



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

**REPLIES TO THE LIST OF ISSUES (CCPR/C/GBR/Q/6)  
TO BETAKEN UP IN CONNECTION WITH THE CONSIDERATION  
OF THE SIXTH PERIODIC REPORT OF THE GOVERNMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
(CCPR/C/GBR/6)<sup>\*\*\*</sup>**

[13 June 2008]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* Annexes to replies to the List of issues (CCPR/C/GBR/Q/6) can be consulted in the files of the Secretariat.

Issue 1

1. The UK Government takes its obligations under the ICCPR very seriously. However, the United Kingdom has no plans to incorporate the Convention into its domestic legislation.
2. In general, treaties and international conventions are not incorporated directly into UK law, as happens in some countries. Instead, if any change in the law is needed to enable the United Kingdom to comply with a treaty or convention, the Government introduces a bill designed to give effect to the relevant articles of the treaty or convention. The United Kingdom does not become party to a treaty unless satisfied that its domestic law and practice are consistent with its treaty obligations. In certain circumstances, courts in the UK may also take account of the UK's treaty obligations - for example as an aid to interpretation of ambiguous provisions of legislation.
3. Most of the rights in the Convention are duplicated in the European Convention on Human Rights (ECHR), and they are protected in UK domestic law under the Human Rights Act 1998, which gives further effect to the rights in the ECHR. Of those rights in the ICCPR which are not duplicated in the ECHR, many receive either direct or indirect protection in the UK via various other statutory provisions.
4. The Government continues to keep under review the mechanisms for protection of civil and political rights enjoyed by people in the United Kingdom but is not persuaded that incorporation of the ICCPR into UK domestic law is an appropriate step at this time.
5. The Government reviewed its position with regard to individual petition to the United Nations Human Rights Treaty Bodies in 2004, and concluded that the practical value to the individual citizen is unclear. The UN monitoring committees which receive individual petitions from citizens are not courts and cannot award damages, or produce a legal ruling on the meaning of the law. However, as a result of the Review, the Government decided to accept the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), so as to enable it to consider on a more empirical basis the merits of the right of individual petition under the other three UN treaties. Since 2005, two applications naming the United Kingdom have been made to the UN CEDAW Committee. Both were declared inadmissible. In 2008, the Government commissioned an independent review of the CEDAW experiment, and expects to announce the review's conclusions by the summer of 2008.
6. The Overseas Territories have their own constitutions and domestic laws and many have a substantial measure of responsibility for the conduct of their internal affairs. However, when discussing constitutional review, the UK continues to press Overseas Territories governments for the inclusion of a comprehensive fundamental rights chapter, reflecting, at a minimum, the provisions of the ICCPR and the European Convention on Human Rights (ECHR). No new constitution would be agreed by the UK which did not contain a comprehensive fundamental rights chapter. Since the publication of the 1999 White Paper on the UK's relationship with the Overseas Territories, new constitutions have come into force in Gibraltar (2007), Turks and Caicos Islands (2006) and the British Virgin Islands (2007). Each of the new constitutions has an updated (Gibraltar and Turks and Caicos

Islands) or new (British Virgin Islands) fundamental rights chapter, which aims to implement fully the rights and obligations under ICCPR and ECHR. An infringement of these rights under these Chapters by the Territory authorities can be challenged before the domestic court in the Territory. Where the ICCPR is currently not implemented, or not implemented fully, in the Constitution of a territory, some of its provisions are nonetheless often reflected in provisions of local legislation (e.g. the Human Rights Act of Bermuda, which is currently under review), relating to due process, deprivation of liberty etc. Where the provisions of the ICCPR have not been incorporated into domestic legislation, and therefore its provisions cannot be invoked directly before a domestic court, the court's attention could still be directed to its provisions, which would be highly persuasive in interpreting domestic legislation should there be any ambiguity in such legislation.

7. In some Territories (e.g. British Virgin Islands), provision is made for the establishment of a Human Rights Commission, the typical mandate of which would be to receive, investigate, and offer guidance in relation to complaints made of any breach or infringement of rights and freedoms under the Constitution. Referral of complaints to this commission would be voluntary and would not derogate from a person's right to seek redress directly from the court.

#### Issue 2

8. There is no intention to withdraw the reservation to article 10. The reservation continues to be required because while the vast majority of juveniles are held separately from adults (and indeed in 2000, the Prison Service for England and Wales created an Under 18 estate to enable greater separation of this group of prisoners), exceptionally there is the need to accommodate a youngster in an adult establishment for security/offence reasons or to meet that particular individual's needs. The reservation needs to be retained for Scotland because children of 16 and over are detained in young offenders' institutions (YOIs) alongside people up to the age of 21, although wherever possible those under 18 are held in separate living accommodation within YOIs.
9. Jersey authorities have requested the withdrawal of the reservation to Article 11; this request is currently being assessed and may be actioned, subject to the completion of the necessary formalities
10. There is no intention to withdraw the reservation to article 12(1) and (4). There is uncertainty concerning the correct interpretation of "territory of a State" and "own country". The purpose of the Immigration Act 1971 and related legislation is to control immigration into the United Kingdom, including immigration from the British overseas territories (which, in general, are responsible for their own immigration controls). The right to enter and reside in the United Kingdom is restricted, in the main, to British citizens. British Nationals (Overseas), British overseas territories citizens, British Overseas citizens, British protected persons and (for the most part) British subjects are eligible for British passports and consular protection but, unless they concurrently hold British citizenship, have no right of abode in the UK. The reservation reflects these arrangements.
11. The United Kingdom interprets article 20 consistently with articles 19 and 21 and there are no plans for new legislation in this area.

12. The United Kingdom has a long tradition of freedom of speech which allows individuals to hold and express views which may well be contrary to those of the majority of the population, and which many may find distasteful or even offensive. The UK maintains its view that individuals have the right to express such views so long as they are not expressed violently or do not incite violence or hatred against others. The Government believes that current legislation strikes the right balance between maintaining the right to freedom of speech and protecting individuals from violence and hatred.
13. There is no intention to withdraw the reservation to article 24(3). The Covenant is silent both as to the circumstances in which “the right to acquire a nationality” will arise, and the identity of the State on which, in any particular case, the obligation to ensure that the right is respected will fall. There are various statutory restrictions on the ability of minors to acquire British nationality, all of which are consistent with our obligations under the 1961 UN Convention on the Reduction of Statelessness. The reservation is deemed necessary to ensure that any obligation under the ICCPR – and article 24(3) in particular – goes no further than these.
14. With regard to the general reservation on service discipline of members of the armed forces and prisoners, a range of Service disciplinary procedures have been modified to bring them in line with the European Convention on Human Rights, particularly in relation to the conduct of summary hearings and courts-martial. Notwithstanding this, there remain points within the ICCPR that would impact on the operational effectiveness of the UK Armed Forces if the current reservation were to be removed. The exigencies of Service life may make it impossible to segregate juvenile offenders (who will not be below 16 years of age in the case of the Armed Forces) from adults. Article 12(1) is inconsistent with the inevitable requirement for Service personnel to be ordered to be sent to, or remain at, a particular location. Article 21 allows the right of ‘peaceful assembly’, but this is not compatible with service disciplinary ethos (Article 11 of the ECHR, covering the same subject matter, recognises this). The use of a single language (English) must be required in the majority of operational situations, and so the linguistic provisions of Article 27 could be problematic for the Services. Maintaining the discipline of the Armed Forces, wherever they are deployed, and in peacetime and in conflict, is vital to their operational effectiveness. For this reason the reservation needs to remain in place as it stands.

### Issue 3

15. Northern Ireland’s turbulent past has seen the issue of human rights and equality become increasingly significant. In this context, the 1998 Belfast Agreement contained a number of specific commitments on human rights and equality, resulting in a comprehensive regime of statutory protections and the establishment of the Northern Ireland Human Rights Commission (NIHRC) and the Equality Commission for Northern Ireland. Additionally, the reformed police service and justice agencies in Northern Ireland have made world-class progress in mainstreaming rights into everyday practice.
16. Aside from the (NIHRC) Human Rights Commission and Equality Commission, there are a number of oversight bodies operating in particular fields which help ensure that rights are protected, including the Police Ombudsman, the Children’s Commissioner and Chief

Inspector of Criminal Justice. Northern Ireland now arguably has the most comprehensive statutory human rights and equality protections in Europe.

17. The NIHRC was established in March 1999. The NIHRC's remit is to promote and protect human rights within Northern Ireland. Its functions and powers, set out in the Northern Ireland Act 1998 and developed further in the Justice and Security (NI) Act 2007, include advising Government and the NI Assembly of measures that ought to be taken for the protection of human rights; reviewing the effectiveness of human rights law in Northern Ireland, carrying out investigations; including statutory powers to compel evidence and access places of detention in connection with its investigation; assisting individuals bringing judicial proceedings on ECHR grounds; and submitting advice to the Secretary of State on the scope for a Bill of Rights for Northern Ireland.
18. The Belfast Agreement tasked the NIHRC 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, made up of representatives of all the main political parties and civic society was established to assist this process. Engaging such a wide spectrum of opinion was a major achievement, and the Forum provided a report on this issue to the Northern Ireland Human Rights Commission on 31 March 2008. This will inform the statutory advice that the Commission is due to submit to the Secretary of State on 10 December 2008.
19. Government will consult on this advice before deciding how to progress. Separately, we are also exploring the potential for a UK-wide Bill of Rights and Responsibilities. The forthcoming Green Paper will invite views on the shape that this Bill should take; and also the relationship it might have with any potential Northern Ireland Bill of Rights.
20. The Police Service of Northern Ireland (PSNI) seeks to be representative of society that it serves and currently 0.31% of PSNI police officers are from a black or ethnic minority background. This compares favourably with a representation figure of 0.47% of the economically active population in Northern Ireland. PSNI have put in place both a grievance procedure and a separate bullying and harassment procedure through which officers who experience discrimination, bullying and/or victimisation can raise complaints which will be dealt with in a timely and professional manner. Analysis of figures for the last three years indicate that no officers have reported racial abuse. In addition, the PSNI have identified Racism as one of three work strands under their Shared Future (Diversity and Equality) Strategy 2007 with the objective of providing a police service that makes people in Minority Ethnic and European Communities feel safer.
21. Police officers in Northern Ireland are subject to a Code of Ethics, based on statutory equality and professional duties and the European Convention on Human Rights. They are held accountable to these standards by a variety of mechanisms. PSNI Professional Standards Department and District Command Teams/Departmental Heads deal with breaches of these articles.
22. Where there is a public complaint regarding the behaviour of a PSNI officer, this is investigated by the Office of the Police Ombudsman for Northern Ireland. Since 2005

there have been a small number of cases resulting in investigations by the Professional Standards Department, District Command Teams and by the Police Ombudsman. These investigations have resulted in several officers being dealt with at formal misconduct hearings and several other officers receiving informal sanctions.

23. The Northern Ireland Policing Board has a specific statutory duty to monitor the PSNI's compliance with the Human Rights Act 1998. The Board's 2007 annual human rights report is broadly very positive. All recommendations made are currently under review by PSNI as part of the ongoing process of dialogue and implementation. For example, PSNI is to examine in even greater detail the use of stop and search powers by officers. This will allow the PSNI to further ensure that these powers are used lawfully and in a non-discriminatory manner.
24. The Northern Ireland five-year strategy on domestic violence "Tackling Violence at Home" was launched in October 2005 and annual action plans are developed in order to secure the strategies objectives. Considerable progress has been made. For example:
  - The establishment of a Government-funded Domestic Violence helpline which provides information, advice and support to victims of domestic violence.
  - Routine checks introduced for pregnant women.
  - Production of guidance documents for employers, agencies, faith communities and political representatives.
  - The appointment of specialised Domestic Violence Officers in each Police Service of Northern Ireland command.
  - The provision of specialist training for key staff in a range of agencies (eg, Northern Ireland Court Service to respond to victims' needs).
  - Research into equality of access to domestic violence services for victims from the black and ethnic minority communities.
  - Development and introduction of Sanctuary Schemes, which provide victims and their children a safe place in their home.
25. Consideration is currently being given to the possibility of establishing specialist domestic violence courts in Northern Ireland.
26. A draft regional strategy to tackle sexual violence and abuse, "Hidden Crimes, Secret Pain", is currently out for consultation and will be published later in the June 2008. Actions will be taken forward to deliver a more effective, collaborative and co-ordinated approach to tackling and reducing sexual violence and abuse.
27. The Northern Ireland Department for Health, Social Services and Public Safety has committed approximately £2m capital resources and over £500k per year, increasing over the next three years, to implement the strategy.

#### Issue 4

28. The number of women holding political office at all levels in the UK has increased markedly over the last 25 years. The proportion of women in Parliament more than doubled from 9.2% in 1992 to 20% in 2005.

29. The figures available show that, in the years when all women shortlists were used, there was an increase. In 1997 the percentage of women MPs increased to 18.2% (from 9.2% in 1992) and in 2005 it went up to 19.8%. But the use of all women-only shortlists was deemed unlawful following the 1992 General Election. It is not possible to determine how many women candidates had already come through women-only shortlists to be the designated candidate for a constituency before the policy was declared unlawful by the time of the 1997 General Election.
30. The 2001 election was carried out without women-only shortlists as they were still unlawful. The Sex Discrimination (Elections Candidates) Act became law in 2002 and provided for women-only shortlists.
31. A table showing numbers of women MPs at Westminster from 1970 to 2005 can be found at Appendix 1
32. In September 2007, the Prime Minister proposed to the Speaker of the House of Commons that he call a conference to consider the representation of women and ethnic minorities in the House of Commons.
33. A Speaker's Conference brings together all the parties at Westminster to look at issues that can only be dealt with on a cross-party basis. In the last century there were five Speaker's Conferences and each looked at different aspects of the political and electoral system - reform of the franchise, distribution of parliamentary seats, registration of electors and other matters.
34. The Scottish Parliament and Welsh Assembly have made significant progress in the representation of women. Women make up 46.7% of Welsh Assembly Members and 33.3% of Members of Scottish Parliament.
35. More and more women are applying for and taking up judicial office in the UK. The Government believes that increasing the profile of women in the judiciary, promoting more flexible working arrangements, and highlighting the new open, transparent selection procedures should encourage more women to consider a career in the judiciary.
36. In 1999 only 24% of judicial appointments to courts and tribunals were women. By September 2005 this had increased to 46%, with the total number of female judges in courts rising from 14-19% in the last 5 years alone. Whilst the figures are clearly not reflective of the ratio of women to men in society, the number of women judges is, in part at least, a reflection of the number of women in the profession with the appropriate experience. As more women enter the legal profession, the number of women in the judiciary continues to show a steady increase, with the fee-paid 'feeder' ranks reflecting a higher proportion of women than are in salaried judicial office.
37. In April 2006 the Judicial Appointments Commission was launched and is now responsible for the selection of candidates for judicial appointment in England and Wales. The Commission has a statutory role in encouraging a wider range of applicants for judicial office, while maintaining the principle that selection for appointment is on merit. In

October 2006 the Commission launched its first High Court selection exercise, open to anyone meeting the eligibility criteria to apply.

38. In May 2006 the Lord Chancellor, Lord Chief Justice and Chairman of the Judicial Appointments Commission (Baroness Prashar) jointly agreed a Judicial Diversity Strategy with the overall aim of bringing about a more diverse judiciary, with particular emphasis on gender, ethnic origin, disability and professional background.
39. The Tribunals, Courts and Enforcement Act 2007 contained order making powers enabling the Lord Chancellor to specify 'relevant qualifications' so that persons other than solicitors and barristers can become judges. The Government is currently consulting on which judicial posts Legal Executives, Patent Attorneys and Trademark Attorneys should become eligible for.
40. Scotland has a separate judicial system and in 2002 the then Scottish Executive established the Judicial Appointments Board for Scotland. Legislation is currently progressing through the Scottish Parliament to place the Board on a statutory basis. The Board's remit is to recommend candidates on merit but in addition to consider ways of recruiting a Judiciary which is as representative as possible of the communities which they serve. In 2001 women held only 12% of the judicial appointments in Scotland. By June 2008 this figure has increased to 18%. The Board have set up a Diversity Working Group to identify evidence of diversity among the legal profession in Scotland and whether that diversity is reflected in applicants for judicial appointments. The Group, which includes representatives from the Faculty of Advocate and the Law Society of Scotland, is currently considering the use of an anonymised survey to all members of the judiciary and the legal profession to establish a benchmark for the legal profession and for judicial office holders, as well as to identify any potential barriers which could be standing in the way of eligible candidates, inhibiting them from applying to become sheriffs or judges

#### Issue 5

41. The powers within counter terrorism legislation are not aimed at a particular race, religion, or any other group. They are aimed at terrorists, whatever background or section of society they may come from. The government is committed to improving and developing a close partnership with the Muslim community to combat terrorism. There is also appropriate parliamentary scrutiny of the impact of counter terrorism powers on communities, including Muslim communities. The Home Affairs Committee continues to examine and report on this particular issue.
42. Those concerned with improving race relations have stressed the need to collect accurate information about the ethnicity of people in contact with the police. Section 95 of the Criminal Justice Act 1991 led to new measures to establish consistent ethnic monitoring within the police service. This includes data on stop and search.
43. Each year figures are published by the Ministry of Justice on the numbers and proportionality of stops and searches carried out. The Metropolitan Police Service annually release data on the use of stop and search powers under the Terrorism Act 2000. The data is broken down by borough and within each borough by age group, ethnic



appearance, self-defined ethnicity and gender. By releasing this data they are being open and accountable to local communities. The Metropolitan Police Service understands that the public have concerns about the use of section 44 Terrorism Act powers.

44. If an individual believes they were stopped and searched unreasonably, or they were not treated fairly or with respect, they can complain to:
  - a police station
  - a Citizen's Advice Bureau
  - the Independent Police Complaints Commission
  - the Commission for Equality and Human Rights
  - a solicitor
45. Numerous research reports, including a Market and Opinion Research International (MORI) survey commissioned by the Office of Criminal Justice Reform in 2005, identified the disproportionate use of stop and search as critical to the perception of fair treatment by the criminal justice system in minority communities.
46. For a number of years the Government has been working to reduce the levels of unjustified or unexplained disproportionality in the use of stop and search. To this end it has developed a diagnostic tool to assist forces in reducing disproportionality. Whilst the national levels of disproportionality remain a concern, significant progress has been made locally in a number of forces.
47. Together with a number of other initiatives this has had a positive impact. The proportion of people from minority ethnic groups who feel that they would be treated worse than other races by at least one of the five criminal justice system (CJS) organisations is significantly lower in April-December 2007 (27%) than it was in 2001 (33%).
48. The Government is committed to increase the confidence minority groups have in the in the criminal justice system by reducing levels of unfair disproportionality at every stage in the system, including stop and search. It therefore intends to roll out the use of the diagnostic tool to other forces.
49. A new public service agreement (PSA 24 Priority 4) states:

“Criminal Justice agencies will be better able to identify and explain race disproportionality at key points within the Criminal Justice System and will have strategies in place to address racial disparities which cannot be explained or objectively justified.”
50. Work on this has already started with:
  - Piloting of the Minimum Data Set for collection of ethnicity data and
  - Publishing a Basket of Indicators and starting to develop diagnostic tools to help local criminal justice organisations identify, understand and tackle unfair racial disparities at key stages in the criminal justice process (stop and search, arrest, bail sentence etc)

51. Stop and search under section 44 of the Terrorism Act 2000 is an important tool in the ongoing fight against terrorism. As part of a structured anti-terrorist strategy, the power creates an environment inconvenient for would-be terrorists to operate in. In order to properly protect sensitive sites, specific zones are authorised for the use of section 44 powers. In this context the Government believes that it is not necessary for the police to have a reasonable suspicion prior to the exercise of their powers. Giving the police the chance to stop and search individuals within an authorised zone, both with and without reasonable suspicion, increases the chance that potential terrorists are found.
52. In operation, stop and search is more likely to be effective and secure public confidence when used in conjunction with up to date and accurate intelligence information. The selection of persons stopped under terrorism provisions should reflect an effective assessment of the threat posed rather than an individual's racial profile, this is made clear in official guidance issued to police officers.
53. On 25 October, the Prime Minister announced a review of the guidance on the use of stop and search powers under the Terrorism Act 2000. The review is being undertaken in consultation with the police, civil liberties and human rights organisations and community groups. The guidance is being reviewed to ensure that the police have the powers they need, and so that public trust is preserved in the use of that power.
54. With regard to Scottish police forces, evidence does not suggest disproportionate targeting of minority ethnic communities for stop and search. However, the communities themselves believe this to be the case, which has led to strained relations at times. Proactive sharing of information about stop and search by Strathclyde Police for example, has been of great value in restoring relations. However, the actions of British Transport Police in Scotland continue to cause concerns among Muslim communities in particular. Significant numbers of Muslims, or Muslim appearing people, have been stopped and searched by BTP in Scotland, and the Cabinet Secretary for Justice has raised this issue with Tom Harris MP, Parliamentary Under Secretary of State for Transport. This has undoubtedly added to the feelings of Scotland's Muslim communities that they are being unfairly targeted.

#### Issue 6

55. The action plan "Implementing Race Equality in Prisons – A Shared Agenda for Change" now forms part of the detailed and comprehensive Race Equality Action Plan (REAP) that sets out all the high-level actions that the Prison Service is taking on race equality. It builds on that plan (which was agreed with the Commission for Racial Equality in 2003) and includes actions to address the recommendations of the Zahid Mubarek Inquiry and the 'Areas for Development' identified by Her Majesty's Chief Inspector of Prisons in the 'Parallel Worlds' report, as well as the programme of work to meet and go beyond legal obligations set out in the Race Equality Scheme. The REAP is managed by a Programme Management Board, chaired by the Director of Finance. This group meets every six weeks and reports quarterly to the Prison Service Management Board.
56. The five-year period of the Action Plan agreed with the Commission for Racial Equality (CRE) comes to an end in December 2008. In the light of this, the Government has commissioned a review involving independent, external stakeholders to assess progress

made by the Service in addressing the failure areas identified by the CRE in their formal investigation. The Prison Service has made considerable progress in working towards race equality. However, it recognises that more work needs to be done to tackle subtle, unintended forms of discrimination. The review will provide an external view on where the challenges still lie and assist in developing further work to meet these challenges in the future.

57. The review will specifically focus on assessing the progress made against the action plan published in 2003. This will involve assessing progress against the 14 failure areas as well as revisiting Brixton, Feltham and Parc. In addition, the outcomes of the review will assist in identifying and setting the priority areas for action over the next 3 to 5 years. The Government is keen to ensure that the review process is open and transparent and has therefore invited participation from respected and well-recognised external stakeholders, such as academics and practitioners from related fields. The work is being overseen by an Independent Advisory Group with representatives from key stakeholders, such as Her Majesty's Inspectorate of Prisons and the Prison Reform Trust, as well as a commissioner from the Equality and Human Rights Commission as an observer. This group will be responsible for guiding the work and for helping to bring together the various elements of it into a coherent commentary on overall progress. It is intended that the review be published in December 2008 to coincide with the end of the partnership agreement with the CRE and to act as the 'sign-off' of the five-year plan, as well as to inform the Service's future work programme on race equality.
58. The REAP includes actions to improve the investigation of race complaints by prisoners. Measures that have already been put in place include:
- improved training for staff conducting formal investigations, including a specific session on race and diversity issues and practice scenarios that involve race issues;
  - improved training for Race Equality Officers conducting fact-finding inquiries into race issues;
  - external scrutiny of a percentage of completed investigations in all establishments.
59. In addition to these actions, a project to improve the handling of complaints and racist incidents has been conducted at four prisons. As well as addressing the Mubarek recommendation for greater external involvement, this project introduced a number of measures to improve the investigation of complaints more generally. A survey measure of prisoner confidence developed by Cambridge University was used in each of the prisons in June 2007 and was repeated in January 2008 to obtain an objective measure of progress. The findings demonstrated that some progress was made in improving the confidence of prisoners at three of the four prisons, and the measures will be rolled out nationally in 2008-09.
60. Since the launch of the Scottish Prison Service Race Equality Scheme in November 2005 the Service has taken a number of positive steps to promote race equality across the organisation. The progress made has ensured that the many improvements SPS have put in place in relation to policy and functions have given the Service the impetus to take forward the mainstreaming of race equality.

61. A separate racist incident complaints procedure is not operated in Northern Ireland. The Northern Ireland Prison Service (NIPS) operates a 3-stage Prisoner Internal Complaints Procedure. If a prisoner is not satisfied with the outcome of the internal procedure they can refer the complaint to the Prisoner Ombudsman for Northern Ireland.
62. NIPS currently records the number of complaints made of a racial nature and advises there were nine complaints on racial grounds in NIPS in the past twelve months. NIPS is exploring a means of monitoring the grounds of complaints based on the perception of the complainant. This is likely to be based on the nine equality categories set out in section 75 of the Northern Ireland Act 1998 (religious belief, political opinion, race or ethnic group, age, marital status, sexual orientation, gender, disability and dependency). NIPS is planning to reproduce its internal complaints form in a multi-lingual format to make it more accessible to foreign national prisoners.
63. NIPS is currently developing a distinct strategy for the management of foreign national prisoners recognising their specific needs and will shortly consult on a Human Resources Diversity Strategy 2007-2010.

#### Issue 7

64. The Government of the United Kingdom has established independent inquiries into the deaths of Robert Hamill, Billy Wright and Rosemary Nelson following the recommendation of Canadian Justice Peter Cory, who examined the cases at the Government's request. The Secretary of State for Northern Ireland announced the establishment of these inquiries in a written statement to Parliament on 12 November 2004. All three inquiries are under way and are gathering evidence. The Wright Inquiry began its oral hearings on 28 January 2008, the Nelson Inquiry began its oral hearings on 15 April 2008 and the Hamill Inquiry will begin its oral hearings once the judicial review, launched by the Hamill family against the Secretary of State's decision not to extend the Inquiry's terms of reference, has been concluded and the Inquiry returns after its summer recess. Therefore the oral hearings will not begin before September 2008. None of these inquiries have yet concluded.
65. The purpose of these independent inquiries is to examine the circumstances surrounding the murders, to produce a report on the facts, and to make any appropriate recommendations; their purpose is not to bring about the prosecution and punishment of those responsible for the deaths. Criminal investigations or prosecutions are a matter for the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland respectively.
66. Three men have been prosecuted for the murder of Billy Wright, the LVF leader who was killed in the Maze prison on 27 December 1997. Three INLA members, Christopher McWilliams, John Kennaway and John Glennon, were convicted of his murder. In the case of Robert Hamill, Paul Hobson was prosecuted for the murder. He was acquitted of murder in 1999 but convicted of affray and sentenced to four years in prison. Five other individuals were also charged with murder, but the charges were subsequently dropped. There have been no prosecutions in relation to Rosemary Nelson.

67. The UK Government has made clear that the only basis for a statutory inquiry into the death of Patrick Finucane is the Inquiries Act 2005. However, the Finucane family have rejected this legislation as the basis for an inquiry. The Inquiry has not yet been established.
68. The Inquiries Act 2005 is now the only basis on which such a statutory inquiry can be established by Ministers to examine events that have caused public concern. It replaced a complicated collection of statutory powers, including the Tribunals of Inquiry (Evidence) Act 1921. The UK Government is quite clear that an inquiry under the Inquiries Act would provide a full, effective and independent examination of the circumstances of Mr Finucane's death, whilst taking into account the legitimate need to protect national security and the safety of individuals. It is the UK Government's view that inquiries under the Inquiries Act are perfectly capable of meeting all international human rights obligations. It is also the Government's view, based on relevant case law, that Article 6 (right to a fair trial) of the European Convention on Human Rights is not generally engaged by inquiries in the UK. Inquiries are not courts and they do not have – and never have had - power to determine civil or criminal liability.
69. The criticism of the Inquiries Act and the suggestion that an inquiry under its terms would not be independent is unjustified. Nothing relevant can be withheld from the Inquiry. It is true that a significant portion of a Finucane Inquiry would have to take place in private in order to protect individuals' right to life and to safeguard national security arrangements and methodologies. This is because of the subject matter, not the legislation.
70. Government Ministers could set up an inquiry into allegations like those in the Finucane case only if assured that there were arrangements in place to safeguard the very sensitive information about national security that an inquiry would inevitably wish to examine.

#### Issue 8

71. The Attenuating Energy Projectile (AEP) was introduced on 21 June 2005 to all police forces in the United Kingdom, as well as the army. During the period 21 June 2005 to 31 October 2007 there were 4 incidents when the AEP was used in Northern Ireland, and 427 AEP rounds were fired.
72. No injuries resulting from the use of the AEP in Northern Ireland are recorded between 21 June 2005 and 31 May 2006, although it is possible that the nature of events leading to the use of AEP may make an injured person reluctant to report such matters officially.
73. During the period 21 June 2005 to 31 October 2007 there were 28 incidents when the AEP was used in Great Britain, and 36 AEP rounds were fired.
74. Rigorous training and robust guidance have enhanced the safety of the AEP. Officers equipped with the AEP have to prove routinely that they are aware of human rights issues, can meet stringent levels of target accuracy, and can meet stringent guidance requirements.
75. The Government's approach to the use of the AEP is in line with Articles 2 and 3 of the UN Basic Principles on the Use of Force and Firearms. 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. The guidance states that every effort should be made to ensure that children are not placed at risk by the firing of baton rounds in public order situations.

#### Issue 9

76. The Independent Police Complaints Commission (IPCC) undertook 2 independent investigations using its own investigators following the death of Jean Charles de Menezes; one was an investigation into the circumstances leading to the shooting of Mr de Menezes at Stockwell underground station on 22 July 2005, and the other was an investigation into complaints from the family of Mr de Menezes about statements made by the Metropolitan Police Service after the fatal shooting. The reports of both investigations, Stockwell 1 and Stockwell 2 respectively, are available on the IPCC website [www.ipcc.gov.uk](http://www.ipcc.gov.uk).
77. As a result of the findings of Stockwell 1, the Crown Prosecution Service decided that, although no individual officers should face criminal proceedings, the Office of the Commissioner of the Metropolitan Police should face charges under the Health and Safety at Work Act 1974. The trial, held in October/November 2007, resulted in a guilty finding and the Metropolitan Police being fined £175 000 (with costs of £385 000).
78. The Inquest into Mr de Menezes' death has been opened and the hearing has been set for September 2008.
79. The IPCC made 16 recommendations within the Stockwell 1 report to mitigate against any repetition of this incident. These have been taken forward by the Metropolitan Police Service locally and through the Association of Chief Police Officers (ACPO) nationally. Her Majesty's Inspectorate of Constabulary reports that good progress has been made in implementing the recommendations.

#### Issue 10

80. The Government's condemnation of the use of torture is a matter of fundamental principle. Evidence found to have been obtained as a result of torture would not be admissible in criminal or civil proceedings in the UK apart from in the circumstances set out in Article 15 of the United Nations Convention Against Torture (UNCAT). It would not matter whether the evidence was obtained in the UK or abroad.
81. The proper approach that a court should apply to consideration of the question of whether any piece of evidence has been obtained by torture is found in the speeches of Lords Hope, Rodger, Carswell and Brown in *A and others v Secretary of State for the Home Department (No 2)* [2005] 3 WLR 1249. That judgment found that a court (in that case, the Special Immigration Appeal Commission (SIAC)) should consider whether it was established by such inquiry as it was practicable to carry out, and on the balance of probabilities, that the information relied upon was obtained by torture. If satisfied that it was so obtained, the court should decline to admit the material; but if doubtful they should admit the material, and should bear in mind their doubt when evaluating it.

82. In the UK's legal system, it is the responsibility of courts to follow precedents laid down by the superior courts, and all judges can be expected to be familiar with key judgments of the House of Lords.
83. The Government fully accepts its responsibility to disclose material which is relevant to the question whether any particular pieces of evidence were obtained by torture. No additional measures are needed to ensure that evidence found to have been obtained under torture is not relied upon in criminal or civil proceedings apart from in the circumstances set out in Article 15 of UNCAT because: firstly, the Government would not seek to rely upon such material; and, secondly, if the court disagreed with the Government's assessment of the provenance of any evidence, the court would exclude it.

#### Issue 11

84. The UK condemns outright the use of torture and inhuman and degrading treatment. The UK will not deport an individual if there is believed to be a real risk of torture to that individual – even if diplomatic assurances or Memoranda of Understanding are in place. An agreement between two sovereign governments is a matter to be taken seriously by all parties involved.
85. Framework agreements (such as Memoranda of Understanding – MoUs or Exchange of Letters) on Deportation with Assurances (DWA) can enable deportations to happen in a way consistent with international law. The UK now has such agreements with Algeria, Jordan, Lebanon and Libya.
86. The UK abides strictly with its human rights obligations under international law when it is considering deportation. As well as its obligations under the ICCPR, this includes the UN Convention Against Torture (UNCAT) and the European Convention on Human Rights.
87. The UK regards DWA as a key tool for disrupting terrorist activity while ensuring compliance with its international human rights obligations. DWA is aimed at meeting these obligations, not avoiding them – protection of human rights is an important part of the UK Counter-Terrorism effort. That is part of a very long and respected tradition in the UK.
88. The UK approach to DWA includes the following important safeguards.
- There is a statutory right of appeal against a decision to deport someone from the UK. This includes the right of appeal to three courts: (i) the court of first instance – in this case, the Special Immigration Appeals Commission (SIAC); (ii) the Court of Appeal; and (iii) the House of Lords. The appellant may then also challenge removal before the European Court of Human Rights. Where a person facing deportation chooses to appeal it is ultimately for the courts to decide whether or not deportation should take place. Where the removal is challenged on human rights grounds, removal cannot take place until the appeal has been resolved.
  - The right of countries to deport foreign nationals who pose a risk to their national security is well established in international law. The principle of relying on

assurances in deportation cases has been upheld by UK courts (SIAC and the Court of Appeal) and by the European Court of Human Rights.

- Arrangements for verifying the assurances in the destination country provide an additional layer of protection.
  - All the DWA agreements are negotiated and agreed at the highest level as government-to-government arrangements concerning a relatively small number of individuals. Failure to comply with formal political commitments in an MOU or similar international instrument can do serious damage to diplomatic relations between the signatory States and will harm a State's reputation as a reliable international partner.
89. The Government was disappointed with the decision by the Special Immigration Appeals Commission (SIAC) at first instance and by the Court of Appeal that it was not safe to deport two Libyan nationals, DD and AS, to Libya at the present time. It believes that the assurances given by the Libyans do provide effective safeguards for the proper treatment of individuals being returned and do ensure that their rights will be respected. Having considered the specific judgments the Government has decided not to appeal them.
90. However, in this and other cases, the Court has not found the principle of the use of assurances to be unacceptable, but rather has concluded that, in these particular cases, the assurances we have sought are not adequate at the present time.
91. The Government will continue to pursue all options, including deportation of foreign nationals for whom there is sufficient reason to suspect are a threat to national security, but whom the Government cannot prosecute, because of the sensitive nature of the information held about them.
92. At the same time, the prohibition of torture is non-negotiable. The UK's condemnation of torture remains unequivocal and its commitment to securing its eradication is unchanged. Protection from torture and ill treatment remains a fundamental human right.
93. The UK Government is fully committed to upholding its international human rights obligations and works hard with international partners to eradicate this abhorrent practice.
94. The Government has a process to allow deportation of foreign nationals involved in terrorism, consistent with its international obligations, through the use of diplomatic assurances. These assurances provide a framework to allow deportation of foreign nationals whom the Government believes threaten national security, while respecting its international human rights obligations, including those under the European Convention on Human Rights and the International Covenant on Civil and Political Rights.
95. The process is already delivering results, and a number of suspects have been deported to their countries of origin. The European Court of Human Rights, in its judgement of the case of Saadi vs Italy, has acknowledged that diplomatic assurances can be used in this way, but should be tested through the Courts. The Government welcomes this.



96. Deportation attracts a statutory right of appeal. Ultimately, given this, it is for the courts to decide whether or not deportation of a particular individual should proceed, including where the person claims that deportation would result in a breach of their human rights.
97. In countries with which the UK has MOUs, the UK Government has appointed monitoring bodies to safeguard against the ill treatment of those being returned. The UK believes that work on deportations with assurances has a positive effect on the human rights situation in the countries concerned, allowing it to engage proactively with both governments and civil society on human rights issues. This has a positive impact not only in respect of those being deported but for the wider population too.

#### Issue 12

98. Whilst reserving the UK's position as to the extent to which the Covenant applies outside of the territory of the UK, the standards of conduct and physical treatment of prisoners required of UK forces are, and have always been, in accordance with relevant international law and UK Military law, which applies to UK forces at all times, wherever in the world they are serving. These explicitly forbid torture and inhuman and degrading treatment. The UK Armed Forces are given thorough mandatory training, which includes specific guidance on handling prisoners. All personnel must attend refresher training every year. Other UK personnel going to operational theatres are also given appropriate guidance on relevant international obligations.
99. The UK Government condemns all acts of abuse and has always treated any allegations of wrongdoing extremely seriously. All allegations or suspicions involving activity of a criminal nature, including any apparent breaches of the Covenant's prohibitions on torture and cruel, inhuman or degrading treatment are taken seriously and investigated promptly and impartially.
100. A Service Police investigation will be initiated where there are any grounds to suspect that a criminal act has been or might have been committed by service personnel. Service personnel can, and will, be prosecuted if there is evidence that they have tortured, assaulted or committed any other offence against a person.
101. The Secretary of State for Defence announced on 14 May that there is to be a Public Inquiry to examine the circumstances surrounding the death whilst in British military custody in Iraq of Mr Baha Mousa in September 2003. This will be a formal inquiry under the Inquiries Act 2005 and the Chair will be a judge. The decision to hold a Public Inquiry was made after consultation with the Army's chain of command, which has given a commitment to co-operate fully with the Inquiry. It will be an open and independent inquiry, and will have powers of compulsion. It will be for the Chair to decide what needs to be taken into account to investigate the incident.

102. When compensation claims, including those relating to alleged mistreatment are received, they are considered on the basis of whether or not the UK Ministry of Defence has a legal liability to pay compensation. Where there is a proven legal liability, compensation is paid. All such claims are investigated and assessed in order to determine whether members of the UK Armed Forces acting in the course of their official duties caused the alleged damage, injury or loss in question.
103. The Ministry of Defence does not shirk its responsibility or avoid settling compensation claims where there is a legal liability to do so. Such liability does not exist when actively engaging the enemy, but where it is judged that UK Forces have been negligent in causing injury or damage post cessation of hostilities, compensation may be paid.
104. With the exception of death and serious injury cases that are handled in UK, the Area Claims Officer handles claims in theatre to speed up the process and enable local communication.

### Issue 13

105. The Government believes that the extension of the period of pre-charge detention from 14 to 28 days in the Terrorism Act 2006, and the proposed extension is compatible with the ICCPR.
106. There has not been a case where the detention of a terrorist suspect being held under the existing maximum period of pre-charge detention has been found to be unlawful or incompatible with the UK's international human rights obligations; indeed no challenge has ever been made on these grounds.
107. Pre-charge detention is subject to regular judicial oversight. Under Schedule 8 of the Terrorism Act 2000, a person is brought before a judge after detention of 48 hours and continued detention is granted by a judge for periods of up to 7 days at a time. In other words, after the first 48 hours, the detention is reviewed by a judge at least every 7 days. This is in compliance with the requirement in Article 9(3) that such a person be "brought promptly before a judge or other officer authorised by law to exercise judicial power". Any extension of the maximum period of pre-charge detention would continue to have strong judicial safeguards in that the detention will continue to be subject to judicial approval at least every 7 days.
108. The UK is facing an unprecedented threat from terrorism. The seriousness of the threat and the way in which the threat is developing means that it may be necessary to go beyond the current limit of 28 days to bring to justice those who are guilty of carrying out serious terrorist attacks.
109. Although there has not yet been a circumstance where more than 28 days has been needed to charge a suspect, the full 28 days have been needed in two separate investigations. The case for going beyond the current pre-charge detention limit is based on the trend for increasingly complex plots involving increasing amounts of evidence and data, in a great variety of forms, often with very significant international links.

110. On 3rd June the Government tabled a series of amendments that provide the police with the power to detain suspects for up to 42 days in future where there is a grave exceptional threat.
111. The Government has listened to the concerns of community groups and others and has come up with a proposal that will ensure any higher limit is exceptional, temporary and subject to strong oversight by Parliament and stringent judicial safeguards.
112. The higher limit could only come into force following a report from the police and Director of Public Prosecutions saying that there was a compelling operational need for the higher limit. This higher limit would be temporary and could not remain in force for more than 60 days. It would be subject to the approval of Parliament within 30 days of coming into force. An individual suspect could only continue to be detained with the approval of a judge.
113. The Government believes this proposal balances the need to protect human rights against ensuring the police have the powers they need to deal with terrorism.
114. Details of numbers of people detained are as follows:

To date 11 individuals have been held for over 14 days pre-charge detention (6 for the maximum 27-28 days 3 charged, 3 released without charge).

9 out of the 11 were arrested following Operation Overt, the disruption of an alleged plot to target aircraft (6 charged, 3 released).

1 individual was charged on the 27-28 day of detention following his arrest in a counter terrorist operation led by Greater Manchester Police.

1 individual was charged on the 18-19 day of detention following his arrest in relation to the recent incidents in London and Glasgow.

115. A table showing periods of detention is at Appendix 2.

#### Issue 14

116. The Government reports quarterly to Parliament on the exercise of the Secretary of State's powers under the Prevention of Terrorism Act 2005 (2005 Act). The last statement was published on 13 March 2008 and covered the period up until the end of 10 March 2008. At that time, 11 control orders were in force. Only 31 individuals had ever been subject to control orders. The total number of control orders made is higher than this, as some individuals have had more than one order made against them.
117. Under the 2005 Act, obligations may be imposed by a control order if they are considered necessary for purposes connected with preventing or restricting involvement, by that individual, in terrorism-related activity. An illustrative but not exhaustive list of obligations is set out in section 1(4) to (8) of the 2005 Act 1. Specific conditions imposed under a

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<sup>1</sup> See Appendix 3

control order are tailored to the individual concerned and must be necessary and proportionate in each case.

118. These obligations are based on a range of options that can be employed to tackle particular terrorism-related activity on a case by case basis. This could for example include measures ranging from a ban on the use of communications equipment to a restriction on an individual's movement. A breach of any of the obligations in 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.
119. Under the 2005 Act, non-derogating control orders can be made by the Home Secretary with permission of the court. They last 12 months but are capable of renewal. Derogating control orders (none of which have ever been made) would be made by the courts. They would last 6 months at a time and would be capable of renewal.
120. The House of Lords handed down a number of linked, complex judgments on control order issues on 31 October 2007, including in relation to JJ and others.
121. The Government is not prepared to comment on individual cases or provide details of changes following the Lords judgments. The Government is pleased that the House of Lords has upheld the control order system and judged that no existing control orders needed to be weakened.
122. However, it is disappointing that the Lords have found against control orders containing 18 hour curfews, which the Government believes are required to protect national security. The Lords agreed that 12 and 14 hour curfews did not breach ECHR Article 5 (right to liberty) and effectively indicated that a 16 hour curfew would not breach Article 5 either. As a result, the Government is considering the imposition of curfews of up to 16 hours where necessary and proportionate.
123. The Lords did not find that the review process in these cases had breached the right to a fair trial under ECHR Article 6. The majority view was that in rare cases, the provisions in the Prevention of Terrorism Act 2005 might lead to a breach of Article 6. However, they concluded that it was possible under section 3 of the Human Rights Act to interpret the provisions so that they could be operated compatibly with Article 6 in all cases. They also concluded that the High Court should examine the compatibility of control order proceedings with Article 6 on a case by case basis, to ensure that in every case the proceedings provide the individual with the substantial measure of procedural justice to which he is entitled under Article 6. The cases before the Lords on this issue were referred back to the High Court to consider again on this basis. This forms part of the mandatory review of each individual control order by the High Court – one of the many safeguards in place to secure the rights of the individual. As a result of the Lord judgments, the 2005 Act is fully compliant with the European Convention on Human Rights.
124. The Government continues to consider the impact of the House of Lords judgments carefully. Overall, the Government regards the judgments as a positive endorsement of the principles of control orders. There are no plans to derogate at present. However, this does not reflect an assessment that the UK no longer faces a public emergency threatening the

life of the nation. Indeed, it is clear that the threat from international terrorism to the UK has increased since 2001.

#### Issue 15

125. Internal management information shows that, excluding time-served **foreign national prisoners who are being held in prison** pending transfer to an immigration removal centre or deportation from the UK, there were 20 immigration detainees who had been transferred to prison accommodation as at 7 June 2008 for reasons of security and control. This will include individuals who may have applied for asylum at some stage and others who have not. The number may change from day to day but will remain broadly at this level.
126. The then Home Secretary's commitment in 2001 to end the routine use of prison accommodation to hold immigration detainees was fulfilled and the practice ended in January 2002. It was made clear at that time that exceptions would have to be made in individual cases for reasons of security and control. That remains the case.
127. Current guidance makes clear that immigration detainees should only be held in prison establishments when they present specific risk factors that indicate they are unsuitable for holding in immigration removal centres for reasons of security or control. Immigration detainees will only normally be held in prison accommodation in the following circumstances:
- national security – where there is specific (verified) information that a person is a member of a terrorist group or has been engaged in terrorist activities;
  - criminality – those detainees who have completed prison sentences of four years or more, have been involved in the importation of Class A drugs, committed serious offences involving violence, or committed a serious sexual offence requiring registration on the sex offenders' register;
  - security – where the detainee has escaped or attempted to escape from police, prison or immigration custody, or planned or assisted others to do so; or
  - control – engagement in serious disorder, arson, violence or damage, or planning or assisting others to so engage.
128. All immigration detainees, including those detained at Oakington Reception Centre or elsewhere as part of a fast-track asylum process, are served with a notice giving reasons for their detention at the initial point of detention. The notice indicates the statutory power under which detention has been authorised, the reasons for their detention and the factors taken into account in reaching the decision to detain. The notice must be explained to the individual, using an interpreter if necessary. A fresh notice is served in the event that the reasons for the person's detention change. In addition, detention is reviewed monthly and the results of these reviews are notified in writing to detainees.
129. All immigration removal centres have access to telephone-based interpreting services and must retain details of official interpreters who can be called upon if needed to ensure that clear communication can take place.

130. Information on contacting the Immigration Advisory Service and the Refugee Legal Centre is contained in the notice of reasons for detention served on all detainees. This information is repeated in all removal centres, together with contact details for local legal representatives who are able to provide immigration advice. Detainees are advised of their right to legal representation, and how they can obtain such representation within 24 hours of their arrival at a removal centre. In those removal centres where asylum applications are considered under the detained fast-track procedures, independent legal advice and representation is available on site. The Legal Services Commission has set up two schemes to further improve detainee access to legal advice: one is a telephone-based advice service for detainees who are held initially at a police station before transfer to an immigration removal centre; and the other is the provision of twice-weekly legal advice surgeries for detainees at removal centres.
131. The notice served on detainees giving reasons for their detention also contains information on their bail rights, which must be explained to the individual, using an interpreter if necessary. Further information on how to apply for bail is held at immigration removal centres and is readily available to detainees: this includes the bail handbook produced by the voluntary group Bail for Immigration Detainees, which also runs bail workshops for detainees in some removal centres. In addition, legal advisors at the twice-weekly advice surgeries in removal centres are required as part of their contract to provide advice on bail to detainees.

#### Issue 16

132. The Prison Service in England and Wales expects high standards of behaviour from its staff. The professional and personal standards of conduct expected of all Prison Service employees are set out in Prison Service Order (PSO) 8460 Conduct and Discipline. Where there has been an allegation that the required standards have been breached, it may be necessary to take disciplinary action.
133. The breakdown of the 1306 cases by calendar year is as follows:
- |            |
|------------|
| 2000 – 147 |
| 2001 – 159 |
| 2002 – 201 |
| 2003 – 282 |
| 2004 – 167 |
| 2005 – 217 |
| 2006 – 133 |
134. The public sector Prison Service employs in excess of 48,000 staff, and therefore the 1300 cases of proven misconduct for the period from 2000 to 2006 represents an average of less than 0.4 percent per year of the overall staffing complement. The types of misconduct identified within the 1300 proven cases include: abuse of sick leave, abusive language/behaviour, asleep on duty, assault on prisoners/staff, absence without leave, breach of security, criminal convictions (including receipt of police caution), failure to obey instructions, improper relations with prisoners/ex-prisoners, racial/sexual harassment,

theft/fraud and unprofessional conduct. The offences listed above cover a cross-section of misconduct charges ranging from very minor offences (e.g. using offensive language to a colleague) which have resulted in oral warnings, to gross misconduct (e.g. assault on a prisoner) which have led to dismissal from the Service.

134. The Service is satisfied that the total numbers are not in themselves significant and, whilst there are no plans for immediate reform, the conduct and discipline policy will be kept under review. The Service continues to pursue misconduct vigorously. It does not believe there are a disproportionate number of staff misconduct cases, especially at a time when staff are dealing with serious overcrowding issues and a very difficult and demanding prisoner population.

#### Issue 17

135. Deportation from the Cayman Islands is dealt with under Part VIII of the Immigration Law (2007 Revision). By virtue of section 89 of the Law, the Governor may make a deportation order in respect of, inter alia, any person who is a convicted and deportable person, a destitute person or an undesirable person. For the purpose of the Law, "Governor" means the Governor-in-Cabinet (i.e., the Governor acting on the advice of the Cabinet).
136. The term "convicted and deportable person" is defined in section 2 of the Law as "...a person in respect of whom any court –  
(a)certifies to the Governor that he has been convicted by that court or by an inferior court from which his case has been brought by way of appeal, of any offence punishable with imprisonment otherwise than only in default of payment of a fine; and (b)recommends that a deportation order should be made in his case, either in addition to or in lieu of sentence."
137. The term "destitute person" is defined in that section as "a person who is, or is likely to be, a charge on public funds by reason of mental or bodily ill-health or insufficiency of means to support himself and his dependants".
138. The term "undesirable person" as defined in section 2 means "a person who in the opinion of the Governor is, or has been, so conducting himself, whether within or outside the Islands, that his presence in the Islands is or is likely to be prejudicial to the maintenance of peace, order and good government or public morals in the Islands".
139. For the period 2005-2007, approximately 46 persons were deported from the Islands for serious criminal convictions. These included convictions for immigration offences such as illegal landing and using an irregular passport; drug/alcohol related offences such as causing death by driving whilst intoxicated and possession of ganja/cocaine/controlled substances with the intent to supply; and other offences such defilement of a girl under 12/16 years of age, violent wounding, false accounting and official corruption. No one was deported from the Islands for any other reason.
140. By virtue of section 88(1) of the Law, a magistrate may make a recommendation for the deportation of a convicted and deportable person, a person convicted of certain immigration offences or a person who has been sentenced in the Islands to imprisonment for not less than six months. Based on the Court of Appeal decision in the case of *Margeson v R* 1990-91CILR 250, such a recommendation for deportation constitutes part

of the offender's sentence and he therefore has a right of appeal against that recommendation or any other part of his sentence. This right of appeal extends not only to the Grand Court but also to the Court of Appeal.

141. Accordingly, while the Immigration Law does not expressly provide a right to appeal against a deportation order made by the Governor, the making of such an order may be and has been challenged by way of judicial review proceedings. The existing legal structure of the Cayman Islands therefore provides avenues of redress for any person aggrieved by the making of a deportation order.

#### Issue 18

142. Provisions under paragraph 8 of Schedule 8 to the Terrorism Act 2000 enable the police to authorize a delay in permitting a person, detained under the Act, access to legal advice for up to 48 hours. The delay can only be authorised by an officer of Superintendent rank. An officer may give an authorization only if he has reasonable grounds for believing that granting access to a solicitor would have one of the following consequences:

- Interference with or harm to evidence of a serious offence;
- Interference with or physical injury to any person;
- Alerting of persons who are suspected of having committed a serious offence but have not been arrested for it;
- Hindering the recovery of property obtained as a result of a serious offence or in respect of which a forfeiture order could be made under section 23 of the Act;
- Interference with the gathering of information about the commission, preparation or instigation of acts of terrorism;
- Alerting a person and thereby making it more difficult to prevent an act of terrorism;
- Alerting a person and thereby making it more difficult to secure a person's apprehension, prosecution or conviction in connection with the commission, preparation or instigation of acts of terrorism.

143. As was made clear in the UK's Sixth Periodic under the ICCPR, the UK Government recognises that this is a power which should only be used in exceptional circumstances. However, when there has been a successful terrorist attack or an imminent attack it may be in the overriding public interest to deny access to a solicitor, if such access would have any of the effects set out above.

144. In Northern Ireland, between 2001 and 2005 access to a lawyer for a person arrested under the Terrorism Act 2000, was delayed under schedule 8, paragraph 8 of the Terrorism Act, 4 times out of 1184 arrests.

145. Data is not held on the number of authorisations issued in the rest of the UK under Schedule 8, Paragraph 8 of the Terrorism Act 2000.



Issue 19

146. ASBOs are one tool in a range of possible interventions to prevent anti social behaviour. Joint guidance has been issued by the Home Office and the Youth Justice Board which reflects the importance of involving the local Youth Offending Team (YOT) before a child is given an ASBO. The aim of an ASBO is to protect the public from the behaviour, rather than to punish the perpetrator. It is a civil order, not a criminal penalty and will not appear on an individual's criminal record. However, a breach of an ASBO is a criminal offence punishable by a fine or a custodial sentence.
147. Up to 31 December 2006, 5110 ASBOs were issued to juveniles, which made up 40% of all ASBOs issued. The most recent figures available on custody for young people breaching their ASBO are up to the end of December 2006. These show that 30 children received a custodial sentence where no other offence was dealt with out of 392 who had breached their ASBO. The Home Office/YJB guidance promotes the use of a scaled approach towards tackling anti-social behaviour with an ASBO being used where other interventions have failed although an ASBO can be used as a measure of first resort where victims need protecting. It also recommends that breaches are taken very seriously but that in the case of young people it is used only as a last resort. The maximum sentence for children is two years in a youth detention facility. Victims of anti-social behaviour can be young people themselves so the ASBO is also a means of protecting them.
148. In all cases where an ASBO is made on a young person aged 10 to 17 the court must consider making an individual support order (ISO). ISOs are just one of the support provisions offered to young people. They impose positive conditions on the young person to address the underlying causes of the behaviour that led to the ASBO. An ISO may last up to six months and can require a young person to attend up to two sessions a week under the supervision of the youth offending team (YOT). Breach of an ISO is a criminal offence punishable by a financial penalty. Forty-nine ISOs have been implemented since June 2004 when they were first introduced. This figure is quite low, although the government has undertaken a concerted campaign to increase take up. We expect the next set of data to show significant improvements.
149. In Scotland, the children's hearings system aims to achieve beneficial change in the lives of children in trouble and troubled children. If this primary aim is achieved, the whole community will benefit: children will be better protected and there will be reduced levels of offending. The welfare of the child is the paramount concern of the Hearing's system. ASBOs for under 16s (12 – 15 year olds only) were introduced by the Antisocial Behaviour etc. (Scotland) Act 2004 and implemented on 31 October 2004. There have been 14 ASBOs for this age group to date. The use of ASBOs for under 16s should complement the Children's Hearings system. Any application for an under 16 ASBO by the local authority will be done in consultation with the children's reporter. Any breach of an order is jointly reported to the procurator fiscal and the children's reporter. The PF has the discretion to pass such cases to the Reporter. In Scotland it is prohibited for under 16's to be detained as the result of a breach
150. We believe in the United Kingdom, in relation to England and Wales, that commencing the age of criminal responsibility from the age of ten helps children develop a sense of personal responsibility for their behaviour, because at that age children can generally

differentiate between bad behaviour and serious wrongdoing. It is not in the interests of justice, victims, or the children themselves to prevent offending being challenged through formal criminal justice processes.

151. However, interventions are intended to be rehabilitative rather than punitive and a significant and local multi-agency Youth Offenders Teams, which include local authority children's services and health professionals who help identify a child's needs and refer them to statutory services, have been set up in England and Wales to work closely with children beginning to display offending behaviour to prevent it escalating.
152. In Scotland the age of criminal responsibility is 8 years but most children under the age of 16 years who offend are dealt with by the Children's Hearing System, which is welfare based - when a child offends this is addressed in the context of securing their own best interests and there is no punitive outcome.

#### Issue 20

153. Under the Diplock system all trials for certain offences were held without a jury unless the Attorney General certified them into jury trials. He would not do this unless satisfied that the case was not connected to the emergency.
154. Although improvements in the security situation enabled the repeal of counter terrorist legislation particular to Northern Ireland, continuing paramilitary and community based pressures on jurors in Northern Ireland made replacement arrangements necessary.
155. The new system relies on a presumption that all cases will be jury trials (unlike the Diplock system), however the Director of Public Prosecution will be able to certify that a case should be tried without a jury if it meets the defined test set out by s1, Justice and Security (Northern Ireland) Act 2007. This system will also be supported by additional safeguards such as reasoned verdicts.
156. A case must fall within at least one of the four conditions in the test, and in view of that, the DPP must be satisfied that there might be a risk to the administration of justice. The four conditions deal with the circumstances of the offence and the defendant and relate broadly to connections with, or the involvement of, a paramilitary organisation; or an offence arising in sectarian circumstances.
157. This is different to Diplock where the default was non-jury trial for certain offences. The new system requires an assessment of the risks in each case.
158. The new system simply enables cases to be heard without a jury, with no further special arrangements. The Diplock provisions extended further than non-jury trials, there were special bail arrangements for those charged with scheduled offences and special provisions about those convicted of further offences while on remission for a scheduled offence.
159. The small size of Northern Ireland and the close knit communities people live in make the jurisdiction particularly vulnerable to intimidation and the fear of intimidation.

160. Given that those cases most prone to jury intimidation were heard under Diplock Courts for the last 35 years it is difficult to judge the level of juror intimidation in Northern Ireland. However it remains prevalent, and intimidation more generally is a growing problem.
161. It is important to recognise that intimidation of victims and witnesses, perverse verdicts and juror intimidation are only likely to happen in a minority of cases. It is, however, significant enough to pose a risk to the safety of those members of the public who participate in the system as jurors or witnesses. Government and the criminal justice agencies in Northern Ireland could be in breach of their obligations to ensure the safety and security of all those in Northern Ireland if this risk is not addressed.
162. In the last five years (2002-2006) of the courts operating under Diplock arrangements on average 64 cases operated under the Diplock arrangements per year.
163. The Director of Public Prosecution for Northern Ireland at the 10 June 2008 had issued 25 certificates under s1 of the Justice and Security (Northern Ireland) Act 2007 in relation to non-jury trials since 1 August 2007. This number includes some cases awaiting trial when the new arrangements came into force that would previously have proceeded to Diplock trial.
164. A commitment has been made to make a statement each year on the number of non-jury trials held under the 2007 Act. The first will be made this autumn.

#### Issue 21

165. Section 79 of the Criminal Justice and Immigration Act 2008, which received Royal Assent on 8 May 2008, contains provisions which abolish the common-law offences of blasphemy and blasphemous libel. Section 153(2)(d) of the Act provides for these provisions to come into force two months after Royal Assent. Therefore, from 8 July blasphemy and blasphemous libel will no longer be criminal offences in England and Wales.
166. Blasphemy is a common law crime in Scotland, which was last prosecuted in Edinburgh in 1843. Whilst there has been no official repeal of this law as yet, various respected authorities on Scots criminal law (such as Stair, Gordon and Macdonald) suggest that in practice it is unlikely to be prosecuted. Depending on the circumstance it is possible that behaviour which could be construed as blasphemous may lead to a prosecution for breach of the peace but this would not be termed "blasphemy" in itself
167. In Northern Ireland, Ministers have decided that it is a matter for the Northern Ireland Executive to consider the necessity for specific legislation in this area, and have raised the matter with the devolved administration for their consideration. Should any demands for prosecutions on these grounds arise, the Director of Public Prosecutions in Northern Ireland could take into account the fact that no such offence exists in other parts of the United Kingdom when determining the public interest.

#### Issue 22

168. The Government is determined to tackle intolerance and discrimination and against Muslims to stamp out extremism and racism wherever it occurs.

169. In 2001, as a direct result of concerns about a backlash against Muslims following the September 2001 terrorist attacks on the United States, the Government introduced specific religiously aggravated offences with higher penalties for such hate crimes.
170. In 2003, the Government transposed provisions of the EU Employment Directive into domestic law to prohibit discrimination in employment and training on grounds of religion or belief – providing protection against discrimination to Muslims in the work place.
171. Under the Equality Act 2006, the law was extended to prohibit discrimination on grounds of religions or belief in the provisions of goods and services and public functions, providing further protection for Muslims and others.
172. Muslims, and other faith groups, were given further protection under the racial and Religious Hatred Act 2006, which prohibit threatening words or behaviour intended to stir up religious hatred.
173. The Scottish Government recognises that as well as countering radicalism and extremism, positive action is required to tackle Islamophobia at local community and national level. To do this the Scottish Government is:
  - Supporting the development of events to raise awareness of Islamic culture. Such events aim to help people understand the breadth of Islamic culture, the contribution it has made to the modern world we live in and to the fact that it is not a threat to other cultures and ways of life.
  - Developing education resources for schools and youth work. Through the Scottish Government's on-line resource "Sectarianism: Don't Give It Don't Take It" we will be making educational materials on talking Islamophobia freely available to all teachers and youth workers.
  - Developing the capacity of local interfaith associations to build trust, respect and understanding within local communities by breaking down perceived barriers and bringing people from different backgrounds together. In addition we will encourage local interfaith associations to act as a link between local communities and statutory service providers to ensure those communities have access to services and the service providers are sensitive to the needs of different faith communities.
  - Working at national level to develop and encourage constructive dialogue among and between religious and non-religious communities. This will ensure that both religious and non-religious communities in Scotland are not left feeling isolated from the wider society. It will also help to ensure that all communities have equal access to Scottish Government through national forums and are able to participate in and contribute to the development of relevant government policies.

174. The Government does not hold records of the number of people prosecuted under section 1 of the Terrorism Act 2006. The Home Office does not hold statistics on Terrorism arrests. It continues to research with the police improvements to the future publication of Terrorism arrest statistics, with a view to breaking down charge and convictions into more detail.
175. The Government believes that UK legislation creating offences relating to the encouragement of terrorism is compatible with ICCPR article 19, freedom of expression, by virtue of the provisions of article 19(3)(b). The restrictions that UK legislation places on freedom of expression are necessary for protection of national security.
176. Parliament was clear in passing the Terrorism Act 2006 that powers were need to enable action to tackle the creation of a climate of extremism. The Government considers statements that glorify terrorism and that foment extremism to be unacceptable.
177. As the nature of extremism changes, it is necessary to respond appropriately. The Terrorism Act 2006 introduced new offences and powers to tackle those who promote terrorism. This included, at Section 1, Encouragement to Terrorism
178. The police and prosecuting authorities, in deciding whether an offence of encouragement to terrorism has been committed, must decide whether a number of tests have been met. First, the activity being encouraged is the commission, preparation or instigation of acts of terrorism or Convention offences. Second, the statement must be 'likely to be understood' by members of the public as encouraging them to commit such acts. Finally, the offence requires intention or recklessness on the part of the defendant as to encouraging or inducing members of the public to commit such acts.
179. The Government has made it clear that it does not wish to curtail proper political debate or to criminalise innocent activity. The offence does not apply in situations where statements are made where there is no intent or recklessness to encourage terrorism or Convention offences. This is not about free speech. It is about tackling those who either directly or indirectly encourage terrorism.
180. Proceedings for an offence under section 1 may only be instituted with the consent of the Director of Public Prosecutors. There is a defence in Section 1(6) of the 2006 Act<sup>2</sup>
181. Guidance on prosecuting offences of violent extremism, which includes the offence of encouragement of terrorism in section 1 Terrorism Act 2006 has been issued by the Crown Prosecution Service.
182. A distinct common thread in offences prosecuted for radicalisation has been a manifested desire to kill, maim or cause a person or group of people immense fear for their personal safety through the threat of extreme violence based on their colour or religion and urging others to take this course.

Issue 24

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<sup>2</sup> See Appendix 4

183. The UK Government will address this issue in the course of the examination.

Issue 25

184. The number of prosecutions under the Official Secrets Act 1989 since 2001 is shown in Appendix 3. Data on the circumstances of individual cases is not collected centrally.
185. The Act applies to Crown servants (or people designated as Crown Servants for the purposes of the Act), Government contractors and members of the public who have, or have had, official information in their possession. As far as we are aware, it has never been used against journalists or television companies.
186. Guidance on making a decision on prosecution is contained in the Code for Crown Prosecutors published by the Crown Prosecution Service. This explains that, in deciding whether a prosecution is in the public interest, a number of factors need to be taken into account. The factors that apply will depend on the facts in each case. The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. It is a well established principle that suspected criminal offences are not automatically the subject of prosecution.
187. The Code sets out common public interest factors both in favour of prosecution and against prosecution. But deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case, and go on to make an overall assessment. Although there may be public interest factors against prosecution in a particular case, often the prosecution will go ahead and these factors will be put to the court when sentence is being passed.

Issue 26

188. The UK Government does not consider that the law of libel as applied in the UK has an unduly chilling effect on the work of journalists and scholars, or that it is in any way incompatible with Article 19 of the Covenant.
189. As ICCPR Article 19 recognises, the exercise of the right of freedom of expression carries with it duties and responsibilities, and may therefore be subject to necessary restrictions provided by law in order to respect the rights or reputations of others. It is important that people have an effective right to redress through the law of libel where their reputation has been damaged as a result of the publication of defamatory material. The determination of individual cases is a matter for the courts based on all the relevant circumstances.
190. The law in the UK provides a range of defences to protect defendants against inappropriate allegations of libel. In the case of primary publishers the Defamation Act 1952 provides the following defences:
- justification i.e. that the material is true

- fair comment, which protects statements of opinion or comment on matters of public interest
- absolute privilege, which guarantees immunity from liability in certain situations e.g. in parliamentary and court proceedings
- qualified privilege, which grants limited protection on public policy grounds to statements in the media, even if defamatory and not true, provided that certain requirements are met
- In the case of secondary publishers, the Defamation Act 1996 also provides that a defendant will not be liable where he or she:
  - is not the author, editor or publisher of the statement complained of
  - took reasonable care in relation to its publication, and
  - did not know, and had no reason to believe, that what he or she did caused or contributed to the publication of a defamatory statement.

191. In addition, section 2 of the 1996 Act provides a procedure by which a defendant can make an offer of amends to enable valid claims to be settled without the need for court proceedings. An offer of amends is not regarded as an admission of liability, and the offer may be withdrawn before it is accepted. However, if an offer is accepted the party accepting it may not bring or continue defamation proceedings in respect of the publication concerned against the person making the offer.
192. The UK Government does not agree that liability in relation to defamatory material published about public figures (or any other category of claimant) should only attach to material which is published maliciously. The issue of malice is relevant in UK law in that, if proved, it can operate to defeat certain defences. The burden of proving malice always rests on the claimant.
193. However, the introduction of a requirement to prove malice in relation to defamatory material would involve a standard of proof substantially higher than the normal civil standard of proof. The introduction of such a requirement or the creation of an exception for public figures would not be appropriate, as it is important that any individual has an effective means of protecting their reputation against defamatory material, whether or not they are a public figure. The effect of a defamatory publication can be just as harmful to the defamed person's reputation whether or not they are a public figure and whether or not it is published maliciously.

#### Issue 27

194. Where information encourages or induces others to prepare, commit or instigate acts of terrorism it is necessary to restrict the expression or dissemination of such information.
195. Section 2 of the Terrorism Act 2006 makes it an offence to distribute, circulate, give, sell, lend or offer for sale or loan terrorist publications. Equally it is an offence to provide a service to others which enables another person to obtain, read, listen to or look at a terrorist publication.
196. Section 2 also creates an offence of transmitting such a publication electronically or being in possession of such a publication with a view to it becoming available to others.

197. These offences are only committed where there is intention or recklessness as to the encouragement, inducement or assistance of the commission, preparation or instigation of acts of terrorism.
198. Under section 3 of the Terrorism Act 2006, notices can be given requiring the relevant person to take down from the internet and other electronic services material that is unlawfully terrorism-related (under sections 1 or 2 of the 2006 Act). Notices can be served on anyone involved in the provision or use of electronic services used in the publication or dissemination of material covered by the Act. Section 3 provides that those served with notices who fail to remove, without reasonable excuse, such material within the specified period are treated as endorsing it, and this means that they cannot benefit from the defences set out in sections 1 and 23. To date, it has not been necessary to issue a notice under Section 3.
199. Section 57 of the Terrorism Act 2000 makes it an offence to possess an article which gives rise to a reasonable suspicion the article is possessed for the purposes of committing, preparing or instigating an act of terrorism. It is a defence to this offence to show that the possession of the article was not for any of those purposes mentioned.
200. Section 58 of the Terrorism Act 2000 creates the offence of possession, collection, or making records of information of a kind that is likely to be of use to terrorists. It is a defence to this offence if the person accused can show that they had a reasonable excuse for their actions or possession.
201. Sections 59 to 61 of the Terrorism Act 2000 make it an offence to incite terrorism overseas.
202. Organisations which are believed to be concerned in terrorism may be proscribed under Part 2 of the Terrorism Act 2000. The decision is made by the Secretary of State who, of course, has access to the full range of intelligence material. However, any decision made by the Secretary of State to proscribe an organisation has to be approved by both Houses of Parliament. A proscribed organisation, or any person affected by its proscription, may apply to the Secretary of State for de-proscription. There is then a route of appeal to the Proscribed Organisations Appeal Commission. This is an independent tribunal made up of senior judges who are cleared to see intelligence material. The Commission can, if appropriate, appoint special advocates to represent the interests of the group concerned. There is then a further route of appeal to the Court of Appeal on points of law.
203. The independent reviewer of the operation of the Terrorism Act 2000, Lord Carlile, has consistently said in his annual reports that proscription is a necessary and proportionate response to the threat posed by terrorist organisations.

#### Issue 28

204. There are two limited circumstances where children may be detained under Immigration Act powers. First, as part of a family group which it is considered necessary to detain. Second, and wholly exceptionally, where it is necessary to detain an unaccompanied child

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<sup>3</sup> See Appendix 5



while alternative care arrangements are made, and then normally just overnight.

205. Families with children may be detained under the same criteria as individuals: i.e., whilst their identity and basis of claim is established; because there are reasonable grounds for believing that they will fail to comply with the conditions of temporary admission or release; as part of a fast-track asylum process; or to effect removal from the UK. Each case is considered on its merits, and the presumption is in favour of granting temporary admission or release wherever possible. In practice, detention of families with children is most often used, only where necessary, in order to effect their removal from the UK and usually takes place just a few days before removal. Detention of families is kept to the minimum period necessary and is subject to frequent and rigorous review, including Ministerial authorisation in those exceptional cases where detention lasts for 28 days or more.
206. A table which includes details of children leaving detention between January – September 2006 (the latest period for which published statistics are available) broken down by age and length of detention can be found in Appendix 6.
207. Families with children may be held at three immigration removal centres: Yarl's Wood, Tinsley House and Dungavel. At all three centres, families are accommodated in dedicated family rooms to ensure that family members are not separated and, so far as practicable within the constraints of detention, are able to maintain family life. Family accommodation is separated from the remainder of the centres concerned, and has its own dining and association areas.
208. Families with children will usually stay at Tinsley House and Dungavel for no more than 72 hours. If detention continues beyond this period families will normally be transferred to Yarl's Wood, the main centre for holding families with children. Activities are provided at the centre for children and babies in child-friendly care rooms throughout the day. Educational classes for school age children are also provided. The staff at Yarl's Wood include a dedicated family manager, qualified teachers, child carers and full-time, professional social workers. There is a comprehensive children's welfare framework in place at Yarl's Wood, which includes:
  - A health-led initial assessment of all children on arrival in detention.
  - OFSTED inspected children's education and crèche facilities open daily.
  - An extensive sport and leisure service led by qualified youth workers.
  - A children's forum.
  - A statutory children's social work service provided on site.
  - A weekly welfare meeting that considers all children in the centre.
  - A weekly conference call for any child in the centre longer than 21 days.
  - A multi-agency Child Protection Meeting, which has developed a clear procedure for referral to agencies with statutory responsibilities for safeguarding children.
  - A constantly reviewed safeguarding strategy, which involves the Local Safeguarding Children Board and regular development meetings with the Local Authority Children's Services.

209. There have been a small number of cases where babies have been detained briefly with their mothers in prison Mother and Baby Units on completion of prison sentences pending removal from the UK or transfer to an immigration removal centre. When considering whether to detain a child with its mother at a Mother and Baby Unit, BIA caseowners are required to ensure that any actions they consider appropriate fully take into account the potential impact the decision may have on the child in question. Caseowners will also seek advice from any authority that is currently providing care for the child, or the social worker attached to the Mother and Baby Unit, and ensure that their actions will not unnecessarily disrupt the existing care arrangements for a child when removal is not reasonably imminent.

Issue 29

210. The laws of the Falkland Islands are based upon the laws of England. By virtue of section 78 of the Interpretation and General Clauses Ordinance 1977, the Legitimacy Act 1976 applies as law in the Falkland Islands, as a substitution for the Legitimacy Act 1959, and remains subject to the up-dating provisions of section 83 of the said ordinance, so that any amendment to the law of legitimacy in England automatically applies to the Falkland Islands. The effect of the Legitimacy Act 1976 is to make provision for legitimation.
211. The Family Law Reform Ordinance 1994 removed in the Falkland Islands any legal discrimination against children born outside of marriage. The Ordinance makes provision for the maintenance of minor children and the inheritance of property without regard to whether or not a person's parents are or have been married.
212. The Family Law Bill 2006 has been examined by the select committee of Legislative Council. The Attorney General is in the process of amending the Bill to take the council's comments into account. Schedule 3 of the bill proposes an important amendment to the Children Ordinance 1994 concerning the issue of parental responsibility for a minor child. This prospective amendment is closely modelled on an amendment which has been made in England to the corresponding provisions of the Children Act 1989.
213. The Prospective amendment is to the effect that a father who is not married to the mother at the time of the child's birth automatically acquires parental responsibility for a minor child if he is registered as the child's father under the Registration Ordinance 1949. The Registration Ordinance 1949 allows a father who is not married to the mother at the time of the child's birth to be registered as the child's father either when the child's birth is registered (which must, by law, be done within ten days of the birth) or subsequently, provided both parents confirm to the registrar that the man is the child's father. At present, a father who is not married to the mother at the time of the child's birth will also be able to acquire parental responsibility for a minor child either by court order or by entering into a parental responsibility agreement with the mother. (Where a child's parents are married at the time of the child's birth, the father automatically acquires parental responsibility for the child.)
214. The prospective amendment will meet the obligations under article 24 of the Convention by giving every child, without discrimination according to whether or not the child's parents were married at the time of his birth, the right to the same measures of protection that a father can give his minor child through having parental responsibility for that child.

Issue 30

215. The Government is currently considering how to take forward the implementation of the judgement in *Hirst v United Kingdom* in light of the first stage consultation on this issue and will publish the results of that consultation due course. The Government remains committed to carrying out a second, more detailed public consultation on how voting rights might be granted to serving prisoners, and how far those rights should be extended. This is a sensitive and complex issue that will require careful consideration about what the right approach should be and how it would be implemented.
216. The *Hirst* judgment did not conclude that the UK must enfranchise all prisoners. The government is opposed to that level of enfranchisement and therefore this was not offered as a possible option for change in the first stage consultation paper.

Issue 31

217. The sixth periodic report was published on 10 November 2006 and copies were sent to the 7 legal deposit libraries (The British Library, National Library of Scotland, National Library of Wales, Oxford University, Cambridge University, Trinity College Dublin, and TSO's Bibliographical Services Section). The report was also published on the Ministry of Justice website on 10 November 2006 and copies were placed in the libraries of the Houses of Parliament.
218. Copies of reports on international covenants and treaties, including the ICCPR, to which the United Kingdom is a party in respect of the Overseas Territories are usually publicised in the territories when they become available. The texts may be published in the Official Gazette and in sections of the local press or placed in public libraries and in schools, and by the Government Information Services where established in a territory. In the Cayman Islands, responsibility for the dissemination of information on the Covenant has been taken over by the Human Rights Committee, a non-governmental body vested with competence to promote and protect human rights ([www.humanrights.ky](http://www.humanrights.ky)). Some territories, e.g. Bermuda ([www.hrc.bm/HRC](http://www.hrc.bm/HRC)) and the Turks and Caicos Islands, have Human Rights Commissions and they have a general role in promoting public awareness of the ICCPR and other international covenants and treaties.

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