) Law, 2001*.
54. In addition, mutual legal assistance can be offered in respect of civil asset recovery investigations and proceedings under the provisions contained in the *Civil Asset Recovery (International Co-operation) (Jersey) Law, 2007*, which came into force on 28 December 2007.
55. Since the last report, Her Majesty's Attorney-General for Jersey, who carries responsibility under both pieces of legislation for mutual legal assistance, has received one request for assistance from overseas authorities which has had a connection with offences involving torture. This involved a request from a Middle Eastern country for evidence in relation to an offence for which, if the suspect was convicted, the potential penalty included a public flogging. An undertaking was obtained from the judge that if assistance was given, there would be no penalty of flogging imposed. Account was taken of the fact that the United Kingdom had given assistance in the same case and the decision was taken to give assistance. It is confirmed that human rights considerations, including those set out in Article 3 of the Convention, are taken into account when deciding whether to provide mutual legal assistance.

### Isle of Man

56. The International Criminal Court Act 2003, which came into operation on 1 April 2004, made provision for the Isle of Man to cooperate in proceedings against and/or extradition of persons accused of war crimes, including torture, to the International Criminal Court.

## Article 10

### Guernsey

#### **Police Service**

57. Regular training is provided to Police Officers (in some cases also extended to Guernsey Border Agency Officers) in the following areas:
- Custody Officer (all those who act or are likely to act as Custody Officers)
  - Officer Safety (use of force)
  - Firearms
  - Less than lethal options ('Taser' – Selected officers from Firearms Team)
  - Island Police Learning and Development Programme (principles of Human Rights and Police Powers and Criminal Evidence legislation).
58. All of this training incorporates the principles of humane treatment in accordance with *The Human Rights (Bailiwick of Guernsey) Law, 2000* and the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (PPACE)) along with its associated Codes of Practice.
59. Training is predominantly provided locally by qualified Police Staff. Other more specialist courses require officers to attend the UK and other jurisdictions.
60. All Police Officers in the Bailiwick receive training on PPACE and it is constantly referred to in other areas of police training.

#### **Guernsey Border Agency**

61. Training of all Guernsey Border Agency staff is undertaken with recognised training agencies in both Guernsey and the UK. The levels of training standards and attainment is comparable with officers performing similar functions in the UK. All training will cover all relevant ECHR compliance. Custody staff are required to attend recognised custody training and are not able to perform their functions until competency standards have been demonstrated and met.
62. The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (PPACE) came into force in 2004 and all actions under this Law are covered by the Codes of Practice issued under it. The Guernsey Border Agency bases its working practice on the Laws and Codes of Practice and receive training following these guidelines.

### Jersey

63. Within the Jersey Prison Service, appropriate and humane treatment of prisoners features significantly across a range of training inputs for staff of various grades and disciplines. In particular, sessions related to

managing conflict, control and restraints, use of inter-personal skills and de-escalating violence.

64. Training for new entrants to the Jersey Customs & Immigration Service is delivered by nationally accredited trainers from HM Revenue & Customs and the UK Border Agency. This training encompasses interviewing skills, safe and professional working practices and awareness of Human Rights legislation.
65. There is no immigration detention centre in Jersey; therefore persons in detention in excess of 24 hours are placed at HMP La Moye until their release. Whilst in detention at HMP La Moye, immigration detainees are subject to the care and supervision of prison staff.
66. Every Honorary Police officer is issued with a comprehensive training booklet on human rights for police officers and support staff. This includes information on the prohibition of torture, recommendations on compliance with Codes of Practice made under the Police Procedures and Criminal Evidence (Jersey) Law, 2003, and advice on preventing unlawful interrogation techniques.

#### **Isle of Man**

67. The Isle of Man Constabulary and the Isle of Man Prison Service have received training in relation to the provisions of the *Human Rights Act 2001* and are kept up to date in relation to developments in training and best practice generally in the United Kingdom.

#### **Article 11**

##### **Guernsey**

##### ***Right to silence***

68. In Guernsey, whether a legal advisor is present or not, inferences cannot be drawn from the silence of a person when being interviewed, cautioned, charged or when giving evidence.

##### ***Measure to prevent ethnic discrimination***

69. Whilst the insular authorities have not introduced equivalent legislation to the *Crime and Disorder Act 1998*, any racial element to the offence would be considered to be an aggravating feature. *The Racial Hatred (Bailiwick of Guernsey) Law, 2005*, criminalises acts intended or likely to stir up racial hatred, which can be punished with a maximum sentence of seven years imprisonment.

##### ***Guernsey Border Agency***

70. The Guernsey Border Agency has received no complaints of torture of any person held in Custody.

71. The Guernsey Border Agency is involved in the lay visitor scheme whereby appointed persons have unqualified access to Guernsey Border Agency custody areas at any time to ensure that the rights of the detained person is being adhered to.
72. The Guernsey Border Agency also undertakes detention of persons detained under the Immigration Act 1971 in accordance with written Service policy and adherence with best practice as laid out in the Code of Practice of The PPACE.

### ***Prison Service***

73. The operation of the Prison Service is monitored through the scrutiny of the parliamentary assembly of the States of Guernsey, external audits by the Chief Inspector of Prisons of the UK and regular inspections by the Panel of Visitors. Although the relevant legislation regulating the Prison is the Prison (Guernsey) Ordinance, 1998, enacted by the States, and the various Prison Rules, made by the Governor, a modernised system will soon be introduced, allowing changes to be made far more quickly than at present.

### **Jersey**

#### ***Honorary Police***

74. HM Attorney General is titular head of the Honorary Police and keeps under review the guidelines and instructions under which the Honorary Police operate. All cases of arrest are subject to rules issued by the Attorney General. The Honorary Police do not hold persons in custody, detention or imprisonment.

#### ***Prison services***

75. The Prison Rules were reviewed in 2006, with an emphasis on ensuring ECHR compliance. Consequently, the *Prison (Jersey) Rules 2007* were promulgated.
76. The prison operates under the ongoing scrutiny of the Board of Visitors and in 2008 received two visits from the Howard League for Penal Reform.
77. Following a report from Her Majesty's Chief Inspector of Prisons (HMCIP) in 2005, the prison developed an extensive Performance Improvement Plan. This required a comprehensive review of policies, systems and processes and resulted in improvements to the prison estate, to the prison regime and to the policies and procedures for governing the prison.

#### ***Customs and Immigration***

78. Jersey Customs and Immigration adhere to all applicable provisions of the Police Procedures and Criminal Evidence (Jersey) Law 2003 and continue to work within Codes of Practice relating to the treatment,

custody and care of persons detained in custody. Those detainees who are considered to be at risk are kept under constant supervision.

79. The decision on whether or not someone should be detained is made by a Customs and Immigration Officer under powers contained in the Immigration Act 1971. Individuals may be There is no statutory limit on the length of time immigration offenders may be detained.
80. Detention past 24 hours for immigration purposes is authorised at Assistant Director level. There is no immigration detention centre in Jersey, therefore persons in detention in excess of 24 hours are placed at HMP La Moye until their release or removal. Reviews of further detention are carried out every seven days, at Assistant Director level or above and, additionally, every month at Director level or above.

### ***Mental Health Services***

81. Jersey FOCUS on Mental Health, a local mental health charity employs a patients' advocacy worker whose main role is working with the acute in-patients unit. The advocacy worker is available on the unit five days a week and represents the views of individual patients.
82. Although Jersey's health services are not obliged to undertake regular inspections, in 2007 the mental health service was inspected by AIMS (Accreditation for Acute Inpatient Mental Health Services) which is a quality assurance initiative of the Royal College of Psychiatrists and Royal College of Nursing. At that time the service was only the seventh in-patient unit to receive accreditation following assessment of 270 standards. The service has also received a UK Healthcare Commission report on the acute inpatient unit.
83. Data on detentions under the *Mental Health (Jersey) Law 1969* is as follows:

| <b>Type of Detention</b>  | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>2009</b> | <b>7 Year Overall Total</b> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-----------------------------|
| Emergency:<br>Up to 72 hours (including 3<br>hour Nurses Holding Power<br>from 11/04) | 13          | 27          | 33          | 26          | 15          | 8           | 7           | 129                         |
| Observation:<br>Up to 28 days   | 25          | 38          | 46          | 30          | 46          | 44          | 18          | 247                         |
| Treatment:<br>Up to one year  | 29          | 32          | 47          | 37          | 37          | 40          | 29          | 251                         |
| Guardianship:<br>Up to one year   | 9           | 2           | 5           | 3           | 1           | 1           | 1           | 22                          |
| <b>Totals</b>   | <b>76</b>   | <b>99</b>   | <b>131</b>  | <b>96</b>   | <b>99</b>   | <b>93</b>   | <b>55</b>   | <b>649</b>                  |

### **Isle of Man**

84. There have been no deaths in police custody during the reporting period.

85. There have been no suicides in the Isle of Man Prison since the submission of the third periodic report.
86. The Isle of Man Government has opened a new prison which is a purpose-built facility that was designed to meet the standards expected from a modern prison. All inmates have been transferred to the facility and the old prison has been closed.
87. Health services are now provided to the prison under a service level agreement with the Department of Health to specified healthcare standards. The health staff consists of suitably qualified nurses managed by a Health Service clinical manager. Detainees have access to appropriate health service provision, including psychiatric services, drug treatment services, and dental treatment to a standard equal to that available to the general public.
88. The Custody Rules 2001 which were referred to in the previous report have been amended by the Custody (Amendment) Rules 2003.<sup>134</sup>
89. The Board of Visitors was re-named the Independent Monitoring Board in October 2007. The name change was made in the Criminal Justice, Police and Courts Act 2007<sup>135</sup> as it more accurately describes the functions of the Board. The change was made to comply with the *Human Rights Act 2001*. This change also removed the Board from the Parole Committee process. All cases that the Parole Committee considered were forwarded in the first instance to the Board which considered the case and put forward their recommendations to the Parole Committee. It was considered that parole issues should be dealt with solely by the Parole Committee.
90. As described in the previous report, interviews at a police station with persons suspected of committing an offence must be audio recorded and carried out under strictly controlled conditions to ensure the integrity of the tape. It is intended that the Criminal Justice (Miscellaneous Provisions) Bill, which has commenced its parliamentary procedures, will make provision for the full video recording of interviews.

## Articles 12 and 13

### Guernsey

#### ***Investigation of deaths in police or prison custody***

91. Where a death occurs in police or prison custody, a doctor will examine the body before one of the Law Officers (Her Majesty's Procureur, the Attorney-General, or Her Majesty's Comptroller, the Solicitor-General, both Crown appointments who are independent of the States) decides

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<sup>134</sup> See Appendix 4.

<sup>135</sup> See [www.gov.im/lib/docs/infocentre/acts/crimjusticeact.pdf](http://www.gov.im/lib/docs/infocentre/acts/crimjusticeact.pdf)

whether an inquest should be held. Any inquest would be undertaken by a Judge or Deputy Judge of the Magistrate's Court acting as coroner. The Guernsey Prison Service experienced a death in custody in 2008. The Prisons and Probation Ombudsman for England and Wales (who has no statutory role or powers in Guernsey) was invited to investigate the circumstances in this case and made recommendations to improve local practice.

92. Furthermore, the Police Complaints (Guernsey) Law, 2008 will introduce the Guernsey Police Complaints Commission to supervise the investigation of complaints regarding death or serious injury, or if no complaint is made, of allegations of police officers committing criminal or disciplinary offences.

***Guernsey Border Agency***

93. The Guernsey Border Agency has in place a procedure for dealing with a death in custody which after initial containment involves the Police who become the investigating authority.
94. Complaints made by detained persons are dealt with in line with internal policy and disciplinary procedures, with complaints referred to the police when appropriate if involving allegations of criminal conduct.

***Developments in police complaints systems***

95. The new *Police Complaints (Guernsey) Law, 2008* will modernise the system of complaints by introducing a clear framework by which any allegations made against a police officer can be heard. Under the Law, it will be possible for a complaint to be dealt with by either:
- Informal resolution, where the complainant consents and no criminal or disciplinary charges will be preferred, or
  - Formal investigation, where the Chief Officer requests that an investigation is undertaken by a member of the Island Police Force or another force, which may in certain circumstances, be supervised by the Guernsey Police Complaints Commission (GPCC).
96. Alternatively, even where a complaint is not made, the GPCC may supervise an investigation where a criminal or disciplinary charge might follow, and has the power to direct the Chief Officer to bring disciplinary proceedings or pass on information to Her Majesty's Procureur so that criminal proceedings can be considered. Where disciplinary action has been taken, matters are heard by the Complaints Tribunal which can pass such sentence as it sees fit.

***Access to legal advice***

97. The States have sought to protect the position of inmates who take legal advice through the provisions of the Prison Administration (Guernsey) Ordinance, 1998. Under the current framework, confidentiality is maintained by the provision of facilities for a prisoner to consult with his



legal advisors in sight but out of the hearing of prison officers regarding civil or criminal legal proceedings. Furthermore, he has an unrestricted ability to correspond with his legal advisors. Prisoners also benefit from the general non-statutory legal aid scheme which exists in Guernsey.

### **Protection of complainants and witnesses**

98. To ensure that those who are assisting in the investigation of an offence or are a witness or potential witness, the States enacted the *Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006* which makes it an offence for anyone to intimidate, harm or threaten to harm such persons.
99. Current statistics relating to suicides of persons in custody, complaints against police offices, prison officers and mental health staff and details of extraditions and deportations are provided below.

|                               | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|-------------------------------|------|------|------|------|------|------|------|
| <b>Police</b>                 |      |      |      |      |      |      |      |
| Suicides in custody           | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| All complaints against police |      |      |      |      |      |      |      |
| Substantiated                 | 26   | 15   | 10   | 5    | 5    | 3    | 1    |
| Partly substantiated          | 3    | 2    | 3    | 3    | 0    | 0    | 0    |
| Unsubstantiated               | 20   | 15   | 15   | 19   | 11   | 14   | 4    |
| Informally resolved           | 12   | 6    | 7    | 13   | 11   | 14   | 31   |
| Withdrawn                     | 0    | 2    | 2    | 2    | 4    | 4    | 10   |
| Remedial                      | -    | 2    | 0    | 0    | 0    | 0    | 0    |
| Pending                       | 8    | 3    | 0    | 0    | 0    | 3    | 2    |
| Not pursued                   | 3    | 2    | 4    | 5    | 2    | -    | -    |
| Unresolved                    | 1    | 0    | 0    | 0    | 0    | 0    | 0    |

|                             | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|-----------------------------|------|------|------|------|------|------|------|
| <b>Prison</b>               |      |      |      |      |      |      |      |
| Suicides in custody         | 0    | 1    | 0    | 0    | 0    | 0    | 0    |
| Staff disciplinary hearings | 0    | 0    | 1    | 3    | 3    | 1    | 5    |
| Complaints against staff    | 2    | 4    | 0    | 1    | 0    | -    | 3    |
| <b>Prison occupancy</b>     |      |      |      |      |      |      |      |
| Maximum                     | 78   | 122  | 122  | 122  | 122  | 122  | 122  |
| Highest                     | 90   | 113  | 126  | 129  | 126  | 98   | 91   |
| Lowest                      | 66   | 77   | 89   | 103  | 89   | 72   | 64   |
| Average                     | 78   | 92   | 105  | 117  | 108  | 88   | 78   |

|                                       | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|---------------------------------------|------|------|------|------|------|------|------|
| <b>GBA</b>                            |      |      |      |      |      |      |      |
| Suicides in custody                   | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Extraditions                          | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Deportations of non-British nationals | 2    | 0    | 3    | 1    | 6    | 0    | 6    |

**United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment**

|                              | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|------------------------------|------|------|------|------|------|------|------|
| Mental Health Hospital       |      |      |      |      |      |      |      |
| Suicides of persons detained | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Complaints against staff     | 0    | 3    | 4    | 0    | 3    | 5    | 3    |

|   | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|---|------|------|------|------|------|------|------|
| <b>Data from Sark</b>                                 |      |      |      |      |      |      |      |
| Persons held in police custody on Sark                | 1    | 3    | 4    | 0    | 2    | 5    | 6    |
| Death of persons held in police custody               | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| All complaints lodged by those held in police custody | 0    | 0    | 0    | 0    | 0    | 1    | 0    |

|   |
|---|
| <b>Data from Alderney</b>   |
| Police Services in Alderney are undertaken by the Guernsey Police Service as a transferred service. |

**Jersey**

100. In the period 2002–2008, no deaths occurred in police custody. Statistical information on complaints against the Jersey police for the same period is provided below.

|  | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|--|------|------|------|------|------|------|------|------|
| No of deaths in police custody                       | 0    | 0    | 0    | 0    | 0    | 0    | 0    | 0    |
| Total no. of complaint cases registered against SOJP | 34   | 44   | 38   | 38   | 35   | 43   | 39   | 32   |
| No. of complaint cases supervised by the PCA         | 20   | 29   | 23   | 26   | 29   | 32   | 25   | 20   |
| No. of complaints substantiated                      | 0    | 2    | 3    | 2    | 1    | 2    | 3    | 0    |
| No. of complaints unsubstantiated                    | 4    | 17   | 17   | 6    | 6    | 9    | 12   | 3    |
| No. of complaints withdrawn                          | 11   | 4    | 11   | 15   | 11   | 10   | 8    | 5    |
| No. of complaints deemed incapable of investigation  | 2    | 5    | 3    | 3    | 8    | 3    | 1    | 2    |
| No. of complaints deemed vexatious                   | 2    | 2    | 1    | 2    | 1    | 3    | 1    | 0    |
| No. of complaints still under investigation          | 0    | 0    | 0    | 0    | 0    | 4    | 0    | 8    |
| No. of complaints informally resolved                | 15   | 14   | 3    | 10   | 8    | 12   | 14   | 12   |

101. The Jersey Prison service experienced two deaths in custody, the first in 2006 and the second in 2007. The Prisons and Probation Ombudsman for England and Wales (who has no statutory role or powers in Jersey) was invited to investigate the circumstances in both cases. In one case, he concluded that the death was neither predictable nor preventable. In the second case, he did not attribute blame to the prison but made a

series of recommendations related to suicide prevention measures. A revised suicide prevention policy has since been put in place.

102. There have been no deaths of persons in Jersey Customs and Immigration custody.
103. The prison introduced a revised Prisoner Complaints Procedure in 2008. Prisoners have ready access to the Board of Visitors and are provided with guidance on how to escalate their complaint internally or to external sources, including the Minister for Home Affairs, the police or their legal agent.
104. The *Police (Complaints and Discipline) (Jersey) Law 1999* also applies to the Honorary Police and any complaints received by a Connétable in respect of his officers are recorded and investigated in accordance with the law. The Jersey Police Complaints Authority oversees the investigation of complaints.

#### Isle of Man

105. Details of complaints against the police since the 4<sup>th</sup> periodic report and their status, as at 31 March 2010, are set out in the table below. It is important to note that a single complaint may result in more than one outcome; for example, one complaint may lead to an officer being found guilty of neglect of duty but also an abuse of authority from the same set of circumstances.

|                                     | 2005/06   | 2006/07   | 2007/08   | 2008/09   | 2009/10   |
|-------------------------------------|-----------|-----------|-----------|-----------|-----------|
| Formal Complaints                   | 18        | 21        | 28        | 23        | 20        |
| Informal Complaints                 | 2         | 1         | 0         | 0         | 0         |
| <b>Total</b>                        | <b>20</b> | <b>22</b> | <b>28</b> | <b>23</b> | <b>20</b> |
| Substantiated                       | 5         | 4         | 5         | 4         | 6         |
| Unsubstantiated                     | 7         | 11        | 13        | 9         | 1         |
| Informal Resolution                 | 3         | 1         | 8         | 5         | 1         |
| Withdrawn                           | 5         | 5         | 5         | 3         | 1         |
| Dispensation                        | 1         | 2         | 3         | 1         | 2         |
| With Police Complaints Commissioner | 0         | 0         | 0         | 0         | 0         |
| No Further Action                   | 1         | 0         | 0         | 0         | 0         |
| On-going                            | 0         | 0         | 0         | 1         | 9         |
| <b>Total</b>                        | <b>22</b> | <b>23</b> | <b>34</b> | <b>23</b> | <b>20</b> |

106. The 4<sup>th</sup> periodic report referred to a complaint against a prison officer. The complaint was investigated by the police and placed before the court but not proceeded with. That officer was subjected to internal disciplinary proceedings.

## Article 14

### Guernsey

107. Apart from ordinary civil claims for damages, since commencement of the Human Rights (Bailiwick of Guernsey) Law, 2000, if a person were to suffer torture at the hands of a public authority he (or his dependants in the event of his death) could seek specific relief under section 8 of that Law, including compensation where appropriate. The States of Guernsey have also approved the drafting of the legislation that will introduce a criminal injuries compensation scheme. The legislation is yet to be finalised and will need to be laid before to the States of Guernsey before it can be presented for Royal Assent.

### Jersey

108. There has been no change since the previous report.

### Isle of Man

109. The position is generally unchanged from the previous report. However, now that the *Human Rights Act 2001* is fully operational, the court may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate where it finds that a public authority has unlawfully breached a person's rights under the European Convention, including the right not to be subjected to torture.

## Article 15

### Guernsey

110. The Judges' Rules referred to in the previous periodic report have been replaced by the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003. This Law is based on the UK Police and Criminal Evidence Act and the relevant sections are 76, which refers to confessions, and 78, which relates to exclusion of unfair evidence.

111. Under section 76 if in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained by oppression of the person who made it that evidence must be excluded unless the prosecution establish beyond reasonable doubt that it was not so obtained. In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

112. Section 78 states that the court may refuse in any proceedings to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

### **Jersey**

113. Part 9 of the PPCE, concerned with evidence in criminal proceedings, came into force on 18 March 2003.
114. If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained:
- (a) by oppression of the person who made it; or
  - (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the accused in consequence thereof, the court shall not allow the confession to be given in evidence against the accused except in so far as the prosecution proves to the court beyond reasonable doubt that the confession, notwithstanding that it may be true, was not obtained as aforesaid (Article 74(2) PPCE).
115. Under Article 74(8) “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence, whether or not amounting to torture.
116. Furthermore, under Article 76(1) of the PPCE a court may, in any proceedings, refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would so adversely effect the fairness of the proceedings that the court ought not to admit it.

### **Isle of Man**

117. The position is unchanged since the previous report.

### **Article 16**

#### **Guernsey**

118. Further to the previous periodic report the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 repealed the Corporal Punishment (Guernsey) Law, 1957. Also, the ECHR’s prohibition of inhuman or degrading treatment or punishment is now incorporated into domestic law.

#### **Jersey**

119. There has been no change since the previous report.

#### **Isle of Man**

120. Section 10(b) of the *Education Act 2001*, which was brought into force on 1 September 2004, prohibited the use of corporal punishment in a school provided or maintained by the Island’s Department of Education

and Children. However, this statutory prohibition did not extend to independent schools. Although, as a matter of policy, corporal punishment was not administered in the Island's independent schools, the Education (Miscellaneous Provisions) Act 2009, which came into operation on 1 September 2009, made it unlawful to administer corporal punishment to a minor at any school or other place of education.

121. The 4<sup>th</sup> periodic report referred to training being given to social workers, health visitors, police, teachers, and various healthcare professionals in the recognition of child abuse and actions that should be taken to protect the child where abuse has been identified. This training is now audited.
122. There is a range of residential provision for children and young people on the Island, from traditional six bed Children's Homes to smaller two or three bed Homes with specialist Statements of Purpose. The assessed needs of the child will inform the choice of placement.

## **PART 3: UNITED KINGDOM OVERSEAS TERRITORIES**

1. This part of the present report contains the United Kingdom's 5<sup>th</sup> periodic report in respect of its Overseas Territories under article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

### **A. ANGUILLA**

2. For the most part, the situation in Anguilla with respect to the observance of the Convention remains as described in the 4<sup>th</sup> report. The Government of Anguilla continues to be alert to the requirements of the Convention which are reinforced by corresponding provisions in the Constitution of Anguilla. Section 6 of the 1982 Constitution provides that no person shall be subjected to torture or to inhumane or degrading punishment or other treatment. There are two particular matters which should be mentioned.
3. First, the Committee will recollect that the 3<sup>rd</sup> report (paragraphs 170 and 171 of CAT/C/44/Add.1) drew attention to a Mental Health Bill which was, at the time of that report, being considered by the Anguilla House of Assembly. Among other things, this Bill, when enacted, would provide enhanced protection from ill-treatment for mental health patients. The Bill subsequently encountered criticism for what was seen as its failure to adequately treat a number of mental health issues in a way appropriate to a modern environment. As a result, it was withdrawn from the House of Assembly and a new Bill was commissioned. The Bill was passed into law on 15 December 2006. The legislation provides for a Mental Health Review Panel which is comprised of a Chair-person or Vice-chairperson, medical practitioner, social worker and two members of the general public. One of the functions of the review panel is to hear applications under sections 25 (competence to make treatment decisions), 27 (objection to treatment), 36 (application for hearing regarding certificates) and 37 (review of certificates after 6 months). It should also be pointed out that mentally ill patients are still housed at Her Majesty's prison. There are plans to construct a new prison facility which will include a separate facility for mentally ill patients.
4. Second, the amendment of the existing prison regulations (the Prison Regulations 1996) with the introduction of a new "Code of Discipline for Prison Officers" makes it a disciplinary offence for a prison officer to use obscene, insulting or offensive language to a prisoner or deliberately to act in a manner calculated to provoke a prisoner or, in dealing with a prisoner, to use force unnecessarily or, where force is necessary, to use undue force. In addition, a number of new services have been introduced at the prison. These include a Rehabilitation Coordinator, Counsellor, Chaplain and a Tutor who coordinates educational activities.

Some basic data on the prison population is set out below.

|  |              |
|--|--------------|
| Capacity of Her Majesty's prison                         | 36 prisoners |
| Present population                                       | 50           |
| Expected ratio of prisoners to prison officers per shift | 8:1          |
| Current ratio  | 10:1         |

## B. BERMUDA

5. The position with respect to the observance of the Convention in Bermuda remains substantially as described in the previous report. However, the Committee's attention is drawn to the following developments that have taken place during the period since the last report.

### Article 2

6. *The Police and Criminal Evidence Act 2006* which became operative in Bermuda in September 2008 is being brought into operation incrementally. Its enshrined 'Right to have someone informed when arrested' per section 60 is a constructive mechanism consistent with Article 2. By mandating that the detained has an entitlement to have a friend or relative informed as to their detention, such a person is afforded the best chance of having their well being monitored and investigative action triggered in the event it is necessary.

#### **Section 60**

- (1) Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.
- (2) Delay is only permitted:
  - (a) in the case of a person who is in police detention for a serious arrestable offence; and
  - (b) if an officer of at least the rank of inspector authorizes it.
- (3) In any case the person in custody shall be permitted to exercise the right conferred by subsection (1) within 36 hours from the relevant time, as defined in section 44(2).
- (4) An officer may give an authorization under subsection (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (5) Subject to subsection (6) an officer may only authorize delay where he has reasonable grounds for believing that telling the named person of the arrest:



- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
  - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
  - (c) will hinder the recovery of any property obtained as a result of such an offence.
- (6) An officer may also authorize delay where he has reasonable grounds for believing that:
- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct; and
  - (b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.
- (7) For the purposes of subsection (6) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 2 of the Proceeds of Crime Act 1997.
- (8) If a delay is authorized:
- (a) the detained person shall be told the reason for it; and
  - (b) the reason shall be noted on his custody record.
- (9) The duties imposed by subsection (8) shall be performed as soon as is practicable.
- (10) The rights conferred by this section on a person detained at a police station or other premises are exercisable whenever he is transferred from one place to another; and this section applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.
- (11) There may be no further delay in permitting the exercise of the right conferred by subsection (1) once the reason for authorising delay ceases to subsist.

## **Article 13**

### ***Ombudsman Act 2004***

7. The Ombudsman within the Constitution (per sections 93A and 93B) as well as by independent legislation is another possible systemic apparatus that has the power to give effect to Article 13 as exemplified by provisions of section 7 of the enabling act:

#### ***Section 7***

- (3) Where a person who is detained in custody or otherwise confined in an institution informs the person in charge or another person performing duties in connection with his detention or confinement, that he wishes to make a complaint to the Ombudsman, the person so informed:

- (a) shall take all steps necessary to facilitate the making of the complaint including the provision of an unsealed envelope; and
  - (b) without delay, shall send such envelope to the Ombudsman, sealed.
- (4) A communication from the Ombudsman to a person confined or in custody as described in subsection (3) shall be forwarded to that person in a sealed envelope.
- (5) The Ombudsman shall write to a complainant acknowledging receipt of the complaint.

### **Article 15**

8. Another constructive mechanism of the PACE legislation in keeping with the objectives of Article 15 of the Convention are its provisions as to the inadmissibility of confessions evidence obtained contrary to law per section 90 of the Act:

#### **Section 90**

- (1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.
- (2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained:
- (a) by oppression of the person who made it; or
  - (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

### **Conclusion**

9. Bermuda's domestic legislative regime embodies a range of enactments that compliment the objectives of the United Nations' Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, particularly Articles 10 to 13. These range from comprehensive human rights protection, such as specific constitutional prohibition against torture and inhuman and degrading treatment and punishment to criminal code sanctions. The latter include strong habeas corpus protections for victims and severe penalty for offenders. Additionally, prison rules, monitoring and enforcement mechanisms are in place to curtail the possibility of such occurrences bolstered by the recent appointment of a constitutionally established office of Ombudsman and a 'Treatment of Offenders Board' that is mandated by

law to visit prisons with unfettered access to meet with prisoners and to report to the highest level of the decision making authority to ensure that such violations do not occur.

## **C. BRITISH VIRGIN ISLANDS**

10. This report is filed on the situation in the British Virgin Islands since the last report filed on the Territory's behalf by the United Kingdom which was published by the United Nations in May 2004. Significant developments have occurred since the last report.

### **Human Rights**

#### ***New Constitution***

11. On June 15, 2007 a new Virgin Islands Constitution Order 2007 was promulgated reflecting a more advanced political stage in the Territory's relationship with the United Kingdom. Chapter 2 of the Constitution is captioned Fundamental Rights and Freedoms of the Individual and is essentially a Bill of Rights. As noted in the previous Report, prior to this there was no single, integrated, human rights legislation identifiable as such in the British Virgin Islands. However it is fair comment that there are several items of legislation which over the years have addressed human rights topics. Nearly twenty separate individual rights and freedoms are listed in the Constitution. Where appropriate, these are curtailed in the interest of defence, public health, public order, etc.
12. Specifically on the subject of torture, Section 13 of the Constitution is captioned Protection from inhuman treatment and reads as follows:

"No person shall be subjected to torture or to inhuman or degrading treatment or punishment."
13. Furthermore Section 17 of the Constitution is captioned Protection of right of prisoners to humane treatment and provides that all prisoners have a right to be treated humanely. Generally, there is also a protection of the right to life provided for in Section 11.

#### **Human Rights Committee**

14. The Committee on Human Rights established by the former Executive Council a decade ago is still very active in the Attorney General's Chambers, particularly since the new Constitution was passed. The Chambers has already prepared draft model legislation for the establishment of a Human Rights Commission which is a body envisaged by the Constitution to, amongst other things, receive and investigate complaints of breaches or infringements of individual rights or freedoms and to, more generally, oversee the Human Rights agenda. Cabinet has already approved the Bill and authorised the Chambers to hold civic consultations on the Bill before its introduction in the House of Assembly. The civic consultations have been held since January 2010 (Jost Van Dyke, 12 January 2010; Virgin Gorda, 13 January 2010; Anegada, 19 January 2010; and Tortola, 21 January 2010). If enacted,

the legislation is likely to make specific reference to the right of the Human Rights Commission to inspect custodial facilities and places of detention and to ensure that persons who are detained in these facilities are protected against torture and other cruel, inhuman or degrading treatment or punishment.

15. In 2009, the Chambers also collaborated with the Commonwealth Foundation to begin its first capacity-building awareness drive in the Virgin Islands. Human rights awareness and capacity-building programmes for public servants, residents of the major islands and some nongovernmental organisations will be conducted in late 2010 by the Attorney General's Chambers and the Commonwealth Foundation. It is expected that law enforcement officials will also feature prominently in these programmes.
16. It can be reported that the Human Rights Committee has found no recent breaches of the Convention against Torture as of 31 July 2010.

### **Miscellaneous Matters**

#### ***Custodial***

17. The 1999 Prison Rules have been in force for a decade or so and the Government has authorised a review to begin in late 2010. A new immigration detention facility was commissioned by the Government in 2008, in the quest to separate temporary, custodial persons from prison inmates.

#### ***Parole***

18. In 2009, a Parole Act was enacted for the first time and is in application by the courts. Plans to establish a Board are ongoing.

#### ***Legal Aid***

19. The Legal Aid collaboration with the BVI Bar Association continues to be in operation with plans for a more elaborate scheme.

## **D. CAYMAN ISLANDS**

### **Article 2**

20. The Royal Cayman Island Police Service (RCIPS) has taken steps to operate within the spirit of human rights conventions, even where these may not be directly enforceable by the courts at this time. For example, the provisions of relevant Conventions are included in covert human intelligence procedures, a firearms manual of guidance and the procedures governing the custody and care of prisoners including the right to consult with an attorney and, in the case of foreign nationals, a consular officer.
21. Upon arrival at a detention facility the existing practice is that a person is given a copy of the Notice of Rights and Entitlements which explains his

rights whilst in detention. This document informs the detainee of his right to access legal advice, medical personnel and, where appropriate, consular notification or notification of a family member or employer.

22. The holding facilities at Immigration Headquarters and the Immigration Detention Center are designated locations for the temporary holding of persons suspected of immigration offences, asylum seekers and illegal migrants.
23. In December 2005 a new Cayman Islands Human Rights Committee was appointed as the national body responsible for the promotion and protection of fundamental human rights in the Islands. By virtue of its Terms of Reference, the Committee is empowered to enhance public awareness of human rights; serve as the focal point for the direction of any human rights concerns; and where necessary, to make reports and prepare recommendations for the improved protection of human rights.
24. The Committee also plays an active role in the review of legislation and administrative provisions in force, as well as bills and proposals, and makes recommendations to ensure that these provisions are in accordance with the human rights principles set out in the treaties and conventions that have been extended to the Islands.
25. Although the Committee was appointed by Cabinet, its members are not accountable to that body and function independently of the Executive. All members, including those who are civil servants, serve voluntarily in their individual capacities. They do not represent any particular interests or organizations and are free to reflect their own views on issues relating to human rights in the Islands.
26. In early 2006 the government agreed to have the right of individual petition under the European Court for Human Rights re-extended to the Cayman Islands on a permanent basis. Although this avenue of redress does not empower local courts in Cayman to enforce the human rights contained in the European Convention on Human Rights or any of the other core human rights conventions, it is a powerful tool in the vindication of human rights in the Islands.

## **Article 10**

### ***Police***

27. The training curriculum of the RCIPS clearly recognizes and promotes the principles of fairness, integrity, appropriate and respectful treatment in the custody, questioning and treatment of all persons by providing recruits with a fundamental foundation during a twelve week recruit course focusing on components including:
  - Judge's Rules
  - Diversity Training

- Law including Police Law & Regulations/Discipline, Evidence Law and Mental Health Law (including care of patients) etc.
  - Powers of Arrest
  - Attributes of a Good Constable
  - Victim Care
  - Investigative Interviewing
  - Policing as a Human Service
  - Ethics of Policing
  - Domestic Violence (including children and family services)
  - Conflict Resolution
  - Stop & Search (including cell searches).
28. During the course of the training, role playing and knowledge debriefs tenaciously reinforce the principles enshrined in the Judge's Rules. A newly recruited police officer's core knowledge is further enhanced through on the job training under the command of a senior mentoring constable. In-service training augments these practices and addresses deficiencies in order to improve an officer's skills and competencies and ensure adherence to the highest professional policing standard.
29. The makeup of the populace, driven by complex social, cultural and economic factors presents law enforcement training with challenges and to effectively meet these challenges the RCIPS has become proactive in recruiting, training and developing officers of different ethnicities as well as indigenous officers in order to establish a more effective and collaborative network to safeguard the community and preserve the rights of all under the law.
30. The RCIPS recently completed a draft Manual of Guidance to Investigation of Public Complaints and Internal Police Misconduct which will be ratified and introduced shortly. This Guide augments the newly formed Professional Standards Unit following a three month external review by an experienced professional from the Metropolitan Police and defines the standards and behavior for all officers when dealing with their peers and members of the public. All allegations of misconduct will be investigated in order to establish whether or not a breach of the Code of Conduct for Police Officers has occurred and whether formal disciplinary action is appropriate. The Manual is for all intents a guide that will be updated to reflect current law and evolving procedures and practices as they relate to the RCIPS.

***Prisons***

31. Human rights training is a compulsory part of the Officer Foundation Programme for new recruits. Thereafter they are required to achieve 10 Units of Competence over the two years following their Foundation

Programme and one of those units relates specifically to human rights including prisoners' rights. Additionally, there is an e-learning human rights programme available on the computer network. This was developed specifically for use in prisons and will be compulsory so that all staff members will be tested on their knowledge of, and attitudes towards human rights.

### ***Immigration***

32. Officers of the Enforcement Unit of the Department of Immigration who are involved with the detention and questioning of persons on matters relating to immigration receive training with respect to physical control and restraint methods, reasonable use of force, and the proper use of pepper spray and batons. As part of this training, officers are also instructed on the appropriate treatment of women and juveniles as well as ethnic, religious or other diverse groups.
33. This training is given upon joining the Unit and refresher courses (including any requisite certification or re-certification with respect to pepper spray, batons etc.) are given annually thereafter by in-house certified instructors.
34. The George Town Hospital does not have a specific training program on identification of torture specifically for its staff. However, they are trained in the recognition of trauma. There is a full-time nurse at the Prison and general practitioners visit the Prison twice a week to provide medical care to the detainees. GP visits are also arranged for the immigration detention centres. To date, there have been no reported cases of injuries sustained as a result of torture.

### **Article 11**

35. With respect to the Constitution of the Cayman Islands, in 2001 three Constitutional Modernisation Review Commissioners were appointed to review the Constitution. Their 2002 Report included a recommendation for the inclusion of a Bill of Rights consistent with the provisions of the European Convention on Human Rights. Following the establishment of the Constitutional Modernisation Secretariat and significant public sensitisation and debate, the draft new Constitution, negotiated with the United Kingdom was circulated for final public consultation and referendum in the Cayman Islands in 2009. It contains a comprehensive bill of rights which contains, among other things, the right not to be subjected to torture or inhuman or degrading treatment or punishment. Following the General election in May 2009, the Cayman Islands Constitution Order 2009 came into effect on 6 November 2009, the appointed day. By virtue of section 4(2), the Bill of Rights will come into effect the day three years after the appointed day, except certain provisions relating to prisoners which will come into force on 6 November 2013.

### **Prisons**

36. A new Prison Law and Prison Rules are currently with the Legislative Drafting Department. The new Rules incorporate all the appropriate safeguards from the new European Prison Rules (2006), the Standard Minimum Rules and Principles. Moreover, steps are taken to identify new case law or recommendations from the Committee of Ministers of the Council of Europe so that where necessary and as far as practicable within the local context, such recommendations can be incorporated into the existing legislative framework and policies and any judicial decisions can be used for guidance on the interpretation and application of the various articles of the Convention.
37. All prisoners, both convicted and those awaiting trial, are afforded access to medical personnel, family members, and where appropriate, consular officials.
38. The Prisons Inspection Board was re-constituted in May 2007 and Cabinet approved its terms of reference.<sup>136</sup> In September 2007, a new Secretary was appointed to the Board. In early October 2007 all members of the Board including the Secretary received in-depth training in prison inspection from Professor Jim McManus and Mr. Roger Houchin, both of whom have extensive experience in the area of prisons inspection worldwide and particularly in Europe. The new members were apprised of the latest standards employed in EU prisons inspections and were led through a 'model' inspection of the local prison facilities.
39. The Board now visits all places of detention (prisons, immigration detention centers, and police holding cells and detention centers for juveniles) and conducts inspections against a set of standards derived from the European Convention on Human Rights as well as the appropriate UN standards. These standards are set out in a document entitled "Inspection Standards" which was compiled by Dr. William Rattray, Commissioner of Corrections and Rehabilitation. It is anticipated that this document will be revised over time as more specific and suitable 'indicators' are developed to address issues arising in the local detention centers so that international standards will attain a greater degree of relevance locally.
40. The Board has conducted monthly inspections since November 2007 for all three types of detention facilities and produced the 2007–2009 General Report setting out its findings. The Portfolio of Internal and External (which is responsible for the contributing departments in this report) published the report together with the Inspection Standards and the Board's terms of reference on its website<sup>137</sup> to ensure that members of the public are fully informed of the existing procedures and practices.

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<sup>136</sup> See Appendix 2.

<sup>137</sup> [http://www.pie.gov.ky/portal/page?\\_pageid=1795,3509442&\\_dad=portal&\\_schema=PORTAL](http://www.pie.gov.ky/portal/page?_pageid=1795,3509442&_dad=portal&_schema=PORTAL)



It is hoped that such public dissemination of the relevant material will lend to the inspection process a new level of transparency and accountability.

41. Steps have also been taken to procure further training for the Board. In this respect, contact has been made with a renowned prison expert to arrange for the necessary training to be conducted locally. Efforts are also underway to procure training for the Secretary of the Board.
42. The Portfolio's long term goals are to place the Board on a thoroughly professional footing so that its work will be, and also be perceived as, independent of the agencies that are subject to inspection; to ensure that the performance of its mandate will be in accordance with best international practices and that it will remain accountable to the public whose interests it ultimately serves.

### ***Immigration***

43. The Department keeps under review its procedures for the custody and treatment of detained persons to ensure that they are not subjected to treatment which amounts to torture or other cruel, inhuman or degrading treatment or punishment. The Department is in the process of producing internal written instructions for officers to strengthen its existing procedures in this respect. These instructions will set out what Enforcement Officers can and cannot do with respect to a person being detained. The instructions will also set out the information that must be recorded in a Custody Record for the entire period that a person is held.
44. Holding facilities at Immigration Headquarters and at the Immigration Detention Center are independently monitored by the Prison Inspection Board.

### **Article 12 and 13**

#### ***Police***

45. A Professional Standards Policy has been implemented and this specifically encompasses the RCIPS' stance respecting professional standards, integrity and investigation within its Professional Standards Unit. The Policy specifically applies to those officers and staff members responsible for enforcing these standards and investigating allegations of misconduct. Witnesses, victims and accused persons are provided with information relating to the process of investigation together with the necessary support throughout the process. A Family Liaison Policy is also in place which deals exclusively with victims of crime, witnesses and other family/policing related matters. Ongoing support is provided through the RCIPS Family Support Unit.
46. In both the Prison Service and the Department of Immigration the existing practice is that any allegation of torture is immediately turned over by these agencies to the RCIPS for independent investigation. Additionally, Prisons have an internal complaints procedure drafted in

consultation with the Office of the Complaints Commissioner. When an allegation of torture is made, a prisoner is entitled to submit such complaint directly to the Director of Prisons or the Chief Medical Officer. However, even where this course of action is taken, the RCIPS would still be called in to conduct its own investigations.

47. *The Police Bill 2008* introduces, under Part VII, the Police Public Complaints Authority, the functions of which will include the investigation and resolution of:
- (a) a complaint alleging that the conduct of a police officer resulted in the death or serious injury to a person; or
  - (b) any other description of complaint; or
  - (c) any other matter, which, whether or not the subject of a complaint is in the opinion of the Authority of such a nature that it should be so investigated because of:
    - its gravity; or
    - its exceptional circumstances.

Where the chairman of the Authority may attempt to resolve the complaint and he may, if he considers it necessary to do so, designate a member of the Authority to assist him, if he is satisfied that:

- (a) a complaint relates to conduct which, even if proved, would not justify a criminal or disciplinary charge; and
- (b) the complainant and the police officer concerned have given consent for that purpose.

Following an investigation into a complaint, the Commissioner of Police may impose such sanction as he sees fit, direct that no action is warranted or caution the police officer regarding his conduct.

48. The Department of Immigration has an Internal Complaints Process (ICP) whereby customers who feel that they have been treated inappropriately by members of staff may lodge complaints about the conduct of Immigration Officers (including enforcement personnel and civilian personnel) which will then be investigated. The ICP is available to the public as a written publication via the Department's website. One of the policy statements contained in this document is a commitment by the Department to ensuring that no person shall be subjected to treatment which amounts to torture and other cruel, inhuman or degrading treatment or punishment.
49. Complainants also have access to the independent Office of the Complaints Commissioner which has wide powers of investigation over government departments and statutory bodies. To date, no complaints of torture and cruel, inhuman and degrading treatment or punishment involving any officers of the police, immigration or prison authorities have been reported.

50. Apart from the individual departmental complaints procedures, complaints of torture or cruel, inhuman or degrading treatment may be made to the Cayman Islands Human Rights Committee. As part of its mandate, the Cayman Islands Human Rights Committee may receive complaints from individuals in relation to their human rights and may make non-binding recommendations and findings after investigating such complaints.

## **E. FALKLAND ISLANDS**

51. Observance of the Convention by the Falkland Islands remains as described in previous reports. The Falkland Islands have a new Constitution which came into effect on 1 January 2009. Chapter one concerns the protection of fundamental rights and freedoms of the individual. This includes protection of the right to life, protection from inhuman treatment, protection from slavery and forced labour, protection of the right to personal liberty, provisions to secure protection of law, protection of prisoners to inhumane treatment, protection of freedom of movement, protection for private and family life for privacy of home and other property, protection of right to marry and found a family.
52. Part 7 of the constitution states: "All persons deprived of their liberty have the right to be treated with humanity and with respect for the inherent dignity of the human person".
53. The Falkland Islands have built a new prison and work has now commenced on updating the Prison Ordinance 1966 and the Prison Regulations made under it.

## **F. GIBRALTAR**

54. Gibraltar's observance of the convention remains as described in previous reports.

## **G. MONTSERRAT**

55. Montserrat's observance of the convention remains as described in previous reports.

## **H. PITCAIRN**

56. The most recent population census recorded 53 residents as at 31 December 2009. A new Governance structure was introduced in April 2009 to reinforce fair and transparent systems of government and a DFID-funded project is underway to provide Human Rights capacity building (across a number of Overseas Territories). Through these projects the Pitcairn Island Council and community have access to up-to-date training about individuals' rights and responsibilities.
57. From November 2006 to April 2009 Pitcairn's only (6-cell) detention facility housed up to five inmates, four of whom are now on parole in the

community and the fifth has completed his sentence and parole. Pitcairn's law enforcement personnel, judges and magistrates are recruited or seconded from the New Zealand Department of Corrections, New Zealand Police and the New Zealand Bench. All have received training in New Zealand relevant to their professions. In the case of Corrections Officers, recruit training includes instruction on the UN Standard Minimum Rules for the Treatment of Prisoners and protection of individuals at risk and police recruits receive comprehensive training on the treatment of prisoners detained in custody. There is one medical officer on Pitcairn who is recruited and vetted by the global organisation International SOS – detainees receive regular medical check-ups and additional visits are permitted without delay when required.

58. Pitcairn's Prisons Ordinance and prison regulations were modelled on those in other Overseas Territories incorporating modern principles and practices. The prison facility was constructed with advice from expert consultants and well exceeds the Standard Minimum Rules and Basic Principles for Treatment of Prisoners. It was located in the heart of the main settlement and; given Pitcairn's size and population, there would be no possibility of incommunicado detention. The detention facility is currently unoccupied but, when it was operating, a Prison Visiting Committee, chaired by the Seventh-Day Adventist pastor, had a mandate to receive prisoner complaints or allegations of prison officer abuse and report them direct to the Pitcairn Governor. Any complaints of ill-treatment would normally be investigated in the first instance by the Prison Superintendent or, if more appropriate, by the Governor's Representative who has local oversight of the prison. Thereafter, any complaint would be dealt with by the Governor's Office in Wellington, New Zealand. There were no reports of ill-treatment by prison officers during HMP Pitcairn's operation.

## **I. ST HELENA, ASCENSION AND TRISTAN DA CUNHA**

59. St Helena, Ascension Island and Tristan da Cunha have a new Constitution which contains specific human rights guarantees, including protection against being subjected to torture or to inhuman or degrading treatment or punishment. In the period to which the present report relates, there have been no incidents or complaints of torture or other cruel, inhuman or degrading treatment or punishment, nor have there been any requests for the extradition of any person to face a charge of torture, nor has anybody been extradited or removed to a country where there was a risk of his being subjected to torture or ill-treatment.
60. St Helena, Ascension and Tristan da Cunha adopted new Constitutions in 2009 and all contain extensive provisions guaranteeing fundamental rights and freedoms of the individual alongside the provision mentioned above in relation to torture. These provisions substantially correspond to the relevant provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights. In addition, it may be noted that, although the *Human Rights Act 1998* of the United

Kingdom does not extend of its own force to the Overseas Territories, including St Helena, the Supreme Court of St Helena has recently held that that Act does have a certain application in St Helena by virtue of the territory's English Law Application Ordinance. (Broadly speaking, this Ordinance, within certain limits and subject to certain exceptions and qualifications, which are not relevant for present purposes, incorporates English law as in force on 1 January 2006 into the law of St Helena.) Further, the *Criminal Justice Act 1988 (Torture) (Overseas Territories) Order 1988*, which was made expressly to give effect to the Convention against Torture, extends to St Helena: see paragraph 8 of the initial report in respect of St Helena (CAT/C/9/Add.10, p. 25).

## **J. TURKS AND CAICOS**

61. We are awaiting a report from Turks and Caicos and will forward it to the Committee when we receive it.

## Glossary

|        |   |
|--------|---|
| ACAS   | Advisory, Conciliation and Arbitration Service  |
| ACCT   | Assessment, Care in Custody and Treatment   |
| ACDT   | Assessment Care in Detention and Teamwork   |
| ACPC   | Area Child Protection Committee   |
| ACPO   | Association of Chief Police Officers  |
| ACPOS  | Association of Chief Police Officers in Scotland  |
| AEP    | Attenuating Energy Projectile   |
| AJTC   | Administrative Justice and Tribunals Council  |
| ATCS   | Anti-Terrorism, Crime and Security  |
| ATCSA  | Anti-Terrorism, Crime and Security Act 2001   |
| CCNVQ  | Custodial Care National Vocational Qualification  |
| CJA    | Criminal Justice Act 1988   |
| CPS    | Crown Prosecution Service   |
| CSRA   | Cell Sharing Risk Assessment  |
| DDA    | Disability Discrimination Act 1995  |
| DIUS   | Department for Innovation, Universities and Skills  |
| DoH    | Department of Health  |
| DoMILL | Defence Scientific Advisory Council's subcommittee on the Medical Implications of Less-lethal Weapons |
| DPA    | Data Protection Act 1998  |
| DSAC   | Defence Scientific Advisory Council   |
| DTO    | Detention and Training Order  |
| ECHR   | European Convention on Human Rights   |
| ECtHR  | European Court of Human Rights  |
| ECNI   | Equality Commission Northern Ireland  |
| ECPT   | European Committee for the Prevention of Torture  |
| EHRC   | Equality and Human Rights Commission  |
| ELR    | Exceptional Leave to Remain   |
| FOIA   | Freedom of Information Act 2000   |
| FNP    | Foreign National Prisoners  |
| GB     | Great Britain   |
| GEO    | Government Equality Office  |
| GOCNI  | General Officer Commanding Northern Ireland   |

|       |   |
|-------|---|
| GPCC  | Guernsey Police Complaints Commission                   |
| HET   | Historical Enquiries Team                               |
| HMCIP | Her Majesty's Chief Inspector of Prisons                |
| HMIC  | Her Majesty's Inspectorate of Constabulary              |
| HMICS | Her Majesty's Inspectorate of Constabulary for Scotland |
| HMP   | Her Majesty's Prison                                    |
| HMPS  | Her Majesty's Prison Service                            |
| HMRC  | Her Majesty's Revenue and Customs                       |
| HMYOI | Her Majesty's Young Offenders Institute                 |
| HOSDB | Home Office Scientific Development Branch               |
| HRA   | Human Rights Act 1998                                   |
| HSCE  | Health Service Commissioner for England                 |
| ICRC  | International Committee of the Red Cross                |
| ICCPR | International Covenant on Civil and Political Rights    |
| IMB   | Independent Monitoring Board                            |
| IND   | Immigration and Nationality Directorate                 |
| IO    | Investigating Officer                                   |
| IPCC  | Independent Police Complaints Commission                |
| IRC   | Immigration Removal Centre                              |
| ISSP  | Intensive Surveillance and Supervision Programme        |
| LASU  | Local Authority Secure Unit                             |
| LOAC  | Law of Armed Conflict                                   |
| LSC   | Legal Services Commission                               |
| MCTC  | Military Corrective Training Centre                     |
| MHAC  | Mental Health Act Commission                            |
| NCB   | National Children's Bureau                              |
| NGO   | Non-Government Organisation                             |
| NHS   | National Health Service                                 |
| NIHRC | Northern Ireland Human Rights Commission                |
| NIPS  | Northern Ireland Prison Service                         |
| NOMS  | National Offender Management Service                    |
| NPM   | National Preventative Mechanism                         |
| OJC   | Office for Judicial Complaints                          |
| OLASS | Offender Learning and Skills Service                    |
| OLSU  | Offenders' Learning and Skills Unit                     |
| PABEW | Police Advisory Board for England and Wales             |

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|         |  |
|---------|--|
| PACE    | Police and Criminal Evidence Act 1984/ Northern Ireland Order 1989 |
| PAVA    | Pelargonic Acid Vanillylamide                                      |
| PBR     | Plastic Baton Round  |
| PCA     | Police Complaints Authority  |
| PCfA    | Parliamentary Commissioner for Administration                      |
| PCCS    | Police Complaints Commissioner for Scotland                        |
| PCT     | Primary Care Trust   |
| PECCS   | Prisoner Escorting and Court Custody Service                       |
| PHSO    | Parliamentary and Health Service Ombudsman                         |
| POELT   | Prison Officer Entry Level Training                                |
| PPCEG   | Police Powers and Criminal Evidence (Guernsey) Act 2003            |
| PPCEJ   | Police Procedures and Criminal Evidence (Jersey) Law 2003          |
| PSA     | Public Service Agreement   |
| PSDB    | Police Scientific Development Branch                               |
| PSNI    | Police Service Northern Ireland                                    |
| PSO     | Prison Service Order   |
| QCA     | Qualifications and Curriculum Authority                            |
| RCIPS   | Royal Cayman Island Police Service                                 |
| RUC     | Royal Ulster Constabulary  |
| SCHR    | Scottish Commission for Human Rights                               |
| SETF    | Social Exclusion Task Force  |
| SI      | Statutory Instrument   |
| SIA     | Security Industry Authority  |
| SIDCAAR | Self-Inflicted Death in Custody: Analysis, Audit and Review        |
| SIO     | Senior Investigating Officer                                       |
| SOCA    | Serious Organised Crime Agency                                     |
| SOJP    | States of Jersey Police  |
| SPC     | Suicide Prevention Co-ordinator                                    |
| SPS     | Scottish Prison Service  |
| STC     | Secure Training Centre   |
| UKBA    | United Kingdom Border Agency                                       |
| YCAP    | Youth Crime Action Plan  |
| YJB     | Youth Justice Board  |
| YOI     | Youth Offender Institution   |



## **Appendix 1: The United Kingdom's National Preventive Mechanism**

The following bodies form the UK's NPM:

### **England and Wales**

Her Majesty's Inspectorate of Prisons (HMIP)

Independent Monitoring Boards (IMB)

Independent Custody Visiting Association (ICVA)

Her Majesty's Inspectorate of Constabulary (HMIC)

Care Quality Commission (CQC)

Healthcare Inspectorate of Wales (HIW)

Children's Commissioner for England (CCE)

Care and Social Services Inspectorate Wales (CSSIW)

Office for Standards in Education (OFSTED)

### **Scotland**

Her Majesty's Inspectorate of Prisons for Scotland (HMIPS)

Her Majesty's Inspectorate of Constabulary for Scotland (HMICS)

Scottish Human Rights Commission (SHRC)

Mental Welfare Commission for Scotland (MWCS)

The Care Commission (CC)

### **Northern Ireland**

Independent Monitoring Boards (IMB)

Criminal Justice Inspection Northern Ireland (CJINI)

Regulation and Quality Improvement Authority (RQIA)

Northern Ireland Policing Board Independent Custody Visiting Scheme (NIPBICVS)

If it is necessary to add new inspection bodies to the NPM, or if bodies within the NPM are restructured or renamed, the Government will notify Parliament accordingly.

## **Appendix 2: Composition and Terms of Reference of the Royal Cayman Islands Prison Inspection Board**

1. The Prison Inspection Board is composed of seven members. One member will be drawn from each of the six electoral districts in the Cayman Islands. A Chairman will be appointed by the Portfolio for Internal and External Affairs.
2. The purpose of the Prison Inspection Board is to provide an independent perspective, on behalf of the public and the Cabinet Member responsible, regarding the conditions in each correctional facility and the ways in which that facility is achieving the two main goals of a prison:
  - to provide secure and humane custody for those sentenced to prison by the courts;
  - to promote the rehabilitation of inmates so that they live law-abiding and useful lives in custody and after release.
3. The Chairman will arrange for visits to each correctional facility at least once per month, if possible. No more than sixty (60) calendar days shall pass without any particular facility being visited by the board. The Prison Inspection Board should provide the Prison Director or his representative with at least two (2) working days notice of any visit.
4. At least two board members should take part in every visit, one of whom should be female if the visit is to a female facility.
5. The Prison Inspection Board shall promote the efficiency of the prison by conducting inspections according to inspection standards approved by the Portfolio, and shall inquire into and report to the Portfolio upon any matter requested by the Portfolio. In particular, the Prison Inspection Board shall:
  - (a) notify the Director in writing of any circumstances relating to the administration of the prison which are contrary to the requirements of the Prison Law and Prison Rules;
  - (b) notify the Director in writing of any circumstances relating to the administration of the prison which are contrary to the requirements specified in the inspection standards;
  - (c) notify the Portfolio in writing of any situation in which it appears to the Board that the Director has not addressed a matter on which the Board has notified the Director in regards to sub-paragraphs (a) and (b) within such period as appears to the Board to be reasonable.

6. The Prison Inspection Board or any member of the Board may inspect any prison records with the exception of:
  - (a) staff personnel records;
  - (b) personal records of prisoners (sentence plans, however, can and should be examined as part of inspecting the rehabilitation process);
  - (c) security manuals or other documents whose examination may compromise security.
7. Board members may visit any part of any facility or may request to speak with any prisoner or any member of the prison staff. Unless security or personal safety considerations demand otherwise, prison staff shall make every reasonable attempt to meet these requests. Any request that cannot be met should be noted in the inspection report.
8. Within ten (10) calendar days of any visit, the board shall deliver a written report of its findings to the Portfolio with a copy to the Director of Prisons. Within ten (10) calendar days of receiving the report, the Director shall deliver a written response to the board, with a copy to the Portfolio. Problems observed during a visit should be noted in the report and should be given priority attention during the next visit.
9. Prison Inspection Board members will be required to undergo training and to become completely familiar with the inspection standards approved by the Portfolio. The “Profile of a Prison Inspection Board Member” below sets out the qualities needed for this work.
10. At the discretion of the members, the Prison Inspection Board may invite a professional who is an expert in a specific area (such as diet, building sanitation, or teaching literacy) in order to assist them in inspecting that aspect of prison life.
11. In view of the importance of inspection work and the commitment required by board members, the Portfolio will arrange for relevant training to be provided for board members from time to time, and for an appropriate monthly honorarium to be paid to members by the Portfolio.

### **Profile of a Prison Inspection Board Member**

What is involved in being a member of the Prison Inspection Board? Members may come from all walks of life but they should share some important qualities.

- (i) Members will find this work to be both demanding and rewarding. They should be prepared to set aside at least two to three full days per month for board business. This will include conducting inspections, meeting to discuss inspections, assisting in preparing inspection reports, and preparing for future inspections.

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- (ii) Members should be able and willing to undergo training. They should be ready to learn about prison life, the prison law and rules, and about how prison inspection standards promote a well-run prison.
- (iii) Members serve as representatives of their district. However, their perspective and concerns should not be limited to prisoners from their district but should feed into a broader, national understanding of correctional work in the Cayman Islands.
- (iv) Members should become increasingly familiar with the many aspects of prison life and should not underestimate the complexities of how a prison works. (Admiral Sir Raymond Lygo, after conducting an in-depth review of the English Prison Service at the request of the Home Office, described it as “the most complex organization...and the most difficult management task I have encountered”.)
- (v) Members are free to ask questions about any aspect of prison life that will enable the prison to comply with inspection standards, the prison law or prison rules.
- (vi) Members may or may not have any training or experience in legal matters. Some members may be Justices of the Peace, but in order to preserve balance in the board’s composition, it is envisioned that no more than three members will be Justices of the Peace.
- (vii) Members are expected to exercise considerable discernment, judgment, tact and diplomacy. In the course of their work they will be exposed to sensitive information about prisoners and prison life, which they must be willing to hold in strictest confidence.



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