



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/GBR/6  
18 May 2007

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT**

**Sixth periodic report**

**UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND\***

[1 November 2006]

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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.

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### **List of abbreviations**

BME	Black and Minority Ethnic
CDs	Crown Dependencies (comprising the Isle of Man, the Bailiwick of Jersey, the Bailiwick of Guernsey and its dependencies)
CEHR	Commission for Equality and Human Rights
CRE	Commission for Racial Equality
DRC	Disability Rights Commission
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
EOC	Equal Opportunities Commission
HRA	Human Rights Act 1998
ICCPR	International Covenant on Civil and Political Rights
IPCC	Independent Police Complaints Commission
OTs	British Overseas Territories covered by the ICCPR (comprising Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha), and the Turks and Caicos Islands).
UK	United Kingdom (comprising England, Wales, Scotland and Northern Ireland)

## Foreword

1. As already indicated in the United Kingdom of Great Britain and Northern Ireland's interim report of 7 November 2002,<sup>1</sup> the international and domestic context in which the United Kingdom has promoted human rights has significantly changed as a result of the rising number of terrorist attacks in the world, such as in the United States of America on 11 September 2001, Bali on 12 October 2002, Istanbul on 20 November 2003, Madrid on 11 March 2004 and London on 7 July 2005.
2. The response of the Government to the rising terrorist threat has been based on the principle that acts of terrorism are crimes and, as such, must be vigorously prosecuted by law. Therefore, domestic legislation must be adapted to respond to this changing threat but must also be balanced with the respect for human rights. The United Kingdom's long experience in counter-terrorism also teaches that respect for human rights is vital for long-term success in the fight against terrorism. As stated in article 4 of the International Covenant on Civil and Political Rights (ICCPR), some rights are absolute and cannot be derogated from, or restricted, in any circumstances. However, in maintaining human rights standards, States also have the flexibility to restrict some rights in specific circumstances if such restrictions are lawful and proportionate.
3. The structure of this sixth periodic report reflects the current United Nations reporting guidance on the ICCPR,<sup>2</sup> in particular:
  - The core document has been updated to reflect the most recent statistics and constitutional changes;
  - The report covers the United Kingdom, the Overseas Territories (OTs) and the Crown Dependencies (CDs). The responses from the OTs<sup>3</sup> and the CDs are included in the relevant sections of the report. As requested by the Committee, the original reports

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<sup>1</sup> See CCPR/CO/73/UK/Add.2; CCPR/CO/73/UKOT/Add.2 of 4 December 2002.

<sup>2</sup> Office of the High Commissioner for Human Rights et al., *Manual on human rights reporting under six major international human rights instruments*, Geneva, 1997 ([http://www.unhchr.ch/pdf/manual\\_hrr.pdf](http://www.unhchr.ch/pdf/manual_hrr.pdf)). Office of the High Commissioner for Human Rights, *Compilation of guidelines on the form and content of reports submitted by States Parties to the international human rights treaties*, HRI/GEN/2/Rev.3, 8 May 2006 ([http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/975dd3fb10e75b83c12571850050edda/\\$FILE/G0641857.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/975dd3fb10e75b83c12571850050edda/$FILE/G0641857.pdf))

<sup>3</sup> British Virgin Islands Government, *Contribution to sixth ICCPR report*, 5 September 2006. Cayman Islands, *Report of the Cayman Islands for the Sixth Periodic Report*, 7 September 2006. Pitcairn, Henderson, Ducie and Oeno Islands, *Suggested Amendments for sixth report*, 11 September 2006. Gibraltar, *Updates to the Sixth Periodic Report*, 14 September 2006. Montserrat, *Comments to be included in the CCPR Report*, 21 September 2006. Falkland Islands, *Updating Report 2006 for the Falkland Islands on the International Covenant on Civil and Political Rights*, 6 October 2006. Turks and Caicos Islands, *Comments on the UN Convention on Civil and Political Rights*, 20 October 2006.

from the CDs are also attached to this report.<sup>4</sup> The Committee should note that the inclusion of the reports from the OTs and the CDs into this sixth periodic report does not imply any change in the constitutional relationship between the United Kingdom and the CDs, and the United Kingdom and the OTs.

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<sup>4</sup> APPENDIX A (Bailiwick of Jersey, *International Covenant on Civil and Political Rights - Sixth periodic report of the States of Jersey*, 7 September 2006, ref. 855(4)), APPENDIX B (Bailiwick of Guernsey, *Sixth Periodic Report by the Bailiwick of Guernsey pursuant to Article 40 of the International Covenant on Civil and Political Rights*, 13 September 2006, ref. Intl/H.3), APPENDIX C (The Isle of Man, *Sixth Report of the Isle of Man Government under Article 40(1)(b) of the International Covenant on Civil and Political Rights*, 5 October 2006).

## I. GENERAL INFORMATION

### A. Land and people

4. General information and statistics about the people and society of the United Kingdom, its Overseas Territories and Crown Dependencies is set out in tables 1, 2 and 3 below.

**Table 1**  
**General statistics about the United Kingdom**

Population <sup>5</sup>	59 843 000
Number of men per 100 women <sup>6</sup>	96
Ethnic groups <sup>7</sup>	White (92.1 per cent), Mixed (1.2 per cent), All Asian or Asian British (4.0 per cent), Black or Black British (2.0 per cent), Chinese (0.4 per cent), Other ethnic groups (0.4 per cent).
Percentage of population under 15 <sup>8</sup>	18.2 per cent
Percentage of population over 65 <sup>9</sup>	16.0 per cent
Percentage of population in urban areas <sup>10</sup>	79.7 per cent
Religion <sup>11</sup>	Christian (71.6 per cent), no religion (15.5 per cent), not stated (7.3 per cent), Muslim (2.7 per cent), Hindu (1 per cent), Sikh (0.6 per cent), Jewish (0.5 per cent), Buddhist (0.3 per cent), other religion (0.3 per cent).

<sup>5</sup> *Mid-2004 population estimates*, Office of National Statistics.

<sup>6</sup> Ibid.

<sup>7</sup> *Census*, April 2001, Office of National Statistics. More recent “experimental” figures released by the Office of National Statistics give the following breakdown of the population of England in mid-2004: White (89.5 per cent), Mixed (1.5 per cent), Asian or Asian British (5.1 per cent), Black or Black British (2.6 per cent), Chinese (0.6 per cent), Other (0.6 per cent).

<sup>8</sup> *Mid-2004 population estimates*, Office of National Statistics.

<sup>9</sup> Ibid.

<sup>10</sup> *Census*, April 2001, Office of National Statistics, using 2004 Urban / Rural classifications. Note that this figure is for England and Wales only.

<sup>11</sup> *Census*, April 2001, Office of National Statistics. Note that this figure is for Great Britain (England, Wales and Scotland) only.

**Table 1 (continued)**

GDP <sup>12</sup>	£1,209 billion at market prices in 2005
GDP per head <sup>13</sup>	£20,208 (sterling)
Inflation <sup>14</sup>	2.4 per cent
Government deficit/surplus <sup>15</sup>	−£43.7 billion (3.6 per cent GDP) in 2005
Government debt <sup>16</sup>	£525.9 billion (42.8 per cent GDP) in 2005
Employment rate <sup>17</sup>	74.6 per cent (28.94 million)
Adult literacy <sup>18</sup>	99.0 per cent
Languages	<ul style="list-style-type: none"> <li>• Official language: English (throughout the UK).</li> <li>• Recognised languages<sup>19</sup>: Welsh (in Wales); Gaelic and Scots (in Scotland); Cornish (in Cornwall); Irish and Ulster Scots (in Northern Ireland).</li> </ul>
Life expectancy <sup>20</sup>	77 (men), 81 (women)
Infant mortality - number of deaths of children aged under 1 year per 1,000 live births <sup>21</sup>	5.1 in 2004
Fertility rate (per woman) <sup>22</sup>	1.77 in 2004

<sup>12</sup> *UK Output, Income and Expenditure*.

<sup>13</sup> *Ibid.*, and *Mid-2004 population estimates*, Office of National Statistics.

<sup>14</sup> *Consumer Price Index (CPI)*, Office of National Statistics, July 2006.

<sup>15</sup> *UK Government Debt and Deficit*, Office of National Statistics, 2005.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Labour Market Statistics*, Office of National Statistics, August 2006.

<sup>18</sup> *The Economist*, 2003 figures.

<sup>19</sup> Under the European Charter for Regional or Minority Languages (1992).

<sup>20</sup> Government Actuary's Department, 2004.

<sup>21</sup> *Infant Mortality rates 1976-2004*, Office of National Statistics, 2005. Note that this figure is for England and Wales only.

<sup>22</sup> Office of National Statistics, 2005.

**Table 2**  
**General information and statistics on British Overseas Territories (OTs)<sup>23</sup>**

Population	<ul style="list-style-type: none"> <li>• 1,000 (Ascension Island – in 2005).</li> <li>• 64,500 (Bermuda – in 2003).</li> <li>• 27,000 (British Virgin Islands – in 2005).</li> <li>• 54,465 (Cayman Islands – in 2005).</li> <li>• 2,913 (Falkland Islands – in 2001).</li> <li>• 28,605 (Gibraltar – in 2003).</li> <li>• 4,483 (Montserrat – in 2006).</li> <li>• 47 (Pitcairn, Henderson, Ducie and Oeno Islands – in 2005).</li> <li>• 4,000 (Saint Helena – in 2005).</li> <li>• 275 (Tristan de Cunha – in 2005).</li> <li>• 30,602 (Turks and Caicos Islands – in 2005).</li> </ul>
Number of men per 100 women	<ul style="list-style-type: none"> <li>• 99 (British Virgin Islands – in 2005).</li> <li>• 101 (Cayman Islands – in 2005).</li> <li>• 121 Falkland Islands – in 2001).</li> <li>• 100 (Gibraltar – in 2001).</li> <li>• 113 (Montserrat – in 2004).</li> <li>• 104 (Pitcairn, Henderson, Ducie and Oeno Islands – in 2005).</li> <li>• 89 (Tristan de Cunha – in 2005).</li> <li>• 99 (Turks and Caicos Islands – in 2005).</li> </ul>
Ethnic groups	<ul style="list-style-type: none"> <li>• Descendants from the mutineers from the HMS Bounty and their Tahitian companions (Pitcairn, Henderson, Ducie and Oeno Islands).</li> </ul>

<sup>23</sup> *Foreign and Commonwealth Office Country Profiles 2006*, available on-line at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1013618138315>. Overseas Territories Department, Foreign and Commonwealth Office. Statistics Department, Montserrat.

**Table 2 (continued)**

Percentage of population under 15	<ul style="list-style-type: none"> <li>• 23.7 per cent (British Virgin Islands – in 2005).</li> <li>• 16.6 per cent (Cayman Islands – in 2005).</li> <li>• 15 per cent (Falkland Islands – 2001).</li> <li>• 19.3 per cent (Montserrat – in 2004).</li> <li>• 13 per cent (Tristan de Cunha – in 2005).</li> <li>• 15.5 per cent (Pitcairn, Henderson, Ducie and Oeno Islands – in 2005).</li> <li>• 31.9 per cent (Turks and Caicos Islands – in 2005).</li> </ul>
Percentage of population over 65	<ul style="list-style-type: none"> <li>• 5.4 per cent (British Virgin Islands – in 2005).</li> <li>• 5.8 per cent (Cayman Islands – in 2005).</li> <li>• 8.3 per cent (Falkland Islands – 2001).</li> <li>• 22.6 per cent (Montserrat – in 2004).</li> <li>• 24 per cent (Tristan de Cunha – in 2005).</li> <li>• 20 per cent (Pitcairn, Henderson, Ducie and Oeno Islands – in 2005).</li> <li>• 3.7 per cent (Turks and Caicos Islands – in 2005).</li> </ul>
Percentage of population in urban areas	<ul style="list-style-type: none"> <li>• 62 per cent (British Virgin Islands – in 2005).</li> <li>• 48.2 per cent (Cayman Islands – in 2006).</li> <li>• 68.2 per cent (Falkland Islands – 2001).</li> <li>• 24 per cent (Gibraltar – in 2001).</li> </ul>
Religion	<ul style="list-style-type: none"> <li>• Christian (Ascension Island).</li> <li>• Christian – mainly Anglican and African Methodist Episcopalian (Bermuda).</li> <li>• Christian (British Virgin Islands).</li> <li>• Christian – majority (Cayman Islands).</li> <li>• Christian – Catholic, Anglican and other Christian churches (Falkland Islands).</li> <li>• Catholic, Protestant, Islamic, Hindu, Judaic (Gibraltar).</li> <li>• Christian (Montserrat).</li> <li>• Seventh Day Adventist (Pitcairn, Henderson, Ducie and Oeno Islands).</li> <li>• Christian, Bahai (Saint Helena).</li> <li>• Christian (Tristan de Cunha).</li> <li>• Christian (Turks and Caicos Islands).</li> </ul>

**Table 2 (continued)**

<p>GDP<sup>24</sup></p>	<ul style="list-style-type: none"> <li>• £482 million (British Virgin Islands – in 2005).</li> <li>• £2.3 billion (Bermuda – in 2003).</li> <li>• £1.1 billion ((Cayman Islands – in 2005).</li> <li>• £70 million (Falkland Islands – in 2001).</li> <li>• £470 million (Gibraltar – in 2001-02).</li> <li>• £17.7 million (Montserrat – in 2004).</li> <li>• £5.6 million (Saint Helena – in 2000-01).</li> <li>• £239 million (Turks and Caicos Islands – in 2005 (estimate)).</li> </ul>
<p>GDP per head<sup>25</sup></p>	<ul style="list-style-type: none"> <li>• £18,710 (British Virgin Islands – in 2005).</li> <li>• £35,719 (Bermuda – in 2003).</li> <li>• £21,468 (British Virgin Islands – in 2003).</li> <li>• £23,601 (Cayman Islands – in 2005).</li> <li>• £28,100 (Falkland Islands – in 2001).</li> <li>• £16,608 (Gibraltar – in 2001-02).</li> <li>• £3,779 (Montserrat – in 2004).</li> <li>• £1,273 (Saint Helena – in 2000-01).</li> <li>• £1,667 (Tristan de Cunha – in 2005).</li> <li>• £7,811 (Turks and Caicos Islands – in 2005).</li> </ul>
<p>Inflation</p>	<ul style="list-style-type: none"> <li>• 2 per cent (British Virgin Islands – in 2005).</li> <li>• 3 per cent (Bermuda – in April 2005).</li> <li>• 1 per cent (British Virgin Islands – in 2003).</li> <li>• 7 per cent (Cayman Islands – in 2005).</li> <li>• 4.3 per cent (Falkland Islands – in 2005).</li> <li>• 2.9 per cent (Gibraltar – in 2005-06).</li> <li>• 4 per cent (Montserrat – in 2004).</li> <li>• 3.7 per cent (Turks and Caicos Islands – in 2005).</li> </ul>

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<sup>24</sup> Expressed in GBP £.

<sup>25</sup> Expressed in GBP £.

**Table 2 (continued)**

Government deficit/surplus <sup>26</sup>	<ul style="list-style-type: none"> <li>• -£2.9 million (British Virgin Islands – in 2005).</li> <li>• £1 million (Ascension Island – in 2003-04).</li> <li>• £52.8 million (Cayman Islands – in 2005).</li> <li>• -£4.7 million (Falkland Islands – 2004-05).</li> <li>• £20 million (Gibraltar – in 2006<sup>27</sup>).</li> <li>• -£10.6 million (Montserrat – in 2004).</li> <li>• £150,000 (Tristan de Cunha – in 2005).</li> <li>• -£313,000 (Turks and Caicos Islands – in 2005).</li> </ul>
Government debt <sup>28</sup>	<ul style="list-style-type: none"> <li>• £70.1 million (British Virgin Islands – in 2005).</li> <li>• £3.3 million (Ascension Island – in 2003-04).</li> <li>• £102.2 million (Cayman Islands – in 2005).</li> <li>• £525,000 (Falkland Islands – 2005).</li> <li>• £93 million (Gibraltar – in 2005).</li> <li>• £2 million (Montserrat – in 2004).</li> <li>• £20 million (Turks and Caicos Islands – in 2005).</li> </ul>
Employment rate	<ul style="list-style-type: none"> <li>• 96.9 per cent (British Virgin Islands – in 2005).</li> <li>• 96.5 per cent (Cayman Islands – in 2005).</li> <li>• 80 per cent<sup>29</sup> (Falkland Islands – 2001).</li> <li>• 87 per cent (Montserrat – in 2001).</li> <li>• 100 per cent (Pitcairn, Henderson, Ducie and Oeno Islands – in 2005).</li> <li>• 100 per cent (Tristan de Cunha – in 2005).</li> <li>• 92 per cent (Turks and Caicos Islands – in 2005).</li> <li>• 87.3 per cent (Saint Helena – in 2001-02).</li> </ul>

<sup>26</sup> Expressed in GBP £.

<sup>27</sup> Estimate.

<sup>28</sup> Expressed in GBP £.

<sup>29</sup> Population aged 15 or over and employed full time.

**Table 2 (continued)**

<p>Languages</p>	<ul style="list-style-type: none"> <li>• English (Ascension Island).</li> <li>• English and Portuguese (Bermuda).</li> <li>• English (British Indian Ocean Territory).</li> <li>• English (British Virgin Islands).</li> <li>• English (Cayman Islands).</li> <li>• English (Gibraltar).</li> <li>• English (Montserrat).</li> <li>• English and Pitkern (Pitcairn, Henderson, Ducie and Oeno Islands).</li> <li>• English (Saint Helena).</li> <li>• English (Tristan de Cunha).</li> <li>• English, Creole (Turks and Caicos Islands).</li> </ul>
<p>Life expectancy</p>	<ul style="list-style-type: none"> <li>• 76.4 – M; 83 - F (British Virgin Islands – in 2005).</li> <li>• 78.5 – M; 83.3 – F (Gibraltar – in 2001).</li> <li>• 76 – M; 81 – F (Montserrat – in 2004).</li> <li>• 80 years (Tristan de Cunha – in 2005).</li> <li>• 75 – M; 76.1 F (Turks and Caicos Islands – in 2001).</li> </ul>
<p>Infant mortality - number of deaths of children aged under 1 year per 1,000 live births</p>	<ul style="list-style-type: none"> <li>• 0 (British Virgin Islands – in 2005).</li> <li>• 4 (Falkland Islands – 2000-05).</li> <li>• 0 (Gibraltar – in 2004-05).</li> <li>• 0 (Montserrat – in 2004).</li> <li>• 0 (Tristan de Cunha – in 2005).</li> <li>• 3.1 (Turks and Caicos Islands – in 2005).</li> </ul>

**Table 3**  
**General information and statistics on Crown Dependencies (CDs)<sup>30</sup>**

Population	<ul style="list-style-type: none"> <li>• 76,315 (Isle of Man – in 2001).</li> <li>• 88,200 (Bailiwick of Jersey – in 2005).</li> <li>• 63,267 (Bailiwick of Guernsey – in 2001).</li> </ul>
Number of men per 100 women	<ul style="list-style-type: none"> <li>• 96 (Isle of Man – in 2001).</li> <li>• 95 (Bailiwick of Jersey – in 2001).</li> <li>• 98 (Bailiwick of Guernsey – in 2001).</li> </ul>
Ethnic groups	<ul style="list-style-type: none"> <li>• 51 per cent Jersey, 35 per cent UK, 6 per cent Portuguese/Madeira, 3 per cent Irish (Bailiwick of Jersey – in 2001).</li> <li>• 60.8 per cent Guernsey, 0.6 per cent Jersey, 25.9 per cent UK, 0.6 per cent Irish, 1.8 per cent Portuguese, 1.5 per cent Other EU, 0.6 per cent Other Europe, 2.3 per cent Other (Bailiwick of Guernsey – in 2001).</li> </ul>
Percentage of population under 15	<ul style="list-style-type: none"> <li>• 17.8 per cent (Isle of Man – in 2001).</li> <li>• 15.7 per cent (Bailiwick of Guernsey – in 2001).</li> <li>• 18 per cent (Bailiwick of Jersey – in 2001).</li> </ul>
Percentage of population over 65	<ul style="list-style-type: none"> <li>• 16.7 per cent (Isle of Man – in 2001).</li> <li>• 15.5 per cent (Bailiwick of Guernsey – in 2001).</li> <li>• 16.6 per cent (Bailiwick of Jersey – in 2001).</li> </ul>
Percentage of population in urban areas	<ul style="list-style-type: none"> <li>• 72.6 per cent (Isle of Man – in 2001).</li> <li>• 50 per cent approx. (Bailiwick of Jersey – in 2005).</li> <li>• 27.6 per cent (Bailiwick of Guernsey – in 2001).</li> </ul>
Religion	<ul style="list-style-type: none"> <li>• Christian (majority), Islamic, Judaic (Bailiwick of Guernsey).</li> </ul>

<sup>30</sup> Economic Affairs Division – Isle of Man Treasury, *Digest of Economic and Social Statistics 2006*. States of Jersey Statistics Unit, *Jersey in Figures 2005*, *Report of 2001 Jersey Census*, *States of Jersey 2005 Financial Accounts*. 2001 Guernsey Census – *Report on the census of population and households*.

**Table 3 (continued)**

GDP	<ul style="list-style-type: none"> <li>• £1.3 billion (Isle of Man – in 2003-04).</li> <li>• £2.7 billion (Bailiwick of Jersey – in 2005).</li> <li>• £1.5 billion (Bailiwick of Guernsey – in 2004).</li> </ul>
GDP per head	<ul style="list-style-type: none"> <li>• £17,309 (Isle of Man – in 2003-04).</li> <li>• £30,900 (Bailiwick of Jersey – in 2005).</li> <li>• £24,538 (Bailiwick of Guernsey – in 2004).</li> </ul>
Inflation	<ul style="list-style-type: none"> <li>• 4.2 per cent (Isle of Man – in 2005).</li> <li>• 3.1 per cent (Bailiwick of Jersey – in 2005).</li> <li>• 3.4 per cent (Bailiwick of Guernsey – in 2006).</li> </ul>
Government deficit/surplus	<ul style="list-style-type: none"> <li>• £14 million (Isle of Man – in 2004-05).</li> <li>• £39.2 million (Bailiwick of Jersey – in 2005).</li> <li>• £9.2 million (Bailiwick of Guernsey – in 2004).</li> </ul>
Government debt	<ul style="list-style-type: none"> <li>• £117,261 million (Bailiwick of Jersey – in 2005).</li> </ul>
Employment rate	<ul style="list-style-type: none"> <li>• 98 per cent (Isle of Man – in 2001).</li> <li>• 82 per cent (Bailiwick of Jersey – in 2001).</li> <li>• 99 per cent (Bailiwick of Guernsey – in 2006).</li> </ul>
Languages	<ul style="list-style-type: none"> <li>• English, Manx Gaelic (Isle of Man).</li> <li>• English, French (Bailiwick of Jersey).</li> <li>• English and Norman-French (Bailiwick of Guernsey).</li> </ul>
Life expectancy	<ul style="list-style-type: none"> <li>• 76.3 – M; 80.7 – F (Isle of Man – in 2001).</li> <li>• 77 – M; 82 – F (Bailiwick of Jersey – in 2004).</li> <li>• 77.5 – M; 82.1 – F (Bailiwick of Guernsey – in 2001).</li> </ul>
Infant mortality - number of deaths of children aged under 1 year per 1,000 live births	<ul style="list-style-type: none"> <li>• 3.6 (Isle of Man – in 2000-04).</li> <li>• 2.1 (Bailiwick of Jersey – in 2004).</li> <li>• 4.5 (Bailiwick of Guernsey – in 1999-03).</li> </ul>
Fertility rate <sup>31</sup>	<ul style="list-style-type: none"> <li>• 56.7 (Isle of Man – in 2000-04).</li> <li>• 51.3 (Bailiwick of Jersey – in 2004).</li> <li>• 46.6 (Bailiwick of Guernsey – in 2001).</li> </ul>

<sup>31</sup> Calculated in live births per 1,000 females aged 15-44.

## B. General political structure

5. The United Kingdom is a parliamentary democracy and constitutional monarchy. The British Constitution is not set out in a single document, but is derived from a variety of written and unwritten sources centring around the sovereignty of Parliament. The written sources include: United Kingdom legislation,<sup>32</sup> the common law (case law), European Community legislation, judgements of the European Court of Justice, and academic writings. The unwritten sources include constitutional conventions and the law and custom of Parliament.

6. The Constitution does not provide for a strict separation of the three powers (legislative, executive and judiciary) although the recent reform of the Office of Lord Chancellor and the forthcoming establishment of a Supreme Court separately from the legislature has moved somewhat in that direction. The legislative power resides in the United Kingdom Parliament (Westminster) as the supreme law-making body (with the exception of European Community law). The Westminster Parliament consists of the reigning monarch (Queen/King in Parliament), the House of Commons (elected through the relative majority or first past the post system) and the House of Lords. The House of Lords is predominantly made up of nominated members. Acts of Parliament provide that the House of Commons, as the elected House, should be able to see legislation it has approved being made into law, regardless of any reservations expressed by the House of Lords.

7. Primary legislation is introduced in Parliament as “Bills”. The law-making process then involves a number of stages of consideration in either House and scrutiny by one House of amendments made by the other and concludes with the formal stage of Royal Assent by the monarch (when the Bill becomes an “Act”). Secondary legislation is usually produced by the relevant Government minister using powers provided for under primary legislation but it also includes other forms of legislation such as powers exercised under the royal prerogative or by-laws made by local authorities.

8. The prerogative powers are the residual powers of the Crown, which are exercised without being subject to statute law. In many respects these powers have been curtailed except in areas such as the formal ratification of international treaties and the issuing and withdrawing of United Kingdom passports. However, the Government is accountable to Parliament for all of its actions. The Government is formed from the party that can command a majority in the House of Commons and is accountable to Parliament for all matters. All ministers must be members of one of the two Houses of Parliament. The Prime Minister is the senior minister within government and is “*primus inter pares*” or first amongst equals. The Prime Minister is also formally responsible for the civil service, the permanent administrative body of officials that serves the government regardless of the political affiliation of the party that heads that government. The legal authority of the Civil Service formally derives from the monarch through an order made under the royal prerogative.

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<sup>32</sup> Primary legislation includes Acts of Parliament or Statutes while secondary or delegated legislation includes regulations adopted within the framework of primary legislation, so-called “Parent Acts”, or the exercise of the Royal Prerogative.

9. Judicial power is exercised by judges and courts on behalf of the monarch. Through the process of judicial review, the judiciary can review executive action and secondary legislation on grounds of illegality, irrationality or procedural irregularity. However, under the principle of parliamentary sovereignty, the judiciary cannot strike down an Act of the British Parliament as unconstitutional or because it does not comply with human rights obligations. The HRA preserves parliamentary sovereignty but it empowers the courts to draw attention to incompatibilities in primary legislation. The Act requires the courts, so far as possible, to interpret all legislation in a way that is compatible with the ECHR rights set out in the Act. But if that is not possible, then any incompatibility in primary legislation can be made subject to a 'declaration of incompatibility', whilst any incompatibility in secondary legislation can be struck down.

10. The Scotland Act 1998 and the Government of Wales Act 1998 and 2006 started the process of devolution of power from Westminster Parliament to the Scottish Parliament and the Welsh National Assembly. The Belfast Agreement reached in Northern Ireland in April 1998, approved in a referendum the following month, also opened the way for the devolution of power to Northern Ireland through the Northern Ireland Act 1998.

11. The United Kingdom is responsible for the defence and international representation of the CDs. The United Kingdom also has the power to legislate for the CDs. The United Kingdom respects the Crown Dependencies' rights to autonomy in their domestic affairs and ordinarily it would be contrary to constitutional convention to exercise the power to legislate in these areas. However, the British Government retains the power to do so in order to protect both its own and the Crown Dependencies' domestic and international interests.<sup>33</sup>

12. The OTs also retain a special constitutional status. The OTs are: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha), South Georgia and South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, and the Turks and Caicos Islands. However, the ICCPR does not extend to Anguilla, the British Antarctic Territory, the British Indian Ocean Territory, South Georgia and South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus. OTs have a considerable measure of devolved government. The Governor, the personal representative of the monarch, retains direct responsibility for all matters not specifically allocated to the local government (particularly defence and external affairs).

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<sup>33</sup> The UK disagrees with the view in Appendix B (Bailiwick of Guernsey, *Sixth Periodic Report by the Bailiwick of Guernsey pursuant to Article 40 of the International Covenant on Civil and Political Rights*, 13 September 2006, ref. Intl/H.3) that the power to legislate is little more than theoretical.

### C. General legal framework within which human rights are protected

13. As stated in the previous periodic report,<sup>34</sup> the British Government remains fully committed to promoting human rights. This includes giving effect to the rights contained in the international instruments it has ratified.

14. The HRA 1998 gives further effect, in United Kingdom law, to the substantive rights and freedoms contained in the ECHR. As a result, individuals can now rely directly on the ECHR rights in British courts.

15. The HRA has been implemented in full on 2 October 2000. It works in three main ways. Firstly, it places all public authorities (including central and local government, the police and the courts), under a statutory obligation to act compatibly with ECHR rights, and allows a case to be brought in a United Kingdom court or tribunal against a public authority which fails to do so. Secondly, it requires that all legislation must be read and given effect in a way compatible with the ECHR rights. If it is impossible to do so, the higher courts may formally declare the legislation incompatible with the ECHR (in the case of primary legislation), or strike it down (in the case of secondary legislation). A formal declaration of incompatibility does not affect the validity, continuing operation or enforcement of the legislation but may trigger the use of a remedial order, a special procedure allowing Ministers to amend the offending provisions or the passing of fresh amending legislation. A Minister introducing a Bill in Parliament, must make a declaration to the effect that the Bill is, in his or her view, compatible with the ECHR rights, or that, despite his or her inability to make such a declaration, he or she wishes the House to proceed with the Bill. Finally, the HRA requires British courts and tribunals always to take account of the case-law of the ECtHR in Strasbourg when determining a question which has arisen in connection with a ECHR right.

16. The Scotland Act 1998, which created the Scottish Parliament, requires the Scottish Ministers to act in compliance with the ECHR rights and allows for domestic courts to strike down any legislation not in compliance with ECHR.

17. Alleged victims of human rights breaches retain the right to apply to the ECtHR after exhausting domestic remedies.

18. The Equality Act 2006 provides for the establishment of the CEHR. Once appointed, this new independent body will provide information and advice, establish codes of practice and undertake inquiries in the areas of equality & diversity and human rights.<sup>35</sup> As stated in the Act, the general goals of the CEHR will be to ensure people's ability to achieve their potential is not limited by prejudice or discrimination, there is respect for and protection of each individual's

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<sup>34</sup> See CCPR/C/UK/99/5, 11 April 2000.

<sup>35</sup> Under UK law, the issues of equality and human rights are kept separate although the CEHR will be able to look into both subject areas.

human rights, there is respect for the dignity and worth of each individual, each individual has an equal opportunity to participate in society, and there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

#### **D. Information and publicity**

19. The Government is committed to raise awareness of and promote the importance of human rights particularly, but not exclusively, among public authorities (including central and local government, Health Service, police and armed services). The HRA makes it unlawful for a public authority to act in a way that is incompatible with a ECHR right unless it is required to do so by primary legislation that cannot be interpreted any other way. The ECHR's progressive nature is reflected in the requirement that ECHR rights need to be "secured to everyone" and by the doctrine of positive obligations being developed by the Strasbourg court and, increasingly, by British courts. The consequence is that public authorities are required as a matter of law to adopt a proactive rather than a reactive approach to implementing the HRA. In practice this means that in making decisions about people's rights, including decisions that affect their own staff, public authorities must have human rights principles in mind when developing and delivering all their services.

20. A cross-Government strategic review of the position of human rights within central Government was carried out in 2004. This was an opportunity to compare experiences across and between Departments. As a result of this review, the Government has re-established the network of human rights contacts in Government Departments that has taken the lead in encouraging the spread of good practice. The network also provides a means of reinforcing key messages and alerting policy officials to developments in human rights. The Government is also planning wider human rights training for civil servants.

21. Following the publication of the "Review of the Implementation of the Human Rights Act" in July 2006 (see below), the Government is engaged in a wide human rights awareness campaign. This includes the production of a new handbook on human rights for public authorities *Human Rights: Human Lives*.<sup>36</sup> This handbook was distributed to attendees of two conferences, held in Manchester and London in October 2006, to raise awareness of human rights amongst the non-legal staff of public authorities and introduce them to the characteristic thinking processes that go with balancing the rights of the individual against the rights of others and the interests of the wider community. The campaign also includes a more proactive communication strategy in the field of human rights in order to challenge the myths surrounding the implementation of human rights in the United Kingdom. The Government is also planning to raise public awareness of human rights through various public events in co-ordination with the National Archives and by better co-ordination with the work of NGOs. The Government has set up a Ministerial Group to ensure that Department and Agencies whose work involves decisions affecting the security of the public will urgently analyse and revise the guidance and training they provide to staff.

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<sup>36</sup> <http://www.dca.gov.uk/peoples-rights/human-rights/pdf/hr-handbook-public-authorities.pdf>

## Publications

22. Since 1998, the United Kingdom Government has published an Annual Human Rights Report<sup>37</sup> that provides an overview of the major countries of concern, human rights protection in Europe and in the rest of the world, and tackles specific types of human rights and the general promotion of democracy, equality and freedom all over the world.

23. The Government currently produces and will continue to issue upon request the leaflet, "An Introduction to Human Rights"<sup>38</sup> - available in 10 languages. "The Human Rights Act – A Guide for People with Learning Difficulties" will also continue to be published but the content and usefulness of "The Human Rights Act – a Guide for Government Departments" will be reviewed.

24. In July 2004, the Government has published the "Interdepartmental Review of International Human Rights Instruments".<sup>39</sup> The review was announced on 7 March 2002 to evaluate the United Kingdom's position on international human rights instruments in the light of experience of the operation of the HRA, the availability of existing remedies within the United Kingdom, and law and practice in other EU Member States. The main conclusions of the review were that:

- For the first time, the United Kingdom accepted the right for individual British citizens to petition the United Nations under the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women. The Government decided to accept this Optional Protocol so as to enable it to consider on a more empirical basis the merits of the right of individual petition which exists under a number of United Nations treaties;
- The United Kingdom should ratify Protocol 13 to the ECHR,<sup>40</sup> which abolishes the death penalty in all circumstances, and the Optional Protocol to the UN Convention Against Torture,<sup>41</sup> which establishes a system of regular visits by independent international and national bodies to places of detention in signatory states.

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<sup>37</sup> <http://www.fco.gov.uk/Files/kfile/HumanRights2005.pdf>

<sup>38</sup> <http://www.dca.gov.uk/peoples-rights/human-rights/pdf/hrintro.pdf>

<sup>39</sup> <http://www.dca.gov.uk/peoples-rights/human-rights/int-human-rights.htm#1>

<sup>40</sup> Ratified by the UK on 10 October 2003.

<sup>41</sup> Ratified by the UK on 10 December 2003.

25. In July 2006, the Government has published the “Review of the Implementation of the Human Rights Act”.<sup>42</sup> The aim of the review was to evaluate the HRA focusing on its impact in British law and in policy formulation while identifying the myths and misperceptions regarding human rights in the United Kingdom. The review concluded that:

- The Government remains fully committed to the ECHR, and to the way in which it is given effect in British law by the HRA;
- The Government is conducting a thorough review of how police, probation, parole and prison services balance public protection and individual rights and, if necessary, will legislate to ensure that public protection is given priority;
- There will be a major push for the provision of better and more consistent guidance and training on human rights within Government, with specific reference to areas in which such guidance is currently lacking;
- The Government will revise and strengthen generic guidance on human rights for public sector managers, placing particular emphasis upon safety arguments;
- The Government must take a proactive, strategic and co-ordinated approach to human rights litigation, so that it has the maximum possible impact on future case law under the HRA;
- The Government will lead a drive to ensure that the public as well as the wider public sector are better informed about the benefits which the HRA has given ordinary people, and to debunk many of the myths which have grown up around the Convention rights.

26. Since July 2006, the Government is publishing a quarterly “Human Rights Newsletter”<sup>43</sup> which complements the Annual Human Rights Report and outlines the Government’s priorities in the field of international human rights.

27. In October 2006, the Government published a revised edition of “A Guide to the Human Rights Act 1998”. This is available online<sup>44</sup> as well as in hard-copy format. The guide is aimed at non-experts and is a useful aide memoir for public authorities. Previous editions have also been popular with students, whilst at the same time being an understandable guide for the general public.

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<sup>42</sup> [http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full\\_review.pdf](http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full_review.pdf)

<sup>43</sup> [http://www.fco.gov.uk/Files/kfile/FCO\\_HR\\_E\\_Newsletter.pdf](http://www.fco.gov.uk/Files/kfile/FCO_HR_E_Newsletter.pdf)

<sup>44</sup> <http://www.dca.gov.uk/peoples-rights/human-rights/pdf/act-studyguide.pdf>

## Internet

28. The United Kingdom Government runs dedicated pages to national and international human rights instruments on the web sites of the Department for Constitutional Affairs and the Foreign and Commonwealth Office:

- Department for Constitutional Affairs

<http://www.dca.gov.uk/peoples-rights/human-rights/index.htm>

- Foreign & Commonwealth Office

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029393564>

## Education

29. “Impetus” is a programme for young people across the United Kingdom and its aims are to promote human rights and responsibilities in schools, colleges, youth organisations and communities. Participants explore what shared values are - and should be – and develop the confidence and courage to put those into practice. These values – mutual respect, honesty and integrity, fairness of treatment, individual freedom and personal responsibility – reflect those underpinning the HRA.

30. Early in 2005, the Government approached the British Institute of Human Rights to manage a study to find out more about the resources available to schools that can be used with young people to promote the HRA specifically and human rights thinking more broadly, and to suggest ways in which the Government might further support this area of work. A report of this study has resulted in a series of recommendations. Some relate directly to the production of resources; some focus on the context of human rights in education and others on the longer-term development of a whole school approach to human rights. The Government will continue to develop the strategic partnership with key organisations and education providers, such as BIHR, in order to deliver a range of learning opportunities in schools.

### **E. Status of the declarations, reservations and derogation<sup>45</sup>**

31. The United Kingdom has ratified the ICCPR on 20 May 1976. The ratification extends to the CDs and the following OTs: Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha), and the Turks and Caicos Islands.

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<sup>45</sup> Extract of Department for Constitutional Affairs, *Interdepartmental Review of International Human Rights Instruments*, July 2004 (available online on <http://www.dca.gov.uk/peoples-rights/human-rights/int-human-rights.htm#1>)

32. The Committee should note the following:

- Declarations:

- The declaration on Article 1(3) is maintained;

- Reservations:

- The reservations to Articles 13, 23(3), 25(b) and the General Reservation relating to Southern Rhodesia are to be considered void because the reservations were made in respect of territories over which the United Kingdom formerly exercised sovereignty but which are now independent states;
- The reservation to Article 11 is currently under review;
- The reservation to Article 14(3)(d) is maintained but is to be considered void for the Gilbert Islands and Tuvalu because these are now independent States;
- The reservations to Articles 10, 12(1) and (4), 20, 24(3) and the general reservation to preserve service discipline to members of the armed forces and prisoners are maintained for the reasons outlined in the tables below;

- Derogation

- The derogation of 17 May 1976 to Articles 9, 10(2), 10(3), 12(1), 14, 17, 19(2), 21, 22 was terminated on 22 August 1984;
- The derogation of 23 December 1988 to Article 9(3) was terminated, for the United Kingdom, on 26 February 2001, and, for the CDs, on 17 May 2006;
- The derogation of 18 December 2001 to Article 9 was terminated on 14 March 2005.

33. Tables 4, 5 and 6 below summarize the status of the declarations, reservations and derogation placed by the United Kingdom since the ratification of the International Covenant on Civil and Political Rights (ICCPR).

**Table 4**  
**Declarations**

Article of the ICCPR	Declarations	Status	Reasons for position
<p>Article 1(3) - “The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”</p>	<p>In the event of any conflict between UK’s obligations under Article 1 and the UK’s obligations under the Charter, the obligations under the Charter shall prevail.</p>	<p>Maintained.</p>	<p>The Government considers that it remains necessary to clarify that Article 1 of the Covenant is not to be interpreted as imposing on an administering power greater obligations in respect of its overseas territories than the UN Charter itself.</p>

**Table 5**  
**Reservations**

Article of the ICCPR	Reservations	Status	Reasons for position
<p>Article 10 - “1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2 (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;</p>	<p>The Government of the United Kingdom reserve the right to apply to members of and persons serving with the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they may from time to time deem to be necessary for the preservation of service and custodial discipline and their acceptance of the provisions of the Covenant is subject to such restrictions as may for these purposes from time to time be authorised by law.</p> <p>Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is deemed to be mutually beneficial, the Government of the United Kingdom reserve the right not to apply Article 10 (2) (b) and 10 (3), so far as those</p>	<p>Maintained.</p>	<p>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 alongside people up to the age of 21 in Scottish young offenders institutions. In Northern Ireland juveniles are segregated wherever possible from adults but, for operational reasons, this is not always possible. This is particularly true of women prisoners, given the small numbers of women - between 15 and 20 – in prison in Northern Ireland at any one time.</p>

**Table 5 (continued)**

Article of the ICCPR	Reservations	Status	Reasons for position
<p>2 (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.</p> <p>3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status”.</p>	<p>provisions require juveniles who are detained to be accommodated separately from adults, and not to apply Article 10 (2) (a) in Gibraltar, Montserrat and the Turks and Caicos Islands in so far as it requires segregation of accused and convicted persons.</p>		

**Table 5 (continued)**

Article of the ICCPR	Reservations	Status	Reasons for position
Article 11 – “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”	The Government of the United Kingdom reserve the right not to apply Article 11 in Jersey.	Under review.	On 2 August 2006, the Bailiwick of Jersey has requested the Government to withdraw the reservation placed on Article 11 on its behalf. The Government is currently reviewing the request.
Article 12(1) and (4) – “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 4. No one shall be arbitrarily deprived of the right to enter his own country.”	<p>The Government of the United Kingdom reserve the right to interpret the provisions of Article 12 (1) relating to the territory of a State as applying separately to each of the territories comprising the United Kingdom and its dependencies.</p> <p>The Government of the United Kingdom reserve the right to continue to apply such immigration legislation governing entry into, stay in and departure from the United Kingdom as they may deem necessary from time to time and, accordingly, their acceptance of Article 12 (4) and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom. The United Kingdom also reserves a similar right in regard to each of its dependent territories.</p>	Maintained.	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 here. The reservation protects these arrangements.

**Table 5 (continued)**

Article of the ICCPR	Reservations	Status	Reasons for position
<p>Article 13 – “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”</p>	<p>The Government of the United Kingdom reserve the right not to apply Article 13 in Hong Kong in so far as it confers a right of review of a decision to deport an alien and a right to be represented for this purpose before the competent authority.</p>	<p>Void.</p>	<p>The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.</p>

**Table 5 (continued)**

Article of the ICCPR	Reservations	Status	Reasons for position
<p>Article 14(3)(d) – “To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”</p>	<p>The Government of the United Kingdom reserve the right not to apply or not to apply in full the guarantee of free legal assistance in sub-paragraph (d) of paragraph 3 of Article 14 in so far as the shortage of legal practitioners renders the application of this guarantee impossible in the British Virgin Islands, the Cayman Islands, the Falkland Islands, the Gilbert Islands, the Pitcairn Islands Group, St. Helena and Dependencies and Tuvalu.</p>	<p>Maintained. (Void for the Gilbert Islands and Tuvalu).</p>	<p>The shortage of legal practitioners renders the application of this guarantee impossible in the British Virgin Islands, the Cayman Islands, the Falkland Islands, the Pitcairn Islands Group, St. Helena and Dependencies.</p> <p>The Gilbert Islands and Tuvalu are now independent States so the reservation placed on their behalf is void.</p>
<p>Article 20 – “1. Any propaganda for war shall be prohibited by law.</p>	<p>The Government of the United Kingdom interpret Article 20 consistently with the rights conferred by Articles 19 and 21 of the Covenant and having legislated in matters of practical</p>	<p>Maintained.</p>	<p>There are no plans for new legislation in this area.</p>

**Table 5 (continued)**

Article of the ICCPR	Reservations	Status	Reasons for position
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”	concern in the interests of public order (ordre public) reserve the right not to introduce any further legislation. The United Kingdom also reserve a similar right in regard to each of its dependent territories.		
Article 23(3) – “3. No marriage shall be entered into without the free and full consent of the intending spouses.”	The Government of the United Kingdom reserve the right to postpone the application of paragraph 3 of Article 23 in regard to a small number of customary marriages in the Solomon Islands.	Void.	The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.
Article 24(3) – “3. Every child has the right to acquire a nationality.”	The Government of the United Kingdom reserve the right to enact such nationality legislation as they may deem necessary from time to time to reserve the acquisition and possession of citizenship under such legislation to those having sufficient connection with the United Kingdom or any of its dependent territories and accordingly their acceptance of Article 24 (3) and of the other provisions of the Covenant is subject to the provisions of any such legislation.	Maintained.	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

**Table 5 (continued)**

Article of the ICCPR	Reservations	Status	Reasons for position
			is deemed necessary to ensure that any obligation under the ICCPR –and article 24(3) in particular- goes no further than these.
Article 25(b) – “(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”	The Government of the United Kingdom reserve the right not to apply sub-paragraph (b) of Article 25 in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong.	Void.	The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.
General Reservation	Ratification does not preclude laws and procedures to preserve service discipline of members of the armed forces and prisoners.	Maintained.	A range of Service disciplinary procedures have been modified to bring them in line with the ECHR, 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

**Table 5 (continued)**

Article of the ICCPR	Reservations	Status	Reasons for position
			<p>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 force as it stands.</p>
<p>General Reservation</p>	<p>The Government of the United Kingdom declare that the provisions of the Covenant shall not apply to Southern Rhodesia unless and until they inform the Secretary-General of the United Nations that they are in a position to ensure that the obligations imposed by the Covenant in respect of that territory can be fully implemented.</p>	<p>Void.</p>	<p>The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.</p>

**Table 6**  
**Derogation**

Article of the ICCPR	Derogation	Status	Reasons for position
Articles 9, 10(2), 10(3), 12(1), 14, 17, 19(2), 21, 22.	<p>DEROGATION (17 May 1976)</p> <p>The Government of the United Kingdom notify other States Parties to the present Covenant, in accordance with article 4, of their intention to take and continue measures derogating from their obligations under the Covenant. There have been in the United Kingdom in recent years campaigns of organised terrorism related to Northern Irish affairs which have manifested themselves in activities which have included murder, attempted murder, maiming, intimidation and violent civil disturbances and in bombing and fire-raising which have resulted in death, injury and widespread destruction of property. This situation constitutes a public emergency within the meaning of Article 4 (1) of the Covenant. The emergency commenced prior to the ratification by United Kingdom of the Covenant and Legislation has, from time to time, been promulgated with regard to it. The Government of the United Kingdom have found it necessary (and in some cases continue to find it necessary) to take powers, to</p>	Terminated on 22 August 1984.	

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
	<p>the extent strictly required by the exigencies of the situation, for the protection of life, for the protection of property and the prevention of outbreaks of public disorder, and including the exercise of powers of arrest and detention and exclusion. In so far as any of these measures is inconsistent with the provisions of Articles 9, 10 (2), 10 (3), 12 (1), 14, 17, 19 (2), 21 or 22 of the Covenant, the United Kingdom hereby derogates from its obligations under those provisions.</p>		
<p>Article 9 – “1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time</p>	<p>DEROGATION (23 December 1988) The Government of the United Kingdom of Great Britain and Northern Ireland have found it necessary to take or continue measures derogating in certain respects from their obligations under Article 9 of the Covenant. Persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of offences under the legislation and who have been detained for 48 hours may be, on the authority of the Secretary of State, further detained without charge for periods of up to five days. Notwithstanding the judgement of 29 November 1988 by the ECtHR in the case of Brogan and Others the Government has found it necessary to continue to exercise the powers described above but to the extent strictly required by the exigencies of the situation to enable necessary enquiries</p>	<p>Terminated on 26 February 2001 (for the UK).  Terminated on 17 May 2006 (for the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man).</p>	

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
<p>of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.</p> <p>3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise,</p>	<p>and investigations properly to be completed in order to decide whether criminal proceedings should be instituted. This notice is given in so far as these measures may be inconsistent with Article 9 (3) of the Covenant.</p>		

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
<p>for execution of the judgement.</p> <p>4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.</p> <p>5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”</p>			

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
	<p data-bbox="555 344 1043 371">DEROGATION (18 December 2001)</p> <p data-bbox="555 416 1093 443">Public emergency in the United Kingdom</p> <p data-bbox="555 488 1279 1297">The terrorist attacks in New York, Washington, D.C. and Pennsylvania on 11 September 2001 resulted in several thousand deaths, including many British victims and others from 70 different countries. In its resolutions 1368 (2001) and 1373 (2001), the United Nations Security Council recognised the attacks as a threat to international peace and security. The threat from international terrorism is a continuing one. In its resolution 1373 (2001), the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks. There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or</p>	<p data-bbox="1312 344 1518 408">Terminated on 14 March 2005.</p>	

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
	<p>groups, and who are a threat to the national security of the United Kingdom. As a result, a public emergency, within the meaning of Article 4(1) of the Covenant, exists in the United Kingdom.</p> <p>The Anti-terrorism, Crime and Security Act 2001 (ATCSA)</p> <p>As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, inter alia, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic law powers. The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ('SIAC'), established under the Special Immigration Appeals Commission Act 1997, which will have power to cancel it if it considers that the certificate should not have been</p>		

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
	<p>issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, the certificate will be reviewed by SIAC at regular intervals. SIAC will also be able to grant bail, where appropriate, subject to conditions. It will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom. The extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001 is a measure which is strictly required by the exigencies of the situation. It is a temporary provision which comes into force for an initial period of 15 months and then expires unless renewed by Parliament. Thereafter, it is subject to annual renewal by Parliament. If, at any time, in the Government's assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order, repeal the provision.</p> <p>Domestic law powers of detention (other than under the Anti-terrorism, Crime and Security Act 2001)</p> <p>The Government has powers under the Immigration Act 1971 ('the 1971 Act') to remove or deport persons on the ground that their presence in the United Kingdom is not conducive to the public good on national security</p>		

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
	<p>grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation. The courts in the United Kingdom have ruled that this power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful (<i>Rv Governor of Durham Prison, ex parte Singh</i> [1984] All ER 983).</p> <p>Article 9 of the Covenant</p> <p>In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with Article 9 of the Covenant. This may be the case, for example, if the person has established that removal to their own country might result in treatment contrary to Article 7 of the Covenant. In such circumstances, irrespective of the gravity of the threat to national security posed by the person concerned, it is well established that the international obligations of the United Kingdom prevent removal or deportation to a place where there is a real risk that the person will suffer treatment contrary to that article. If no alternative destination is immediately</p>		

**Table 6 (continued)**

Article of the ICCPR	Derogation	Status	Reasons for position
	<p>available then removal or deportation may not, for the time being, be possible even though the ultimate intention remains to remove or deport the person once satisfactory arrangements can be made. In addition, it may not be possible to prosecute the person for a criminal offence given the strict rules on the admissibility of evidence in the criminal justice system of the United Kingdom and the high standard of proof required.</p> <p>Derogation under Article 4 of the Covenant</p> <p>The Government has considered whether the exercise of the extended power to detain contained in the Anti-terrorism, Crime and Security Act 2001 may be inconsistent with the obligations under Article 9 of the Covenant. To the extent that the exercise of the extended power may be inconsistent with the United Kingdom's obligations under Article 9, the Government has decided to avail itself of the right of derogation conferred by Article 4(1) of the Covenant and will continue to do so until further notice.</p>		

## II. REPORTING ON THE SUBSTANTIVE PROVISIONS

### A. Response to the concluding observations (United Kingdom and British Overseas Territories)<sup>46</sup>

#### Introduction

34. In November 2002, the United Kingdom submitted an Initial Response addressing paragraphs 6, 8, 11, 23, 37, 38 of the Committee's concluding observations.<sup>47</sup> This section of the report will address the other concerns expressed by the Committee and will not refer to the paragraphs already addressed in the 2002 response unless where an update is needed.

35. Regarding paragraph 6 of the concluding observations ("The State party should ensure that any measures it undertakes to combat terrorist activities are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant."), there is a need for an update since the United Kingdom's 2002 interim report.

#### Control Orders

36. The Government set out the general context of the introduction of the Anti-terrorism, Crime and Security (ATCS) Act 2001 and the subsequent certification and detention of suspected terrorists under Part 4 of the Act in its interim report to the Human Rights Committee in November 2002. These Part 4 powers have since been repealed and a new system of control orders was introduced in the Prevention of Terrorism Act 2005, a summary of which is provided below.

37. The Part 4 powers were exceptional immigration powers that enabled the Home Secretary to certify, and therefore to detain, foreign nationals who were suspected of involvement in international terrorism and who were believed to represent a risk to national security but who could not be removed from the United Kingdom. The main reason they could not be removed was because it was assessed that, faced with removal, they would be able to argue that, if returned to their countries of origin, there was a real risk that they would suffer torture or inhuman treatment, putting the United Kingdom in breach of article 3 of ECHR, article 7 of ICCPR and the Convention Against Torture (CAT). Since detention in these circumstances was arguably contrary to article 5 of ECHR and article 9 of ICCPR, the United Kingdom derogated from these articles (in accordance with article 15, ECHR, and article 4, ICCPR).

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<sup>46</sup> CCPR/CO/73/UK; CCPR/CO/73/UKOT of 6 December 2001.

<sup>47</sup> CCPR/CO/73/UK/Add.2; CCPR/CO/73/UKOT/Add.2 of 4 December 2002. In compliance with paragraph 40 of the Committee's concluding observations that invited the UK Government to submit its response to paragraphs 6, 8, 11 and 23 by December 2002.

38. These powers were used sparingly: only 17 people were certified under the 2001 Act. Sixteen were certified and detained, and one was certified but detained under other powers (of the sixteen who were detained on the strength of the Part 4 powers, two chose to leave the UK). Those certified had a right of appeal to the Special Immigration Appeals Commission (SIAC), and all 17 exercised their right. SIAC heard 16 appeals and the remaining one has recently been withdrawn. In the 16 appeals which it determined, SIAC upheld the Home Secretary's decision to certify in all but one of the cases. The determinations for the first 10 appeals were handed down together. The appellants were given leave to appeal to the Court of Appeal. Their case was heard in July 2004 and the judgment given on 11 August 2004. The Court of Appeal upheld the position taken by the Home Secretary.

39. The legality of the derogation sought in relation to the ATCS Act Part 4 powers has also been separately challenged in the Courts. On 30 July 2002 SIAC upheld the Home Secretary's conclusion that the Part 4 powers remained a necessary and proportionate response by the Government in view of the public emergency threatening the life of the nation within the terms of article 15 of ECHR and article 4, ICCPR. SIAC however considered that the provisions of the Act were discriminatory and contrary to article 14 of ECHR in so far as they permitted detention of suspected international terrorists in a way that discriminated against them on the ground of nationality. The Court of Appeal reversed this decision on 25 October 2002 (while still upholding the Home Secretary's conclusion that the Part 4 powers remained a necessary and proportionate response by the Government in view of the public emergency threatening the life of the nation).

40. The case was subsequently taken to the House of Lords. On 16 December 2004 the Law Lords concluded that section 23, ATCS Act, was incompatible with articles 5 (deprivation of liberty) and 14 (prohibition of discrimination) of ECHR. The basis for the decision was that detention of foreign suspected nationals was discriminatory and disproportionate in that (a) the measures targeted foreign nationals alone and (b) it could not be said that measures short of detention would not adequately meet the threat posed by international terrorists. In summary, they concluded that there was a public emergency threatening the life of the nation but that the measures were not strictly required by the exigencies of the situation because they were disproportionate and discriminatory.

41. Following this ruling, the British Government acted swiftly to bring forward new legislation – the Prevention of Terrorism Act 2005. The 2005 Act repealed sections 21 to 32 of the ATCS Act, and introduced a new system of control orders. Subsequently, the United Kingdom withdrew its derogation from ECHR and ICCPR.

42. Control orders are preventative orders which place one or more obligations upon an individual which are designed to prevent, restrict or disrupt his or her involvement in terrorism-related activity. They can be applied to any individual whether a British or a foreign national where the Secretary of State has reasonable grounds for suspecting the individual is or has been involved in terrorist activity and he considers it necessary for protecting members of the public from terrorism.

43. The Prevention of Terrorism Act provides for two types of order: 'non-derogating control orders' in which the obligations imposed must not amount to a deprivation of liberty within the meaning of article 5 ECHR; and "derogating control orders", which impose obligations that do

amount to a deprivation of liberty under the terms of the ECHR. The Act empowers the Secretary of State to make a non-derogating control order but only a court can make a derogating control order. To date, the Government has not sought a derogation from article 5 ECHR and unless and until it does so, derogating control orders cannot be made.

44. In the case of *Secretary of State for the Home Department v JJ and Others* (1 August 2006), the Court of Appeal upheld the High Court's decision to quash six non-derogating control orders that were found to include obligations that deprived the individuals of their liberty contrary to article 5 ECHR and accordingly had been unlawfully made by the Secretary of State. The Government of the United Kingdom is seeking to appeal the Court of Appeal ruling in the House of Lords.

45. The orders themselves are based on a menu of options that can be employed to tackle particular terrorism 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. This allows for orders to be suited to each individual and therefore be proportionate to the threat that the individual actually poses. Significantly, the new orders seek to address the threat without detention in prison. However, breach of any of the obligations of the control order without reasonable excuse is a criminal offence punishable with a prison sentence of up to five years or a fine or both.

46. A number of safeguards designed to protect the rights of the individual are contained in the legislation. Permission to make a non-derogating control order must be obtained from the court, other than in urgent cases. This ensures that for all control orders there is independent judicial scrutiny at an early stage. If the court grants permission to make an order, the decision is automatically subject to review after the imposition of an order. An individual also has the right to appeal any of the single obligations contained within the order. Whenever possible material is dealt with in open court where the controlled person is represented by legal representatives of their choosing. Where there is sensitive material ("closed material") then a special advocate is appointed to represent them. The special advocate procedures ensure that the interests of the appellant are fairly represented whenever closed material is involved without compromising sources or the interests of national security.

47. As mentioned above, the Secretary of State must normally apply to the court for permission to impose a non-derogating control order. If a derogating control order is required, the Secretary of State (having no power to make such an order itself) must apply to the court to make a derogating control order against a particular individual.

48. Control orders themselves are subject to strict time limitations. A non-derogating control order lasts for 12 months but is renewable. A derogating control order has effect for six months, also renewable. Both types of order may be revoked before expiry.

49. The Act itself is subject to a variety of reviewing and reporting requirements including:

- An annual review of the entire Act by an Independent Reviewer who will provide a report to Parliament on the workings of the Act. Lord Carlisle published his report on operation of the first nine months of the Prevention of Terrorism legislation on 2 February 2006;

- A requirement on the Home Secretary to report to Parliament every 3 months on the operation of the powers. The Home Secretary so reported on 16 June 2005, 10 October 2005, 12 December 2005, 13 March 2006, 12 June and 11 September 2006;
- A requirement for the Act to be renewed annually by affirmative resolution in both Houses of Parliament. The Act was renewed by both Houses of Parliament on 15 February 2006.

50. Prosecution is, and will remain, the Government's preferred way of dealing with terrorists. Priority will continue to be given to prosecuting wherever possible, subject to the over-riding need to protect highly sensitive sources and techniques. However, in the absence of the ability to prosecute it is vital that the law enforcement agencies have the ability to act in order to disrupt and prevent further engagement in terrorist related activity.

#### **“Extraordinary rendition” flights**

51. During the period in which this Response was prepared, there has been widespread public attention to alleged “renditions” of terrorist suspects. The Committee may wish to note the following.

52. The Government has not approved and will not approve a policy of facilitating the transfer of individuals through the United Kingdom (including the UK's OTs) to places where there are substantial grounds to believe they would face a real risk of torture. The Government would not assist in any case if to do so would put us in breach of British law or international obligations.

53. In view of the level of concern, in late 2005 and early 2006, the Government has carried out an extensive search of files. The search did not uncover any evidence of detainees being rendered through British territory or airspace (or that of the OTs) since 11 September 2001. There was also no evidence of detainees being rendered through the United Kingdom (or OTs) since 1997 where there were substantial grounds to believe there was a real risk of torture. There were four cases in 1998 where the United States requested permission to render one or more detainees through the UK or OTs. In two of these cases, the Government granted the request, and in the other two it refused. In both the cases where the request was granted, the individuals were being transferred to the United States in order to face trial on terrorism charges and were subsequently convicted.

#### **Use of torture and Memoranda of Understanding on Deportation with Assurances**

54. An appeal by the British Government to the House of Lords on the use of torture evidence arose as a result of individual appeals by 10 of the individuals who were certified and detained under the ATCS Act. On 8 December 2005, the Law Lords ruled that there is an exclusionary rule precluding the use of evidence obtained by torture. The effect of this ruling is simply to replace the British Government's stated policy, namely, not to rely on evidence which is believed to have been obtained by torture by an “exclusionary” rule of law.

55. To date, the British Government has signed Memoranda of Understanding (MoU) on Deportation with Assurances (DWA) with the Libyan Arab Jamahiriya, Jordan and the Lebanon and is in discussions with a number of other countries from Northern Africa and the Middle East.

56. MoUs on Deportation with Assurances enable the Government to obtain assurances that will safeguard the rights of individuals being returned, for example in relation to humane treatment, access to medical care, adequate nourishment and accommodation, in accordance with internationally accepted standards - in particular article 3 of the ECHR (prohibition of torture or inhuman or degrading treatment). The specificity of MoUs, including in relation to particular individuals, mean that they provide an additional level of protection over and above that provided by international agreements.

57. The British Government has responsibility to the public to take action to reduce the threat of terrorism in the United Kingdom and to consider all options for doing so. MoUs on Deportation with Assurances are an important tool in this respect, which enable the Government to remove individuals who are foreign nationals and pose a terrorist threat to the United Kingdom, thereby providing a means of disrupting their activity and reducing the threat to national security.

### **Ramzy Case**

58. The United Kingdom, with Lithuania, Portugal and Slovakia, has intervened in the case of *Ramzy v the Netherlands*, with a view to persuading the ECtHR to revisit and reverse its ruling in *Chahal v United Kingdom* (1997) 23 EHRR 413. The latter held that, in considering whether a removal would be incompatible with article 3 of the ECHR, it was not legitimate to have regard to the conduct of the individual to be removed, nor to balance the risks to national security if the person remained against the risks to the person if removed. The United Kingdom believes that it should be possible to have regard to the risks to national security when considering the compatibility of removal. The United Kingdom interprets the provisions of article 7 of ICCPR along these same lines.

59. The Government believes that, in arguing for such a balancing test, no challenge is being made to the absolute nature of the prohibition in article 3 of ECHR against a Contracting State itself subjecting an individual to a real risk of article 3 ill-treatment. The Government's view is that the context of removal involves assessments of the risk of ill-treatment and needs to afford proper weight to the fundamental rights of the citizens of, and other residents in, the Contracting States who are threatened by terrorism. The Government therefore believes that it is necessary and appropriate for all the circumstances of a particular case to be taken into account in deciding whether or not a removal is compatible with the ECHR: national security considerations cannot be dismissed as irrelevant in this context:

(a) Regarding paragraph 7 of the concluding observations (CCPR/CO/73/UK; CCPR/CO/73/UKOT) (“The State party should consider, as a matter of priority, how persons subject to its jurisdiction may be guaranteed effective and consistent protection of the full range of Covenant rights. It should consider, as a priority, accession to the first Optional Protocol.”), the Government has noted that what the Committee has called the “general obligation” on States Parties to ICCPR is “to respect and to ensure to all individuals within its territory and subject to

its jurisdiction the rights recognized in the ICCPR” without discrimination.<sup>48</sup> The Government considers that this obligation, as the language of article 2 of ICCPR makes very clear, is essentially an obligation that States Parties owe territorially, i.e. to those individuals who are within their own territory and subject to the jurisdiction of the United Kingdom;

(b) In paragraph 10 of its general comment No. 31,<sup>49</sup> the Committee has suggested that there may be circumstances in which ICCPR has effect outside the territory of a State Party. The Government considers the Covenant can only have such effect in very exceptional cases. The Government has noted the Committee’s statement that the obligations of ICCPR extend to persons “within the power or effective control of the forces of a State Party acting outside its territory”.<sup>50</sup> Although the language adopted by the Committee may be too sweeping and general, the Government is prepared to accept, as it has in relation to the application of the ECHR, that, in these circumstances, its obligations under the ICCPR can in principle apply to persons who are taken into custody by British forces and held in British -run military detention facilities outside the United Kingdom.

60. The Government has reviewed the question of the optional right of individual petition under the ICCPR, the International Convention against All Forms of Racial Discrimination (ICERD), the Convention against Torture (CAT), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2004 as part of a comprehensive review of the United Kingdom’s position under international human rights treaties. The Government published its conclusions on 22 July 2004.<sup>51</sup>

61. The United Kingdom seeks to comply with these treaties and has given effective protection in its law. There is strong legislation against discrimination, including discrimination against ethnic minorities and the disabled. In addition, the HRA 1998, which was fully brought into force on 2 October 2000, gives further effect in the United Kingdom to civil and political rights in the ECHR. These cover many of the rights in these treaties and allow access to these rights in the British domestic courts.

62. The British Government has not seen a compelling need to accept individual petition to the UN. The practical value to the individual citizen is unclear and there is also to be considered the cost to public funds of preparing submissions of the government’s opinion on the subject matter of the petition. This could be significant if individual petition were used extensively as a means of seeking to explore the legal meaning of a treaty’s provisions, a process which could not come to juridical conclusion in any case since the Human Rights Committee is not a court.

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<sup>48</sup> United Nations Human Rights Committee, *General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13 (General Comments).

<sup>49</sup> Op. cit., paragraph 10.

<sup>50</sup> Op. cit.

<sup>51</sup> See <http://www.dca.gov.uk/peoples-rights/human-rights/int-human-rights.htm>.

63. As a result of the review, the Government has 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 United Nations treaties. The Government proposes to review this experiment two years after the coming into force of this Protocol.

64. As regards paragraph 8 of the concluding observations (“The State party should implement, as a matter of particular urgency given the passage of time, the measures required to ensure a full, transparent and credible accounting of the circumstances surrounding violations of the right to life in Northern Ireland.”) and in an update since the United Kingdom’s 2002 interim report, the Government is determined that, where there are serious allegations of collusion, the truth should emerge. Inquiries have been established into the deaths of Robert Hamill, Billy Wright and Rosemary Nelson and arrangements are being taken forward for the establishment of an inquiry into the death of Patrick Finucane on the basis of the new Inquiries Act 2005. The three established inquiries have all the powers necessary to uncover the full facts of what happened, as will the Finucane Inquiry.

65. The Government recognizes the continuing hurt that many feel about the number of deaths that remain unresolved. Many who have suffered the loss of loved ones still yearn for closure and the Government is committed to doing everything possible to give those people the best chance of achieving this. In March 2005 the Government announced that funding of £32 million would be made available to the Police Service of Northern Ireland (PSNI) to review all unresolved deaths arising from the troubles from 1969 to 1998. A new Historical Enquiry Team within the PSNI has since been set up with the aim of achieving closure for the families of victims either through judicial or non-judicial means. This Team will be staffed by a mixture of PSNI officers and seconded and/or retired officers.

66. As regards paragraph 9 of the concluding observations (“The State party should consider the establishment of a national human rights commission to provide and secure effective remedies for alleged violations of all human rights under the Covenant.”) and as already stated in chapter II.C of this report, the Equality Act 2006 provides for the establishment of the CEHR. Once appointed, this new independent body will provide information and advice, establish codes of practice and undertake inquiries in the areas of equality, diversity and human rights.<sup>52</sup> As stated in the Act, the general goals of the CEHR will be to ensure people’s ability to achieve their potential is not limited by prejudice or discrimination, there is respect for and protection of each individual’s human rights, there is respect for the dignity and worth of each individual, each individual has an equal opportunity to participate in society, and there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

67. The CEHR will be able to refer to any human rights treaties, including the ICCPR. A secure and effective remedy is available through the British courts in the case of violations under the HRA. The CEHR will be able to stand in court on behalf of the alleged victim.

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<sup>52</sup> Under UK law, the issues of equality and human rights are kept separate although the CEHR will be able to look into both subject areas.

68. The Scottish Parliament is currently considering the Scottish Commissioner for Human Rights (SCHR) Bill. If this Bill is passed it will create a body that will deal with devolved human rights issues. The SCHR will focus upon promoting awareness and understanding of, and respect for, human rights. If the Parliament decides to pass the Bill it would be anticipated that the SCHR will be ready to begin his or her functions in late 2007 / early 2008.

69. Regarding paragraph 10 of the concluding observations (“The State party should reconsider its law depriving convicted prisoners of the right to vote.”), the ECtHR found in the case of *Hirst* ((2006) 42 EHRR 41) that the United Kingdom’s law relating to voting by convicted prisoners infringed his human rights. The judgement raises a number of complex and difficult issues that the Government will need to consider carefully, in particular what measures may need to be taken to implement the judgement. A decision on the way forward will be taken shortly.

### **Reporting racism incidents within prisons**

70. As regards paragraph 12 of the concluding observations (“The State party should encourage the transparent reporting of racist incidents within prisons and ensure that racist incidents are rapidly and effectively investigated. It should ensure that appropriate disciplinary and preventive measures are developed to protect those persons who are particularly vulnerable. To this end, the State party should pay particular attention to improving the representation of ethnic minorities within the police and prison services.”), prisoners are able to make complaints in a variety of ways, including orally or through a third party. The formal request/complaint system or the racist incident report form, are the two usual methods of reporting racist incidents. Both systems have been significantly revised, following consultations and piloting of new procedures during 1999/2000. The Government now requires all establishments to use the revised “Racist Incident Reporting Form” for the recording of all racist incidents and the “Standardised Log” for the monitoring of the information, and to provide information available to area managers and others on the scope and scale of the incidents recorded.

71. In Scotland, the Scottish Prison Service (SPS) Race Relations Policy sets out the process for making a confidential racial incident complaint. All establishments are required to use the revised “Confidential Racial Incident Reporting Form” for the recording of all racist incidents. The Race Equality Management and Integration Team monitor all racial incidents and promulgate best practice throughout the organization.

72. For reporting purposes a racist incident is defined as any incident which is perceived to be racist by the victim or any other person. The Government’s commitment to promoting race equality requires that all staff, uniformed or not, are proactive in addressing racist behaviour and need to be aware of the procedures for reporting racist incidents. If appropriate, a member of staff can complete the form on a victim or witness’ behalf. Oral reports, letters of complaints alleged to contain a racist element are referred by the complaints clerk to the Race Relations Liaison Officer.

73. The Government is undertaking a project to review both the complaints procedures and racist incidents systems, looking at the possibility of bringing them together into one system. This work will include a review of current good practice where complaints are handled well. The review will also assess the feasibility of independent monitoring of complaints and racist

incident data. The Government currently keeps detailed records of all violent incidents through a national reporting system. All establishments must enter any violent incident on to a centrally collated system. They must also undertake regular analysis of the problem areas and provide an action plan to improve personal safety.

74. Phase II of the public inquiry into the death of Zahid Mubarek continues and the Chairman of the inquiry is considering the areas in which shortcomings occurred and allowed the attack on Zahid to take place. The Government submitted a comprehensive written statement addressing various issues raised by the Chairman. This sets out our current policies and practices in those areas and is available on the inquiry's website.<sup>53</sup> Similar statements were also sought from the Court Service and the Police. Other parties such as the CRE have also made submissions to the inquiry. During July 2005, the Chairman has visited various prison facilities and staff focus groups have been held in the same period. A series of seminars is currently underway on issues such as racism and religious tolerance and on the relationship between staff and prisoners.

### **Representation of ethnic minorities within the police and prison services**

75. In January 2005, the Government published a new strategy ("Improving Opportunity, Strengthening Society: The Government's Strategy to increase race equality and community cohesion") to identify and respond better to the specific needs of different communities, in key areas such as education, health, employment, housing, and criminal justice. The strategy is focused on practical measures, providing a framework that helps the Government continue to work with businesses, local public services and communities themselves to further improve opportunities and cohesion in Britain over the next three years.

76. The criminal justice agencies, such as the police and the prison service, have a major target of 'reassuring the public, reducing the fear of crime and anti-social behaviour, and building confidence in the Criminal Justice System without compromising fairness'.

### **The Police Service**

77. Much has already been achieved in terms of establishing better structures and procedures to challenge racism in the police. For example, the Government has established an IPCC and has met the vast majority of the recommendations of the Stephen Lawrence Inquiry Report into the death of the teenager in 1993. The Association of Chief Police Officers, supported by the Government, has banned staff from joining the British National Party, Combat 18 or the National Front, as the aims and pronouncements of these organizations are not compatible with forces' race equality duties. One of five key priorities for the police over the next three years is 'achieving a citizen-focused police service which responds to the needs of communities and individuals, and inspires public confidence in the police, particularly among BME communities'. Taking these aims forward over the next three years the Government will:

- Establish a new statutory duty on police authorities to promote diversity within both their police force and authority;

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<sup>53</sup> See <http://www.zahidmubarekinquiry.org.uk>

- Continue to strengthen the recruitment process to ensure that candidates' attitudes towards race and diversity are comprehensively assessed as a key part of the selection process. The Government will introduce a new regulatory requirement in National Recruitment Standards that assessment and selection panels should be reflective of their areas, including members from local communities and ensuring that local BME communities are appropriately represented;
- Continue to roll out training in community and race relations, building on the participation of over 130,000 officers since the publication of the Stephen Lawrence Inquiry Report;
- Improve the use of Stop and Search. Working with a series of partners, the Government is investigating the process of Stop and Search to ensure that it is applied fairly and appropriately to all communities. An independent Community Panel, chaired by Lord Victor Adebowale CBE, will scrutinize the work and its impact on communities, and a Delivery Board, co-chaired by Doreen Lawrence, will oversee implementation. Police forces will continue to record the ethnicity of the person stopped and searched to measure how the powers affect different communities. The Government is clear that the Stop and Search powers must be applied in the least bureaucratic way possible;
- Address the findings of the CRE's inquiry into racism in the police, in partnership with the police. The Government will develop a race equality action plan addressing employment issues (a major focus of the CRE's inquiry) and other key issues which are central to the delivery of race equality and diversity. The Government will consider with stakeholders how the recommendations of the Morris Inquiry report into employment matters in the Metropolitan Police Service might be applied more broadly across the police service and considered in relation to our police reform agenda.

78. The Police Service is steadily increasing the number of officers it employs from minority ethnic communities. On 31 March 2002, there were 3,386 minority ethnic officers in the 43 police forces, an increase of 251 (or 8 per cent) over 30 September 2001 and 410 or (13.8 per cent) more than on 31 March 2001. Many forces have put a great deal of thought and imagination into their recruitment policies and strategies and are seeing success. Positive action contributes to creating a fair and level playing field for minority groups who have been disadvantaged through, for example, unfair selection processes and procedures. Most forces are conducting positive action initiatives to help redress the balance and increase recruitment and ultimately improve overall representation of minority ethnic people.

79. In September 2004, the CRE Scotland, with the support of the Scottish Executive, commissioned an independent review of policing and race relations in Scotland. The report concluded that all eight forces had met their legal obligations and there was a clear commitment to maximizing public confidence and enhancing community relations. While the report made 67 recommendations, it was clear that it should not be seen as reflecting a process that was failing. Significant efforts have been made to ensure progress and important steps have already been taken that places the Scottish Police Service ahead of many other public bodies in its approach to diversity. The report is an important step in taking forward the very real commitment by the police to improve police relations with ethnic minority communities and implementation of its recommendations will pave the way to a better understanding of ethnic minority needs and

ensure that race and equal opportunities issues are fully integrated into the Force human resources strategies. Scottish police are committed to this task and guidance has already been issued to forces as part of the Association of Chief Police Officers in Scotland (ACPOS) Diversity Strategy and further detailed advice on recruitment, retention and development of ethnic minority police staff was issued by ACPOS in mid 2002.

80. It is an aim of the Service to increase the number of minority ethnic persons employed. Scottish Forces are now required to (a) find out why minority ethnic staff leave employment in the police service; (b) compile information on the career development of minority ethnic staff; and (c) provide information on the number of staff trained to an appropriate level in diversity awareness. Ethnic minorities in Scotland are relatively small and the targets for individual forces would correspondingly be too small to be meaningful (for all but 3 forces, they would be in single figures). In Scotland, as at 31 March 2005, 1.1 per cent or 184 police officers and 1.1 per cent or 13 special constables came from BME backgrounds. The Scottish Executive does not intend to set central targets for recruitment for Scottish Police forces. But it has ensured that figures are collected and published annually on levels of ethnic minority officers so that changes in this area can be tracked. The Scottish Police Service treats complaints of racism against any of its officers extremely seriously and investigates thoroughly all such complaints. The total number of complaint allegations against police staff in 2004-2005 was 4992. Of these 71 were alleging racially discriminatory behaviour, of which only one complaint was substantiated.

### **The Prison Service**

81. To improve the management of race equality in the Prison Service, the action plan "Implementing Race Equality in Prisons - A Shared Agenda for Change", is being delivered. Phase 1 of the Plan was completed in 2005 and the Prison Service is currently working through Phase 2. Delivery of that action plan, together with the work identified in the Prison Service Associate Race Equality Scheme, including the completion of race equality impact assessments, is ensuring that race equality is integrated into all aspects of its business.

82. Increasing BME representation is critical to Prison Service business. Overall BME representation stands at 5.6 per cent of all staff. Representation is projected to rise to 5.7 per cent by April 2006 against the target of 6.0 per cent. BME representation has been rising gradually for several years. Since the introduction of the Employment Targets in 1999 the Service has made good and steady progress towards a more representative workforce of the communities that it serves. The information, data and analysis produced by the Quarterly Ethnicity Review Human Resources Planning Team helps to highlight and pinpoint the areas the Service has to address. It allows for the continuous tracking of progress and efforts made towards meeting the targets set.

83. The Scottish Prison Service (SPS) continues to make progress in terms of increased applications from under represented groups and has utilised various approaches to highlight the diversity of careers within the Organisation. 95 per cent of staff have completed Equality and Diversity Training, which includes a module on Race Equality. The SPS has introduced a Continuous Improvement Target relating to equality and diversity as part of the Personal Performance Management System this year.

84. As regards paragraph 13 of the concluding observations ("The State party should take appropriate measures to ensure that its public life better reflects the diversity of its population."),

the Government is committed to building a safe, just and tolerant society for everyone in the United Kingdom, without discrimination based on race, religion or belief, gender, sexual orientation, disability or age. As previously stated, the Government has produced in January 2005 a new strategy (“Improving Opportunity, Strengthening Society: The Government’s Strategy to increase race equality and community cohesion”) which explains the steps the Government will be taking to ensure its public life better reflects the diversity of its population. The following areas will be tackled:

### **Education – focusing on those whose attainment still falls behind**

85. The Government is committed to providing equal educational opportunities for all children. The Government’s comprehensive Skills Strategy aims to give every young person a firm foundation in the skills they need for adult and working life, and for adults, opportunities to keep developing their skills. This is the backbone around which the Government is developing specific work to support disadvantaged BME children, as well as other disadvantaged groups.

86. Sure Start Children’s Centres are being significantly expanded, offering early education and childcare, family support, health services, employment advice and specialist support on a single site. There are currently 909 centres. This will grow to 2,500 centres by March 2008 and 3,500 across England by 2010, one for every community. As part of their objective of addressing disadvantage, the centres are expected to provide services that are responsive to the needs of BME children. Research shows that a smaller proportion of BME children, especially those from Bangladeshi and Black African households, attend childcare and nursery education compared to the population as a whole. The Sure Start Children’s Centres Practice Guidance provides advice and further information, including case study material about involving and working with minority ethnic families in the design and delivery of services. The Government will ensure that all Sure Start early years services are appropriate, relevant and accessible to all communities and that there is increased recruitment of BME groups into the workforce.

87. The Government is stepping up its work in schools to combat the effects of deprivation on educational attainment. The Aiming High programme brings a strong focus to meeting the needs of BME pupils and pupils with English as an additional language, particularly groups whose attainment is lower. Some groups such as pupils of Chinese and Indian descent are now generally thriving, but others of Black African and Caribbean, Bangladeshi and Pakistani origin, particularly boys, still fall behind and will be the Government’s priority over the next three years. This is also the case for Gypsy and Traveller pupils. The programme includes:

- Reform of the Ethnic Minority Achievement Grant – making the £162 million grant better targeted and more focused on areas with the greatest need;
- Supporting learners for whom English is an additional language. Around 10 per cent of all pupils in England have English as an additional language. The Government is ensuring that they are supported by developing a national qualification for teachers of English as an additional language;

- Raising the achievement of underachieving BME pupils. By identifying and disseminating good practice through a pilot programme in 30 secondary schools, the Government is identifying methods of improving the attainment of pupils of African-Caribbean background.

88. The Government is also ensuring that at least 10.5 per cent of new entrants to the teaching workforce are from BME communities in 2006/07. The Training and Development Agency for Schools census of new entrants shows that in 2005 almost 3,379 trainees entering initial teacher training came from a minority ethnic background. This is over 10 per cent of the trainees recruited where the ethnicity is known, an increase of 1638 (94 per cent) since 2001/02. One of the great successes of the last few years has been the significant expansion in further and higher education among young people from BME communities (so much so that higher education participation rates exceed those from the majority of the population), but students tend to be clustered in a relatively small number of mainly new institutions. Through its partnerships between higher education, schools and colleges, the “Aim higher” programme will work with gifted and talented young people who live in deprived areas, including those from BME communities, helping them to see that top universities are within their grasp. Typical activities include summer schools, weekend or evening study sessions and visits to universities.

89. A Green Paper, entitled Reducing Re-Offending through Skills and Employment, was published by the Government in December 2005. The document includes proposals and seeks views on how to improve the motivation and engagement of offenders thereby encouraging them to participate in learning skills which lead to employment. Flexible approaches are required when looking at the barriers to participation for particular groups of offenders. Specific groups of offenders – for example, ethnic minority, women, disabled, older, juvenile and young adult offenders – may feel unwilling or unable to participate in learning or preparation for work at times. The reasons for this may include unhappy previous experiences of education or employment; problems with access, due to a learning difficulty or disability; issues with a traditional classroom-style delivery; or competing personal priorities. Barriers may also include maturity and behavioural issues, which may need to be partially overcome in the first instance, and tackled in more depth as part of the package of learning and skills on offer.

90. With regard to BME offenders in particular. BME offenders are over-represented in the criminal justice system. According to 2004 Home Office offender management statistics, 25 per cent of the prison population was from a minority ethnic group. More specifically, black and Asian prisoners are more likely to attend education and training in prisons than white prisoners. However, with unemployment around twice as likely in BME communities, BME offenders may face additional hurdles in obtaining and retaining employment according to a 2002/03 Labour Force Survey. The proposals in the document to improve the qualifications, skills, and ultimately employment of all offenders may be, accordingly, of particular importance to minority groups.

91. Work with offenders is also important in the context of other key government priorities. Offender learners already make a significant contribution to the national Skills for Life target for improvement of literacy, language and numeracy. Improving the effectiveness of offender education can also help us achieve the national target to cut the number of adults in the workforce who lack National Vocational Qualification (NVQ) Level 2 or equivalent

qualifications by 40 per cent by 2010. Finally, placing offenders in work contributes to the Government's commitment to raise employment rates, and to the specific targets for jobs for the least qualified, most disadvantaged areas, and ethnic minority groups.

92. The Scottish Executive is committed to promoting equality within education. To help achieve this aim, the Executive annually collects a series of data which includes statistics on pupil numbers, teachers numbers, attainment levels, and exclusions. This data, which is broken down into a number of categories including ethnicity and gender, is closely monitored to ensure that any emerging trend or pattern is identified. A key aim of the Executive is to increase the performance of lowest achieving pupils, with target to raise the average tariff score of the lowest attaining 20 per cent of S4 (last year of secondary education) pupils. The "Ambitious, Excellent Schools" sets out agenda for action to build and sustain performance and ambition in the education system, instil belief and high aspirations in all children and young people and extend opportunities to transform their life chances. As part of this agenda, the Executive is taking forward a number of initiatives to actively promote equality within education, boost attainment, and help enable every pupil to achieve their full potential, regardless of their gender, ethnicity or social background. Initiatives include taking forward research looking at gender and pupil performance; research on strategies used to tackle gender inequalities in schools; research experiences of minority ethnic pupils in school; develop guidance to deal with racist incidents; implementation of the Education (Additional Support for Learning) (Scotland) Act 2004 and the provision within this for EAL (English As second Language) pupils; promote the educational interests of Gypsy and Traveller pupils; and continue to assist Education Authorities with their duties under the Race Relations (Amendment) Act 2000.

### **The labour market – more tailored responses to the needs of specific groups**

93. The Government has developed the first cross-government ethnic minority employment strategy. The strategy falls into three broad themes, each addressing the main factors in ethnic minority employment disadvantage:

- Connecting People to Work – The Government will help connect disadvantaged ethnic minority groups to the labour market over the next three years by:
  - (a) Providing guidance for jobseekers and employers. Specialist Employment Advisers offer support and practical advice to employers on race equality issues, and work with them to develop ways to ensure that their recruitment practices reach a diverse range of potential employees. Ethnic Minority Outreach works with community organizations to engage jobseekers from ethnic minority groups, and provides tailored guidance and support;
  - (b) Piloting new locally-led partnerships. The National Employment Panel has set up the Fair Cities initiative, a set of pilot partnerships between business, local government and the voluntary sector that will aim to provide people with skills that match the needs of employers;
  - (c) Creating incentives to search for work. The Government is piloting the Work Search premium for partners. This introduces a £20 weekly payment to give non-working partners in low income families help to meet the costs of searching for

employment. This pilot is for partners in general, but the Government expects will be particularly useful in testing ways of helping ethnic minority groups, who experience particularly low employment rates and who are over-represented in low-paid single earner families;

- Human Capital – The Skills for Life programme will improve the numeracy and language skills of at least 1.5 million adults by 2007. Within this more general context, the Government will be targeting key groups as a priority, and the Government will seek to ensure that current and new skills programmes fully address the needs of ethnic minority communities as an integral element of their work;
- Equal Opportunities in the Workplace - The Government will lead by example in promoting diversity and ethnic minority achievement in the workplace. To accomplish this, all government departments will implement plans to improve their recruitment and promotion of members of ethnic minority groups.

### **Health - Reducing health inequalities and providing culturally appropriate services**

94. The Government's action to address the health needs of particular disadvantaged minority ethnic communities takes place in the context of its drive to increase health overall and to reduce inequalities. There is a new performance framework for the Government requiring different needs and inequalities within the local population to be taken into account on the basis of a systematic programme of health equity audit and equality impact assessment. This enables local government bodies to target action in response to locally identified needs and help organizations address inequalities in access to services and in health outcomes experienced by BME groups. For example, to combat the disproportionately high levels of heart disease among people of South Asian origin and to support all relevant health workers, the Government published a best-practice toolkit "Heart Disease and South Asians". A multi-million pound tobacco education campaign is helping address the high levels of smoking among BME groups, particularly the Bangladeshi and Pakistani communities, including training for frontline health care workers who deal with Asian clients. The Government is also looking at ways of improving services to reduce diabetes. More broadly, Race for Health is a three-year programme that supports 13 Primary Care Trusts around the country, working in partnership with specific local BME communities to improve health and modernize services, increase choice and create greater diversity within the Government's workforce.

95. To address issues in providing mental health services for BME people, the Government launched an action plan for reforming services, (Delivering race equality in mental health care). The plan sets out three key elements for reform of services:

- More appropriate and responsive services, focusing both on improving organisations and the workforce, and on tailoring services more effectively to specific needs;
- Community engagement, supported by 500 new Community Development Workers and delivered through 80 planned new community engagement projects;
- Better information, through improved monitoring of ethnicity, including a new regular census of mental health patients.

96. The Government is committed to ensuring that services are developed to meet the specific needs of different cultural groups, and is concerned about lower perceptions of service among some groups such as people of Indian, Pakistani and Bangladeshi origin. The Government will continue to design tailored services such as specific cancer screening programmes for women of Asian origin, and will pursue organ donation campaigns targeting specific minority ethnic communities in order to raise awareness and promote organ donation.

97. These measures take place within the overall drive to reduce health inequalities and the specific national framework of the Leadership and Race Equality Programme, which is a long-term undertaking to give greater prominence to race equality in the health service.

### **Police Service and Prison Service**

(see response to paragraph 12 of the concluding observations)

### **Courts - Addressing perceptions of discrimination by courts**

98. The Government has commissioned a comprehensive two-year study which will investigate whether there is evidence that sentences differ for offenders from BME communities compared with White people convicted of offences of a similar nature and seriousness. If evidence exists, the Government will take action to address the issues. The Government already knows that offenders from some BME communities are more likely to be remanded in custody than White offenders and is investigating this potential discrimination through research and pilots looking at the remand decision making process and will implement the findings once the pilots are completed in the course of 2006.

99. To draw these programmes together and help drive progress in increasing overall confidence in the criminal justice system among BME communities the Government has established a National Race Forum for Local Criminal Justice Boards, which will facilitate the exchange of good practice, such as learning from Boards who have run pilot schemes to improve their performance assessment on issues of race equality, and promoting better engagement with local communities. The Government is undertaking a fundamental review to ensure that it collects the right statistics on race and the criminal justice system to inform policy development and evaluation, and to be most useful to local managers. The new National Offender Management Service is committed to engaging with all sections of the public more actively in its work to reduce reoffending. The Government expects that this will raise public confidence in its service.

### **Public Services - Addressing discrimination and promoting better life chances for all across public services**

100. These specific programmes of action within education, employment, health, Police and Prison Service, housing and the Criminal Justice System are complemented by a further drive to embed tackling discrimination and promoting race equalities as integral elements of all good public service delivery. This includes transport, planning, social services, benefits administration and rural services. The Race Relations (Amendment) Act 2000 was a major step in promoting race equality, giving Great Britain some of the most powerful race equality legislation in Europe. It places a legal obligation on some 43,000 public bodies to make race equality central to their work. This new duty has three parts:

- Eliminating unlawful racial discrimination;
- Promoting equal opportunities;
- Promoting good race relations.

101. In order to strengthen the effective implementation and enforcement of equality legislation, Parliament has passed the Equality Act 2006 which provides for the establishment of a new single equalities body in Great Britain, the CEHR, which by 2009 will incorporate the CRE, the DRC and the EOC. It will also support the new rights against discrimination on grounds of religion or belief, age and sexual orientation, and promote human rights. The CEHR will build on the work of the existing equality commissions, promoting equality, human rights and cohesion as core values for a fair society. It will work to enforce the law and place as much emphasis as before (or more) on tackling specific issues and barriers affecting race, faith, gender, disability and other groups. The CEHR will inherit the CRE's responsibilities for promoting good race relations between different communities and will be equipped with new powers to combat prejudice and tackle crime. The CEHR's powers will fully match those of the existing Commissions but with increased breadth and flexibility where needed, for example in updated inquiry and investigation powers and more effective tools to improve compliance with the statutory duties under the Race Relations (Amendment) Act. The CEHR will have a duty to track systematically society's progress towards better equality and human rights outcomes and develop a powerful evidence base to support this.

102. In 2003, the Government provided protection from discrimination on grounds of religion or belief in the areas of employment and vocational training through the Employment Equality (Religion or Belief) Regulations 2003. Under Part 2 of the Equality Act 2006, the Government has extended the law to prohibit discrimination on grounds of religion or belief in the provision of goods, facilities and services and public functions. These new provisions will ban: direct discrimination, where a person is treated less favourably than another on the grounds of religion or belief, such as where a shopkeeper refuses to serve someone or a landlord refuses to rent accommodation on these grounds, or a hotel allocates the worst rooms to those of a particular religion; indirect discrimination, where a requirement or practice has the effect of putting people of a particular religion or belief at a disadvantage that cannot be justified, for example where an entertainment venue sets unreasonable dress restrictions; and victimization, where someone is treated less favourably than others because, for example, they have complained of discrimination or have assisted someone else in a complaint.

### **Increasing diversity in the judiciary**

103. In October 2004 the Government published a separate consultation paper on increasing diversity among judges and tribunal members in England and Wales. The paper examines the current lack of diversity in the judiciary, focusing on the issues of gender, ethnic origin and disability. Following a full analysis of the responses, the Government has decided to take action in the following areas:

- Eligibility. The Government is persuaded that the current requirements need to be reviewed, both in terms of the qualification required, and the length of time which must be served before an application for judicial appointment can be made. Examples of the

type of people the Government has in mind as potentially having the right sort of skills and experience are: legal executives, academics with a legal background, patent and trademark attorneys, and possibly lay magistrates with an appropriate legal qualification. The Government also intends to look at whether solicitors and barristers who are lay magistrates should be eligible for fee-paid appointment earlier than 7 or 10 years as at present, by virtue of the experience they have gained as a magistrate. The Government will also consider whether solicitors and barristers who are lay magistrates should, after 7 or 10 years' call/admission, be eligible to apply directly for a fulltime judicial office (i.e. that their experience as a magistrate would be in lieu of fee-paid sitting);

- Return to practice. The Government will consider whether judges below the High Court should be allowed to return to practice;
- Career breaks. In addition to the full implementation in April 2005 of salaried part-time working, the Government will further expand the scheme to include career breaks;
- Mentoring for salaried judges. The Government will look at the feasibility of establishing a mentoring scheme for salaried judges (to assist with and promote greater career progression);
- Headhunting. The Government will write to stakeholders to identify organisations the Government can ask for names of potential candidates - and provide them with information about the application process. They will have to compete on a level playing field with all other candidates – the merit test will remain;
- Actively encouraging more people to apply. The Government will do much more to actively encourage people to apply through organizing more and different types of events, by producing a promotional video and DVD, producing a revised Judicial Appointments booklet and improving the information provided on the DCA website. The Government will also provide the opportunity for people to receive an email newsletter and place general advertisements in legal journals aimed at raising awareness about the possibility of becoming a judge. Additionally, the Government will develop a package of information specifically designed for students and recent graduates;
- Areas where more work is needed. The Government fully recognizes that it needs to do more to support and encourage disabled lawyers to apply for judicial appointment. The Government will consult those with the necessary expertise, for example, the DRC;
- Role of the professions. The Government considers important that the professions continue to demonstrate serious commitment to change, for example, broadening the social background from which lawyers are drawn. The Government will work with the current steering group to establish a clearly focused group to drive this work forward at both practitioner and judicial level.

104. As regards paragraph 14 of the concluding observations (“The State party should extend its criminal legislation to cover offences motivated by religious hatred and should take other steps

to ensure that all persons are protected from discrimination on account of their religious beliefs.”), the overall assessment for hate crime incidents is that they are showing a decline, after the increases that followed the London terrorist attacks in July 2005. The Government has increased protection from hate crime by:

- Expanding the racially aggravated offences to include religiously aggravated offences;
- Passing the Racial and Religious Hatred Act 2006, which prohibits threatening words or behaviour which intentionally stirs up hatred on grounds of religious belief (or lack of religious belief);
- Enhancing sentencing powers for other offences aggravated by a victim’s race and religion;
- Enhancing Increasing sentences for assault motivated by hostility towards a person’s disability or sexual orientation. Incitement to religious hatred offences carries a high threshold in order to protect freedom of speech. For successful prosecution, the hatred must be aimed at one or more members of a group, not ideologies.

105. More specifically, the Government has introduced nine racially and religiously motivated offences in its legislation. The Crime and Disorder Act 1998 created specific racially aggravated offences and the Anti-terrorism, Crime and Security Act 2001 amended the 1998 Act to create equivalent religiously aggravated offences; and these make higher penalties available to the courts for this type of offence. The 1998 Act and the 2001 Act further provided that, where the offence before the court is other than one of these nine specifically racially or religiously aggravated offences, sentencers are required, as a statutory duty, to treat race and religion as factors increasing the seriousness of the offence and to state in open court that the offence was found to be so aggravated. Section 146 of the Criminal Justice Act 2003 extended further these statutory duties on sentencers. The effect is that a court is now required to treat sexual orientation and disability as well as race and religion as factors increasing the seriousness of the offence and to state in open court that the offence was found to be so aggravated.

106. In 2001, the Government raised the maximum penalty for incitement to racial hatred from two to seven years’ imprisonment. In 2006, the government introduced an offence of ‘incitement to religious hatred’ to prohibit threatening words or behaviour that stirs up hatred on grounds of religious belief or lack of religious belief (Racial and Religious Hatred Act 2006).

107. As regards paragraph 15 of the concluding observations (“The State party should take necessary steps towards achieving an appropriate representation of women at senior levels of the executive, judiciary, Parliament and the private sector.”), the Government has legislated through the Sex Discrimination (Election Candidates) Act 2002 to allow political parties to take positive measures to reduce inequality in the numbers of men and women elected, at local, national and European level. It also led a national campaign to encourage more women onto the boards of national public bodies. The aim is that women should hold 45-50 per cent of public appointments made by the majority of government departments by the end of 2005.

108. There are roughly twice as many women judges in the courts as there were 10 years ago and women now have judicial representation within every tier of the court system. However, while just over 50 per cent of the British population is female, fewer than 20 per cent hold judicial posts within the courts.

109. Initiatives in place to address diversity in the judiciary include encouraging applications and raising awareness, removing barriers to appointment and ensuring judicial offices operate in a way that encourages and supports diversity such as career-break schemes, mentoring and part-time working/job-sharing.

### **Detention of asylum-seekers**

110. As regards paragraph 16 of the concluding observations (“The State party should closely examine its system of processing asylum-seekers in order to ensure that each asylum-seeker’s rights under the Covenant receive full protection, being limited only to the extent necessary and on the grounds provided for in the Covenant. The State party should end detention of asylum-seekers in prisons.”), it is not clear why the Committee also observed that “asylum-seekers had been detained in various facilities on grounds other than those legitimate under the ICCPR, including reasons of administrative convenience”. Detention of asylum-seekers in the United Kingdom may occur in the following circumstances: initially, whilst identity and basis of claim are established; where there are reasonable grounds to believe a person will fail to comply with the conditions of temporary admission or release; as part of a fast-track asylum process; or to effect removal. The use of detention is not arbitrary and is authorised only following careful consideration of an individual’s circumstances. No one is detained for reasons of administrative convenience. Whilst there is no statutory maximum period for immigration detention, individuals are detained for only as long as is reasonably necessary and their detention is not prolonged unduly. If it is clear that a person will not be removed from the United Kingdom, release from detention will be authorised.

111. The British Government is satisfied that its immigration detention policies and procedures are compliant with article 5 of the ECHR. The routine use of prison accommodation to hold asylum seekers and others detained under Immigration Act powers ended in January 2002. However, it remains the case that individual detainees may still be held in prison for reasons of security and control or, in the case of Northern Ireland, for reasons of geography. In the former case, such individuals will include those awaiting deportation from the United Kingdom following conviction for serious criminal offences and those whose conduct (e.g. violent or disruptive) make them unsuitable to be held in the relaxed regime of an Immigration Service removal centre. In the case of Northern Ireland, there is a general presumption of transfer to a removal centre in Britain unless the person concerned expresses a wish to remain in Northern Ireland, in which case there is no local alternative to prison accommodation.

### **Dispersal policy – access to and quality of legal advice**

112. The Immigration and Nationality Directorate regularly informs the Legal Services Commission (LSC) of the geographical locations used for dispersal of asylum-seekers so that they can let legal aid contracts in appropriate areas. LSC have also been working with the Immigration Law Practitioners Association to train solicitors in dispersal areas so that they are able to provide better quality advice to clients. The contracts let by LSC allow solicitors to claim

for travel to see clients and the travel expenses of asylum seekers who travel to visit solicitors can also be paid. The Home Office does not pay for travel expenses where interviews are between asylum applicants and external organizations.

113. As regards paragraph 17 of the concluding observations (“The State party should reconsider, with a view to repealing it, the principle that juries may draw negative inferences from the silence of accused persons. This is to ensure compliance with the rights guaranteed under article 14 of the Covenant.”), the key question in addressing this issue is, whether the power to draw inferences from a person’s silence is compatible in principle with the right not to incriminate oneself. It is important to note that, while the ECtHR has made clear that the right to silence and privilege against self incrimination is at the heart of a fair trial, and particular caution is required by a domestic court before it can invoke an accused’s silence against him, that Court has also made clear that the right is not absolute and that it must be considered in the context of the particular circumstances of each case.

114. The ECtHR has stated, in *Murray v UK* (1996 22 EHRR 29) that whether the drawing of adverse inferences from an accused’s silence infringes article 6 of the ECHR is a matter to be determined in the light of all the circumstances of the case, having particular regard to the situations where inferences may be drawn, the weight to be attached to them by national courts in their assessment of the evidence and the degree of compulsion inherent in the situation.

115. It is also important to note that, under British law, an inference cannot be drawn simply from failure to answer police questions. An inference may only be drawn if the defendant fails to answer police questions and then also fails to testify at trial, or if the defendant fails to mention something, which, in the circumstances existing at the time, he could reasonably have been expected to mention, and which he then seeks to rely upon in his defence at trial. The aim of the British legislation is to discourage an accused from fabricating a defence late in the day and to encourage the accused to make a speedy disclosure of any genuine defence or fact which may go to establishing a genuine defence. It is not to secure convictions at the expense of defendant’s rights.

116. The British Courts will have due regard to the requirements of article 6 of the ECHR and to the overall fairness of proceedings in determining whether to invoke an accused’s silence against a defendant. This was demonstrated in the recent case of *R v Becouarn* [2005], UKHL 55, in which the House of Lords found that the recommended direction on drawing inferences was sufficiently fair to defendants, emphasizing as it did that the jury had to conclude that the only sensible explanation for a defendant’s failure to give evidence was that he had no answer to the case against him, or none that could have stood up to cross-examination. It was noted that trial judges had full discretion to adapt the direction if they considered that by doing so it would provide the best guidance to a jury and the fairest representation of the issues.

117. The Government considers that the ability to draw negative inferences from an accused’s silence under British law cannot be said to be, on its face, a breach of article 14, and that each case will be subject to the supervisory scrutiny of the Courts to ensure that the requirements of a fair trial are met. The arrangements therefore will remain in place.

118. As regards paragraph 18 of the concluding observations (“The State party should carefully monitor, on an ongoing basis, whether the exigencies of the specific situation in Northern Ireland

continue to justify the distinctions in its criminal procedure. In particular, it should ensure that, in each case where a person is subjected to the “Diplock” jurisdiction, objective and reasonable grounds are provided and that this requirement is incorporated in the relevant legislation, including the Northern Ireland (Emergency Provisions) Act 1996’): The Diplock court system is the default mode of trial specified in the Terrorism Act 2000 for a specified list of offences (known as ‘scheduled offences’). The Attorney General has the discretion to certify a case out of that system and into a Crown Court sitting with a jury. The test the Attorney General applies is a matter of public record. He considers the facts of the case and judges whether or not the commission of the offence is connected with terrorism in Northern Ireland. If the offence is unconnected with terrorism in Northern Ireland, the Attorney General certifies it out of the Diplock system. The Government thinks that this makes sufficiently clear the grounds on which such a decision has been made.

119. The Secretary of State for Northern Ireland announced on 1 August 2005 a programme of security normalization measures which is expected to last for two years, subject to an enabling environment. Counter-terrorism legislation specific to Northern Ireland (which includes the provisions governing Diplock courts) is due to be repealed by the end of that normalization programme.

120. As regards paragraph 19 of the concluding observations (“The Committee notes with concern that, under the general Terrorism Act 2000, suspects may be detained for 48 hours without access to a lawyer if the police suspect that such access would lead, for example, to interference with evidence or alerting another suspect. Particularly in circumstances where these powers have not been used in England and Wales for several years, where their compatibility with articles 9 and 14, inter alia, is suspect, and where other less intrusive means for achieving the same ends exist, the Committee considers that the State party has failed to justify these powers. The State party should review these powers in the light of the Committee’s views”): 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 powers 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 arrestable offence;
- Interference with or physical injury to any person;
- Alerting of persons who are suspected of having committed a serious arrestable offence but have not been arrested for it;
- Hindering the recovery of property obtained as a result of a serious arrestable 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.

121. Where the reason for authorizing a delay ceases to exist, no further delay is permitted and the detained person must be allowed access to consult a solicitor if he so wishes. The priorities of the police are the safety of the public and the effective investigation of terrorism. Where possible, the Government has always sought to ensure that legislation against terrorism should approximate as closely as possible to criminal law and procedure. However, these provisions take account of the nature of the threat and potential consequences of a successful terrorist attack. Although this is a strong measure, the powers are designed to be used only in exceptional circumstances. There are appropriate safeguards in place. Section 126 of the Terrorism Act 2000 requires the Secretary of State to place a report on the operation of the whole Act before Parliament at least once every twelve months. The powers in the Act are thoroughly reviewed by an independent reviewer, currently Lord Carlile of Berriew, QC, to ensure they are necessary, proportionate and used appropriately by the police. It is essential that the Government strikes a balance between protecting our civil liberties and safeguarding security, and it is right that law-enforcement agencies have appropriate powers available to them.

122. As regards paragraph 20 of the concluding observations (“The State party should review the provisions of the Criminal Procedure and Investigations Act 1996 that enable prosecutors to seek a non-reviewable decision by a court to the effect that sensitive evidentiary material, which would otherwise be disclosed to a defendant, is withheld on public interest/immunity grounds. The State party should ensure that the guarantees of article 14 of the Covenant are fully respected”): The United Kingdom believes its legislation complies with the requirements of article 14 of the ICCPR. However, there are a number of points that should be clarified in relation to the concerns expressed. Firstly, evidence which forms part of the prosecution case against the accused may not be withheld under any circumstances. The Criminal Procedure and Investigations Act 1996 (CPIA) relates to unused prosecution material, that is to say, material generated during a criminal investigation but which specifically does not form part of the prosecution case against the accused. Under the CPIA, the prosecution must disclose any previously undisclosed unused material which might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused.

123. The relevant provisions of the Criminal Procedure and Investigations Act 1996 do not apply in Scotland, where the prosecutors cannot seek a non-reviewable decision by a court. Prosecutors in Scotland are governed by jurisprudence of Scottish Courts. In particular, they are under a duty to disclose to the defence information in their possession which would tend to exculpate the accused. In the recent cases of *Holland v HMA* (2005 SCCR 41) and *Sinclair v HMA* (2005 SCCR 446), Scottish Prosecutors must disclose the statements, previous convictions of all witnesses who are to be called to trial. The settled jurisprudence of the ECtHR continues to apply and the entitlement to disclosure of relevant evidence is not an absolute right.

124. Unused material that meets the disclosure test can be withheld from the defence if, and only if, the public interest lies in favour of its non-disclosure. The prosecution alone cannot withhold such material. An application for permission not to disclose otherwise disclosable unused material must be made by the prosecution to the court and it is the court which decides

on whether it is appropriate for the material to be withheld from the defence on public interest grounds. In reaching its decision, the court will order the material to be disclosed if, as a result of non-disclosure, a miscarriage of justice may ensue. In other words, there is a slightly different test for disclosure of sensitive material than other material. Where the court orders disclosure, however, the prosecution must either disclose the material or cease the prosecution.

125. It is a settled feature of the jurisprudence of the ECtHR that “the entitlement to disclosure of relevant evidence is not an absolute right. In any criminal proceedings there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the accused” (see the *Fitt v United Kingdom* case (2000) 30 EHRR 480). In the case of *Regina v H and Others* ((2004) UKHL 3) the House of Lords considered in detail the current arrangements on disclosure and sensitive material with particular reference to the requirements of the ECtHR. The House of Lords endorsed the current legal framework and set out in detail the procedure which prosecutors and courts must follow with regard to disclosure generally and public interest immunity material in particular to ensure that there is a fair trial.

126. As regards paragraph 21 of the concluding observations (“The State party should ensure that its powers under the Official Secrets Act 1989 to protect information genuinely related to matters of national security are narrowly utilised and limited to instances where it has been shown to be necessary to suppress release of the information”): The Act only protects certain categories of information, and the Government considers the release of any information protected by the Official Secrets Act (OSA) to be damaging. The powers are there not to frustrate employees but to protect national security. Prosecution is a matter for the Crown Prosecution Service which takes into account (a) the strength of the evidence and (b) the issue of the public interest before deciding whether to prosecute. Before a prosecution under the OSA can proceed the Attorney-General must give his consent. There are therefore additional “necessity tests” in place and employees have several avenues open to them if they have any concerns which they wish to raise.

127. As regards paragraph 22 of the concluding observations (“The Committee notes the retention of the death penalty in the Turks and Caicos Islands for piracy and treason”): The death penalty for treason and piracy has been abolished in the Turks and Caicos Islands. Negotiations on a revised constitution for the Turks and Caicos Islands (TCI) were concluded in October 2005. The revised draft text of the constitution has been the subject of public consultations in early 2006 and contains amendments to the chapter on fundamental rights and freedoms to ensure that it more closely reflects the provisions of the ICCPR and the ECHR. In recognition of the importance which the Governments of the United Kingdom and TCI attach to human rights, the chapter is also moved from its previous position near the end to a prominent position at the beginning of the draft new constitution. The TCI Government has run a series of workshops and seminars for its officials in recent years covering a range of human rights related topics. These include:

- Domestic Violence Intervention Training Project, November 2000;
- Consultative Workshop on the Convention on the Rights of the Child, April 2001;

- Workshop on the Convention on the Elimination of All Forms of Discrimination against Women, October 2003;
- International Labour Organisation workshops on employment rights, December 2004 and August 2005;
- In-house women's advancement seminars, February 2005;
- National Children's Home Barbados Workshops on child protection and domestic violence, March and November 2005;
- In-house workshop on Rights of the Child, April 2005.

### **Montserrat**

128. As regards paragraph 23 of the concluding observations (“The State party should give priority to incorporating Covenant rights in the respective domestic legal orders of the Overseas Territories”), and in an update to the 2002 United Kingdom interim report: Extension of an international convention to Montserrat does not ipso fact give the convention the same force of law in the courts of Montserrat. Where necessary, the rights and obligations arising from such a convention have to be incorporated into national law before they can create rights or obligations enforceable in the national court by the individual. ICCPR has not been incorporated into the domestic laws of Montserrat but in the past the view has been expressed that Part IV (Fundamental Rights and Freedoms of the Individual) of the Montserrat Constitution Order 1989 gives effect to the rights in the Convention. However, as part of a constitutional review of the Constitution of Montserrat which is currently underway, the fundamental rights provisions of the Constitution will be reviewed and, as necessary, amended to bring them more closely into line with the ICCPR and the ECHR. An attempt will also be made to simplify the language of the fundamental rights provisions in the Constitution in order to make them more accessible to the individual.

### **British Virgin Islands**

129. The Constitutional Review Commission agreed that the new Constitution should contain a human rights chapter. The legislation, known as the ‘Rasta Law’ under which **British Virgin Islands** (BVI) Immigration officers were allowed to refuse admission to those of whose haircuts they did not approve has been repealed.

130. As regards paragraph 24 of the concluding observations (“The appropriate authorities should establish programmes of training and education for their public officials, aimed at inculcating a human rights culture in these persons who exercise governmental powers in the various overseas territories”): In Montserrat, the Human Rights Reporting Committee is presently in the process of retaining a consultant to design and implement a Human Rights Public Education Strategy. The ultimate goal being the establishment of an independent Human Rights Commission.

131. The British Virgin Islands have not run a specific human-rights oriented programme of training for public servants. But they did have, earlier in 2005, a successful series of seminars on

“enforcement”, which had a strong emphasis on the citizen’s rights to proper and equal treatment under the law. Public servants attended a workshop in 2003 run by the Foreign Office on reporting obligations under the United Nations human rights treaties.

132. As regards paragraph 28 of the concluding observations (“The State party should review its law on deportation to the Cayman Islands to provide clear criteria, and effective and impartial review of any deportation decision, in order to ensure compliance with articles 17, 23 and 26 of the Covenant”): The Immigration Law 2003 (“the Law”) clearly sets the provisions relating to deportation and provides the necessary procedure for an effective and impartial review of a decision to issue a deportation order. Provisions relating to deportation from the Cayman Islands are contained in Part VIII of the Law. The power to issue a deportation order is vested in the Governor. However, the Law prohibits the making of a deportation order against a Caymanian or a permanent resident of the Cayman Islands. No proceedings shall be instituted under Part VIII except by the Attorney General or with his previous sanction in writing. The Governor shall report any deportation order made, varied or modified to the Secretary of State for Foreign and Commonwealth Affairs.

133. The deportation of convicted persons is restricted to: (a) cases where a court recommends that a deportation order should be made; (b) a person who has been convicted for overstaying or working without a work permit; (c) a person who has been sentenced in the Islands to imprisonment for a term of not less than six months.

134. The Governor may make a deportation order in respect to any person who is: (a) destitute; (b) a prohibited immigrant who has entered the Islands contrary to the Law; (c) a person whose permission to land, remain or reside in the Islands has expired or has revoked and who fails to leave the Islands; (d) a person whose application for asylum has been refused; and (e) where the Governor considers that a person is an undesirable person or that his presence in the Islands is not conducive to the public good.

135. As regards paragraph 30 of the concluding observations (In the Falkland Islands, the law does not abolish the status of illegitimacy and does not include any right of compensation in respect of article 14, paragraph 6, of the Covenant: “The State party should amend these aspects of its law to bring them into line with its obligations under article 24, taken together with article 26, and under article 14 of the Covenant”): It is not yet possible to abolish the status of illegitimacy in the Falkland Islands. For example, there are still consequences of illegitimacy in terms of the law of nationality and an illegitimate child’s father and persons related to an illegitimate child’s father have no rights of inheritance on the illegitimate child’s intestacy. An illegitimate child’s father is not a person who automatically, under the law of the Falkland Islands, has parental responsibility for his illegitimate child but he is able to apply for an order of the court granting parental responsibility to him.

136. The Falkland Islands Government will consider the enactment of legislation conferring a statutory right to compensation in the circumstances with which article 14, paragraph 6, of the ICCPR deals. The Committee is asked to note that the Falkland Islands Government is unaware of any case in which the right to compensation provided for by that provision of the ICCPR has arisen.

137. As regards paragraph 33 of the concluding observations (“The State party should ensure that, consistent with articles 10, 17, 23 and 24 of the Covenant, long-term prisoners [in Montserrat] may serve their sentences in its territory [as opposed to other overseas territories]; alternatively, it should investigate non-custodial means of punishment”): All these long-term prisoners are presently serving their sentences in Montserrat and they have been so doing since 8 September 2004. Montserrat is also one of the Territories covered by work, financed by the United Kingdom, which is currently being undertaken into how the Territories could make greater use of alternatives to custodial sentences. In the summer of 2005, a member of the United Kingdom Probation Directorate visited Montserrat to discuss problems associated with alternatives to custody and possible solutions.

138. As regards paragraph 35 of the concluding observations (“The State party should ensure that accused and convicted prisoners [in St. Helena] are appropriately segregated”): The Police Headquarters in St. Helena do not, as yet, have the facilities to provide holding cells for arrested prisoners. However, the Chief of Police is seeking to secure a building and funding which will enable St Helena to provide segregated facilities for accused and convicted prisoners.

139. As regards paragraph 37 of the concluding observations (“The State party should take the necessary steps to abolish the death penalty for treason and piracy [in the Turks and Caicos Islands]”): The death penalty for treason and piracy has been abolished in the Turks and Caicos Islands.

140. As regards paragraph 39 of the concluding observations (“The State party should publicize the text of its fifth periodic reports, the written answers it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations”): The fifth periodic report of the United Kingdom, OTs and CDs to the Human Rights Committee together with the Committee’s concluding observations have been published in the official web site of the Department for Constitutional Affairs.<sup>54</sup>

## **B. Response to the concluding observations (Crown Dependencies)<sup>55</sup>**

141. As regards paragraph 8 of the above concluding observations (“The Committee strongly urges the State party to ensure that all Covenant rights are given effect in domestic law (art. 2)”), the application of the Covenant in Crown Dependencies is set out below.

### **Isle of Man**

142. It should be emphasized that, whilst the United Kingdom is the State party and it is responsible for the Isle of Man’s international relations, the Island is internally self-governing and the responsibility for ensuring that all Covenant rights are implemented domestically rests with the Isle of Man Government.

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<sup>54</sup> <http://www.dca.gov.uk/peoples-rights/human-rights/int-human-rights.htm#3>

<sup>55</sup> CCPR/C/79/Add.119, 27 March 2000.

143. The Human Rights Act, which incorporates into Manx domestic law rights from the ECHR, was passed in 2001 and it will come fully into effect on 1 November 2006. The rights and freedoms of the European Convention incorporated into Manx law apply to all Island residents without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

144. As is the case in the United Kingdom there are currently no plans to incorporate the Covenant itself into domestic legislation. However, the Isle of Man Government remains committed to developing Isle of Man legislation that both implements and complies with the Covenant's provisions.

#### **Bailiwick of Jersey**

145. Jersey will continue to give consideration from time to time to introducing the Covenant into the domestic law of the island but has no present intention of doing so. However, the Covenant rights receive consideration in the drafting of new legislation which is put before the States Assembly for its approval.

#### **Bailiwick of Guernsey**

146. The status of international conventions in the Bailiwick of Guernsey is the same as it is in the United Kingdom: they cannot be directly enforced by the courts unless specifically incorporated into domestic law. The Covenant has not been specifically incorporated into the domestic law of the Bailiwick. Should the United Kingdom decide to incorporate the Covenant into its domestic law then the matter would receive further consideration by the Bailiwick authorities.

147. Table 7 below lists all relevant legislation enacted since the last (the fifth) periodic report.<sup>56</sup>

**Table 7**  
**Relevant legislation**

Orders in Council
The Real Property (Succession) (Sark) Law, 1999
The Human Rights (Bailiwick of Guernsey) Law, 2000
The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002
The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002
The Bail (Bailiwick of Guernsey) Law, 2003
The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2004
The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003

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<sup>56</sup> All the documents listed in the table are available in paper format upon request.

**Table 7 (continued)**

The Matrimonial Causes (Guernsey) (Amendment) Law, 2003
The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004
The Racial Hatred (Bailiwick of Guernsey) Law, 2005
The Protection from Harassment (Bailiwick of Guernsey) Law, 2006
Ordinances of the States
The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005
The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006

148. As regards paragraph 9 of the concluding observations (“The Committee recommends that human rights education be extended to members of the police force, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training. Human rights education should also be incorporated at every level of general education”), human rights education in Crown Dependencies is set out in the paragraphs below.

#### **Isle of Man**

149. Following the passing of the Human Rights Act 2001 a programme of education about the European Convention and the Act was delivered to all sections of public service. This included the publication of guidance to both public servants (including members of judiciary and of the Constabulary) and members of the public on the rights enshrined in Manx law by the Act. With the Act coming into force on 1st November that documentation has been updated and it is available free of charge on the Isle of Man Government website. Paper copies are also available upon request. The Isle of Man Law Society has been carrying out a programme of training for Manx advocates. This is in addition to the training which is an integral part of the professional qualifications which have to be obtained before a person can enter into Articles to become a Manx advocate.

150. In addition to the basic training to all police officer following the passing of the Human Rights Act, specialist detective training (including training for senior investigating officers) contains detailed modules on human rights. A Police Inspector is currently preparing a second wave of training to coincide with the implementation of the Human Rights Act.

151. In the Island’s prison, training on human rights issues is provided as a part of the initial training for all staff. Also, all new members of staff are issued with an information booklet covering the Isle of Man Human Rights Act.

152. Human rights education now forms an integral part of the personal, social and health education curriculum delivered to all pupils of compulsory school age (5 to 16 years) in provided and maintained schools in the Isle of Man.

### **Bailiwick of Jersey**

153. Human rights education has been offered across the whole of the States public sector services in Jersey. Independent evaluations have demonstrated significantly increased awareness of the implementation of human rights in the public service. Literature has been published providing human rights guidance to staff in the public service and further information is available on the States of Jersey web site ([www.gov.je](http://www.gov.je)).

154. Specific human rights training has also been available for all members of the States police force and the honorary police. It is provided for all new probationer recruits and is a continuing thread throughout their training programme. It is included as a key principle in other courses provided by the police, for example investigative interviewing, community relations and firearms training.

155. Within the judiciary, human rights training is a core requirement for all members of staff, including the Magistrate's Court, the Judicial Greffe and the court offices.

156. School education at various levels incorporates, as part of the personal, social and health education curriculum, preparation for citizenship, and developing knowledge and information for citizenship including a sense of justice. Amongst other issues, pupils are taught:

- The legal and human rights responsibilities underpinning society and how they relate to citizens, including the role of the criminal and civil justice systems;
- The origins and implications of the diverse national, regional, religious and ethnic identities within the Island and the need for mutual respect and understanding.

### **Bailiwick of Guernsey**

157. All police officers currently receive training in law and procedure which incorporates human rights aspects, including, for example, law and procedure relevant to the arrest and detention of suspects. This law and procedure is now set out in the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, which is considered to be fully compliant with the ECHR and on which all police officers receive training. Similarly it is considered essential that prison officers also receive training in human rights issues. Police and prison officers receive training in the United Kingdom which includes human rights education. Judges and lawyers in Guernsey are also fully aware of human rights issues following the enactment of the Human Rights (Bailiwick of Guernsey) Law, 2000 which came into force on the 1 September 2006 and which incorporates the ECHR into domestic legislation.

158. As regards paragraph 10 of the concluding observations ("The Committee recommends that the authorities in Guernsey and the Isle of Man give due consideration to establishing independent bodies with a mandate to review administrative decisions (arts. 2 and 14)") this issue is set out in the paragraphs below.

## Isle of Man

159. The Committee should note that there are presently a range of formal and informal appeal mechanisms available in respect of administrative decisions, including appeals to the Minister and the raising of issues through constituency Members.

160. However, in July 2004 Tynwald<sup>57</sup> approved the establishment of a statutory Ombudsman Service to provide a fair and impartial assessment of complaints which is divorced from either political or administrative involvement. Tynwald agreed that members of the public should have the right of direct access to the Ombudsman rather than by reference from a member of Tynwald. Drafting instructions have been given to the Attorney General's Chambers and it is expected that this issue will be progressed by the next administration.

161. It is intended that the Ombudsman will be empowered:

- To investigate maladministration in Departments, Statutory Boards and Local Government, as well as complaints regarding the Code of Practice Regarding Access to Government Information;
- To make binding recommendations as to how the complaint can be remedied;
- To make suggestions as to improvements in Administration.

162. In addition, Tynwald agreed at its sitting in July 2006 that an Auditor General should be appointed. The Auditor General would undertake responsibility for the following functions:

(a) Ultimate responsibility for auditing all statutory bodies (including local authorities), with the power to delegate some of the audit work to firms of local accountants;

(b) Value for Money Investigations;

(c) Regular consultation with the PAC (Tynwald Public Accounts Committee) and provision of assistance with investigations;

(d) Identification of issues which may be appropriate for PAC investigations;

(e) Examination of issues referred by Tynwald. The Auditor General will be able to decide whether or not to undertake a full investigation, but will report to Tynwald in any event;

(f) Examination of issues referred by individual Members of Tynwald or the public. The Auditor General will be able to decide whether or not to undertake a full investigation, but will include in the Annual Report a list of all the matters referred to the Office and the action taken.

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<sup>57</sup> The Parliament of the Isle of Man.

### **Bailiwick of Guernsey**

163. A review is presently being undertaken of the Administrative Decisions (Review) (Guernsey) Law, 1986, as amended. It is expected that proposals to introduce a fully independent body will be put to the States of Deliberation before the end of 2006. This review is without prejudice to the powers of the Bailiwick courts to judicially review and if necessary overturn administrative decisions (for example, on grounds of unreasonableness or lack of proportionality). In addition, a number of independent tribunals have been established to deal with particular classes of administrative decision (for example, in relation to housing, planning and, from 2007, property tax).

164. As regards paragraph 11 of the concluding observations (“The Committee notes the information provided by the delegation that corporal punishment is not permitted in schools on the Isle of Man as a matter of policy, and recommends the adoption of legislation to outlaw corporal punishment (arts. 7 and 10).”), information on corporal punishment is set out in the paragraphs below.

### **Isle of Man**

165. The use of corporal punishment in schools provided and/or maintained in the Isle of Man by the Department of Education has been prohibited by statute since 2004 when the Education Act 2001 (and specifically section 10(b)) came into force. However, this statutory prohibition does not apply to independent schools (that is, schools which are outside the state education system) and, at this point in time, the Department of Education has no proposals to bring forward legislation extending the prohibition to those (very few) schools.

166. As regards paragraph 12 of the concluding observations (“The Committee notes the information provided by the delegation that steps are being taken in the United Kingdom to ensure that its anti-terrorism laws comply with article 9 of the Covenant, and urges Jersey, Guernsey and the Isle of Man to take corresponding measures.”), information on this question is provided in the paragraphs below.

### **Isle of Man**

167. The Isle of Man’s legislation in this area continues to broadly follow that of the United Kingdom but it is not as severe in relation to periods of detention without charge. The Island’s Anti-Terrorism and Crime Act 2003 came fully into operation on 1 January 2005. This allowed a derogation that existed in respect of article 5 of the ECHR to be withdrawn. The Department of Home Affairs is presently in the process of bringing forward amending anti-terrorism legislation, based on provisions already in force in the United Kingdom.

### **Bailiwick of Jersey**

168. Although the United Kingdom has maintained the reservation to this Article in respect of Jersey, the Island has enacted provisions of similar effect to the Terrorism Act 2000 by the Terrorism (Jersey) Law 2002, and subsequently has requested the United Kingdom to withdraw the reservation.

### **Bailiwick of Guernsey**

169. In 2002 the States of Deliberation enacted the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 which repealed the Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990 and which came into force on the 16 July, 2002. This replicated in the Bailiwick the provisions of the Terrorism Act 2000 of the United Kingdom and removed the unilateral power of Her Majesty's Procureur to authorize the continued detention of a terrorist suspect after the initial detention period of 48 hours without bringing the detainee before a court. The legal position in respect of the Bailiwick is therefore the same as that in respect of the United Kingdom.

170. Enactment of the Law of 2002 meant that the Bailiwick was in a position to have the United Kingdom's ratification of two United Nations Conventions – for the Suppression of Terrorist Bombing (1997) and the Suppression of Financing of Terrorism (1999) – extended to it.

### **Bailiwick of Jersey**

171. As regards paragraph 13 of the concluding observations (“The Committee recommends that the authorities in Jersey consider amending relevant legislation to enable a withdrawal of the reservation to article 11 of the Covenant.”), as a result of the Court of Appeal decision in the case of *Benest v. Le Mestre* [1998 JLR 213] the Royal Court is bound to exercise its discretion in relation to an application for an *acte peine de prison* having regard to the provisions of article 11 of the ICCPR. Thus there is now adequate protection to ensure that the United Kingdom will not be in breach of the Covenant if the derogation is removed.

172. Consequently, the derogation on behalf of Jersey in relation to article 11 of the Covenant is no longer required and a formal request to the United Kingdom that it withdraws its derogation entered on Jersey's behalf in relation to article 11 has been made.

173. As regards paragraph 14 of the concluding observations (“The Committee recommends that measures be taken to remove and prohibit any discrimination on grounds of sexual orientation (arts. 17 and 26).”), information on the question is set out below.

### **Isle of Man**

174. The Sexual Offences (Amendment) Act 2006, which came into force on 1 September 2006, has equalized the age of consent for homosexual males with that of other persons at 16 years. The Act also repealed section 38 of the Sexual Offences Act 1992, which prohibited the “promotion” of homosexuality.

175. The Employment Act 2006 (awaiting Royal Assent at the time of writing) will give employees a right not to be dismissed on the ground of their sexual orientation. In contrast to the general rules on unfair dismissal, employees will not have to serve a minimum qualifying period to be protected from dismissal for this reason and there will be no upper age limit to bring a claim.

### **Bailiwick of Jersey**

176. On 5 July 2006 the States passed the Sexual Offences (Jersey) Law 200- which when it comes into force will, amongst other things, reform the law relating to the circumstances in which anal sex is lawful by removing the discrimination between the sexes. Thus, it will no longer be an offence at customary law for two consenting persons, both aged 16 or more, to engage in an act of sodomy in private. An act of sodomy committed in a public lavatory will still be treated as having been committed in public.

177. In addition, work is actively being progressed on the introduction of a new Discrimination (Jersey) Law, which is hoped will be put before the Assembly of the States of Jersey in 2006 (see response to paragraph 18 of the concluding observations). It is intended that during 2007, public consultation will take place on legislation to prohibit sex discrimination on grounds of gender, sexual orientation and transsexuality.

### **Bailiwick of Guernsey**

178. A review of the Bailiwick's sexual offences legislation is being carried out and it is expected that proposals to equalize the age of consent for heterosexual and homosexual acts will be laid before the States of Deliberation towards the end of 2006/early 2007. See also the comments in relation to paragraph 16 below.

179. As regards paragraph 15 of the concluding observations ("The Committee notes with concern that the archaic and discriminatory provisions of the Criminal Code which make blasphemy a misdemeanour are still in force on the Isle of Man, and recommends that these be repealed (art. 19)."), information on the question is set out below.

### **Isle of Man**

180. The legislation referred to by the Committee dates from 1872 and it is in practice not enforced. However, the repeal of the relevant provisions can be considered when legislation in this area is next reviewed.

181. The Data Protection Act 2002 makes provisions in relation to the special purposes of journalism, literature and art. These provisions are based on similar provisions in the Data Protection Act 1998 and are intended to ensure that the Data Protection Act 2002 can not be used to prevent freedom of expression.

182. The Isle of Man Government has agreed that the rights of the public set out in the Code of Practice on Access to Government Information should be placed on a statutory footing, through an Access to Information Bill. The Government will be holding a public consultation shortly to inform the drafting of such a Bill.

183. As regards paragraph 16 of the concluding observations ("The Committee notes that consideration has been given in Jersey to amending the Separation and Maintenance Orders (Jersey) Law 1953 and recommends that all three jurisdictions introduce legislation and other effective measures to prohibit discrimination between women and men (arts. 3 and 26)."), information on the question is set out below.

**Isle of Man**

184. In addition to the Isle of Man Human Rights Act 2001 referred under article 2, the Employment (Sex Discrimination) Act 2000 has been passed and is in force. The Act provides protection against discrimination on the grounds of a person's sex or because he or she is married. The Act applies to all stages of the employment process, including advertisements and the process of obtaining a job. The Act also gives men and women the right to receive equal pay for doing the same work or work which has been rated equivalent by a job evaluation study.

185. The Employment (Sex Discrimination) Act 2000 also brought into being the post of Discrimination Officer, which was created in order to assist employers and individuals to understand the requirements of the new law.

**Bailiwick of Jersey**

186. The Separation and Maintenance Orders (Jersey) Law 1953 empowers the Petty Debts Court to make orders with respect to the separation of married persons, and the maintenance of either party to and the children of the marriage. On 20 October 2000, the Separation and Maintenance Orders (Amendment No. 2) (Jersey) Law 2000 came into force. It provided for the jurisdiction of the Court to be exercised on an equal footing between either party to the marriage.

**Bailiwick of Guernsey**

187. Pursuant to the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004, the States of Deliberation have enacted the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. This prohibits, and creates remedies in respect of, sex discrimination in the workplace.

188. As regards paragraph 17 of the concluding observations ("With reference to the withdrawal of the State party's reservation to article 25, the Committee urges the authorities to introduce further reforms that secure all their inhabitants full right of participation in the conduct of public affairs"), information on the question is set out below.

**Bailiwick of Jersey**

189. On 24 February 2006, the Council of Ministers lodged a proposition in the States to agree that the present restrictions on the ability of public sector employees and office-holders to engage in political activities, including standing for election to the States, should be amended and that the following public sector employees and office-holders should be categorized as "politically eligible" and, therefore, able to participate in political activities subject to certain conditions:

- Airport electricians;
- Airport rescue and fire-fighting service;
- Civil servants graded 11 or below;
- Educational, technical and support staff graded 11 or below;

- Emergency ambulance service;
- Family support workers;
- Fire and rescue service;
- Highlands college lecturers;
- Manual workers;
- Medical staff;
- Nurses and midwives;
- Postal workers;
- Prison officers;
- Prison managers;
- Residential child care officers;
- Teachers;
- Youth workers.

190. The following employees and office-holders would be categorised as “politically ineligible” but would still be able to stand for election to the States subject to certain conditions:

- Civil servants graded 12 or above;
- Educational, technical and support officers graded 12 or above;
- Head-teachers;
- Police officers;
- Chief Officer and area managers of the Fire Service;
- Prison Governor and Deputy Prison Governor.

191. Under the proposals, employees designated as “politically eligible” would be free to engage in any political activity which would include – on certain terms – standing for election to the States or as a Connestable, publicly supporting someone standing for election or playing a public part in any political matter.

### **Bailiwick of Guernsey**

192. Sark is currently in the process of enacting a new Constitution of Sark Law, 2006 which will reform their electoral process and the constitution of their legislature. For further information please see the comments on article 1 of the ICCPR.

193. As regards paragraph 18 of the concluding observations (“The Committee recommends that the authorities complete the current process of enacting legislation outlawing all racial discrimination. In accordance with article 26, the authorities should also promulgate legislation which prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”), information on the question is set out below.

### **Isle of Man**

194. The Race Relations Act 2004 makes unlawful discrimination in the provision of goods and services on the grounds of race. The Act is not yet in force pending the commencement of Codes of Practice under the Act which are presently being drafted.

195. The Disability Discrimination Act 2006 recently received Royal Assent. When in force it will provide a framework for making unlawful discrimination against people with disabilities in the provision of goods and services, education and access to buildings.

196. The Isle of Man Government also has plans to bring forward an Employment Equality Bill. This legislation will deal comprehensively with any discrimination in employment on a number of grounds including race, religion and disability.

### **Bailiwick of Jersey**

197. See also the response to article 20 (chap II.C).

### **Draft Discrimination (Jersey) Law**

198. On 14 May 2002 the States of Jersey voted, overwhelmingly, in favour of a proposal<sup>58</sup> for the preparation of a Race Discrimination Law. On further consideration it was decided that it would be desirable to bring forward legislation which would promote not only the elimination of racial discrimination but also other forms of discrimination. A public consultation<sup>59</sup> paper published in July 2006 promoted the idea of an over-arching enabling law and the introduction, in the first instance, of protection from race discrimination. The consultation period closes in October 2006.

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<sup>58</sup> [www.statesassembly.gov.je](http://www.statesassembly.gov.je) – Proposition 32 2002.

<sup>59</sup> <http://www.gov.je/ChiefMinister/International+Relations/International+Agreements/Discrimination+per+cent28Jersey+per+cent29+Law+200+-+htm>

199. The Discrimination Law is designed to establish areas in which discrimination should not be tolerated. It will protect anyone who suffers a detriment as a result of discrimination or a range of prohibited acts such as victimization, unlawful advertising, harassment and other discriminatory practices in certain conditions, and will provide an enforcement mechanism for complaints brought under the Law.

200. It is proposed that the scope of the law should extend to employment, including selection for employment, treatment of employees, contract workers, partnerships, professional bodies and vocational training, and also discrimination in education, provision of goods, facilities and services, access to and use of public premises, disposal or management of premises and memberships of clubs.

201. The first phase of discrimination legislation to be introduced in 2007 would comprise the principal Law together with Regulations to prohibit discrimination on the grounds of race, including colour, race, nationality, ethnic origin or national origin.

202. Future legislation in Jersey will provide, as a minimum, further protection from discrimination on the grounds of sex, gender, sexual orientation, transexuality, disability and age. However, it is recognized that it is important to keep in perspective the need for legislation versus the size of the Island and the impact that legislation will have on resources. In order to achieve a wide range of protection and the necessary balance the legislation will need to be introduced in phases to allow proper consultation and education about the effect of the law.

### **Succession rights for children born out of wedlock**

203. A number of consultative documents have been issued on 11 November 2003, the States Assembly approved in principle the following proposals:

(a) To repeal the laws of succession so as to allow any person to dispose of moveable estate by will as he/she sees fit, subject to paragraph (b) below;

(b) To create a jurisdiction in the Royal Court to make such order as it thinks fit in the administration of the moveable estate as provides a proper sum out of the state for the maintenance and support of the dependents of the deceased;

(c) To provide a new Law for succession to moveable estate on intestacy the result of which will be to confer a share on the surviving spouse and another share on all the children of the deceased whether legitimate or illegitimate in equal shares; and

(d) To provide protection for executors and administrators dealing with the administration of the estate of the deceased in good faith.

204. A draft law has been prepared and is under consideration. It is anticipated that the draft may be presented to the Assembly of the States of Jersey during 2007.

### **Bailiwick of Guernsey**

205. The Racial Hatred (Bailiwick of Guernsey) Law, 2005 creates specific offences related to acts intended or likely to stir up racial hatred. Such acts include the use of words or behaviour or

display of written material, the publishing or distributing of written material, the public performance of plays, distributing, showing or playing a recording, broadcasting programmes and possession of racially inflammatory material. Persons found guilty of an offence under this Law are liable to a maximum term of imprisonment of seven year or to an unlimited fine, or to both.

206. In addition the Protection from Harassment (Bailiwick of Guernsey) Law, 2006 creates civil and criminal remedies in respect of conduct which amounts to the harassment of another person. This includes putting people in fear of violence, alarming them or causing them distress.

207. The Bailiwick legislatures have also enacted legislation [The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004] enabling them by secondary legislation to make provision for the prevention of discrimination. This Law includes powers to implement international agreements. In this Law discrimination means discrimination against any person by reason of race, colour, sex, sexual orientation, language, religion, belief, political or other opinion, national or social or ethnic origin, association with a national minority, age, disability, gender reassignment, property, birth or marital, family or other status.

208. As regards paragraph 19 of the concluding observations (“The Committee requests that the sixth periodic report concerning Jersey, Guernsey and the Isle of Man be submitted together with the sixth report of the United Kingdom and Northern Ireland, at a date to be set after the examination of the pending fifth report. That report should be prepared in accordance with the revised Guidelines adopted by the Committee (CCPR/C/66/GUI/Rev.1) and should give particular attention to the issues raised in the present concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in Jersey, Guernsey and the Isle of Man.”), information on the question is set out below.

209. The Committee will note that the original reports from the CDs have been attached to the present Report.<sup>60</sup> The information contained in the reports from the CDs has also been added to the relevant sections of this report. The last concluding observations of the Committee as well as the last periodic reports from the United Kingdom, OTs and CDs have been published on the official website of the Department for Constitutional Affairs.<sup>61</sup>

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<sup>60</sup> APPENDIX A (Bailiwick of Jersey, *International Covenant on Civil and Political Rights - Sixth periodic report of the States of Jersey*, 7 September 2006, ref. 855(4)), APPENDIX B (Bailiwick of Guernsey, *Sixth Periodic Report by the Bailiwick of Guernsey pursuant to Article 40 of the International Covenant on Civil and Political Rights*, 13 September 2006, ref. Intl/H.3), APPENDIX C (The Isle of Man, *Sixth Report of the Isle of Man Government under Article 40(1)(b) of the International Covenant on Civil and Political Rights*, 5 October 2006).

<sup>61</sup> <http://www.dca.gov.uk/peoples-rights/human-rights/int-human-rights.htm#3>

## **Isle of Man**

210. The present Report, the Committee's Concluding Observations and any comments the Isle of Man Government may wish to make about those Observations will be published in due course as part of the process of maintaining public awareness of human rights issues.

## **Bailiwick of Jersey**

211. The concluding observations of the Human Rights Committee on the fourth and fifth periodic reports of the United Kingdom regarding the CDs of Jersey, Guernsey and Isle of Man in 2000, were published in a report (R.C.1/2001) and presented to the States of Jersey in January 2001. The Sixth Periodic Report has also been presented to the States of Jersey by the Chief Minister and published on the web site of the States Assembly.<sup>62</sup>

### **C. Information relating to each of the articles in parts I, II and III of the International Covenant on Civil and Political Rights**

#### **Introduction**

212. In this final part of the report, the Government addresses the progress made in the implementation of Articles 1-27 of the ICCPR and, to avoid duplication, may occasionally refer back to the responses to the Committee's concluding observations (chaps. II.A and II.B).

#### **Article 1**

213. Protection for the right to self-determination is provided under other international instruments ratified by the United Kingdom:

- Charter of the United Nations (1945);
- International Covenant on Economic, Social and Cultural Rights (1966);
- European Charter for Regional or Minority Languages (1992);
- Framework Convention for the Protection of National Minorities (1995).

#### **Progress since the fifth periodic report: United Kingdom**

214. In June 2005, the Government published "Better Governance for Wales". This Paper formed the basis of the Government of Wales Act 2006. This Act provides for the separation of the executive and legislative arms of the Assembly and introduces a streamlined procedure allowing the British Parliament to give the new legislative arm (to be known as the National Assembly) powers to legislate on specific matters within fields in which the National Assembly currently exercises functions. The National Assembly also currently exercises subordinate

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<sup>62</sup> [http://www.statesassembly.gov.je/display\\_result.asp?url=\documents\reports\15337-4463-892006.htm](http://www.statesassembly.gov.je/display_result.asp?url=\documents\reports\15337-4463-892006.htm)

law-making powers under primary legislation, controls an annual budget of around £7 billion and has oversight of public bodies and agencies with responsibilities in Wales. When the Government of Wales Act 2006 comes into force (after the May 2007 elections) these responsibilities will be taken over by the new executive arm, to be known as the Welsh Assembly Government.

## **Overseas Territories**

### **British Virgin Islands**

215. A review of the Constitution of the British Virgin Islands (BVI) was carried out in 2005 by nine BVI Commissioners. Their task was to conduct a review of the Virgin Islands (Constitution) Order 1976 (UK S.I. 1976 No. 2145) with a view to ensuring the British Virgin Islands' continued advancement and good governance and, in particular, to review the following:

- The duties of the Attorney General as the chief legal adviser to the Government and as public prosecutor, with a view to separating those duties and reposing the function of public prosecutor in a Director of Public Prosecutions;
- The provision of a clear definition of "a believer", in particular persons who may be deemed to belong to the British Virgin Islands, but who may not enjoy British Overseas Territories Citizenship (BOTC) status under the British Nationality Act 1981, with the entitlement to a passport that such status offers;
- The protection of the rights and privileges of the indigenous people of the British Virgin Islands, by limiting the ability of non-indigenous persons to hold elected office;
- The introduction of a sixth ministerial position in light of the increase in the size of the Government and the need to ensure greater efficiency and productivity;
- The need for a human rights chapter in the Constitution;
- Having regard to the reserve powers of the Governor, to consider the feasibility of scaling down those powers and establishing a viable system of checks and balances to ensure continued good governance;
- Considering the existing system relating to the functioning of the Executive Council, to provide a critical analysis on the feasibility of establishing a cabinet system of government for the British Virgin Islands.

216. The Commissioners' report was completed in April, 2005. Among the Commissioners' recommendations are:

- The complete separation of the prosecutorial functions of the Attorney General and the reposing of these functions in a Director of Public Prosecutions established as an office under the Constitution;

- The provision in the Constitution for a sixth ministerial position and at least two additional seats in the Legislative Council;
- The inclusion of a human rights chapter in a new Constitution;
- The introduction of a cabinet system of government for the British Virgin Islands.

217. The United Kingdom and BVI Governments have already begun to negotiate the terms of a new Constitution for the BVI. By virtue of an amendment to the Constitution of the BVI in 2000, the Executive Council now comprises the Chief Minister and four other Ministers as well as the Attorney General as an ex officio member. Previously, there were only three Ministers in addition to the Chief Minister and the Attorney General. The Referendum Act, 2002 (No. 9 of 2002) has been enacted, but it has not been brought into force. This Act provides for the holding of referenda on any subject.

### **Cayman Islands**

218. The most recent general elections in the Islands took place in May 2005. During these elections the question of the constitutional relationship of the Cayman Islands to the United Kingdom was not raised as an issue nor has it been raised in the Assembly.

219. With respect to the Constitution of the Cayman Islands, in 2001 three Constitutional Modernisation Review Commissioners were appointed to review the Constitution. Their 2002 Report included a recommendation for the inclusion of a Bill of Rights consistent with the provisions of the ECHR. Discussions on constitutional reform are ongoing between the Cayman Islands and the Foreign Commonwealth Office and it is anticipated that the revised Constitution featuring an enforceable Bill of Rights will be in effect within the next few years.

220. Since the fifth periodic report, the office of the Complaints Commissioner has been established by virtue of the Complaints Commissioner Law (2003) and a Commissioner duly appointed. The Commissioner is vested with the power to investigate complaints of improper, unreasonable or inadequate administrative conduct on the part of any government entity subject to that Law.

### **Falkland Islands**

221. No further developments to report under this article.

### **Gibraltar**

222. In the intervening period since the fifth periodic report the Government of Gibraltar submitted proposals for constitutional reform. These proposals have been the subject of detailed negotiations which have very recently concluded. The text of the draft constitution has been made publicly available, and the people of Gibraltar will be asked to approve the reforms through a referendum.

### **Montserrat**

223. Most of the rights protected under the ICCPR are already enshrined in the Montserrat Constitution (Cap. 1.01). These fundamental rights and freedoms are guaranteed and are thoroughly protected.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

224. No developments to report under this article.

### **Turks and Caicos Islands**

225. No developments to report under this article.

## **Crown Dependencies**

### **Isle of Man**

226. There are no further developments to report under this article.

### **Bailiwick of Jersey**

227. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

228. With effect from 1 May 2004 the size of Guernsey's legislature was reduced from 57 voting members to 47 voting members, of which 45 are directly elected by universal franchise in seven electoral districts each electing either six or seven members. The remaining two members are representatives of the States of Alderney. In Alderney all 10 members of the legislature are directly elected by universal franchise. In Sark 12 members of the legislature are directly elected by universal franchise. The remaining 40 members hold their seats by virtue of rights associated with the ownership of certain properties. However, the constitution of the Sark legislature, known as Chief Pleas is currently under review and is likely, when the Constitution of Sark Law, 2006 is enacted, to result in all, or in the majority of, the members being directly elected. In all three Islands the system of government and method of election reflects the wish of the respective populations.

## **Articles 2 and 26**

229. Protection of the right to non-discrimination is provided under other international instruments ratified by the United Kingdom:

- Charter of the United Nations (1945);
- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004);

- ILO Convention no.100 concerning Equal Remuneration for Men and Women Workers for Equal Value (1951);
- Convention on the Political Rights of Women (1953);
- Convention on the Nationality of Married Women (1957);
- ILO Convention no. 111 concerning Discrimination in respect of Employment and Occupation (1958);
- European Social Charter (1961);
- ILO Convention no. 122 concerning Employment Policy (1964);
- International Convention on the Elimination of All Forms of Racial Discrimination (1966);
- International Covenant on Economic, Social and Cultural Rights (1966);
- Convention on the Elimination of All Forms of Discrimination against Women (1979) and Amendment (1995);
- Framework Convention for the Protection of National Minorities (1995);
- Treaty establishing the European Community and Treaty on European Union (as amended in Nice – 2003).

### **Progress since the fifth periodic report: United Kingdom**

230. See also the response to paragraphs 12 and 13 of the concluding observations (chap. II.A).

231. The British Government remains firmly committed to the elimination of all forms of racial discrimination and to the development of legislation and policies which effectively tackle racial discrimination, intolerance and violence. Its approach and actions to eliminate any discrimination on these grounds were detailed at length in the fifth periodic report (gender discrimination is addressed separately under article 3) and this report details significant improvements to legislation and policy since then.

232. The Race Relations (Amendment) Act 2000 amended the Race Relations Act 1976 so that it became illegal for public authorities to discriminate on racial grounds in the exercise of their functions. It also established that public authorities, in carrying out their functions, should have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.

### **Commission for Equality and Human Rights**

233. As British discrimination law has extended in recent years beyond issues of race, gender and disability to cover religion, belief, sexual orientation and age, so has the need for effective promotion and enforcement across the piece. With this in mind, the Government is moving

forward to establish a new independent Commission for Equality and Human Rights (CEHR). The CEHR will combine the responsibilities of three existing equality commissions: the CRE, the DRC and the EOC. The CEHR will, for the first time, offer institutional support to newer discrimination legislation in the areas of age, sexual orientation and religion or belief. In addition it will take on responsibility for the promotion of human rights and good relations between and within groups in society.

234. Once established, this new independent body will provide information and advice, establish codes of practice and undertake inquiries in the areas of equality & diversity and human rights. The goals of the CEHR will be to ensure people's ability to achieve their potential is not limited by prejudice or discrimination, and that there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

235. The CEHR will be able to refer to any human rights treaties ratified by the United Kingdom, including the ICCPR. A secure and effective remedy is available through the British courts in the case of violations under the HRA. The CEHR will be able to stand in court on behalf of the alleged victim.

### **Immigration and nationality**

236. The Immigration and Nationality Directorate (IND) is exempt from the duty to promote equality of opportunity because the application of the immigration and nationality legislation necessarily involves denying opportunities to some groups on the basis of their nationality which are granted to others. It is subject to the remainder of the general duty to have due regard to the need to eliminate unlawful discrimination and to promote good relations between different racial groups.

237. However, there may be occasions when IND needs to discriminate in its day to day functions, for example, to comply with immigration legislation, such as that regarding freedom of movement into the United Kingdom for EEA<sup>63</sup> nationals which is discriminatory since nationals of non-EEA states do not have the same freedom of movement.

238. To ensure that IND can perform its duties effectively, therefore, without breaching the law a limited exemption from the Race Relations (Amendment) Act 2000 (RR(A)A) was obtained for IND. Section 19(D) ensures that it is not unlawful to discriminate against another person on grounds of nationality or ethnic or national origins when carrying out immigration and nationality functions but it is always unlawful to discriminate on grounds of colour or race. An authorization to discriminate under section 19 (D) must be approved by the Home Secretary, on the basis of intelligence or statistical evidence indicating actual or potential abuse of the immigration system. The authorization is lawful only if it is reasonable, that is justified and proportionate, otherwise it can be struck down through the judicial review process.

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<sup>63</sup> European Economic Area (comprising the European Union, Norway, Iceland and Liechtenstein).

239. The authorizations are subject to scrutiny by an independent monitor under section 19(E) of the RR(A)A. Under this section the Home Secretary is obliged to appoint someone who is not a member of his staff as an Independent Race Monitor. The CRE must be consulted before the monitor is appointed. Although the Independent Race Monitor is financed by the Home Office, he or she works independently of the Department and reports to Parliament. The duties of the person appointed are to ensure that the terms of the authorisations are not being exceeded, and that the authorisations themselves are justified in practice.

### **Race and gender relations in the Armed Forces**

240. The Government and the CRE signed a five years “Partnership Agreement” in March 1998 to ensure close co-operation to promote racial equality practices throughout the Services. A second Partnership Agreement with the CRE was signed in July 2003. This set out priority areas and expected outcomes over a period of three years with a challenging and realistic mechanism for reviewing progress. Work is in hand with the CRE on the successor to the Partnership Agreement.

241. The Armed Forces are subject to the Race Relations (Amendment) Act 2000. In common with other public bodies, they have a statutory duty to promote race equality. In May 2002, the Government published a Race Equality Scheme. The Scheme set out how the Government intended to comply with the Act in the Armed Forces and build on existing work in relation to employment in the Civil Service and the Armed Forces. It also focused on the delivery of policies and services to employees, dependants and the general public, and the activities of the Military Police. A new Equality and Diversity Scheme 2006–2009 encompassing race, disability, gender, age, religion or belief and sexual orientation was published in April 2006 meeting the statutory requirements previously covered by the Race Equality Scheme in the Armed Forces.

242. Armed Forces’ recruitment from British ethnic minority communities during 2005-2006 was 2.0 per cent for the Royal Navy, 3.6 per cent for the Army and 1.5 per cent for the Royal Air Force. The Armed Forces have set a new round of annual British ethnic minority recruiting goals from the financial year 2006-2007 to the next five years. The goal is set at 0.5 per cent above the previous year’s achievement for each Service, or rolling forward the previous year’s target where this would provide a greater challenge. This means that in the financial year 2006-2007, the goals will be for the Royal Navy to recruit 3.5 per cent of intake from ethnic minorities, the Army 4.1 per cent and the Royal Air Force 3.6 per cent. The Armed Forces’ aim is to reach 8 per cent ethnic minority representation by 2013 (in line with ethnic minority representation in British society) with an interim goal of 6 per cent by 2006. Ethnic minority representation in the Armed Forces has risen substantially in recent years from just over one per cent in 1999 to 5.5 per cent as at 1 April 2006.

243. On 1 April 2006 there were 17,870 women in the Regular Armed Forces, which constitutes 9.1 per cent of the total strength. The majority of posts in the Armed Forces are open to women. By Service this equates to: 71 per cent of posts in the Naval Service, 71 per cent of posts in the Army and 96 per cent of posts in the Royal Air Force.

### Race and gender relations in education

244. Every year, the Government collects data on pupil ethnicity as part of its annual school census. In January 2006 there were over 6.6 million pupils in state maintained primary and secondary schools in England. Of these, 19.06 per cent identified themselves as being from a minority ethnic group (an ethnic group other than White British). The proportions for each group were: White British (80.94 per cent); White Irish (0.38 per cent); Traveller of Irish Heritage (0.06 per cent); Gypsy/Roma (0.11 per cent); Any other White background (2.5 per cent); mixed White and Black Caribbean (1.08 per cent); mixed White and Black African (0.31 per cent); mixed White and Asian (0.63 per cent); any other mixed background (1.06 per cent); Indian (2.39 per cent); Pakistani (2.96 per cent); Bangladeshi (1.21 per cent); any other Asian background (0.89 per cent); Black Caribbean (1.40 per cent); Black African (2.21 per cent); any other Black background (0.45 per cent); Chinese (0.37 per cent); any other ethnic group (1.03 per cent); refused/data not yet obtained (1.89 per cent). Over 11 per cent of these pupils were known or believed to have a first language other than English. This data is used to identify inequalities in outcomes, and to target policies and resources to reduce these inequalities.

**Table 8**

**Maintained primary, secondary and all special schools (1)(2)(3):  
number and percentage of pupils by ethnic group<sup>64</sup>**

Ethnic Group		Pupils of compulsory school age and above					
		Primary Schools		Secondary Schools		All Special Schools	
		Number	Percentage (4)	Number	Percentage (4)	Number	Percentage (4)
White		2 732 302	81.3	2 764 071	83.6	70 320	83.0
	White British	2 614 842	78.1	2 673 984	80.9	68 244	80.6
	Irish	12 347	0.4	12 218	0.4	317	0.4
	Traveller of Irish heritage	2 995	0.1	1 064	0.0	100	0.1
	Gypsy / Roma	5 145	0.2	2 299	0.1	150	0.2
	Any other White background	87 973	2.6	74 506	2.3	1 509	1.8
Mixed		117 495	3.5	84 192	2.5	2 573	3.0
	White and Black Caribbean	40 077	1.2	30 487	0.9	1 019	1.2
	White and Black African	12 524	0.4	8 025	0.2	228	0.3
	White and Asian	24 244	0.7	16 855	0.5	466	0.6
	Any other Mixed background	40 650	1.2	28 825	0.9	860	1.0

<sup>64</sup> Source: Annual Schools' Census, January 2006 – England.

Table 8 (continued)

Ethnic Group		Pupils of compulsory school age and above					
		Primary Schools		Secondary Schools		All Special Schools	
		Number	Percentage (4)	Number	Percentage (4)	Number	Percentage (4)
Asian		265 756	7.9	221 107	6.7	5 596	6.6
	Indian	77 651	2.3	78 629	2.4	1 296	1.5
	Pakistani	110 413	3.3	82 903	2.5	2 958	3.5
	Bangladeshi	46 563	1.4	32 679	1.0	707	0.8
	Any other Asian background	31 129	0.9	26 896	0.8	635	0.7
Black		148 288	4.4	117 388	3.6	3 533	4.2
	Black Caribbean	48 584	1.5	43 077	1.3	1 291	1.5
	Black African	83 923	2.5	60 503	1.8	1 712	2.0
	Any other Black background	15 781	0.5	13 808	0.4	530	0.6
Chinese		11 047	0.3	12 940	0.4	230	0.3
Any other ethnic group		37 328	1.1	29 651	0.9	691	0.8
Classified (1)		3 303 216	98.6	3 229 349	97.7	82 943	97.9
Unclassified (5)		45 835	1.4	77 216	2.3	1 775	2.1
All pupils (6)		3 349 051	100.0	3 306 565	100.0	84 718	100.0

- (1) Pupils of compulsory school age and above were classified according to ethnic group. Excludes dually registered pupils.  
(2) Includes maintained and non-maintained special schools. Excludes General Hospital Schools.  
(3) Includes middle schools as deemed.  
(4) The number of pupils by ethnic group expressed as a percentage of all pupils of compulsory school age and above.  
(5) Information refused or not obtained.  
(6) All pupils of compulsory school age and above.

245. The Government is firmly committed to equal opportunities for all school teachers and collects information on the ethnic origin of all school teachers each January. From 2006/07 changes have been made by the Training and Development Agency to the target setting process to ensure that ethnic minority recruitment targets are challenging and reflect the minority ethnic pupils in and around the areas where initial teacher training providers are located.

246. In January 2006, provisional data indicate that 5 per cent of school teachers were not white, and this proportion has remained fairly stable over the last few years. London has the most diverse teaching population, with nearly 20 per cent of teachers being from a non-white background. The ethnic origin is still unknown for around 13 per cent of teachers.

### **Further and higher education**

247. The Government is similarly committed to equal opportunities for all teachers engaged in the delivery of education in the further education (FE) sector. A 'Race Advisory Group' supports the Government in developing policies for increasing the number of ethnic minority leaders in FE in England. Lifelong Learning UK (LLUK), as the Sector Skills Council for FE, is leading on behalf of the Government on work to address the diversity challenges of FE teachers. Further discussions will be held with the CRE about the development and implementation of appropriate policies. In 2004/05, 79.8 per cent of learners in council-funded FE were recorded as being of White ethnicity and 16 per cent from BME groups - information on ethnicity was not available for the remaining 4.2 per cent of learners.

248. The Government collects data on the origins of FE teachers through the Learning and Skills Council. Responsibility for this will pass to LLUK from September 2006. The most recent available data (2004/05) shows that where ethnic background data was given, 5.3 per cent of FE teachers were from minority ethnic groups. 1 per cent declared 'other' ethnic background. This analysis may be affected by the 7.8 per cent of FE teachers for whom ethnic background was not reported.

249. For Higher Education (HE), of the 1,627,500 UK Domiciled students<sup>65</sup> in English higher education institutions in 2004/05, 17.8 per cent were from BME groups, based on those students with a known ethnicity. Women students in HE: of the 1,627,500 UK Domiciled students in English higher education institutions in 2004/05, 58.6 per cent were women.

250. Staff in HE: of the 134,100 academic staff<sup>66</sup> in English higher education institutions in 2004/05, 11.1 per cent were from BME groups, based on those members of staff with a known ethnicity. "The figures for female staff in HE are as follows - Of the 134,100 academic staff in English higher education institutions in 2004/05, 41.5 per cent were women."

251. Of nearly 4 million students in further education in England in 1997-1998, 56 per cent were women. Of the 4.2 million learners in FE in 2004/05, 59.3 per cent were women.

### **Religious discrimination**

252. The Anti-terrorism, Crime and Security Act 2001 amended the Crime and Disorder Act 1998 to permit both racially and religiously aggravated offences to carry a greater penalty.

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<sup>65</sup> Note: UK Domiciled Students refers to those students with a permanent or home address in the UK prior to entry to the programme of study.

<sup>66</sup> Note: Figures cover academic staff with active contracts within the reporting period.

253. Legislation to prohibit discrimination on grounds of religion or belief in employment or vocational training was introduced in Great Britain in 2003, in compliance with the European Employment Directive.<sup>67</sup> Part 2 of the Equality Act 2006 prohibits discrimination on grounds of religion or belief in the provision of goods, facilities and services, and public function in Great Britain.

254. The Employment Equality (Religion or Belief) Regulations 2003 came into effect on 2 December 2003. The Regulations prohibit discrimination on grounds of religion or belief in employment, self-employment, occupation and vocational training. They apply throughout the employment relationship including recruitment, in the workplace, dismissal and, in some cases, after the employment has finished. The legislation is enforceable through the tribunals and courts.

### **Wales**

255. Non-discrimination strategy in Wales remains as detailed in the fifth periodic report. In particular, the equal opportunity provisions in the Government of Wales Act 1998 oblige the National Assembly for Wales to ensure equal opportunity in the conduct of its business and in the exercise of its functions. Similar provisions are contained in the Government of Wales Act 2006 and these will become the responsibility of the Welsh Minister after May 2007 (when the 1998 Act will be repealed). The National Assembly for Wales and public bodies are also subject to the statutory duty to promote race equality under the Race Relations Act (as amended) and to the publication of race equality schemes setting out how they intend to implement the duty.

### **Overseas Territories**

#### **British Virgin Islands**

256. The Anti-Discrimination Act, 2001 (No. 2 of 2001) has been enacted, but has not been brought into force. The Act prohibits and penalizes discrimination on racial grounds.

257. The provisions of the Constitution of the **British Virgin Islands** (BVI), which automatically conferred “belonger” status (a legal status normally associated with British OTs) on a woman who married a male believer but not on a man who married a female believer, were repealed in 2000. A non-belonger of any sex who marries a believer must now satisfy a five-year residency requirement in order to be eligible to apply for believer status. Belonger status obtained on the grounds of marriage would not be adversely affected by a subsequent divorce or separation.

258. The Labour Code Bill, 1998, which proposed enhanced provisions with respect to discrimination in the workplace, was not enacted. The Bill has been revised several times since then and was re-introduced in the legislature in 2001 and again in 2005. The current Labour

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<sup>67</sup> Council Directive 2000/78 (General framework for equal treatment in employment and occupation).

Code prohibits discrimination in the workplace by reason of race, colour, creed, sex, age and political belief. If enacted, the Labour Code Bill, 2005 would prohibit discrimination in the workplace by reason of race, colour, sex, religious belief, ethnic origin, nationality, political opinion or affiliation, disability, family responsibility, pregnancy, marital status or age.

### **Cayman Islands**

259. The information set out in the fifth periodic report remains substantially the same.

260. With respect to the prohibition of discrimination in employment matters, this is addressed in the present Labour Law (2001 Revision). Immigration matters are dealt with under the Immigration Law (2006 Revision).

261. With specific reference to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) the Cayman Islands is currently in the process of drafting domestic legislation that will address racial discrimination. It is also anticipated that with the advent of the Bill of Rights any allegation of discrimination may also be appropriately dealt with by means of constitutional redress.

262. In December 2005 a new Cayman Islands Human Rights Committee was appointed as the national body responsible for the promotion and protection of fundamental human rights in the Islands. By virtue of its Terms of Reference, the Committee is empowered to enhance public awareness of human rights; serve as the focal point for the direction of any human rights concerns; and where necessary, to make reports and prepare recommendations for the improved protection of human rights. To date the Committee has accepted nine petitions. Of these, one has reached the final report stage; two have been deemed to raise no substantive issue; one has been settled by way of friendly settlement and five cases are currently pending.

### **Falkland Islands**

263. There are no further developments to report under this article.

### **Gibraltar**

264. In 2004 the House of Assembly passed the Equal Opportunities Ordinance 2004. This Ordinance transposed into the law of Gibraltar the following European Union directives:

- Council Directive 1997/80/EC on the burden of proof in cases of discrimination based on sex;
- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

265. This Ordinance prohibits discrimination on the grounds of race and ethnicity by schools, public authorities, landlords and other public and private bodies who provide goods, facilities or services to the public, or sections of the public.

### **Montserrat**

266. There are no developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

267. There are no developments to report under this article.

### **Turks and Caicos Islands**

268. The new Constitution (Section 15) enshrines the fundamental rights of the islanders against discrimination. The Turks and Caicos Islands's Government has also set up a Gender Affairs Unit, headed by the Minister for Education, Youth, Sports and Social Development. The purpose of this unit is to enable women, men and children to achieve their full potential and to participate to the Islands' social, cultural and economic life as well as to benefit from the country's resources. The Gender Affairs Unit aims to build an inclusive society.

## **Crown Dependencies**

### **Isle of Man**

269. See the response to paragraphs 8, 9, 10, 14, 16 and 18 of the concluding observations (chap. II.B above).

### **Bailiwick of Jersey**

270. See also the response to paragraphs 8, 9, 14, 16 and 18 of the concluding observations.

### **Bailiwick of Guernsey**

271. The Bailiwick legislatures have enacted the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 enabling them by secondary legislation to make provision for the prevention of discrimination.

272. The Human Rights (Bailiwick of Guernsey) Law, 2000 which came into force on the 1 September 2006 gives domestic effect to the ECHR. Whilst not having a direct bearing on the Covenant it reflects the commitment to the principles of the Covenant and many of the rights set out correspond to rights set out in the Covenant.

## **Article 3**

273. Protection of gender equality is also covered under other international instruments ratified by the United Kingdom: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004):

- ILO Convention no.100 concerning Equal Remuneration for Men and Women Workers for Equal Value (1951);

- Convention on the Political Rights of Women (1953);
- Convention on the Nationality of Married Women (1957);
- European Social Charter (1961);
- International Covenant on Economic, Social and Cultural Rights (1966);
- Convention on the Elimination of All Forms of Discrimination against Women (1979) and Amendment (1995);
- Treaty establishing the European Community and Treaty on European Union (as amended in Nice – 2003).

### **Progress since the fifth periodic report**

#### **United Kingdom**

274. See also the response to paragraphs 12 and 13 of the concluding observations (chap. II.A above).

275. The Women and Equality Unit works across Government, contributing the women's perspective to the wider government agenda. The Ministers for Women also sit on a number of Cabinet Committees to provide a strategic mechanism to ensure that gender (and broader equalities issues) are integrated and embedded into policy formulation and service delivery issues at the point of development in Government.

276. This high-level intervention forms one of a range of measures, including the Ministers for Women Network priorities, interventions through high-level cross-government targets within the Gender Equality 'Public Service Agreement', custodianship of equalities legislation through Parliament and their personal representation, and activity through debates, the media and through Women and Equality Unit initiatives to mainstream equalities. This work also complements gender and equalities activity within the European Union and international commitments.

277. In 2002, the Government decided to take a strategic approach to tackling the persistent inequalities that in most cases still affect more women than men. The Government set high level targets to bring about measurable improvements through a range of indicators, that commit a number of individual Government departments to tackling inequalities.

278. The Gender Equality Public Service Agreement focuses on improving areas such as the provision of childcare, increasing flexible working, improving women's participation in under-represented sectors of the workforce and in civic life, and tackling violence against women. In monitoring and supporting the targets the Women and Equality Unit continues to mainstream gender equality through Government and its stakeholders.

279. Ministers with special responsibilities for women's issues and equal opportunities have also been appointed for Scotland, Wales and Northern Ireland.

280. The United Kingdom's third periodic report on the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was submitted in July 1995. The United Kingdom's Fourth Periodic Report was submitted in January 1999. The British Government was examined on both reports in June 1999. The United Kingdom's fifth periodic report was submitted in June 2003.

### **Sex Discrimination (Election Candidates) Act 2002**

281. The Sex Discrimination (Election Candidates) Act received Royal Assent on 26 February 2002. The Act enables a political party to adopt measures which regulate the selection of candidates for certain elections in order to reduce inequality in the numbers of men and women elected as candidates of the party.

### **Equal Opportunities Commission**

282. The EOC has legal duties to promote equality between men and women and conducts periodic reviews of the sex discrimination legislation to advise the Government of any changes it considers necessary. The responsibilities of the EOC will be folded into the CEHR by October 2007 as referred to earlier.

### **Duty on public authorities: 'gender duty'**

283. Part IV of the Equality Act 2006, introduced a general duty – the equivalent of a lawful overarching obligation on public authorities which will require them, as employers and service providers, to have due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women.

284. The duty, which will come into effect in April 2007, will also cover contraventions or breaches to the 1970 Equal Pay Act. It will be effective in England, Scotland and Wales.

### **Gender Directive**

285. The Government is currently preparing regulations to implement the Gender Directive on Goods and Services<sup>68</sup> by December 2007. The regulations will make relatively minor changes to existing discrimination legislation on sex and extend protection on grounds of gender reassignment and on grounds of pregnancy and maternity from employment to the provision of goods and services.

### **Equal Treatment Directive**

286. The 1976 Equal Treatment Directive<sup>69</sup> established, at European Community level, the principle of equal treatment for men and women with regard to access to employment, vocational training, promotion and working conditions. This Directive was amended by Directive 2002/73,

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<sup>68</sup> Directive 2004/113/EC.

<sup>69</sup> Directive 76/207/EEC.

which incorporates the case law of the European Court of Justice and strengthens the principle of equal treatment and its practical implementation. In Great Britain, regulations implementing this Directive came into force on 1 October 2005 and in Northern Ireland on 5 October 2005.

Because sex discrimination law in the United Kingdom was already well advanced, changes required by the Directive were relatively few. These were:

- A new definition of indirect sex discrimination in employment matters and vocational training;
- Prohibiting harassment and sexual harassment in employment and in vocational training;
- Making it clear that less favourable treatment of women on grounds of pregnancy or maternity leave is unlawful sex discrimination;
- Extending the protection for people who work overseas for a company in Great Britain;
- A change to a little used exception to the Sex Discrimination Act 1975 (SDA) where an employer could refuse to offer a particular job to someone who was undergoing or had undergone gender reassignment;
- Elimination of some discriminatory provision of death or retirement benefits for people in a company partnership or in a trade union;
- Clarifying the responsibilities of vocational training providers and adding protection towards unpaid practical work experience provided by private organisations;
- Coverage of people in the special position of being an office holder rather than an employee;
- Clarifying how the SDA applies to ministers of religion; and
- Introducing a new time limit for one of the forms used in a claim to an Employment Tribunal.

### **Pregnant workers**

287. The Employment Relations Act 1999 contains provisions for new family-friendly rights, in particular: the extension of maternity leave from 14 to 18 weeks and three months parental leave for employees who satisfy specific conditions. In addition, the Work and Families Act 2006 aims to establish a balanced package of rights and responsibilities for both employers and employees, in line with the Government's better regulation agenda. The Work and Families legislation will:

- Extend maternity and adoption pay from six to nine months from April 2007, towards the goal of a year's paid leave by the end of the Parliament;
- Extend the right to request flexible working time to carers of adults from April 2007;

- Give employed fathers a new right to up to 26 weeks Additional Paternity Leave some of which could be paid, if the mother returns to work. This will be introduced alongside the extension of maternity pay to 12 months;
- Introduce measures to help employers manage the administration of leave and pay and plan ahead with greater certainty from April 2007;
- Help employers and employees benefit from improved communication during maternity leave.

### **Women in the Armed Forces**

288. Following a detailed study, the Government announced in May 2002 that the case for lifting the restrictions on women serving in ground close-combat roles had not been made. Therefore, for reasons of combat effectiveness, women do not serve in roles that may require them deliberately to close with and kill the enemy face-to-face. Women do, however, serve in the front line in ground combat support roles, as well as flying aircraft and serving on warships.

289. The Armed Forces' maternity policy provides supportive arrangements to enable Service women to accommodate pregnancy and maternity absence within their Service careers. Service women may choose to leave the Service prematurely on the grounds of pregnancy, if they so wish.

### **Homosexuals and transsexual people in the Armed Forces**

290. The ban on homosexual people serving in the Armed Forces was lifted in January 2000. As part of that change in policy, the Armed Forces' Code of Social Conduct was introduced to revise guidelines on personal relationships involving all Service personnel. Within the Armed Forces a person's sexuality is now regarded as a private life matter. The Armed Forces neither ask for, nor record, a person's sexual orientation.

291. The Armed Forces are equal-opportunity employers. Transsexuals serve on the same terms as any other person performing the same military role. Transsexuals wishing to join the Services must meet the same educational and physical fitness criteria for their chosen specialization as other applicants.

### **Domestic violence against women**

292. The Deputy Minister for Women and Equality sits on a number of Inter-Ministerial Groups covering trafficking, prostitution, sexual offending, domestic violence, forced marriage and honour killings, all aspects of violence against women, to ensure that the gender perspective is fully taken into account and that the Government's commitment on gender equality is embedded at a strategic decision making stage.

293. In 2001, Scotland introduced the National Group to Address Domestic Abuse to oversee the implementation of the National Strategy to Address Domestic Abuse. The priorities set out in the Action Plan were: identify and disseminate good practice, identify key issues and develop a common national response, provide advice in relation to monitoring data and the identification of

the research required, establish and oversee a structure of specific issue-based groups and local multi-agency groups working with a coherent framework, review and monitor progress against the Action Plan and consider links between domestic abuse and the wider issues of violence against women.

294. In 2004, Scotland widened the remit of the National Group to Address Domestic Abuse to include more situations of violence against women. An Expert Committee on violence against women was set up to advise the National Group on the wider remit. The National Group also established the Children's Services Working Group, which made a series of recommendations including, in relation to the Guidance for Integrated Children's Services Plans 2005-8, that "children affected by domestic abuse" should be treated as "children in need". This Working Group also published "Children and Young People Experiencing Domestic Abuse: Guidance Notes for Planners"; recommended funding for direct support; and recommended the establishment of a delivery group and plan to continue focus on children and young people.

295. Since 1998, the Scottish Executive has allocated a significant amount of funding to tackle domestic abuse and violence against women:

- £9 million to the Domestic Abuse Service Development Fund, introduced to match fund local projects aimed at improving service delivery;
- £10 million was awarded, via Communities Scotland (then Scottish Homes) to the Refuge Development Programme to improve and increase the refuge places available from 1999, for 3 years;
- £1.5 million was provided to develop the Violence Against Women Service Development Fund for women victims and survivors of sexual violence;
- £1.96 million for Rape Crisis groups to improve local services for people experiencing rape and sexual assault;
- £6 million to fund the Violence Against Women Fund to support projects delivering services across Scotland and the developing ways in which groups can work together to provide better responses to violence against women;
- £2.1 million to support roll out of the Domestic Abuse Training Strategy;
- £6 million to ensure a minimum standard of direct support is provided to children and young people experiencing domestic abuse in Scotland; and in addition to the different funding streams, funding is also given to core fund Scottish Women's Aid, Rape Crisis Scotland and the Scottish Domestic Abuse Helpline.

296. The Welsh Assembly Government is committed to tackling the problems faced by women in society, in particular domestic abuse. In March 2005, in partnership with a number of agencies and organisations, they published "Tackling Domestic Abuse: The All Wales National Strategy", which sets out their approach to tackling domestic abuse, including the provision of refuges.

## Overseas Territories

### British Virgin Islands (BVI)

297. The current law relating to sexual harassment and to equal pay would be revised if the Labour Code Bill, 2005 (which has received its first reading in the legislature) were enacted.

### Cayman Islands

298. The reference to the Immigration Law should be amended to refer to the Immigration Law (2006 Revision).

299. The representation of women in society remains substantially the same. There are currently three women members of the Legislative Assembly, one of whom is the Speaker of the House. Of the 3,491 members of the public service (civil servants) 1,763 are women. The average salary of female civil servants is \$36,830.30 per annum, compared with \$37,984.49 per annum for male civil servants.

300. As at August 2006 there were 1,893 girls and 2,300 boys in the government primary and secondary schools.

### Falkland Islands

301. At the last general election, which took place in 2005, two of the eight members elected to Legislative Council were women. One of these women members was subsequently chosen by all the Elected Members to be one of the Elected Members for Executive Council.

302. As regards access to public service, women officers currently hold the posts of Director of Education, Director of Agriculture and Mineral Resources, Director of Health and Social Services, Head of Environmental Planning, Head of Computers and Information Technology and Head of the Postal Services Department. As of the 1 November 2006, the posts of Attorney General and Principal Crown Counsel, (who is the Deputy to the Attorney General), will be held by women. The present Senior Magistrate is a woman, as is the Falkland Islands Representative in the United Kingdom. Of the total number (524) of full and part time officers employed by the Falkland Islands Government 271 are female and 253 are male. These are the current 2006 figures, and do not include casual and seasonal staff and those serving with the Falkland Islands Defence Force.

303. An important legislative development in ensuring that women's rights and equality are upheld is the Family Law Bill. This Bill is principally concerned with family homes and domestic violence. Part 2 of the Bill, which is the main part of the Bill, originates in part in the need to comply more fully with the Convention on the Elimination of all Forms of Discrimination against Women, which was extended to the Falkland Islands in 1986. Part 2 of the Bill is closely modelled on Part 4 of the English Family Law Act 1996, the provisions of which were enacted as a result of the English Law Commission's 1992 Report on Domestic Violence and Occupation of the Family Home. It will positively impact on those who are subjected to, or are affected by, domestic violence in the home. This Bill is currently at the stage of being amended following examination by a Select Committee of Legislative Council. A

Working Group has been formed to identify how the Bill, if enacted, can be used to best effect and disseminated to the community, in order to reach those in need of the Bill's protection.

### **Gibraltar**

304. As stated in relation to the update on article 2, the Equal Opportunities Ordinance 2004 prohibits discrimination on the basis of sex, sexual orientation, race, religion or belief in relation to employment and occupation thus supplementing existing prohibitions contained in the Employment Ordinance which prohibit sex discrimination in employment. The Equal Opportunities Ordinance 2004 extends the prohibition on discrimination to certain private individuals - it prohibits discrimination by employers, vocational training providers, employer organizations and trade unions on the grounds specified. The Government of Gibraltar is currently looking to extend the Equal Opportunities Ordinance 2004 to cover discrimination on the grounds of disability and age.

305. In May 2006 in the exercise of its powers under section 51(1) of the Equal Opportunities Ordinance 2004 the Government designated the Gibraltar Citizens Advice Bureau as the body responsible for the promotion of equal treatment of all persons without discrimination on grounds of sex or racial or ethnic origins.

306. In March 2006, the Government of Gibraltar and the INTERREG<sup>70</sup> programme of the European Community provided the funding for the 'Strait Ahead' conference. This was organised by the Gibraltar Business Network (an organization consisting of professional and business women). The aim of the conference was to highlight the possibilities that exist for women from small-towns or developing countries. The conference was attended by professional and business women from Gibraltar, Morocco, the United Kingdom, Portugal and Spain.

### **Montserrat**

307. No developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

308. The former inequality as to eligibility for appointment as Island Officer and as to duty to perform public work has been removed by legislative steps. The equality of males and females is generally acknowledged within the community.

### **Turks and Caicos Islands**

309. See comments under articles 2 and 26.

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<sup>70</sup> A European Community initiative to encourage trans-national co-operation.

## **Crown Dependencies**

### **Isle of Man**

310. See the response to paragraph 16 of the concluding observations (chap. II.B).

### **Bailiwick of Jersey**

311. See also the response to paragraph 16 of the concluding observations.

### **Bailiwick of Guernsey**

312. The States of Guernsey remain committed to adopt appropriate measures to ensure the equality of men and women in all spheres. In September 2003 the States resolved:

(a) To enact legislation to make discrimination unlawful and to promote equality of opportunity and diversity;

(b) To agree that once the new legislation is in place that subordinate legislation dealing with gender discrimination be brought forward for consideration;

(c) That the British Government be requested to include Guernsey in its ratification of the International Convention on the Elimination of all forms of Discrimination against Women.

313. The legislation referred to in sub-paragraph (b) of the previous paragraph is the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 which came into force on the 6 September, 2005. The subordinate legislation dealing with gender discrimination in employment was enacted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2006.

314. In total, 19.1 per cent of the members of the States of Guernsey are women. The comparative figures for the States of Alderney and Chief Pleas of Sark are 30 per cent and 37 per cent respectively. Of the 121 Advocates of the Royal Court 34 (28 per cent) are women. There are 2,164 boys and 2,013 girls undergoing primary education in the state sector: those undergoing primary education in the private sector are 232 and 272 respectively. 1,693 boys and 1,505 girls are undergoing secondary education in the state sector whilst 420 boys and 625 girls are undergoing secondary education in the private sector. There are 129 males and 172 females undergoing full time education at the Guernsey College of Further Education. 406 males and 490 females are undergoing higher education off the Island.

## **Article 4**

### **United Kingdom**

315. As regards derogation, see chapter I.E above of this report and the response to paragraph 6 of the concluding observations (Part II.A).

## **Overseas Territories**

### **British Virgin Islands**

316. The declaration of a disaster area under the Disaster Management Act, 2003 is dependent on the prior declaration of a state of public emergency.

### **Cayman Islands**

317. No issues under this Article have arisen in the Cayman Islands.

### **Falkland Islands**

318. No developments to report under this article.

### **Gibraltar**

319. No development to report under this article.

### **Montserrat**

320. No developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

321. There has been no declaration of a state of emergency and no instance of derogation.

### **Turks and Caicos Islands**

322. No developments to report under this article.

## **Crown Dependencies**

### **Isle of Man**

323. There have been no significant changes in respect of this article.

### **Bailiwick of Jersey**

324. No further developments to report.

### **Bailiwick of Guernsey**

325. In March 2005 the States constituted a body called the Emergency Powers Authority comprising the Chief Minister and two other ministers who, in the event of a state of emergency may take necessary and expedient steps to preserve and maintain supplies and services essential to life and to protect the economic interests of the Bailiwick, the well-being and security of the community, the safeguarding of public health, the maintaining of security and law and order and the carrying out of all executive and administrative acts of government.

## **Article 5**

326. As regards interpretation, see chapter I.E of this report.

### **Overseas Territories**

#### **British Virgin Islands**

327. There are no developments to report under this Article.

#### **Cayman Islands**

328. No issues under this article have arisen in the Cayman Islands.

#### **Falkland Islands**

329. Article 5, paragraph 1, is understood to mean that the Covenant may not be used to imply the right to carry out an activity or to perform any act which infringes the Covenant to a greater extent than the Covenant itself provides for those rights to be infringed.

330. Article 5, paragraph 2, is understood to mean that the Covenant may not be used to erode existing fundamental rights already recognized by a State Party to the Covenant.

331. There has been no breach of article 5.

#### **Gibraltar**

332. The Government of Gibraltar has nothing to add in respect of this article.

#### **Montserrat**

333. No developments to report under this article.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

334. The existence and inviolability of the Covenant rights has been acknowledged by the Crown in recent proceedings in the Supreme Court, Pitcairn Court of Appeal and the Privy Council.

#### **Turks and Caicos Islands**

335. No developments to report under this article.

### **Crown Dependencies**

#### **Isle of Man**

336. There have been no significant changes in respect of this article.

### **Bailiwick of Jersey**

337. No further developments to report.

### **Bailiwick of Guernsey**

338. There is nothing to add to comments set out in previous reports.

## **Article 6**

339. Protection of the right to life is also provided under other international instruments ratified by the United Kingdom: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the Fifth Periodic Report**

### **United Kingdom**

#### **The Case of Anthony Rice**

340. In 1989, Anthony Rice received a life sentence for attempted rape. On 12 November 2004, he was released from prison subject to life licence supervision. On 17 August 2005, Rice murdered Naomi Bryant and was arrested for this offence on 19 August 2005. In October of the same year, Rice was convicted for murder. This case gave rise to debates in the United Kingdom on the need to have proper regard to public safety issues. HM Inspectorate of Probation (HMIP) conducted an independent review on this case<sup>71</sup> in order to assess the arrangements made for the supervision of Rice and the procedures that led to his release from prison in 2004. The case of Rice contributed to the Government's decision to publish, in July 2006, a "Review of the Implementation of the Human Rights Act"<sup>72</sup> (see chap. I.D above of this report). The Government stated in the Review that: "These errors in application of the Act seem to derive from two fundamental mistakes in the application of human rights principles. In the first place, test cases are understood to mean that once the tariff date has passed, the authorities have to justify keeping a prisoner in custody rather than having to justify why he should be released. In fact they should be balancing the prisoner's rights under the European Convention on Human Rights with restrictions which are proportionate given the risk of harm to the public he presents. Secondly, there seems to be insufficient recognition that the prison, parole and probation services are themselves subject to a positive obligation under the Human Rights Act to take proper steps to protect the public from dangerous criminals such as Rice".<sup>73</sup>

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<sup>71</sup> [http://inspectorates.homeoffice.gov.uk/hmiprobation/inspect\\_reports/serious-further-offences/AnthonyRiceReport.pdf?view=Binary](http://inspectorates.homeoffice.gov.uk/hmiprobation/inspect_reports/serious-further-offences/AnthonyRiceReport.pdf?view=Binary)

<sup>72</sup> [http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full\\_review.pdf](http://www.dca.gov.uk/peoples-rights/human-rights/pdf/full_review.pdf)

<sup>73</sup> Department for Constitutional Affairs, *Review of the Implementation of the Human Rights Act*, July 2006, p. 27.

### **Death penalty**

341. In 1999, the United Kingdom ratified the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty and Protocol 6 of the ECHR also concerning the abolition of the death penalty. In 2003, the United Kingdom ratified Protocol 13 of the ECHR concerning the abolition of the death penalty in all circumstances. The HRA was amended in 2004 in order to give effect to these provisions in domestic law.

### **Police use of firearms**

342. For England and Wales, the statistics for 1 April 2004 to 31 March 2005 show that the number of police operations in which firearms were authorized was 15,981. The Police discharged a conventional firearm 18 times covering 5 incidents. In addition, the Police discharged baton rounds in 23 incidents and fired "Taser"<sup>74</sup> in 35 incidents. Armed response vehicles were deployed on 13,137 occasions and there were 6,243 authorized firearms officers in England and Wales.<sup>75</sup>

343. On 22 July 2005, Jean Charles de Menezes, a Brazilian electrician living in London, was shot and killed at Stockwell Underground station in London by Metropolitan Police officers who mistook him for the suspect suicide bomber involved in the failed terrorist bombing attack of 21 July 2005. The Metropolitan Police immediately issued an apology while it was announced that the IPCC would open an inquiry into the incident. In July 2006, the Crown Prosecution Service (CPS) announced that no charges would be brought against the Police officers involved in the shooting of Jean Charles de Menezes because of lack of evidence. But the CPS also said that the Metropolitan Police Service would be charged with alleged violations of the Health and Safety at Work Act 1974 for failure to ensure the safety of Jean Charles de Menezes.

344. As of 26 July 2006, there are 685 firearms officers in Scotland. From March 2005 to March 2006, there have been six occasions when firearms were discharged by officers, all of which were related to the destruction of animals. Scottish Ministers are required by both the HRA and the Scotland Act to comply with the ECHR rights. This applies both to the use of firearms by police officers and to the positive obligation to take reasonable steps to protect the lives of citizens.

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<sup>74</sup> Non-lethal weapons that fire electrified projectiles.

<sup>75</sup> The full report on the Police use of firearms in England and Wales is available on [http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/firearms\\_policestats04-05?view=Binary](http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/firearms_policestats04-05?view=Binary)

### Deaths in police custody

345. Under the Police Reform Act 2002 Police forces in England and Wales must now refer any incident involving a death following Police contact to the IPCC. In England and Wales, in the year 2004/05, the IPCC reported<sup>76</sup> 106 deaths during or following contact with the Police. The IPCC decided to investigate 85 per cent of the 106 deaths that occurred during this period. The deaths were classified by the IPCC according to four categories:

- Road traffic fatalities resulting from police pursuits, police vehicles responding to emergency calls and other police traffic-related activity;
- Fatal shootings where police officers fire the fatal shots;
- Deaths in or following Police custody;
- Death during or following other Police contact including deaths where a link can be established between the Police contact and the death, and which did not involve arrest or other detention.

Table 9 summarizes the number of deaths during or following contact with the Police in England and Wales in the period 2004/05.<sup>77</sup>

**Table 9**

IPCC Death Category	2004/05
Road traffic fatalities	44
Fatal shootings	3
Deaths in or following Police custody	36
Death during or following Police contact	23
Totals	106

346. In order to reduce all types of deaths in Police custody, the Government:

- Monitors policy initiatives in this field to ensure they are compatible with the ECHR and HRA;
- Has revised the 'Notice of Rights and Entitlements', which is provided to detainees as they enter custody, and has increased its accessibility by simplifying the language used, providing translations in the main languages requested at custody suites, and providing audiotape versions of the 'Notice';

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<sup>76</sup> [http://www.ipcc.gov.uk/deathreport0405\\_printerversion.pdf](http://www.ipcc.gov.uk/deathreport0405_printerversion.pdf)

<sup>77</sup> IPCC, *Deaths During or Following Police Contact – Statistics for England and Wales 2004/05*, p. 7 ([http://www.ipcc.gov.uk/deathreport0405\\_printerversion.pdf](http://www.ipcc.gov.uk/deathreport0405_printerversion.pdf))

- Monitors the reports received from forces on deaths during or following contact with the Police to identify issues of concern, which need to be addressed on a timely basis. Such issues arising from individual cases are referred to the 'Learning the Lessons' Group for consideration and possible advice to forces on risks and preventative measures;
- Has established the IPCC from 1 April 2004 in order to ensure that there is an independent investigation of deaths during and following Police contact. Under the new Police complaints system all deaths in custody are referred to the IPCC which determines what type of investigation is appropriate for a particular incident and can choose to investigate a death in Police custody on its own initiative;
- Has developed a Statutory Code of Practice and National Standards for visiting people in custody in consultation with interested stakeholders and in conjunction with the Independent Custody Visiting Association;
- Has revised the Codes of Practice under the Police and Criminal Evidence Act 1984 (PACE) to allow the use of healthcare professionals alongside forensic physicians in the care and treatment of detainees in Police custody;
- Alongside the 2003 revision of the PACE Codes of Practice, the Government issued guidance to Chief Officers on the use of healthcare professionals and the extension of Patient Group Directions to Police custody suites;
- Is facilitating the work of the Advisory Forum on Forensic Physicians, which the Government established in April 2002 to monitor and oversee the delivery and quality of Police surgeon services in England and Wales. The Advisory Forum has oversight of assessment, training and accreditation and complaint procedures for forensic physicians;
- Has issued guidance to Chief Officers on developing local protocols to address Police-health interface issues relating to the management of potentially violent individuals. The guidance covers the general principles to be addressed in protocols relating to information sharing, mental health issues and substance abuse and includes an annex providing a checklist template for developing local protocols;
- Is developing policy on alternative ways of dealing with intoxicated detainees, including alcohol arrest referral schemes. The Government is also looking to facilitate alternative treatment centres to which drunk and incapable offenders could be diverted as an alternative to Police custody;
- Has revised the PACE Codes of Practice in April 2003 to ensure safeguards for vulnerable detainees, including access to clinical treatment from an appropriate healthcare professional, monitoring procedures for those at risk and the support of an appropriate adult for juveniles and mentally disordered or mentally vulnerable detainees;

- Has provided guidance to custody staff on the monitoring of detainees, particularly those who are identified as being at risk because of substance misuse or a history of self-harm;
- Is working to develop the standard and delivery of interpretation services for detainees in Police custody. The Government has provided guidance in the PACE Codes of Practice advising forces that wherever possible interpreters should be drawn from the National Register of Public Service Interpreters, so as to ensure the quality of service provided for detainees;
- Is participating in the Justice and Offender Services Health Education and Development Group, which is working to develop standards and accredited training to raise awareness on health issues such as mental health, substance misuse, communicable diseases and information sharing.

347. Scottish Police Forces attach great importance to the care and welfare of people in police custody. All deaths in Police custody are subject to an inquiry.

### **Deaths in prison**

348. All deaths in prison custody are subject to a police investigation, an independent investigation by the Prison and Probation Ombudsman (PPO) and to a Coroners inquest before a jury. Since 1 April 2004, when the PPO took over responsibility for investigating deaths in prison custody, the Prison Service has not routinely conducted an internal investigation. The PPO investigation looks at the circumstances leading up to the death, and if necessary can make recommendations. The Prison Service responds to the recommendations. All prisons are now required to have a local protocol in place which sets out how they will learn from deaths in custody. The Coroner will hold an inquest to look at the circumstances of the death and following the inquest the Coroner may decide to write to us under Coroners Rule 43 if they consider there are lessons to be learned from a death in custody.

349. The reduction of self-harm and self-inflicted deaths among prisoners remains one of the key priorities of the Government. In 2005/06,<sup>78</sup> the Government's target was to ensure that the rate of self-harm and self-inflicted deaths in prison did not exceed 112.8 per 100,000 prison population. The Government met this target and reached a rate of 96.8 per 100,000 prison population. The rate is clearly still very high and the Government will continue to maintain the reduction of the deaths in custody as one of its top priorities. A Prisons and Probation Ombudsman Liaison Unit has been established and part of their remit is to learn from the PPO's investigations into deaths in custody, the Inspectorate of Probation's reports and Coroners recommendations. In addition, information systems have now been strengthened to the point where a vast array of information and analysis is available, not just about those who die in custody but also about self-harmers, victims of assault and their assailants. The new cross Government Forum for Preventing Deaths in Custody was set up in the period 2005/06 as a

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<sup>78</sup> HM Prison Service, *Annual Report and Accounts April 2005 – March 2006*,  
[http://www.hmprisonservice.gov.uk/assets/documents/10001E3Fannual\\_rep\\_0506\\_main.pdf](http://www.hmprisonservice.gov.uk/assets/documents/10001E3Fannual_rep_0506_main.pdf)

response to the parliamentary Joint Committee on Human Rights Report on Deaths in Custody.<sup>79</sup> Safer cell standards are now fully embedded and the proportion of safer cells increases with each passing year. Improvements to the safer cell design have continued with a new anti-ligature safer cell window and the introduction of low cost whitewood anti-ligature furniture being developed, as well as a dual occupancy cell design.

## **Crown Dependencies**

### **British Virgin Islands**

350. There are no developments to report under this article.

### **Cayman Islands**

351. By virtue of the Penal Code (2006 Revision) the death penalty has been abolished for the offences of treason and piracy and is therefore no longer part of the domestic laws of the Cayman Islands.

### **Falkland Islands**

352. No further developments to report under this article.

### **Gibraltar**

353. In 2000 the House of Assembly passed the Criminal Offences (Amendment) Ordinance 2000. The effect of this Ordinance was to repeal the death sentence for persons convicted of treason. Under Gibraltar law there are now no enactments under which a person may be sentenced to death.

### **Montserrat**

354. No developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

355. In line with the Crime and Disorder Act 1998 and the HRA by the United Kingdom, the remaining power of capital punishment has been removed in Pitcairn. Paragraph 8 of the Pitcairn Royal Instructions 1970 concerning the death penalty has now been omitted from the written laws of Pitcairn.

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<sup>79</sup> Joint Committee on Human Rights, *Deaths in Custody*, 3<sup>rd</sup> Report, Session 2004/05, 8 December 2004, <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/15/15.pdf>

## **Turks and Caicos Islands**

356. Section 2 of the new Constitution protects the right to life and states that “every persons’ right to life shall be protected by law. No person shall be deprived intentionally of his or her life”. Abortion is illegal in the Turks and Caicos Islands.

## **Crown Dependencies**

### **Isle of Man**

357. The ratification of Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances, was extended to the Isle of Man in August 2004. Although as stated in a previous Report the death penalty was abolished in Manx law in 1993, the right under Protocol 13 has also been incorporated into the Human Rights Act 2001.

### **Bailiwick of Jersey**

358. See response on article 2.

### **Bailiwick of Guernsey**

359. The infant death rate of 1,000 live births averaged 4.5 over the five-year period from 1999 to 2003. Out of 525 deaths in Guernsey in 2005, 12 were due to violent or accidental causes including suicide. There were eight deaths in Sark in 2005 of which one was caused by an accident. The last case of murder in the Bailiwick occurred in January 2006.

360. At the request of the Island legislatures the United Kingdom’s ratification of Protocol 13 to the ECHR was extended to the Bailiwick in April 2004. The effect of that Protocol is to abolish the death penalty including during times of war.

## **Article 7**

361. Protection against torture and cruel, inhuman or degrading treatment

- Is provided under other international instruments ratified by the United Kingdom: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985) and Amendments (1992);
- European Convention against Torture and Inhuman or Degrading Treatment or Punishment (1987) and Protocols 1 and 2 (1987).

## **Progress since the fifth periodic report**

### **United Kingdom**

362. See response to paragraph 6 of the concluding observations (chap. II.A).

#### **Corporal punishment**

363. Corporal punishment of maintained school pupils has been unlawful since 1987, and is currently prohibited for pupils of all schools (including nursery schools) in England and Wales under section 548 of the Education Act 1996.

364. Section 58 of the Children Act 2004 abolished the defence of reasonable chastisement for actual bodily harm, grievous bodily harm or cruelty to children. The Government believes that this should ensure the proper protection of children without criminalizing parents for administering a trivial smack. The Government is committed not to impose a blanket ban on smacking. Such a ban would be difficult to implement, would divert valuable police time and social services resources and could lead to inappropriate criminalization of parents. This is not to say that the Government advocates the use of physical punishment as a means of disciplining children, but recognizes that some parents may feel on some occasions that they may not have an alternative. The Government has supported positive parenting not least through the “Sure Start” programme. In the course of 2007, the Government will review the operation of Section 58 of the Children Act.

365. The Education and Inspections Bill introduces, for the first time, a statutory power for teachers and certain other staff of schools in England and Wales to discipline pupils. The Bill specifically requires that account be taken of the pupil’s age, any special educational needs or disability that he/she may have or any religious requirements affecting him/her and provides that a disciplinary penalty imposed must be reasonable in all the circumstances and take into account the proportionality of the penalty in the circumstances of the case. The Bill also re-enacts (with minor modifications) the existing legal power for members of staff to use reasonable physical force against pupils for the purpose of preventing them: committing any offence; causing personal injury to, or damage to the property of, any person; or prejudicing the maintenance of good order and discipline. Both of these powers are framed in such a way as to enable the exercise of reasonable disciplinary authority and both are expressly subject to section 548 of the Education Act 1996 (prohibition on corporal punishment). These statutory provisions, comprising the only legal authority for the discipline of pupils in school, do not authorize cruel, inhuman or degrading treatment or torture which, if imposed, would be unlawful.

#### **Immigration Removal Centres**

366. Since 2001, the Government has established 10 removal centres (one of which is also a reception centre) where asylum-seekers await to be returned to their countries of origin following the failure of their application for asylum in the United Kingdom. Detention remains an unfortunate but essential element in the effective enforcement of immigration control. The primary focus of detention will continue to be its use in support of the Government’s removal strategy. There will continue to be a need to detain some people at some stages of the asylum process. In particular, the starting point in all asylum applications is a presumption in favour of

granting temporary admission or release. Detention of the applicant and his/her family at Oakington reception centre could form part of the application process if it appears that a claimant's asylum application could be decided quickly in this way. The detention of families for the purpose of removal takes place as close to removal as possible so as to ensure that families are not normally detained for more than a few days. Families may, however, be detained at other times and for longer periods than just immediately prior to removal. This could be whilst their identities and basis of claim are established or because there is a reasonable belief that they would abscond. Where families are detained they are held in dedicated family accommodation based on family rooms in the removal centres.

367. As indicated in table 10 below, between April 2005 and January 2006, there has been a number of incidents of self-harm<sup>80</sup> in the removal centres requiring medical treatment.

**Table 10**

**Incidents of self-harm**

Immigration Removal Centre	Number of individuals on formal self-harm at risk (April 2005-January 2006)	Number of incidents of self-harm requiring medical treatment (April 2005-January 2006)
Campsfield House	33	12
Colnbrook	584	74
Dover	74	22
Dungavel	93	0
Harmondsworth	376	38
Haslar	29	1
Lindholme	10	4
Oakington (Reception Centre)	58	16
Tinsley House	40	3
Yarl's Wood	170	15

368. The Government has responded to these incidents by:

- Ensuring all custody officers in removal centres are trained to the standard delivered within the Prison Service to help identify and prevent suicide and self-harm. They are also trained in accordance with their particular centre's own suicide and self-harm prevention strategy and procedures. Additionally, notices in various languages are displayed in all centres setting out that, where a detainee has a concern about a fellow detainee, this should be brought to the attention of a member of staff;
- Ensuring all removal centres contain fully equipped healthcare units to meet the healthcare needs of detainees including emergencies.

<sup>80</sup> Self-harm is defined as any act where detainees deliberately harm themselves irrespective of the method, intent or severity of any injury.

## **Overseas Territories**

### **British Virgin Islands**

369. There are no developments to report under this article.

### **Cayman Islands**

370. There is nothing further to add to the information set out in the fifth periodic report.

### **Falkland Islands**

371. No further developments to report under this article.

### **Gibraltar**

372. The Government of Gibraltar has nothing to add in respect of this article.

### **Montserrat**

373. No developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

374. No developments to report under this article.

### **Turks and Caicos Islands**

375. No developments to report under this article.

## **Crown Dependencies**

### **Isle of Man**

376. See the response to paragraph 11 of the concluding observations (chap. II.B).

### **Bailiwick of Jersey**

377. See response on article 2.

### **Bailiwick of Guernsey**

378. The Optional Protocol to the Convention against Torture is currently under consideration by the Insular authorities.

### **Article 8**

379. Protection against slavery and forced labour is also provided under other international instruments ratified by the United Kingdom:

- General Act of the Brussels Conference relative to the African Slave Trade (1890);
- International Agreement for the Suppression of the White Slave Traffic (1904); International Convention for the Suppression of the White Slave Traffic (1910) and Protocol amending both instruments (1949);
- Slavery Convention (1926) and Protocol Amending the Slavery Convention (1953);
- ILO Convention No. 29 concerning forced labour (1930);
- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004);
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956);
- ILO Convention No. 105 on the Abolition of Forced Labour (1957);
- ILO Convention No. 138 concerning minimum age for admission to employment (1973);
- Convention on the rights of the child (1989) and Optional Protocol on the involvement of children in armed conflict (2000) and Optional Protocol on the sale of children, child prostitution and child pornography (2000);
- ILO Convention No. 182 on worst forms of child labour (1999).

### **Progress since the fifth periodic report**

#### **United Kingdom**

#### **Illegal workers and human trafficking**

380. The Government has promoted several initiatives, including new legislation, in order to tackle the problem of illegal workers, human trafficking and forced labour. In particular:

- In 2000, the Government set up Reflex, a practical multi-agency task force to combat organized immigration crime. Its remit is to co-ordinate operations against organized immigration crime, to develop the intelligence and strategic planning that underpin these operations and to target the infrastructure which supports such criminality. This coordinated joined-up approach has been very successful in disrupting organized immigration crime gangs and has led to a large number of arrests and the seizure of criminal assets. Under Reflex, a network of Immigration Liaison Officers covering

23 key source and transit countries in Europe has been established. Their role is to work with other governments and their law enforcement agencies to create joint intelligence structures to disrupt and dismantle criminal gangs involved in organized immigration crime;

- The Proceeds of Crime Act 2002 allows for the confiscation of criminal assets including assets from trafficking and related offences. The Asylum and Immigration (Treatment of Claimants, etc.) ;
- The Sexual Offences Act 2003 widened the offence of trafficking for the purpose of sexual exploitation to cover trafficking into, within or out of the United Kingdom. In Scotland, section 22 of the Criminal Justice (Scotland) Act 2003 covers roughly the same issues;
- In March 2003, in conjunction with the voluntary sector, the Government launched a pilot scheme providing safe accommodation and support for adult female victims of trafficking for the purposes of sexual exploitation (the “Poppy Project”). The Poppy scheme was designed to provide safe shelter and care for up to 25 adult female victims of trafficking who have been brought to the United Kingdom to work as prostitutes. The Poppy project provided a range of support services to meet individual needs including counselling, access to primary healthcare, interpretation/translation services and access to legal advice. The Poppy scheme has been formally evaluated.<sup>81</sup> Overall the findings were positive about the model and the quality of support provided for the trafficked women but the report highlighted a number of areas for improvement which are currently being considered. In light of the pilot scheme operation and evaluation findings the Government proposes to increase the geographical coverage of support services for victims and introduce support at varying levels of intensity according to individual need;
- The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 introduced new offences of trafficking for slavery or forced labour, human organ transplant or other forms of exploitation. Trafficking offences carry a maximum penalty of fourteen years imprisonment;
- The Gangmasters (Licensing) Act 2004 established the Gangmasters Licensing Authority which is responsible for setting up and operating the licensing scheme for labour providers operating in the agriculture, shellfish gathering and associated processing and packaging sectors. The aim is to open the scheme for licence applications from April 2006. Once these licensing arrangements are in place, the Act will prohibit anyone from acting as a gangmaster in the specified areas without a licence. It will also make it an offence for a person to enter into an arrangement with an unlicensed gangmaster. The Gangmasters (Licensing) Act 2004 and the associated Gangmasters (Licensing Authority) Regulations 2005 will apply to work done anywhere in the United Kingdom, along the shoreline and in the British coastal waters;

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<sup>81</sup> <http://www.homeoffice.gov.uk/rds/pdfs05/poppy1.pdf>

- As of 1 May 2004, the Government has introduced changes to the types of document which British employers will need to check under section 8 of the Asylum and Immigration Act 1996 to strengthen the Government's controls on tackling illegal working by making it easier for the British Immigration Service to take action against employers who deliberately use illegal labour. The changes to the law make it a criminal offence to employ someone, aged 16 or over, who has no right to work in the United Kingdom. They also make it compulsory for employers to ensure that their recruitment practices do not discriminate against individuals on racial grounds;
- In the course of 2006, the Government established the Serious Organised Crime Agency (SOCA) to improve intelligence and target those organized crime groups. The Government indicated that organized immigration crime should follow drugs as the second current priority for the agency.

### **Overseas Territories**

#### **British Virgin Islands**

381. There have been no developments in the Cayman Islands in relation to this article.

#### **Cayman Islands**

382. There have been no developments in the Cayman Islands in relation to this article.

#### **Falkland Islands**

383. There is no slavery in the Falkland Islands.

384. With regard to forced or compulsory labour, under s.18 of the Prison Ordinance, all male prisoners over the age of 17 and under the age of 60 years who are undergoing a sentence of imprisonment, shall be set to work, if certified by the medical officer to be fit, and may be compelled to work inside and outside the walls of the prison, on such work and at such times and in such manner as may be prescribed in standing orders issued by the Officer in Charge, subject to the approval of the Governor. Under s.18 female prisoners shall not work outside the prison unless so ordered by the medical officer and shall be employed only on such labour as is suitable for women. Under s.19 of the Ordinance, the work which a prisoner may be required to undertake may include the necessary services of the prison or of the quarters for the Officer in Charge, but shall not include any personal services for prison officers. The Officer in charge of the prison is the Chief Police Officer.

385. Prisoners work under the direct supervision of the Prison Officer. In so doing they are engaged in such work as general maintenance around the prison buildings and police station. Prisoners are generally supportive of the requirement to work, as it gives them an opportunity to make a beneficial contribution, limits the boredom which they no doubt experience, and enables them to earn a wage of £7.00 per week. Prisoners are not hired to, or placed at the disposal of, private companies, individuals or associations. Community sentences may be imposed upon

offenders, both male and female, and the nature of the work they are employed to do will be only such work as they are fit to do. Prisoners and those serving community sentences are not physically compelled to work.

386. Section 4 of the Constitution provides that:

1. No person may be held in slavery or servitude.
2. No person shall be required to perform forced labour.
3. For the purposes of this section, the expression “forced labour” does not include:
  - Any labour required in consequence of the sentence or order of a court;
  - Any labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
  - Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
  - Any labour required during any period of public emergency or, in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

## **Gibraltar**

387. In 2000 the Criminal Procedure Ordinance was amended to make provision for the courts to impose Community Service Orders in cases where a person had been convicted of an offence punishable with imprisonment.

388. Section 219A of the Criminal Procedure Ordinance allows a court to impose a Community service order if the person is sixteen years or more and if the convicted person consents to the making of a community service order. Work undertaken is unpaid work.

389. The number of hours, which a person may be required to work under a community service order, shall be specified in the order and shall be in aggregate not less than 40 and not more than 240.

390. Pursuant to section 219C the court which made a community service order may review the order on application of the person affected or by an official. If the person fails to comply with any of the requirements of the order the court may impose a fine up to level 3 on the standard

scale and provide for the order to continue or revoke the order and deal with the person as if he had just been convicted of the offence in respect of which the order was made.

### **Montserrat**

391. No developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

392. There has been no instance of slavery or forced labour on Pitcairn. Various communal activities, e.g. gathering arrowroot, fishing and the like, are longstanding agreed traditions for the sustenance and survival of the community. The duty of public work in Part V of the Local Government Regulations is subject to ample powers of exemption when appropriate. Compliant prisoners may be permitted to work for limited periods, including working the longboats for the benefit of the community.

### **Turks and Caicos Islands**

393. Prisoners are not forced to work, but they can do so voluntarily for a token daily remuneration.

## **Crown Dependencies**

### **Isle of Man**

394. There have been no significant changes in respect of this article.

### **Bailiwick of Jersey**

395. See response on article 2.

### **Bailiwick of Guernsey**

396. There is nothing to add to comments set out in previous reports.

## **Article 9**

397. Protection of liberty and security is also provided under other international instruments ratified by the United Kingdom: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the fifth periodic report**

### **United Kingdom**

398. See the response to paragraph 6 of the concluding observations (chap. II.A).

### **Legislation against terrorism**

399. Legislation against terrorism includes the Terrorism Act 2000. The main provisions of the Act are:

- Definition of terrorism;
- Powers to seize terrorist property and disrupt terrorist financial activity;
- Specific terrorism related powers of stop and search;
- Specific power to arrest individuals suspected of terrorism;
- Enhanced powers for terrorism investigations;
- Specific terrorism offences relating to e.g. proscribed organisations, terrorist property, training, direction of terrorism, possession or articles or information likely to be useful to terrorists, incitement;
- Secretary of State to have power to proscribe organisations involved in international and domestic terrorism.

400. The Anti-terrorism, Crime and Security Act 2001 made provision for:

- Freezing of terrorist assets;
- Security of pathogens and toxins;
- Retention of communications data.

401. The Prevention of Terrorism Act 2005 introduced the power to make control orders (see response to paragraph 6 of the concluding observations –chap. II.A).

402. Terrorism Act 2006. This Act created the following new offences:

- Encouragement of terrorism;
- Dissemination of terrorism publications;
- Application of the offences above to internet activity;
- Preparation of terrorist acts;
- Training for terrorism;
- Powers of forfeiture in respect of the offence of training for terrorism;
- Attendance at a place used for terrorist training;
- Making and possession of devices or materials;

- Misuse of devices or material and misuse and damage of facilities;
- Terrorist threats relation to devices, materials or facilities;
- The Act also extended the criteria for proscribing organizations to include those that encourage or promote terrorism and it extended the maximum period of pre-charge detention of terrorist suspects from 14 days to 28 days.

403. Details of arrests and charges made under the Terrorism Act 2000 are shown in table 11 below.<sup>82</sup>

**Table 11**  
**Arrests and charges under Terrorism Act**

From 11 September 2001 to 30 September 2005	Number of people
Arrested	895
Convicted	23
Charged	138 (62 also charged with offences under other legislation)
Charged under other legislation <sup>83</sup>	156 (63 transferred to Immigration Authorities)
Bail to return	20
Cautioned	11
Final warning for non-TACT offences	1
Dealt under mental health legislation	8
Returned to Prison Service custody	1
Transferred to PSNI <sup>84</sup> custody	1
Released without charge	496

404. Following endorsement of the Belfast Agreement by the people of Northern Ireland, the Government hopes and expects that the threat of Irish terrorism will diminish to the point where no additional special powers are necessary. The Government intends to improve security progressively and achieve normalization as part of the implementation of the Agreement. Its position is that there will be no need for any temporary powers specific to Northern Ireland. The Terrorism (Northern Ireland) Act 2006 provided for the continuation of many of the provisions

<sup>82</sup> Source: statistics compiled from recent Police records and therefore subject to adjustment as cases go through the system.

<sup>83</sup> This includes charges for terrorist offences that are already covered in general criminal law such as murder, grievous bodily harm and use firearms or explosives.

<sup>84</sup> Police Service for Northern Ireland.

of Part 7 of the Terrorism Act 2000, which are specific to Northern Ireland. These will now expire on 31 July 2007, unless repealed by order, or extended by order for one further year to expire before 1 August 2008.

### **Length and conditions of detention**

405. Part 5 of, and Schedule 8 to, the Terrorism Act 2000, as amended by the Terrorism Act 2006, allow for the arrest of those suspected of being a terrorist and their detention prior to charge for a maximum of 28 days. However, all detention beyond 48 hours is subject to judicial authorization. Extension of detention warrants can be granted by a judicial authority for periods of no more than seven days at a time up to the maximum of 28 days. A judge can only agree to issue an extension of detention warrant if he is satisfied that it is necessary and that the investigation is being conducted as expeditiously as possible. A person must be released as soon as the reason for his detention no longer exists, regardless of how long his detention has been authorized.

406. The detention, treatment and questioning by police officers of persons arrested under the Terrorism Act is governed by a Code of Practice introduced simultaneously with the new extended detention provisions. Amongst other things, the Code provides for particular rights concerning exercise, religious observance, and visitors. Unless a number of specified exemptions apply, those detained for longer than 14 days must be transferred to a prison, where more appropriate facilities for extended detention are available than in a police detention cell.

407. Subparagraphs 33(4) – 33(9) of Schedule 8 to the Terrorism Act 2000 (as amended by the Criminal Justice & Police Act 2001) provide for a direction to be given by the judicial authority hearing applications for extension of pre-charge detention under the Act. The judicial authority may direct that hearings may be held by live video link if the Secretary of State has given notification that such facilities exist at the place where the detainee is held. This allows applications for extension of detention to be held which give all parties the opportunity to make representations to the judicial authority where appropriate, without the disruption and resource intensive security requirements associated with a physical hearing.

### **Power to arrest immigrants**

408. The Immigration Acts confer powers to arrest immigrants who have:

- Entered illegally;
- Overstayed ;
- Breached conditions of entry;
- Obtained leave to enter or remain by deception;
- Failed to abide by the conditions of temporary admission or release;
- Are believed to have broken or to be breaking conditions attached to the grant of bail.

409. Additional powers of arrest conferred by Immigration Acts are:

- Failing to comply with a medical examination without reasonable excuse;
- Knowingly employing someone with no permission to work in the United Kingdom;
- Sought or obtained the avoidance, postponement or revocation of enforcement action by deception;
- Assisting unlawful immigration of a non-EU member to a member State;
- Helping an asylum-seeker to enter the United Kingdom for gain;
- Assisting entry to the United Kingdom of an EU citizen in breach of a deportation or exclusion order;
- Obstructing an immigration officer or other person unlawfully acting in the execution of the Immigration Acts without reasonable excuse;
- Making, altering, using a false asylum registration card;
- Possession of a real or replica immigration stamp without reasonable excuse;
- Entering the United Kingdom without a passport without reasonable excuse;
- Failure to comply with re-documentation without reasonable excuse.

410. Section 14 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 also provides immigration officers with arrest powers for specified offences which have been discovered whilst the officer is exercising a function under the Immigration Acts. These offences are ones most closely linked to immigration and include forgery and counterfeiting, trafficking people for sexual exploitation, trafficking people for exploitation, obtaining property by deception, making false statements, bigamy.

411. The proposal that a police or immigration officer may arrest, without warrant, a person who obstructs an immigration officer or other person lawfully executing the Immigration Act 1971 was introduced by virtue of section 128 of the Immigration and Asylum Act 1999, this inserted new section 28A into the Immigration Act 1971. The Immigration (PACE Codes of Practise) Direction 2000 was amended to take this into account. Further revisions have since taken place and another, taking into account legislative changes made in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004, is under review.

## **Immigration detention**

412. See also the response to article 7.

413. The Government believes that detention powers are a necessary part of effective immigration control. Detention is used only as a last resort and for the shortest time possible, to test a person's claims or establish whether he will comply with any conditions attached to the grant of temporary admission or release.

414. The Immigration and Asylum Act 1999 provided that immigration detainees must have a routine bail hearing between 5 and 9 days of initial detention. This legislation was repealed (having never been implemented) by virtue of the Nationality, Immigration and Asylum Act 2002. This decision was reached on the basis of an assessment that the routine bail provisions were inconsistent with the streamlined immigration and asylum processes, and the need to increase the rate of failed asylum seeker removals. Detainees continue to be able to apply for bail (and as often as they wish) and therefore have the opportunity to secure their release from detention.

## **Overseas Territories**

### **British Virgin Islands**

415. The Police (Amendment) Act 2001 and the Police (Detention, Treatment and Questioning of Persons) Code of Practice 2006 were drafted to enhance and make specific provision for the rights of persons who are detained by the Police and to give the Police clear guidelines as to how such detainees should be treated. The legislation is along the lines of provisions applicable in the United Kingdom. The legislation has not, however, been brought into force as yet.

416. The Evidence Bill, 2006 received its first reading in July 2006. This Bill and the Police (Detention, Treatment and Questioning of Persons) Code of Practice 2006 provide for the video and audio recording of police interviews.

### **Cayman Islands**

417. By virtue of the Bail Law (2006 Revision) police officers have the power to arrest persons for arrestable offences (more serious offences) and grant bail where an investigation is likely to be protracted and prevent such persons from otherwise being taken to court expeditiously.

418. While there exists a general presumption of the right to bail for certain less serious offences under the Bail Law, that presumption has been removed in respect of more serious offences such as murder, manslaughter, rape, kidnapping and abduction.

419. The Immigration Law (2006 Revision) confers on immigration officers powers of arrest in circumstances where persons have entered the Islands illegally, breached the conditions of their entry, remained in the Islands beyond the permitted time or undertaken gainful employment without the necessary work permits. In some cases, bail may be offered to such persons. However, the existing practice is that they are taken to court within 24 hours and their matters disposed of summarily.

420. All persons detained in custody have the right to legal advice from the moment of their detention.

### **Falkland Islands**

421. The Criminal Justice Ordinance remains in force, as previously reported, and contains various provisions which were modelled on provisions in the English Police and Criminal Evidence Act 1984 as originally enacted. The Criminal Justice Ordinance came into force on the 1 January 1990. The provisions have not been amended since it was enacted.

422. The Police and Criminal Evidence Act has been the subject of considerable amendment since its enactment. Accordingly, a Falkland Islands Police and Criminal Evidence Bill 2006 has been drafted and presented to Executive Council for its consideration. The Bill is currently at the stage of being published for consultation and is to be examined by a Select Committee of Legislative Council. The Police and Criminal Evidence Bill seeks to incorporate relevant amendments to the Police and Criminal Evidence Act. Part II of the Bill includes, inter alia, detailed provisions as to police powers to stop and search, powers of entry, search and seizure, powers of arrest and detention, and the questioning and treatment of persons by the police. A failure by the police to adhere to the requirements of the Police and Criminal Evidence Act and the Codes of Practice issued under them may lead to evidence resulting from a breach being found to be “inadmissible”.

423. Codes of Practice were issued in 1989 and 1990 corresponding to various provisions of the Codes issued under the Police and Criminal Evidence Act. These Codes need to be replaced, and it is intended that they should be as soon as possible after the Bill is enacted. The new Codes will take into account the Police and Criminal Evidence Act Codes now in force in England.

### **Gibraltar**

424. No developments to report under this article.

### **Montserrat**

425. Section 56 of the Constitution of Montserrat protects a person’s right to liberty; it provides however that any person arrested or detained should be informed ‘as soon as reasonable practicable’ in a language that he understands of the reasons for his arrest or detention. It is arguable that this differs from the protection provided by Article 9 (2) of the Convention which states that the person arrested must be informed at the time of arrest.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

426. Police practice in the investigation of crime is governed by the Police and Criminal Evidence Act 1984 and codes of practice made thereunder. Criminal procedure is regulated by other UK statutes, particularly by the Youth Justice and Criminal Evidence Act 1999, also closely tempered by new provisions in Part VII A of the Justice Ordinance to protect or establish the rights of all parties and of witnesses.

427. These comprehensive provisions permit the use of live-link television facilities between Pitcairn and other countries to secure or improve the quality of justice in criminal cases. This procedure has recently been put to the test, for the benefit of both victims and offenders.

428. The remand of prisoners in custody and the granting of bail or home detention are also closely prescribed in recently modernized laws. There are no unlawful immigrants or asylum seekers in Pitcairn due to its particular situation.

### **Turks and Caicos Islands**

429. See also comments under article 8.

430. Unauthorized arrivals, predominantly by sea, are processed under the Turks and Caicos Islands (TCI) Immigration law. The TCI Government believes that detention powers are a necessary part of effective immigration control. Detention is applied for the shortest time possible in order to establish a person's identity and test their claim to be lawfully admitted into the TCI. Section 5 of the Constitution protects the right to arbitrary arrest or detention.

## **Crown Dependencies**

### **Isle of Man**

431. See the response to paragraph 12 of the concluding observations (chap. II.B).

### **Bailiwick of Jersey**

432. See also the response to paragraph 12 of the concluding observations.

### **Bailiwick of Guernsey**

433. Places of detention in Guernsey are:

- The prison (opened in 1989);
- Detention cells at police station (opened 1993);
- Short term (48 hours) customs detention cells;
- Short-stay unit for adolescents in need of care;
- The mental hospital.

434. The Government's Mental Health Services provide for the treatment of a wide range of psychiatric and behavioural problems, with an open door policy prevailing. Whilst the vast majority of people attend for treatment on an informal basis, nevertheless a small number of patients considered to be a danger to themselves or others can be compulsorily detained under the Mental Treatment Law (Guernsey) 1939 (as amended). In 2005 there were 63 compulsory detentions to the Government's Mental Hospital, of which 25 were for periods exceeding seven days.

435. Juveniles may not be placed in secure accommodation unless certain criteria apply; 2005 statistics are shown in table 12 below.

**Table 12**  
**Secure accommodation statistics, 2005**

	Prison	Police	Customs
Deaths in custody	1	0	0
Complaints against Officers	3	64	4
(a) Upheld	0	22	1
(b) Dismissed	0	34	3
(c) Resolved informally	0	8	0
(d) Other	3 <sup>85</sup>	0	0
(e) Dismissed - Sark		1	
Strip searches		22	86
Intimate searches		0	0
Maximum Prison population - Guernsey	126		
Minimum Prison population - Guernsey	89		
Maximum Prison population - Sark	1		
Minimum Prison population - Sark	0		

436. The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 makes comprehensive provision relating to the powers of police officers and customs officers to stop and search suspects, to enter and search property and to arrest and detain individuals, and consolidates the rules relating to the questioning and treatment of individuals and the presentation and admissibility of criminal evidence. Codes of practice under the Law deal with stop and search, the detention, treatment and questioning of individuals, searches of premises, the identification of suspects, and the taping of interviews.

#### Article 10

437. Protection for detainees is also provided under other international instruments ratified by the United Kingdom:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985) and Amendments (1992);
- European Convention against Torture and Inhuman or Degrading Treatment or Punishment (1987) and Protocols 1 and 2 (1987).

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<sup>85</sup> One complaint withdrawn; two complaints officers resigned prior to conclusion of investigation.

## Progress since the fifth periodic report

### United Kingdom

438. See also the response to article 6.

439. The current prison population in England and Wales is 76,266<sup>86</sup> distributed among 139 prisons. Buildings, facilities and services vary greatly between prisons. Most are publicly operated but some are privately operated. Prisoners are given a security categorisation when they enter prison. These categories are based on the likelihood that they will try to escape, and the danger to the public if they do escape.

440. When young offenders under the age of 21 are sentenced to a custodial sentence they may be sent to:

- Secure Training Centres – privately run, education-focused centres for offenders up to the age of 17;
- Local Authority Secure Children’s Homes – run by social services and focused on attending to the physical, emotional and behavioural needs of vulnerable young people;
- Youth Offending Institutes – run by the prison service, these institutes accommodate 15-21 year olds and have lower ratios of staff to young people than the other institutions for young offenders.

441. In Scotland, major investment in improving the prison estate has taken place and is continuing. Since 1999, the Scottish Prison Service (SPS) has replaced a number of unsuitable facilities with modern fit-for-purpose facilities. The prisons at Dungavel, Longriggend, Penningham and part of Glenochil have closed. New prisoner accommodation has been built at Castle Huntly, Cornton Vale, Edinburgh, Glenochil, Perth, and Polmont providing modern facilities with in-cell toilet facilities. Accommodation at Barlinnie has been upgraded to provide in-cell toilets. By March 2006, 96 per cent of prisoner places had access to night sanitation. New houseblocks are under construction at Glenochil, Perth and Polmont and are expected to open in 2007. A contract for a new prison at Addiewell was awarded in June 2006 and the prison is expected to be fully operational in 2009. Planning permission is being sought for a new prison at Bishopbriggs to replace the existing Low Moss prison. The Prisoner Survey, which began in 1991, is now conducted on an annual basis and the ninth survey was undertaken this year in 2006. The survey canvasses the views of all prisoners in Scottish establishments on issues concerning facilities, conditions, relationships, health and well-being, food, cleanliness and hygiene. The results are published widely and inform the SPS’ planning process and its performance contract measurement system. SPS and its partner agencies have identified and articulated 9 desirable “Offender Outcomes” and measures are currently being put in place to assess progress on these. All prisoners participate in an induction process within the first days of arrival in prison. As part of this, prisoners are provided with information on their rights and welfare issues.

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<sup>86</sup> Source: Prison Population and Accommodation Briefing – July 2005.

## **Crown Dependencies**

### **British Virgin Islands**

442. There are no developments to report under this article.

### **Cayman Islands**

443. A review of the former Prison Rules was completed and resulted in the Prison Rules (1999 Revision). All references to the treatment of prisoners sentenced to death have been duly amended to reflect the abolition of the death penalty in the Cayman Islands.

444. The prison system in the Cayman Islands no longer comprises a single physical facility (HMP Northward) for all prisoners. HMP Northward presently houses only adult male prisoners. Adult, juvenile and young female prisoners are now detained at a separate facility known as HMP Fairbanks Facility. In addition, young and juvenile male prisoners are no longer held at the West Bay Police Station but at a recently constructed facility known as the Eagle House Rehabilitation Centre. This facility can accommodate up to 20 young prisoners (ages 17-21) and 16 juveniles (those under 17 years) and has been useful in eliminating the integration of young and adult offenders. In 2005, the average daily prison population in the Northward and Fairbanks facilities combined stood at 154 of whom 16 were female.

445. While the prison facilities offer a wide variety of courses to all prisoners including anger management, behaviour modification, woodwork and tailoring as well traditional academic subjects such as English and mathematics, the addition of a Vocational and Technical instructor is anticipated in an effort to broaden the range of prisoners' vocational skills. The availability of more accredited vocational programmes and workshops is viewed as an essential part of prisoners' rehabilitation, particularly for those with limited academic aptitudes.

446. The establishment of an Enhanced Living Unit has been used to provide encouragement to prisoners who have shown a willingness to rehabilitate themselves through good behaviour and full participation in their sentence plan. Upon relocation to the Unit these prisoners are entitled to additional privileges such as minimum supervision, the possibility of home visits, participation in the Community Work-Release and Rehabilitation Program as well as in-cell television facilities and the opportunity to prepare their own meals.

### **Falkland Islands**

447. The present prison facilities have been considered inadequate for some years. Between 24 September and the 3 October 2003, Mr Christopher Gibbard, Prison Advisor, United Kingdom Overseas Territories, visited the Falkland Islands and inspected Stanley Prison. His report contained a proposal to build a new prison facility at the east end of Stanley Police Station. This proposal has been accepted and the money allocated in the 2006-2007 budget for the planning/design, preparation of drawings, specifications and requirements.

448. Since the last report, the prison has detained one pregnant female prisoner. After birth, the prisoner concerned was permitted under s.17 of the Prison Ordinance to retain the child with her in prison, where mother and baby were provided with accommodation and facilities to cater for their special needs in a self-contained building within the confines of the prison. This was very positively received by the mother who was released when her child was still a baby under 12 months old.

449. The current prison facility contains a cell designated as a Young Offender's Institution. A review of legislation, which has been conducted for the purposes of reporting in 2006 to the UN on the Convention on the Rights of the Child, has identified a differential between male and female offenders as to the age at which they may be sentenced to a Young Offender's Institution i.e. a male must be under 21 and at least 14 years of age and a female must be under 21 and at least 15 years of age. It is proposed that this differential be eliminated by legislative amendment. This review has further identified that there is no legal requirement to provide education for those prisoners aged under 16 who are in receipt of a custodial sentence. This is a situation which has not arisen, but this is a matter which will be addressed when a new Education Bill, which is to be drafted as a high priority, is presented for consideration to Executive Council.

### **Gibraltar**

450. There are no developments to report under this article.

### **Montserrat**

451. The Parole Process is now operational. The Legislative framework is in place and the Executive council appointed the members of the Parole Board in June 2006. An interim Parole Officer has also been appointed.

452. All the stakeholders in the Parole process, including the members of the board, the justices of the peace have attended a sensitization workshop and the inmates in the prison are also being educated about the process. The Parole Board is due to have its first parole hearing before the 31 December 2006.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

453. New prison facilities have been recently constructed for the humane detention of prisoners remanded or sentenced by the Court; prison regulations modelled upon those in other Overseas Territories and incorporating modern methods and practice as advised by expert consultants are aimed at a balance between security and reform; a modern parole system is operated by an independent authority, which can be reached by any prisoner for appropriate cause.

454. The recently enacted Bail Ordinance and Sentencing Ordinance are closely modelled upon New Zealand legislation, giving emphasis to community-based sentences, home detention and restorative justice; these should prove to be of the utmost value in the circumstances of this tiny community.

455. As a result of an agreement between the Governments of the U.K. and New Zealand, certain trials may take place in New Zealand and a prisoner sentenced to imprisonment may, if he or she consents, serve that term in a New Zealand prison.

### **Turks and Caicos Islands**

456. All adult prisoners serve their sentences in the Turks and Caicos Islands. However, at present there is no juvenile detention centre. The Cabinet has approved funding to establish a temporary centre on Grand Turk which should be ready in this financial year. Meanwhile, young offenders may be placed temporarily in prison (separately from adult prisoners) while arrangements are made for placement in a rehabilitation programme overseas. There is a plan to build a permanent juvenile rehabilitation centre in North Caicos within the next 2-3 years.

## **Crown Dependencies**

### **Isle of Man**

457. The construction of a new modern prison is presently underway. It is scheduled to become operational in late 2007 or early 2008. The new prison will significantly improve conditions for detainees. It will house all types of offenders, and will have five separate wings, including a wing for female prisoners and a wing for sex offenders.

458. However, due to the relatively small numbers of un-convicted persons held in the prison it is impractical to segregate these prisoners from convicted prisoners in terms of accommodation. Even if it were practically possible, it could lead to un-convicted prisoners being held in conditions akin to solitary isolation. Wings for the various categories of prisoner will therefore hold both convicted and un-convicted prisoners, although in the new prison all prisoners will have a single cell and will not be required to share with another prisoner.

459. The treatment and conditions of un-convicted prisoners will be different to convicted prisoners. This will include no requirement to work, greater ability to attend education and greater access to private money.

460. The new prison will have a regime which will challenge prisoners and encourage rehabilitation. All convicted prisoners will have sentence plans and receive regular reviews during the term of their sentence. All sentenced prisoners will be expected to work, participate in programmes and adhere to sentence plans. There will be more opportunities for prisoners to receive training and recognized qualifications in vocational skills.

461. The Children and Young Persons Act 2001 provides that every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person. A court may not remand a child or young person in custody unless he is charged with homicide, or it is of opinion that only his detention in custody would be adequate to protect members of the public from death or serious personal injury occasioned by offences committed by him.

462. The Department of Health and Social Security opened a 5 bedded secure unit (plus one emergency bed) for children in February 2003. This unit is for children referred via both the criminal route and the welfare route (i.e. who are at risk to themselves or others).

463. A court remanding a young person to accommodation provided by the Department of Health and Social Security may, after consultation with the Department, impose on the Department a requirement that the person in question be placed and kept in secure accommodation (a "security requirement"). A court may not impose a security requirement in respect of a young person unless he is charged with or has been found guilty of a violent or sexual offence, or an offence punishable in the case of an adult with custody for a term of 10 years or more; or he has a recent history of absconding while being looked after by the Department, and is charged with or has been found guilty of an offence alleged or found to have been committed while he was being looked after by the Department; and (in either case) the court is of opinion that only such a requirement would be adequate to protect the public from harm from him.

464. In 2003 the Youth Justice Team was formed. Since the formation of the team, there has been a reduction in youth offending, and the number of custodial sentences and remands in custody imposed on young people have been reduced.

#### **Bailiwick of Jersey**

465. There are no further developments under this article.

#### **Bailiwick of Guernsey**

466. The Bail (Bailiwick of Guernsey) Law, 2003 makes statutory provision for the right to bail and prescribes the rules governing the granting of bail in criminal proceedings. Subject to that, there is nothing to add to comments set out in previous reports.

### **Article 11**

467. Protection for inability to fulfil a contract is provided under other international instruments ratified by the **United Kingdom**: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

### **Progress since the fifth periodic report**

#### **United Kingdom**

468. No further developments to report under this Article.

## **Overseas Territories**

### **British Virgin Islands**

469. Domestic law in the BVI does not permit the imprisonment of a person on the ground of his failure to fulfil a contractual obligation.

### **Cayman Islands**

470. The domestic law of the Cayman Islands does not permit the imprisonment of any person on the ground of his failure to fulfil a contractual obligation.

### **Falkland Islands**

471. Under Order 45 Rule 1 of the Supreme Court Practice 1997, which is in force in the Falkland Islands, a judgment or order for the payment of money may be enforced by a number of means including (in a case to which Rule 5 applies) an order for committal. Rule 5 governs the methods for the enforcement by the Court of its judgments or orders in circumstances amounting to a contempt of court. Enforcement under this rule cannot generally be obtained unless a copy of the order is personally served on the person in default with the requisite penal notice endorsed.

472. Rule 5 provides that where a person required by a judgment or order to do an act within a time frame specified in the judgment or order, refuses or neglects to do it within that time, or a person disobeys a judgment or order requiring him to abstain from doing an act, then an order for committal may be made against that person, or where that person is a body corporate, against any such officer, subject to the Debtors Act 1869 and 1878. Such an order for committal is additional to the powers of the court under the Debtors Acts 1869 and 1878. Historically a successful litigant might try to enforce his judgment under s.5 of the Debtors Act 1869, which enabled the court to send someone to prison for a term not exceeding six weeks if he had the money to pay the debt but did not do so. That power is now severely curtailed by s.11 of the Administration of Justice Act 1970, which provides that the power can only be used for the enforcement of the maintenance orders of the higher courts or of a judgment or order which is for the payment of taxes.

### **Gibraltar**

473. Section 3(1) of the Gibraltar Constitution Order sets out a right to personal liberty, and the circumstances in which such a right may be curtailed. Deprivation of a person's liberty on the grounds that he was unable to fulfil a contractual obligation does not fall within one of the permitted derogations.

### **Montserrat**

474. No further development to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

475. There is no such provision available on Pitcairn.

### **Turks and Caicos Islands**

476. No further development to report under this article.

### **Crown Dependencies**

#### **Isle of Man**

477. There have been no significant changes in respect of this article.

#### **Bailiwick of Jersey**

478. See the response to paragraph 13 the concluding observations (chap. II.B).

#### **Bailiwick of Guernsey**

479. There is nothing to add to comments set out in previous reports.

### **Article 12**

480. Protection of freedom of movement is provided under other international instruments ratified by the **United Kingdom**: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004):

- Treaty establishing the European Community and Treaty on European Union (as amended in Nice – 2003).

### **Progress since the fifth periodic report**

#### **United Kingdom**

481. Obligations imposed on individuals who are subject to control orders can include geographical boundary and curfew restrictions. The inclusion of a geographical boundary or a curfew in any individual's obligations is part of the specific tailoring of any order to address the individual's terrorism related activity, which the order is intended to disrupt. See also the response to paragraph 6 of the concluding observations (chap. II.A) on the subject of control orders.

### **Overseas Territories**

#### **British Virgin Islands**

482. The Immigration and Passport (Prohibited Class of Persons) Order, which prohibited rastafarians and hippies from entering the BVI, was revoked in August 2003.

#### **Cayman Islands**

483. In the Cayman Islands the regulation of deportation by the Immigration Law remains unchanged.

484. With respect to the reception and removal of Cuban migrants arriving at the Islands by boat, the Governments of Cuba and the Cayman Islands entered into a Memorandum of Understanding in 1999. The Memorandum governs the repatriation of those Cubans who enter the Cayman Islands illegally. According to the terms of the Memorandum, the Cayman Islands Government must inform the Cuban Government of the illegal arrival of Cuban citizens within 7 days of the date of arrival and provide their personal details as well as a photograph of each person and the place and date of their arrival shortly thereafter. Within 20 days of receipt of this information, the Cuban Government must communicate its authorization to accept the return of the migrants. Once such authorization has been communicated, arrangements are to be made for the expatriation of the migrants. For security purposes, all repatriated Cubans should be escorted by officials from the Cayman Islands Government.

485. Since the fifth periodic report, there has been no mass migration of Cubans into the Cayman Islands. However, there has been an intermittent stream of migrants who traverse the Cayman Islands' waters en route to third countries such as Honduras with a view to gaining entry into the United States.

### **Falkland Islands**

486. The Sexual Offences Ordinance 2005 has applied the English Sexual Offences Act 2003 with minor exceptions and modifications, and is a major development. Part 1 of the Sexual Offences Act creates a framework of sexual offences, setting out, inter alia, new categories of offences involving abuse of trust, care workers and people trafficking, and extending many existing offences. Part 2 of the Act includes detailed notification requirements for those sex offenders who are required to register as sex offenders, and gives the court power to grant both sex offender prevention orders and risk of harm orders. The notification requirements generally do not apply to convictions before 1 September 1997. The requirement to notify commences on the date of conviction. However the period in custody is disregarded. Therefore within three days of being released, the convicted person must notify the police of his address and other personal details. The police officer may also take the fingerprints and/or the photo of the offender. There are also periodic notification requirements. The Act enables Statutory Regulations to be made requiring offenders who leave the United Kingdom to notify such details as the date they will be leaving the country and their destination. No Statutory Regulations have to date been made under the Ordinance. There are currently five sex offenders registered in the Falkland Islands.

487. To date the Magistrate's Court of the Falkland Islands has made one sex offender prevention order. To date no risk of harm orders have been made. A number of offenders have entered into voluntary sex offender prevention orders, the terms of which restrict their movements e.g. requiring that they are not to enter school premises when any child may be in attendance. There is no electronic tagging of offenders in the Falkland Islands.

### **Gibraltar**

488. No further developments to report under this article.

### **Montserrat**

489. No further development to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

490. It is unlikely in the physical circumstances of Pitcairn that these issues will ever arise and no present consideration of them is taking place.

### **Turks and Caicos Islands**

491. No further development to report under this article.

## **Crown Dependencies**

### **Isle of Man**

492. The Isle of Man is currently in the process of updating its immigration legislation. In December 2005 Tynwald agreed that the provisions of the Nationality, Immigration and Asylum Act 2002 and Asylum and Immigration (Treatment of Claimants etc.) Act 2004 legislation (of Parliament) be extended to the Isle of Man with appropriate modifications, adaptations and exceptions. This legislation will also consolidate the provisions of previous British law extended to the Isle of Man, namely the Immigration Act 1971, the Immigration Act 1988, the Asylum and Immigration Act 1996 and the Immigration and Asylum Act 1999. It is anticipated that the updated legislation will be in place by the end of 2006.

493. It will therefore continue to be the case that in general the Island's immigration laws mirror those of the United Kingdom.

### **Bailiwick of Jersey**

494. There are no further developments to report under this Article.

### **Bailiwick of Guernsey**

495. There is nothing to add to comments set out in previous reports.

## **Article 13**

496. Protection in cases of expulsion of aliens is offered under other international instruments ratified by the United Kingdom:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004);
- Convention relating to the Status of Refugees (1951) and Protocol relating to the Status of Refugees (1967);
- Convention relating to the Status of Stateless Persons (1954);
- Convention on the Reduction of Statelessness (1962);

- European Agreement on the Abolition of Visas for Refugees (1959);
- European Agreement on Transfer of Responsibility for Refugees (1980);
- Treaty establishing the European Community and Treaty on European Union (as amended in Nice - 2003).

### **Progress since the fifth periodic report**

#### **United Kingdom**

497. See also the response to article 7.

#### **Deportation and removal**

498. As previously detailed in paragraphs 364 and 365 of the fifth periodic report, the legislative change introduced under the Immigration and Asylum Act 1999 means that deportation now only applies to persons where the Secretary of State deems the deportation to be conducive to the public good, family members of such persons, and persons who have been recommended for deportation by a Court. The following categories of person may be removed administratively rather than deported:

- Illegal entrants;
- Family members of illegal entrants;
- Persons who breach their conditions of limited leave to enter or remain in the United Kingdom (overstayers or those who work or claim benefits without permission);
- Persons who have sought or obtained leave to remain by deception;
- Persons whose indefinite leave has been revoked as a person ceasing to be a refugee;
- Family members of such persons.

#### **Asylum**

499. Figures show that 25,710 asylum claims were made in the United Kingdom in 2005 (excluding dependants). This is a drop of 24 per cent in asylum intake when compared with the previous year (33,960 claims in 2004). It is estimated that 8 per cent of the 25,710 claims for asylum made in 2005 resulted in a grant of refugee status. A further 10 per cent are estimated to have been granted refugee status when their appeal was allowed by an adjudicator or immigration judge at the Immigration Appellate Authority or Asylum and Immigration Tribunal. These figures are estimates because some applications are still awaiting the outcome of initial decisions or of appeals.

500. In the past five years the United Kingdom has introduced three major pieces of legislation: the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants etc) Act 2004, and the Immigration, Asylum and Nationality Act 2006. These Acts

have created a legislative foundation for tough measures we have taken against traffickers and others seeking to abuse British immigration controls; for reforms we have introduced to the asylum process; and for the establishment of the Gateway Programme which provides for the resettlement of refugees from overseas in the United Kingdom.

### **Dublin Convention/"Dublin II" Regulation (EC) No 343/2003**

501. The Dublin II Regulation, which came into effect in the United Kingdom on 1 September 2003, replaced the Dublin Convention (operational since 1997). Like the Dublin Convention the Regulation provides agreed European Union criteria for determining which a member State is responsible for considering asylum claims made in the EU by non-EU nationals. The Regulation applies to EU Member States, Iceland and Norway (from 1 May 2004 to States acceding to the EU on that date and to Denmark from 1 April 2006).

502. The basic criteria determining responsibility within the Regulation are similar to those in the Dublin Convention but there are additional criteria allocating responsibility based on whether the applicant is an unaccompanied minor, family unity considerations and living previously in a state for a continuous period of at least 5 months. The Dublin II Regulation is supported by an EU-wide fingerprint database of asylum applicants and certain other third country nationals, established by the Eurodac Regulation (EC) No.2725/2000. Eurodac allows for the computerized exchange of fingerprints solely in order to support the application of the Dublin arrangements by identifying those applicants already known to other participating states. Applicants can be transferred between member States only where the receiving State is determined to be responsible for dealing with the claim under the terms of the Dublin II Regulation (or Dublin Convention in legacy cases).

### **Third country removals**

503. An applicant may be refused asylum if he can be returned to a safe third country. A safe third country is one of which the applicant is not a national or citizen and one where the applicant's life and liberty would not be threatened in that country by reason of race, religion, nationality, membership of a particular social group or political opinion; and the government of that country would not send the applicant to another country other than in accordance with the 1951 Convention (the concept of 'non-refoulement').

504. If the safe third country is an EU member State, the Dublin II Regulation applies to determine responsibility for examining the asylum claim (see above). In non-Dublin cases paragraph 345 of the Immigration Rules HC395 as set out in paragraph 18 of HC1112 provides that in order to remove the applicant the British authorities must also be satisfied in each case that: the applicant has not arrived in the United Kingdom directly from the country in which he claims to fear persecution and has had an opportunity at the border or within the third country or territory to make contact with the authorities in order to seek protection; or there is other clear evidence of the applicant's admissibility to a safe third country or territory. As with other types of removal, the removal to a safe third country must not breach the United Kingdom obligations under the ECHR.

## **Immigration and Asylum Bill**

505. The Immigration, Asylum and Nationality Act 2006 received Royal Assent on 30 March 2006. The first commencement order entered into force on 31 August 2006, with full implementation not expected until 2008. Several provisions in the 2006 Act relate to the asylum process. These provisions will:

- Strengthen British borders by allowing data sharing between the Immigration Service, police and customs, as part of the e-Borders programme. This programme will support the global roll-out of fingerprinting visa applicants by giving powers to Immigration Officers to verify identity against biometrics contained in travel documents; and
- Respond to new security threats by providing statutory backing for the exclusion of terrorists from asylum; improving the United Kingdom's ability to strip citizenship from and deport those who pose a serious risk to British interests; and speed up the appeals process in national security deportation cases.

## **Extradition**

506. The United Kingdom has extradition arrangements with over 100 countries. Requests are scrutinized by the judiciary and executive and are subject to the Extradition Act 2003 ("the 2003 Act"). The person can make representations before the Secretary of State orders extradition. The 2003 Act contains safeguards to protect human rights; for example, the person will not be surrendered if the offence is deemed to be a political. A decision to extradite is subject to judicial review. A simplified procedure applies to requests from the European Union, subject to the Framework Decision on the European Arrest Warrant (EAW).

507. A person whose extradition is sought will only be surrendered for Acts which are deemed extradition offences within the meaning of the 2003 Act. This means that the conduct for which extradition is sought must be punishable in both the United Kingdom and the Requesting State by a term of imprisonment of at least 12 months. (It is a generally accepted principle, known as "speciality" that an extradited person should only be prosecuted in the Requesting State for the offences for which the person was extradited.

508. The 25 member States of the European Union operate the Framework Decision on the European Arrest Warrant, which came into operation on 1 January 2004. Additionally, most non-EU European countries are parties to the 1957 European Convention on Extradition (ECE). Signatories to both the EAW and the ECE do not have to establish a prima facie case. The United Kingdom has also removed the prima facie requirement for Australia, Canada, New Zealand and the United States of America. All the safeguards contained in the 2003 Act apply to every extradition request received by the United Kingdom.

509. Table 13 below sets out the number of people extradited to and from the United Kingdom. Some countries, but not the United Kingdom, have a constitutional or legal bar on the extradition of own nationals. The numbers therefore include British citizens.<sup>87</sup>

**Table 13**  
**Number of people extradited to and from the United Kingdom**

Year	People extradited from the United Kingdom	People extradited to the UK
1999	38	35
2000	47	31
2001	55	52
2002	53	36
2003	55	64
2004	74 (24)	67 (20)
2005	139 (77)	54 (43)

### Overseas Territories

#### British Virgin Islands

510. Non-belongers who illegally land or remain in the BVI, who are convicted of an offence against the Immigration and Passport Ordinance or an offence punishable with three months imprisonment or more, or whose presence in the BVI would in the opinion of the Governor, acting after consultation with the Chief Immigration Officer, be undesirable and not conducive to the public good, are subject to deportation.

#### Cayman Islands

511. See response to article 12.

#### Falkland Islands

512. The s.17 of the Immigration (General) Regulations Order 1987 makes provision with regard to the treatment of refugees. The Illegal Immigrants Order 1992 deals with, amongst others, those who has not been granted asylum as a refugee.

513. There have been no refugees or illegal immigrants since the last report.

#### Gibraltar

514. No further developments to report under this article.

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<sup>87</sup> The figures in brackets for 2004 and 2005 are the number of people extradited to and from the UK under the EAW procedure.

### **Montserrat**

515. No further development to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

516. An alien unlawfully in Pitcairn can be lawfully expelled in accordance with an enabling provision of the Immigration Control Ordinance 2006 and after the fulfilment of any rights conferred by that provision.

### **Turks and Caicos Islands**

517. See comments under article 9.

## **Crown Dependencies**

### **Isle of Man**

518. There have been no significant changes in respect of this article.

### **Bailiwick of Jersey**

519. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

520. There is nothing to add to comments set out in previous reports.

## **Article 14**

521. Protection for procedural guarantees is provided under other international instruments ratified by the **United Kingdom**: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the fifth periodic report**

### **United Kingdom**

522. See also the response to paragraph 16 of the concluding observations (chap. II.A).

### **Criminal Justice Act 2003**

523. The Criminal Justice Act 2003 introduced a number of fundamental reforms to the criminal justice system. It covers a wide range of areas such as prosecution and defence disclosure, jury trial, retrial for serious offences (double jeopardy), prosecution appeals, bad character and hearsay evidence, and sentencing. These are discussed individually as appropriate later in this section.

### **Delay in criminal proceedings**

524. The Government is committed to reducing unnecessary delay in the criminal justice system. It is rarely in the interests of justice that a case becomes protracted. Measures introduced since 1997 have played an integral part in seeking to reduce delay wherever possible, but the Government fully recognizes the need to do more. Critically, the Government is trying to ensure that the needs of victims and witnesses are considered at all stages of the process.

525. Part 3 of the new Criminal Procedure Rules sets out the court's case management powers and the duties of the parties in terms of managing cases. Furthermore, the Effective Trial Management Programme (ETM) was designed to reduce the number of ineffective trials by improving case preparation and progression from the point of charge through to trial or earlier conclusion. ETM worked with the local Criminal Justice Areas to implement the good practice guidance contained in the Criminal Case Management Framework.

### **Right of silence**

526. The Criminal Justice and Public Order Act 1994, which came into force in England and Wales on 10 April 1995, introduced provisions similar to those in Northern Ireland. They preserve the right of a suspect to remain silent when questioned by the police but permit inferences to be drawn from silence if:

- A suspect has, without reasonable explanation, failed to tell the police something which he later uses in his defence;
- A defendant does not give evidence on his own behalf at trial;
- A suspect fails to account for his presence at a particular time and place or to account for objects, substances or marks on his person at the time of his arrest;
- There are important safeguards to this which can be found in paragraph 387 of the fifth periodic report.

527. Following the ECHR case of Murray (1996), these safeguards were further enhanced by section 58 of the Youth Justice and Criminal Evidence Act 1999. This amended the Criminal Justice and Public Order Act 1994 provisions to prevent inferences being drawn if a suspect has not had the opportunity to speak to a solicitor and PACE Code C was amended accordingly with effect from 1 April 2003.

### **Jury trial**

528. In England and Wales, offences are classified into three categories: summary offences which are tried in magistrates' courts; indictable only offences which can be tried only by a jury in the Crown Court; and either way offences, which can be tried in either court. The decision on which court should try either way offences is made by magistrates. If they decide it would be appropriate for them to take the case, the defendant may elect for jury trial.

529. In the 1990s, the Review of Delay in the Criminal Justice System endorsed the view of the 1993 Royal Commission on Criminal Justice that defendants should no longer be able to

insist on trial in the Crown Court. Legislation to remove the ability of defendants to elect for trial in cases which are triable either way was introduced in Parliament but not enacted. This proposal no longer forms part of the Government's programme.

530. Section 321 of the Criminal Justice Act 2003 and its related schedule abolished most of the existing grounds of excusal from jury service. The change has made jury service a more socially inclusive duty, and strengthened the random selection of juries.

531. Part 7 of the Criminal Justice Act 2003 introduced provision for trials on indictment without a jury in certain narrowly defined cases. These are, certain fraud cases, cases where there is a danger of jury tampering, or where there has been jury tampering. Section 43 on non-jury trial in serious fraud cases requires an affirmative resolution of both Houses of Parliament before it is brought into force. The Government has recently decided to reintroduce this provision by way of fresh primary legislation.

### **Prosecution disclosure**

532. The prosecution has a duty to disclose to the defence both the evidence that it will present to the court as the prosecution case ("used material") and "unused material" that might reasonably be considered capable of undermining the prosecution case or of assisting the defence case. The position on used prosecution material remains unchanged since the Fifth Periodic Report.

533. The procedures for the disclosure of unused prosecution material were reformed in the Criminal Justice Act 2003. The Act retained the basic structure of the scheme in the core legislation, the Criminal Procedure and Investigations Act 1996, but introduced a number of improvements. One of these was, to combine the two different prosecution disclosure tests which used to apply at different stages of the disclosure process into the new single objective prosecution disclosure test referred to in the previous paragraph above.

534. In a group of cases including *Edwards and Lewis* (2003) the ECtHR found that the United Kingdom's procedures governing the disclosure of unused prosecution material and public interest immunity were not consistent, in the particular circumstances of those cases, with the ECHR. These cases were decided against the old common law disclosure arrangements which applied before the enactment of the Criminal Procedure and Investigations Act 1996. In the case of *H&C* (2004), the House of Lords, in interpreting *Edwards and Lewis*, did not find the domestic disclosure rules in England and Wales, based on the 1996 Act, inconsistent with the Convention rights.

### **Hearsay evidence**

535. The Government announced on 17 December 1998 that it had decided to accept all the recommendations of the Law Commission's 1997 report on hearsay evidence in criminal proceedings. More hearsay will be admissible, while the interests of the defendant will be protected. These reforms were taken forward in Part 11 of the Criminal Justice Act 2003.

536. The Criminal Justice (Terrorism and Conspiracy) Act 1998 allows as admissible the opinion of a senior police officer that the accused is a member of a proscribed and specified organisation, but stipulates that he cannot be convicted solely on officer's evidence, (or solely from inferences drawn from his silence). Corroboration is required to secure a conviction.

#### **Bad character evidence**

537. The Law Commission reported on "Bad Character in Criminal Proceedings" in 2001. The subject was also considered by Sir Robin Auld in his 2001 "Review of the Criminal Courts of England and Wales". The Government's approach was closely informed by both reports and the law of bad character was reformed in Part 11 of the Criminal Justice Act 2003. The provisions are intended to provide a comprehensive set of rules for the admissibility of this sort of evidence. The existing common law rules are abolished and other statute law is substantially repealed.

#### **Retrial for Serious Offences (Double Jeopardy)**

538. The Law Commission reported on "Double Jeopardy and Prosecution Appeals" in 2001. Part 10 of the Criminal Justice Act 2003 reforms the law relating to double jeopardy, by permitting retrials in respect of a number of very serious offences, where new and compelling evidence has come to light. The Government considers that these provisions are consistent with article 14(7) of the Covenant, as interpreted by Human Rights Committee General Comment No. 13 of 13 April 1984.

#### **Compensation for wrongful conviction**

539. In the last five financial years, the number of successful applications for compensation for wrongful conviction under section 133 of the Criminal Justice Act 1988 and the complementary ex-gratia scheme have been as follows:

	S.133	Ex-Gratia
2000/01	21	20
2001/02	17	10
2002/03	25	11
2003/04	23	8
2004/05	39	7

540. The ex-gratia scheme was abolished on 19 April 2006.

#### **Reducing delay between arrest and sentence for juveniles**

541. In 1996, the average time from arrest to sentence for persistent young offenders was 142 days. The Government Pledged to halve the time to 71 days by March 2002 (changed to May 2002 by the 2001 Manifesto). The Pledge is a target that applies jointly to all Criminal Justice Agencies. The Pledge target is for all areas to meet the Pledge consistently. The Pledge was met in 2005 for the fourth successive year with an overall performance of 69 days. For non-pledge cases the Government is working on new guidance for all those involved in the arrest to sentence process to ensure that roles and responsibilities are properly understood so that cases proceed as quickly as possible to conclusion.

## Legal Aid

542. In England and Wales, the Legal Services Commission was established under the Access to Justice Act 1999 in order to help people in need to receive high quality information, advice and legal representation; about two million people each year receive help from the Legal Services Commission to get access to justice. The Community Legal Service is a civil network of legal and advice providers while the Criminal Defence Service helps people who are under police investigation or facing criminal charges. Since 1997, legal aid expenditure has increased from £1.5 billion to over £2 billion in July 2006. In July 2005, the Government outlined its proposals, fully compliant with the HRA, to guarantee continued fair and equal access to justice; improve outcomes for those who most need publicly funded legal services ensuring that the taxpayer gets value for money from those who provide legal services. A review was then conducted by Lord Carter of Coles on the means to deliver these goals and its conclusions were published in July 2006.<sup>88</sup> The Government is currently engaged in consultation with stakeholders in order to implement these recommendations aimed at applying fundamental changes in the way legal aid services are procured so that:

- Clients have access to good quality legal advice and representation;
- A good quality, efficient supplier base thrives and remains sustainable;
- The taxpayer and government receive value for money; and
- The justice system is more efficient, effective and simple.<sup>89</sup>

543. In Scotland, the number of people receiving civil legal aid has continued to show reduction and the average case costs have continued to rise. To ensure continuing access to justice for those of limited means, the criteria for financial eligibility are up-rated annually in line with inflation. A wide-ranging package of reform and modernization of the civil legal aid system in Scotland came into force in August 2003. The reforms streamlined the legal aid system through increased efficiency in conduct of cases, improved access to justice, introduced quality assured representation for the client, increased the fees paid for legal aid work, and delivered more efficient administration. The effects of the reform were monitored in 2005 and some possible improvements identified. There has been some movement towards the provision of community legal services and several pilot programmes have been implemented. The delivery of publicly funded legal aid, advice and information in Scotland was reviewed in 2004 and a public consultation on the way forward followed in summer 2005. As a result, a range of legislative and other developments are under way aimed at progressing towards a better planned and coordinated mixed model of advice provision where advice is provided by the most appropriate adviser and a provision is based on needs. The Scottish Executive intends to take forward a

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<sup>88</sup> <http://www.legalaidprocurementreview.gov.uk/docs/carter-review-p1.pdf>.

<sup>89</sup> Lord Carter's Review of Legal Aid Procurement, *Legal aid – a market-based approach to reform*, July 2006, p. 3, <http://www.legalaidprocurementreview.gov.uk/docs/carter-review-p1.pdf>.

number of improvements to the provision of publicly funded legal assistance including expanding of the provision of both civil and criminal legal assistance by solicitors directly employed by the Legal Aid Board, where it is appropriate to do so; extending financial eligibility for civil legal assistance; working together with the Board and with local authorities to develop a joint approach to the proactive planning, co-ordination, support and development of publicly funded legal assistance, with a view to these functions being taken on by a national co-ordinating body in the longer term.

544. In Scotland, criminal legal aid is administered by the Scottish Legal Aid Board but can be granted by the Board or the Court. Legal aid is provided by the suspect's solicitor or a duty solicitor. All such solicitors must now be registered with the Board and comply with a published Code of Practice.

### **Overseas Territories**

#### **British Virgin Islands**

545. No development to report under this article.

#### **Cayman Islands**

546. There is nothing further to add to the information set out in the fifth periodic report.

#### **Falkland Islands**

547. The Legal Aid Scheme is now operated by the Senior Magistrate and not by the Attorney General and can take the following forms:

- 'Advice and Assistance' is advice provided to an individual in respect of any legal matter or issue arising in or relating to the Falkland Islands and which is not the subject of proceedings outside the Islands. This is only available to those individuals whose gross earnings (including those of wife or partner) do not exceed £12,500;
- 'Advice at the Police Station' - all persons arrested and held in custody, or volunteers attending the Police Station for interview under caution in connection with a criminal offence which is punishable by imprisonment, are entitled to free advice and assistance whilst at the Police Station;
- 'Representation Orders' pertain to any 'relevant proceedings' which may be or have been commenced in any court in the Falkland Islands and may be granted to an individual who may be or is a party to such proceedings or whose interests are likely to be affected by those proceedings. In order to be eligible for a representation order, the individual must meet specific financial criteria. Criminal proceedings are 'relevant proceedings' where a person has been charged with a criminal offence in the Falkland Islands, if one or more additional criteria. One of these criteria considers whether it is in the interests of justice for representation to be granted. This means whether, if the offence was proved, the court would be likely to impose a sentence which would deprive the accused of his livelihood, the deprivation of his liberty, or would result in

serious damage to his reputation; the case may involve substantial questions of law; the accused may be unable to understand the proceedings, or state his own case e.g. because of disability; the nature of the defence involves the tracing and interviewing of witnesses or expert cross-examination of a witness for the prosecution; it is in the interests of someone other than the accused that the accused be represented.

### **Gibraltar**

548. Since the last report the House of Assembly passed the Terrorism Ordinance 2005. Under the provisions of this Ordinance property (including money) used for or intended to be used in connection with terrorist offences or the financing of terrorism, may be confiscated by the courts. This Ordinance gives effect to the EU Framework Decision 2002/475/JHA on combating terrorism.

### **Montserrat**

549. The requirements of article 14 of the Covenant which are closely reflected in s. 57 of the Constitution continue to be scrupulously observed in Montserrat.

550. Montserrat has a growing Spanish speaking community and this has resulted in an increased need for interpreters, to be present during the court process. Identifying suitable interpreters is sometimes quite difficult.

551. Due to the volcanic activity, Montserrat no longer has a resident judge. The Judge served other jurisdictions in the Eastern Caribbean, and visited Montserrat three times a year to conduct the Criminal Assizes and to hear Civil Trial matters. Changes have now been made to the jurisdictions to which the Judge appointed to Montserrat is assigned and as a result the Judge now visits Montserrat every month. This has helped to expedite the judicial process and the administration of justice especially in civil matters.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

552. No developments to report under this article.

### **Turks and Caicos Islands**

553. No developments to report under this article.

## **Crown Dependencies**

### **Isle of Man**

554. The Tribunals Act 2006 is scheduled to come fully into force on 1 November 2006. This Act will provide that the members of tribunals are appointed by an independent Appointments Commission to ensure that such tribunals are constituted and operate in a manner that is consistent with human rights principles.

### **Bailiwick of Jersey**

555. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

556. There is nothing to add to comments set out in previous reports.

## **Article 15**

557. Protection against retroactive punishment is also provided under other international instruments ratified by the **United Kingdom**: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the fifth periodic report**

### **United Kingdom**

558. No developments to report under this article.

### **Overseas Territories**

#### **British Virgin Islands**

559. The common law rules pertaining to retrospective legislation are applicable in the BVI.

#### **Cayman Islands**

560. No issues under this article have arisen in the Cayman Islands.

#### **Falkland Islands**

561. Section 31 of the Constitution of the Falkland Islands provides that the Governor, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of the Falkland Islands. Section 47 of the Constitution provides that any such law made under s.31 may have retrospective effect. Under s.21(1) of the Interpretation and General Clauses Ordinance no written law shall come into operation until such time as it has been published in the *Gazette*. Under s.21(2) if so expressed therein, a written law of the Falkland Islands may have retrospective effect from the date of its publication in the *Gazette* but:

- No act or omission which did not constitute an offence at the time it was done or made retrospectively shall become an offence; and
- No written law of the Falkland Islands shall render any offence committed before that law came into operation punishable more severely than it would have been if that law had not been made.

562. Under s.13(4) of the Constitution no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed. Under s.53 (1) of the Crimes Ordinance a person may not by virtue of any provision of that Ordinance be prosecuted in respect of any act or omission which did not constitute an offence at the time it was done or made.

### **Gibraltar**

563. In Gibraltar the general rule that no Ordinance is to be construed to have a retrospective effect unless such a construction appears very clearly in the terms of the Ordinance, or arises by necessary and distinct implication, applies.

### **Montserrat**

564. No further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

565. The rule of English law set out in the first sentence of the article would apply in Pitcairn.

### **Turks and Caicos Islands**

566. No developments to report under this Article.

## **Crown Dependencies**

### **Isle of Man**

567. There have been no significant changes in respect of this article.

### **Bailiwick of Jersey**

568. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

569. There is nothing to add to comments set out in previous reports.

## **Article 16**

570. Protection of the recognition as a person is also provided under other international instruments ratified by the **United Kingdom**: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the fifth periodic report**

### **United Kingdom**

571. Regarding the issue of prisoners' right to vote, please see response to paragraph 10 of the concluding observations (chap. II.A).

### **Overseas Territories**

#### **British Virgin Islands**

572. No developments to report under this article.

#### **Cayman Islands**

573. No issues under this article have arisen in the Cayman Islands.

#### **Falkland Islands**

574. In the Falkland Islands, every person has the right to recognition as a person before the law, irrespective of their status.

575. Prisoners who are not serving a sentence of imprisonment of more than 12 months are not disqualified merely by reason of their conviction or their status as prisoners from being registered as electors in elections to the Legislative Council. If they are so registered, they are permitted and indeed encouraged to vote in elections.

#### **Gibraltar**

576. In Gibraltar a minor is defined in the Interpretation and General Clauses Ordinance as a person under the age of 18 years. A person who attains the age of 18 years enjoys full rights.

#### **Montserrat**

577. No further developments to report under this Article.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

578. No developments to report under this article.

#### **Turks and Caicos Islands**

579. No developments to report under this article.

### **Crown Dependencies**

#### **Isle of Man**

580. There have been no significant changes in respect of this article.

### **Bailiwick of Jersey**

581. There are no further developments to report under this Article.

### **Bailiwick of Guernsey**

582. There is nothing to add to comments set out in previous reports.

## **Article 17**

583. Protection of privacy is also provided under other international instruments ratified by the United Kingdom: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004):

- Treaty establishing the European Community and Treaty on European Union (as amended in Nice – 2003).

## **Progress since the fifth periodic report**

### **United Kingdom**

584. An individual who is the subject of a control order may apply to the court for an anonymity order to protect his/her identity.

## **Overseas Territories**

### **British Virgin Islands**

585. No developments under this article.

### **Cayman Islands**

586. The information set out in the fifth periodic report remains unchanged for the Cayman Islands.

587. In addition, by virtue of The Caribbean Territories (Criminal Law) Order 2000 homosexual acts in private no longer constitute offences provided that the parties consent and have attained the age of 18 years. The Order also has effect in relation to acts done before its commencement.

### **Falkland Islands**

### **Data Protection**

588. The Data Protection Ordinance has not been, and there are no plans for it to be, brought into force. The Falkland Islands has no statutory equivalent of s.115 of the English Crime and Disorder Act 1998, which states that any person who (apart from that section) would not have power to disclose information to a relevant authority, shall have the power to do so in any case where disclosure is necessary or expedient for the purposes of the Act. This is an important

English provision as public bodies can only disclose information if they have the power to do so. S.115 therefore provides a power to exchange information where disclosure is necessary to support local Crime and Disorder Strategies or objectives, which must be aimed primarily at reducing crime and disorder in accordance with the Act.

589. In the Falkland Islands, the various departments of Government share relevant information as far as they feel able to, as a matter of good practice, which in itself is a positive development. It is proposed that legislative provisions specifically empowering the disclosure of information between relevant agencies and Government departments be put before Executive Council with a view to the legal position being clarified.

590. The English Data Protection Act 1998 precludes the transfer of personal data to a country or territories outside the European Community, unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data. This appears to have prevented the transfer of personal data to the Falkland Islands e.g. with regard to intelligence data on those wishing to work with children.

### **Closed Circuit Television**

591. A number of business establishments use closed-circuit television, without issue.

### **Intrusive surveillance**

592. Under s.57(b) of the Telecommunications Ordinance, a person is guilty of an offence who otherwise than under the authority of the Governor or in the course of his duty as a servant of the Crown or of a telecommunications utility licensed under the Ordinance, either:

- Uses any wireless telegraphy apparatus with intent to obtain information as to the contents, sender or addressee of any message (whether sent by wireless telegraphy or not) which neither the person using the apparatus nor any person on whose behalf he is acting is authorised by the Governor to receive; or
- Except in the course of legal proceedings or for the purpose of any report thereof, discloses any information as to the contents, sender or addressee of any such message, being information which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person.

593. The English Regulation of Investigatory Powers Act 2000 has not been made law in the Falkland Islands. However, in the event that the Governor granted his authority under s57(b), or in the event of non intrusive police surveillance being authorised, proper regard would be given to the spirit of the Codes of Practice issued under the Regulation of Investigatory Powers Act.

### **Homosexuality**

594. Previously there were differences between the age of consent for heterosexual and homosexual activity. The Sexual Offences Act 2003, as applied to the Falkland Islands by the Sexual Offences Ordinance 2005, makes the age of consent 16 years for both heterosexual and homosexual activity.

## **Gibraltar**

595. In 2004 the House of Assembly passed the Data Protection Ordinance 2004. This Ordinance protects the right to privacy in respect of information stored by organizations about individuals. It transposes into the law of Gibraltar European Directive 95/46/EC. The Ordinance imposes obligations on organizations that keep personal information about people to protect their right to privacy and gives individuals a range of enforceable rights including access to data held about themselves, and to have any errors corrected. A Data Protection Commissioner has been appointed to ensure that the Ordinance is complied with. The Data Protection Commissioner has the power to investigate possible breaches of the Ordinance and to award damages in the case of infractions that cause loss to any individual. Appeals against decisions of the Data Protection Commissioner lie with the Gibraltar courts.

## **Montserrat**

596. No further developments to report under this article.

## **Pitcairn, Henderson, Ducie and Oeno Islands**

597. The Convention offences referred to are, in large measure, prohibited by Part II (Offences Against Public Order) Part III (Offences Against the Person) and Part IV of the Summary Offences Ordinance 2000. The offender would on conviction in the Magistrate's Court be liable to a fine or imprisonment or both.

## **Turks and Caicos Islands**

598. No developments to report under this article.

## **Crown Dependencies**

### **Isle of Man**

599. On 1 April 2003, the Data Protection Act 2002 came into force and the Data Protection Act 1986 was repealed. The Act is designed to balance the legitimate needs of businesses and organizations to process personal information with an individual's right to privacy. The Act is based upon the Data Protection Act 1998 and was drawn up to be compliant with the EC Data Protection Directive 95/46/EC. The European Commission made a formal decision on 28th April 2004 recognizing the Isle of Man as a jurisdiction with an adequate level of protection for personal data.

600. On 1 October 2005, the Unsolicited Communications Order and the Unsolicited Communications Regulations 2005 came in to effect. The order implements Article 13 of the EU Privacy and Electronic Communications Directive (2002/58/EC) in the Island and the regulations make provisions to prevent unsolicited marketing communications to an individual via telephone, fax, email or text message.

601. The Regulation of Surveillance Bill is presently awaiting Royal Assent. Although practice in the Isle of Man is presently based on best practice in the United Kingdom, this legislation will place all procedures and restrictions relating to covert surveillance and associated matters on a statutory footing.

#### **Bailiwick of Jersey**

602. See the response to paragraph 14 of the concluding observations (chap. II.B).

#### **Bailiwick of Guernsey**

603. The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 sets out a comprehensive statutory scheme in respect of the interception of communications, the acquisition and disclosure of communications data, surveillance and covert investigations, the investigation of encrypted data, and the scrutiny of investigatory powers by an independent commissioner. Codes made under that Law deal with specific areas such as postal interception and covert surveillance.

604. The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 makes provision for criminal convictions to become spent and thereby non-disclosable by (for example) persons seeking employment. There are certain exceptions for particular classes of occupation (for example, for those involved in working with children). The exceptions are set out in the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006.

### **Article 18**

605. Protection for freedom of thought is also provided under other international instruments ratified by the United Kingdom: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

### **Progress since the fifth periodic report**

#### **United Kingdom**

606. See also the response to paragraph 14 of the concluding observations (chap. II.A).

#### **Places of worship**

607. The Government undertook to consult on a new power to order closure of a place of worship which is used as a centre for fomenting extremism. That consultation has now been completed, and resulted in a decision not to legislate at this stage. The Government also consulted with Muslim leaders in respect of those clerics who are not British Citizens to draw up a list of those not suitable to preach and who will be excluded from the United Kingdom in the future. The Mosques and Imams National Advisory Board was formally launched

on 27 June 2006. A steering group of Muslim leaders published a good practice guide for mosques alongside the launch of the Advisory Board. The Government will work with the Advisory Board to identify individuals who are not suitable to preach in this country and who should be considered for deportation or exclusion.

### **Religious education in schools**

608. Religious education (RE) is compulsory in all maintained schools in England. In most maintained schools it must be taught in accordance with locally agreed syllabuses that must “reflect the fact that the religious traditions in Great Britain are in the main Christian” while “taking account of the teaching and practices of the other principal religions represented in Great Britain”. Schools with a religious character are able to teach RE in accordance with the trust deed of the school or the tenets of the school’s foundation. Parents have the right to withdraw their children from receiving RE if they wish to do so. Further information regarding religious education in schools remains as detailed in paragraphs 461-464 of the Fifth Periodic Report.

### **Establishment of voluntary schools**

609. Any person or voluntary body of any religious persuasion can set up an independent school or can make proposals for a new voluntary school to be maintained by the local education authority, even if the school is already an independent school. The Government considers all proposals against educational, organizational and financial criteria (section 41 of the Act). Since 1 September 1999, proposals are decided by the local School Organization Committee or, if it cannot reach a decision, by an adjudicator appointed by the Government. Committees and adjudicators must take guidance from the Government into account when considering proposals.

### **Religious discrimination**

610. Religious discrimination is discussed under articles 2 and 26.

### **Workers’ practice of religion and religious dress**

611. Through its Race Relations Employment Advisory Service, published guidance and its promotional programme, the Government encourages employers to provide flexible working arrangements. These include those made necessary by cultural and religious differences, and it promotes the message that diversity in the workplace helps businesses to succeed and prosper.

## **Overseas Territories**

### **British Virgin Islands**

612. Under the Education Act, 2004 (No. 10 of 2004), no student of a public or private school can be compelled to receive religious education or instruction or to take part in or attend any collective worship or other religious ceremony or observance, except with his own consent or, if he is a person under the age of eighteen years, the consent of his parent.

613. Further, no student of a public or private school can, as a condition of admission or attendance in the school, be required to participate in religious education, to attend or abstain from attending any place of religious instruction or worship, or to attend a school or an activity in any place on any day specially set apart for religious worship by the religious body to which he belongs.

614. The current Labour Code prohibits discrimination in the workplace by reason of, among other things, creed and political belief. If enacted, the Labour Code Bill, 2005 would prohibit discrimination in the workplace by reason of religious belief and political opinion or affiliation.

### **Cayman Islands**

615. It is anticipated that any alleged violations of this Article will be dealt with under the forthcoming Bill of Rights.

### **Falkland Islands**

616. Under s.14 of the Education Ordinance 1989, it is the duty of the Director of Education, the Board of Education, and every committee of the Board to contribute to the spiritual, moral, mental and physical development of the people of the Falkland Islands by ensuring that efficient education is available to every person in the Falkland Islands. This duty does not require education to be provided in accordance with the beliefs, tenets or practices of any religion, national group, or cult. Under s.24(1) of the Ordinance, if the parent of any pupil in attendance at any Government school requests that their child be excused from attendance at religious worship in the school and/or from attendance at religious instruction in the school then the pupil must be excused from such attendance.

### **Gibraltar**

617. The Gibraltar Constitution Order protects an individual's freedom of thought:

- Section 1 states: "It is hereby recognised and declared that in Gibraltar there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely:
  - (a) The right of the individual to life, liberty, security of the person and the protection of the law;
  - (b) Freedom of conscience, of expression, of assembly and association and of freedom to establish schools; and

(c) The right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation, and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest. Protection of right to life.”

618. Section 9 of the Constitution provides:

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) Except with his own consent (or, if he is under the age of eighteen years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.
- (3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Gibraltar, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.
- (4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (3) of this section to the extent that the law in question makes provision:

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief, except so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

## **Montserrat**

619. No further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

620. No developments to report under this article.

### **Turks and Caicos Islands**

621. The new Constitution makes provision to protect freedom of thought, conscience and religion of every citizen in the islands. It further provides that freedom of conscience includes freedom of thought and of religion, freedom to change religion or belief and freedom, either alone or in community with others, and both in public and in private to manifest and propagate one's religion or belief in worship, teaching, practice and observance. It also provides that "no person attending any place of education shall be compelled to receive religious instruction or to take part in, or attend, any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own".

## **Crown Dependencies**

### **Isle of Man**

622. The Education Act 2001, which came into force in 2004, safeguarded the rights of teachers in provided and maintained schools. No teacher in such a school may be required to teach religious education, for example, or be given a lower salary because of their religious beliefs or their desire not to attend acts of religious worship held at the school.

623. The Education Act 2001 also safeguarded the legal rights of parents or guardians to withdraw their children from religious education or religious worship and to have access to denominational teaching of their choice.

624. The Employment Act 2006 re-enacts the existing right in the Employment Act 1991 of employees not to be dismissed on grounds of their religious belief or related reasons, but removes the one year qualifying period, presently necessary to claim unfair dismissal on such grounds.

### **Bailiwick of Jersey**

625. See the response to paragraphs 8 and 9 of the concluding observations (chap. II.B).

### **Bailiwick of Guernsey**

626. There is nothing to add to comments set out in previous reports.

## **Article 19**

627. Protection for freedom of opinion is also provided under other international instruments ratified by the **United Kingdom**: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the fifth periodic report**

### **United Kingdom**

#### **Open Government - the Freedom of Information Act**

628. The Freedom of Information Act 2000 (FOIA) came into force on 1 January 2005 and provided for:

- The right of wide general access to information held by the Government subject to clearly defined exemptions and conditions including some which are subject to the application of a public interest test;
- A duty to publish information;
- Powers of enforcement through an independent Information Commissioner<sup>90</sup> and an Information Tribunal.

629. Under the FOIA, any person can make a request because there are no restrictions based on the applicant's age, nationality, or country of residence. The request to the public authority that is believed to hold the information must be in written format (letter or e-mail). The request should simply state the name of the applicant, the address where he/she can be contacted and a description of the information required. Applicants do not need to state that the request falls under the FOIA although they are welcome to do so if they wish. Applicants must describe the information they require in enough detail to enable the public authority to search for the information. Public authorities must comply with the request promptly and should provide the information within 20 working days. Extensions of time are only permitted in certain circumstances. If they apply, and if they need more time, public authorities are required to inform the applicant and indicate when they expect to be able to comply with the request. The FOIA applies to all public authorities (as defined in the Act), thus including central and local government, the health service, schools, colleges and universities, the police, many non-departmental public bodies, committees and advisory bodies.

630. Applicants may request that the information be given to them in a particular format. However, a public authority may take into account the cost of supplying the information in this form before complying with the request. In particular, applicants may ask for information in permanent form, in summary form, or for permission to inspect records containing the information. It may also be possible for public authorities to supply the information in Braille or audio format, in large type, or translated into another language. However, applicants should discuss this with the individual public authority. The FOIA does not place restrictions on how applicants may use the information received. However, the Act does not transfer copyright in any information supplied under it. If applicants plan to re-produce the information received, they should ensure that they will not be breaching anyone's copyright by doing so.

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<sup>90</sup> The Information Commissioner is also responsible for promoting the rules for the processing of personal information under the Data Protection Act 1998.

631. The FOIA contains a list of exemptions to the right of access in order to protect legitimate interests and sensitivities. Some of these exemptions are absolute. Others are subject to a public interest test and are known as “qualified exemptions”. The FOIA contains the following exemptions:

- Section 21 - information accessible to the applicant by other means. This exemption recognizes that the right of access under the FOIA is supplementary to the very many ways in which public authorities already provide information to the public. For example, section 21 will apply if information is included on a public authority’s publication scheme or if the public authority is under a statutory obligation to give out the information to members of the public on request. This exemption does not mean that applicants cannot have the information they have requested but that it will not be provided under the FOIA. Section 21 is an absolute exemption, that is, there is no public interest test;
- Section 22 - information intended for future publication. This exemption may apply if the public authority intends to publish the requested information at some future date. This ensures that the FOIA does not force public authorities into premature publication of information. This exemption is public interest tested;
- Section 23 - information supplied by or relating to bodies dealing with security matters. This exemption applies to two categories of information: information supplied directly or indirectly by the Security Service bodies (this includes the Security Service, the Secret Intelligence Service and General Communications Headquarters as well as others) and information that relates to one of the Security Bodies. This exemption is absolute so there is no public interest test;
- Section 24 - national security. This exemption applies to information whose exemption from the right of access is required for the purpose of safeguarding national security. In order to apply this exemption, the public authority must decide whether any harm to national security might result from its disclosure. This exemption is public interest tested;
- Section 26 – defence. This exemption applies to information whose disclosure would be likely to prejudice: the defence of the British Islands or any colony; or the capability, effectiveness or security of the armed forces of the Crown or any forces co-operating with them. In order to determine whether this exemption applies the public authority must establish how exactly these defence matters would be prejudiced by disclosure of the information. This exemption is public interest tested;

- Section 27 - international relations. This exemption applies to the following two categories of information: information whose disclosure would be likely to prejudice international relations<sup>91</sup> and confidential information obtained from another state, an international organisation or an international court. This exemption is public interest tested;
- Section 28 - relations within the United Kingdom. This exemption applies to information whose disclosure would be likely to prejudice relations between two or more administrations in the UK. The relevant administrations are: the government of the United Kingdom, the Scottish Administration, the Executive Committee of the Northern Ireland Assembly and the National Assembly for Wales. This exemption is public interest tested;
- Section 29 - the economy. This exemption applies to information whose disclosure would be likely to prejudice the economic or financial interests of the United Kingdom or of any administration in Britain. This exemption is public interest tested;
- Section 30 - investigations and proceedings conducted by public authorities. This exemption is concerned primarily with preserving the integrity of certain proceedings and investigations which public authorities have the duty to conduct. There are two ways in which the application of this exemption may be triggered: where information has at any time been held for the purpose of specified criminal and other investigations or proceedings; and where information relates to the obtaining of information from confidential sources and was obtained or recorded for a number of specified investigations or proceedings. This exemption is public interest tested;
- Section 31 - law enforcement. This exemption is concerned with protecting a wide range of law enforcement interests and its application turns on whether disclosure would be likely to prejudice those interests. Some interests that are protected by section 31 are drawn quite widely, for example: the administration of justice, the prevention or detection of crime and the operation of immigration controls. But the exemption also applies where the exercise by any public authority of certain specified functions would be prejudiced by disclosure. Those functions include: ascertaining whether a person is responsible for improper conduct, determining the cause of an accident and ascertaining a person's fitness to carry on a profession. This exemption is public interest tested;
- Section 32 - court records. This section exempts information contained in certain litigation documents and court, tribunal and inquiry records. It will apply regardless of the content of the information. There are separate and specific regimes for gaining access to court and tribunal records and this exemption ensures that those regimes are not superseded by the FOIA. This exemption is absolute so there is no public interest test;

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<sup>91</sup> The term "international relations" means relations between the UK and any other state, international organisation or court, or the interests of the UK abroad or the promotion or protection of those interests.

- Section 33 - audit functions. Section 33 can only be used by public authorities which have financial audit functions in relation to other public authorities or whose functions include examining the efficiency, effectiveness and economy with which other public authorities discharge their functions. This exemption applies to information whose disclosure would be likely to prejudice the exercise of these functions. This exemption is public interest tested;
- Section 34 - parliamentary privilege. Section 34 applies to information whose exemption is required in order to avoid an infringement of the privileges of either House of Parliament. The purpose of this exemption is to preserve parliamentary privilege and protect the position of Parliament. This exemption is absolute so there is no public interest test;
- Section 35 - formulation of government policy. This exemption is aimed at protecting the government policy-making process and its proper use is essential to ensuring the delivery of effective government. It applies to information which relates to: the formulation and development of government policy; communications between Ministers (including Cabinet proceedings); the provision of advice by the Law Officers (or any request for advice); and the operation of any Ministerial private office. This exemption is public interest tested;
- Section 36 - conduct of public affairs. This section exempts information whose disclosure would be likely to have any the following effects: prejudice collective Cabinet responsibility; inhibit the free and frank provision of advice and exchange of views for the purposes of deliberation; or prejudice the effective conduct of public affairs. This exemption can only be used if the section 35 exemption does not apply. It can also only be used if a “qualified person” thinks that the disclosure would have the specified effects. In most cases, the qualified person for a public authority is the most senior person in that organisation. This exemption is public interest tested;
- Section 37 - communications with Her Majesty and honours. Section 37 applies to two categories of information: Information relating to communications with Her Majesty, other members of the Royal Family or the Royal Household; and Information relating to the conferring by the Crown of any honour or dignity. This exemption is public interest tested;
- Section 38 - health and safety. This section applies to information whose disclosure would be likely to endanger the physical or mental health or the safety of any individual. This exemption is public interest tested;
- Section 39 - environmental information. This section exempts environmental information whose disclosure is governed by the Environmental Information Regulations 2004 (EIRs). The EIRs implement a European Directive and establish a specific regime to enable individuals to access environmental information, including exemptions from that right of access. The disclosure of environmental information must be considered under the EIRs. Section 39 therefore exempts this from the rights of access under the FOIA. The exemption is public interest tested;

- Section 40 - personal information. This exemption concerns personal data within the meaning of the Data Protection Act 1998. Section 40 applies to two distinct types of requests for information: if the applicant asks for his/her own personal data, the information is exempt (but the request will be handled under the Data Protection Act instead); and if the applicant asks for someone else's personal data, then that information will be exempt if its disclosure would contravene any of the data protection principles in the Data Protection Act 1998 (or certain other provisions of the Data Protection Act 1998). Parts of this exemption are absolute; others require the application of the public interest test;
- Section 41 - information provided in confidence. This exemption applies to information that has been obtained from another person and whose disclosure to the public would constitute an actionable breach of confidence (i.e. the person who supplied the information to the public authority could take legal action against the public authority if the public authority disclosed it to anyone else). This exemption is absolute so there is no public interest test;
- Section 42 - legal professional privilege. This exemption applies to information that would be subject to legal professional privilege if litigation were in progress. Legal professional privilege covers confidential communications between lawyers and their clients, and certain other information that is created for the purposes of litigation. This exemption ensures that the confidential relationship between lawyer and client is protected. This exemption is public interest tested;
- Section 43 - commercial interests. This section exempts information whose disclosure would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets. This exemption is public interest tested;
- Section 44 - prohibitions on disclosure. This exemption applies to three distinct categories of information: If there is an existing statutory prohibition on the disclosure of information by a public authority then that information will be exempt; if disclosure would be incompatible with a European Community obligation then the information will be exempt; and if disclosure would constitute or be punishable as a contempt of court at common law (for example because it would breach a court order) then it will be exempt. This exemption is absolute so there is no public interest test.

632. When a public authority decides to withhold the information under one of the exemptions listed above, it must inform the applicant of the decision and explain the reasons. Applicants can then ask the public authority for an internal review of this decision. Following this or if the public authority refuses to review its decision, then applicants can appeal to the independent Information Commissioner (IC). The IC has the power to investigate the way the public authority handled the request and, if he agrees that the public authority has wrongly withheld information, he can order it to disclose the information. The decisions of the IC can be appealed to the Information Tribunal and to the court on a point of law.

633. The FOIA applies to England, Wales and Northern Ireland. Scotland has its own Freedom of Information Act (The Freedom of Information (Scotland) Act 2002).

634. Most requests under the FOIA are free. However, applicants may be asked to pay a small amount for making photocopies or postage. If the public authority believes that the request would cost more than £450 (or £600 for a request to central government) to find the information and prepare it for release, then it can turn down the request but may ask the applicant to narrow down the request by being more specific on the desired information.

### **Proscription**

635. Part 2 of the Terrorism Act 2000 allows for the proscription of organizations which are believed to be connected to terrorism. The decision is made by the Government on the basis of intelligence material. However, any decision made by the Government to proscribe an organization has to be approved by Parliament. A proscribed organisation, or any person affected by its proscription, may apply to the Government for de-proscription. There is then a route of appeal to the Proscribed Organisations Appeal Commission (POAC), an independent tribunal made up of senior judges who are cleared to see intelligence material. POAC 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.

### **Encouragement of terrorism**

636. The Terrorism Act 2006 contains the offence of encouragement of terrorism, including glorification of terrorism, to try to combat those who create a climate in which terrorism is more likely to flourish. However, in order for this offence to be committed a person making a statement must intend members of the public to be encouraged to commit acts of terrorism or be knowingly reckless as to the effect of his or her remarks. The offence can only be committed if members of the public can reasonably infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances. A person making a statement has a defence if he can show that the statement did not represent his views or have his endorsement.

## **Overseas Territories**

### **British Virgin Islands**

637. Freedom of opinion is generally restricted by common law and statutory provisions relating to contempt of court, sedition, defamation, breach of confidence, disorderly conduct, the use of abusive, blasphemous, indecent, insulting, profane or threatening language in public and behaviour likely to cause a breach of the peace.

638. In August 2005, the Law Reform Commission completed and submitted its Report on Freedom of Information, together with a draft Freedom of Information Bill. The Report and the Bill are still being reviewed.

### **Cayman Islands**

639. A Freedom of Information Bill has been drafted with a view to enactment in November 2006. Such legislation is intended to allow access to public records and documents, subject to certain exceptions, thereby promoting greater transparency and accountability.

### **Falkland Islands**

640. The English Freedom of Information Act has not been applied to the Falkland Islands, and there are currently no proposals that it should be. However, consideration is to be given to the introduction of a Code.

### **Gibraltar**

641. In addition to section 1 of the Constitution (reproduced under the update to Article 18) section 10 of the Constitution provides:

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:
  - (a) In the interests of defence, public safety, public order, public morality or public health;
  - (b) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or
  - (c) For the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

### **Montserrat**

642. No further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

643. No developments to report under this article.

### **Turks and Caicos Islands**

644. See comments under article 18.

## **Crown Dependencies**

### **Isle of Man**

645. See the response to paragraph 15 of the concluding observations (chap. II.B).

### **Bailiwick of Jersey**

646. See the response to paragraphs 8 and 9 of the concluding observations (chap. II.B).

### **Bailiwick of Guernsey**

647. There is nothing to add to comments set out in previous reports.

## **Article 20**

648. Progress in countering war propaganda and incitement to discrimination since the fifth periodic report is set out below.

## **United Kingdom**

### **Incitement to racial and religious hatred**

649. The United Kingdom has traditionally allowed people to make known views with which most others may well disagree, and many may find distasteful or even offensive, provided the views are not expressed violently or do not incite violence or hatred against others.

650. Legislation already prohibits threatening, abusive or insulting words or behaviour which is intended, or likely, to stir up or incite racial hatred in Great Britain (Part III of the Public Order Act 1986). This includes the dissemination, or possession with a view to dissemination, of material in order to incite racial hatred. It includes material transmitted online, for example through the internet, as well as through traditional print media. In 2001, the maximum penalty for this offence was increased from 2 to 7 years' imprisonment. The Racial and Religious Hatred Act 2006 prohibits threatening words or behaviour intended to stir up hatred on grounds of religious belief or lack of religious belief.

651. An offence of intentionally causing harassment, alarm or distress, with an immediate power of arrest, and maximum penalties of six months' imprisonment and/or £5,000 fine, was introduced by the Criminal Justice and Public Order Act 1994. This helps the police deal more effectively with serious, especially persistent, racial harassment. Section 19 of the Public Order Act 1986, dealing with the publication and distribution of racially inflammatory material, was reclassified as an arrestable offence.

652. The Crime and Disorder Act 1998 introduced new "racially aggravated" offences where there is evidence of racist motivation or hostility, with higher penalties for such hate crimes. They came into effect on 30 September 1998. In 2001, the law was extended to include similar religiously aggravated offences.

## **Overseas Territories**

### **British Virgin Islands**

653. No developments to report under this Article.

### **Cayman Islands**

654. No issues under this article have arisen in the Cayman Islands.

### **Falkland Islands**

655. The law of the Falkland Islands provides various restrictions on the right to freedom of expression, which are considered necessary for the respect of the rights or reputations of others or for the protection of national security or of public order or of public health or morals. These restrictions deal with such conduct as incitement to violence or incitement to racial hatred, both of which may constitute criminal offences, or the publication of material which defames others, which may constitute a civil wrong.

### **Gibraltar**

656. Section 34 of the Criminal Offences Ordinance criminalizes conduct conducive to a breach of the peace, which perforce includes conduct which incites hostility or violence.

### **Montserrat**

657. No further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

658. No developments to report under this article.

### **Turks and Caicos Islands**

659. The Constitution makes provision to protect against racial discrimination. However, there is no domestic legislation in place to prohibit conduct which is intended to stir up or incite racial hatred.

## **Crown Dependencies**

### **Isle of Man**

660. The Department of Home Affairs' Crime and Disorder Committee is to consider the provisions within the United Kingdom's Racial and Religious Hatred Act 2006 for possible inclusion in a future Isle of Man Bill.

661. The Department of Home Affairs' Crime and Disorder Bill will contain a provision which will provide for an increase in sentence based on aggravation related to sexual orientation, disability, or membership of a racial or religious group. The court must then treat the fact that the offence was so aggravated as increasing the seriousness of the offence, and that it must be stated in open court that the offence was so aggravated.

### **Bailiwick of Jersey**

#### **Crime (Racial Hatred) (Jersey) Law**

662. In 2002, the States of Jersey resolved to create a criminal offence for acts involving incitement to racial hatred. Proposals for a crime (Racial Hatred) (Jersey) Law are to be brought to the Assembly of the States of Jersey for debate in 2006. This legislation will create a criminal offence of using threatening, abusive or insulting behaviour, words or written material with the intention of, or with the likelihood of, stirring up racial hatred, and may include provision regarding acts of violence against racial groups.

663. The provisions will also extend, subject to certain defences, to publishing or distributing material, showing or playing a recording of visual images, broadcasting, and public performance of a play. Possession of racially inflammatory material with a view to carrying out any of the above actions will also be an offence.

664. Subject to the adoption of the draft Law by the States, it is hoped the legislation would be brought into force during 2007. It is proposed to address the issue of racial hatred in this way, as a discrete piece of legislation separate from the Discrimination Law (see response to Paragraph 18 of the Concluding Observations – Part 2(b)) because enforcement of the law will involve criminal sanctions rather than civil penalties.

665. It is already the position that in cases brought before the courts under the existing criminal law, the court takes into account when considering the appropriate sentence any racially aggravating characteristics of the offence. That has been the position for many years. The new Law would provide additional protection against racist behaviour by the creation of the new criminal offences.

### **Bailiwick of Guernsey**

666. See the response to paragraph 18 of the concluding observations (chap. II.B).

#### **Article 21**

667. Protection for freedom of assembly is also provided under other international instruments ratified by the United Kingdom: ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the fifth periodic report**

### **United Kingdom**

667. There are no further developments to report under this article.

### **Overseas Territories**

#### **British Virgin Islands**

668. There are no developments to report under this Article.

#### **Cayman Islands**

669. No issues under this Article have arisen in the Cayman Islands. However, it is anticipated that any alleged violations will be dealt with under the forthcoming Bill of Rights.

#### **Falkland Islands**

670. S.45 of the Crimes Ordinance 1989 provides that a person commits an offence who:

- At a lawful public meeting acts in a disorderly manner for the purposes of preventing the transaction of the business for which the meeting was called;
- With the intention of disrupting any act of religious worship or causing distress or annoyance to any person attending for the purpose of worship:
- Uses abusive or insulting words or behaviour;
- Displays any writing, sign or other visible representation; or
- Does any other thing intended to disrupt any act of religious worship;
- Within the hearing or sight of any person attending at that act of religious worship and so as to be likely to cause him annoyance.

671. For these purposes it is immaterial whether or not any thing done was likely to occasion a breach of the peace, or whether the public meeting or act of worship was being held in a building or in the open air.

672. There are in force sections 61, 68 and 69 of the English Criminal Justice and Public Order Act 1994 i.e. police powers to remove trespassers on land, the offence of aggravated trespass, and police powers to remove persons committing or participating in aggravated trespass. Part II of the English Public Order Act 1986 is not in force in the Falkland Islands. Part II includes the power of the police to impose conditions on processions and assemblies under sections 12 and 14 respectively.

## **Gibraltar**

673. The Constitution sets out the right to peaceful assembly. These are set out in section 1 (reproduced under the update to Article 18) and section 11 which provides:

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:
  - (a) In the interests of defence, public safety, public order, public morality or public health;
  - (b) For the purpose of protecting the rights or freedoms of other persons;
  - (c) For the imposition of restrictions upon public officers;
  - (d) For the registration of trades unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register (including conditions as to the minimum number and qualifications of persons necessary to constitute a trade union qualified for registration); or
  - (e) For the imposition of restrictions upon persons who are not resident in Gibraltar with respect to the holding of office in a trade union or membership of the general committee of management of a trade union or with respect to voting in any proceedings of a trade union relating to or connected with the calling or financing of a strike, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.”

## **Montserrat**

674. There are no further developments to report under this article.

## **Pitcairn, Henderson, Ducie and Oeno Islands**

675. There are no developments to report under this article.

## **Turks and Caicos Islands**

676. There are no developments to report under this article.

## **Crown Dependencies**

### **Isle of Man**

677. There have been no significant changes in respect of this article.

### **Bailiwick of Jersey**

678. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

679. There is nothing to add to comments set out in previous reports.

## **Article 22**

680. Protection for freedom of association is provided under other international instruments ratified by the United Kingdom:

- ILO Convention No. 87 on freedom of association and protection of the right to organise (1948);
- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004);
- ILO Convention No. 135 concerning protection and facilities to be afforded to the workers' representatives in the undertaking (1971);
- ILO Convention No. 151 concerning the protection of the right to organise and procedures for determining conditions of employment in the public services (1978).

## **Progress since the fifth periodic report**

### **United Kingdom**

#### **Armed Forces representation**

681. Regular Service personnel may become members of civilian trade unions and professional associations in order to enhance their trade skills and professional life and as an aid to resettlement into civilian life. They are not allowed to participate in industrial action or in any form of political activity organized by civilian trade unions or professional associations.

682. Representation and safeguarding the well-being of Service Personnel is a vital function of the chain of command. The interests of Service Personnel are also represented by a number of organizations such as the Forces Pension Society, Service Families Federations and the Armed Forces Lesbian and Gay Association. There have been proposals for the creation of an Armed Forces Federation but the Government has yet to see the support the idea receives from serving personnel and will need to consider how to respond to this development.

### **Terrorist organizations**

683. The list of organizations proscribed in the United Kingdom is found in Schedule 2 of the Terrorism Act 2000 and contains 44 international organizations and 14 organizations in Northern Ireland, proscribed under previous legislation. This list is kept under review by the Government, who must seek the approval of Parliament before additions can be made. A proscribed organisation, or any person affected by its proscription, may apply to the Government for de-proscription. There have been no prosecutions in England and Wales for membership of a proscribed organization.

684. According to the Government's independent reviewer of terrorist legislation, there have been 33 charges relating to proscription offences under the Terrorism Act 2000 between 19 February 2001 and 31 December 2005 in Great Britain, excluding Northern Ireland.

### **Overseas Territories**

#### **British Virgin Islands**

685. There are no developments to report under this article.

#### **Cayman Islands**

686. No issues under this article have arisen in the Cayman Islands. However, it is anticipated that any alleged violations will be dealt with under the forthcoming Bill of Rights.

#### **Falkland Islands**

687. There are no further developments to report under this article.

#### **Gibraltar**

688. There are no further developments to report under this article.

#### **Montserrat**

689. There are no further developments to report under this article.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

690. The Trade Unions and Trade Disputes Ordinance 1959 provides for the registration of trade unions, the appointment of a Registrar of Trade Unions and the regulation of trade unions.

#### **Turks and Caicos Islands**

691. British terrorism legislation is extended to the Turks and Caicos Islands. There have been no prosecutions for membership of proscribed organizations.

## **Crown Dependencies**

### **Isle of Man**

692. The Employment Act 2006 re-enacts and strengthens existing rights in the Employment Act 1991 and the Employment (Amendment Act) 1996 which provide protection against discrimination on trade union grounds. Examples of the increased protection are as follows:

- Protection against discrimination at recruitment is extended to cover the applicant's past trade union membership and activities;
- Inducements by employers to workers to be, or not to be, trade union members or involved in union activities, or not to have their pay or conditions negotiated by collective bargaining are made unlawful;
- Existing protection against any detriment (e.g. demotion, dismissal) for exercising trade union rights is now extended to cover some other types of trade union activities such as use of trade union services;
- Protection for employees taking industrial action is strengthened; and
- The remedies for dismissal on trade union (and other) grounds are strengthened and the Employment Tribunal is given new powers to order re-employment.

### **Bailiwick of Jersey**

#### **Employment Relations (Jersey) Law**

693. Following extensive public consultation on a framework for good industrial relations in Jersey, the Employment and Social Security Committee lodged a Report in 2002 on Employment Relations Legislation. A draft Employment Relations Law was prepared, which the Committee released for public consultation in September 2004. Simultaneously the Employment Forum released a consultation document on the content of the codes of practice to accompany the draft Law. The draft Law was adopted by the States Assembly on 17 May 2005. Royal assent is awaited.

694. Amongst other matters, the draft Law will clarify the status of trade unions bodies as legal entities, with a definition wide enough to cover most trade unions, employer associations and staff associations. The Law will afford them the legal rights or responsibilities of other legal entities, and will clarify the obligations and immunities of trade unions and employers' associations, and their officials and members.

695. The new legislation is considered to be consistent with and promote the rights guaranteed under the International Labour Organisation Convention of 1948 to the extent that the island is bound by it.<sup>92</sup>

### **Bailiwick of Guernsey**

696. The comments set out in the first report continue to apply. There are no political parties in the Bailiwick but no restrictions exist which would prevent the establishment thereof if it was desired to do so.

### **Article 23**

697. Protection for family and marriage is also provided under other international instruments ratified by the United Kingdom:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004);
- European Social Charter (1961);
- Convention on consent to marriage, minimum age for marriage and registration of marriages (1962);
- International Covenant on Economic, Social and Cultural Rights (1966).

### **Progress since the fifth periodic report**

#### **United Kingdom**

#### **Gender Recognition Act 2004**

698. In April 2005, the Gender Recognition Act 2004 (GRA) came into force. The GRA allows transsexual people to be recognised in their acquired gender. The GRA provides for the establishment of a Gender Recognition Panel which assesses applications from transsexual people. The panel consists of both legal and medical experts. Applicants need to complete an application form, which can be obtained from the panel, and attach the required evidence. Following a successful application to the Gender Recognition Panel, a transsexual person, will, from the date of recognition:

- Be treated for all purposes as a person of the acquired gender;
- Acquire all the rights and responsibilities which fall to a male or female of birth gender;

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<sup>92</sup> Full details of the legislation are available on the States of Jersey website <http://www.gov.je/SocialSecurity/Employment/Jobs+In+Jersey/Employment+Relations/>.

- Be able to get married in the acquired gender (to a person of the opposite gender or form a civil partnership in the acquired gender with a person of the same gender);
- Be eligible for the State retirement pension and other benefits at the age appropriate to the new gender;
- Be able to apply for a new birth certificate in their acquired name and gender (if their birth has been registered in the United Kingdom).

### **Civil Partnership Act 2004**

699. In December 2005 the Civil Partnership Act came into force. Civil Partnership is a completely new legal relationship, exclusively for same-sex couples, distinct from marriage. The Act gives civil partners parity of treatment with spouses, as far as is possible, in the rights and responsibilities that flow from forming a civil partnership.

700. The aim of the Civil Partnership Act, is to address the injustices that same-sex couples faced because they have been unable to secure legal recognition of their relationships. Provisions in the Act include both rights and responsibilities. For example a duty to provide maintenance to the other partner; access to fatal accident compensation; and the right to survivor pension benefits, to name a few. The Act does not apply to opposite-sex couples as they already have the opportunity to obtain a legally recognised status for their relationship through marriage, whether through a religious or civil ceremony.

### **Overseas Territories**

#### **British Virgin Islands**

701. There are no developments to report under this Article.

#### **Cayman Islands**

702. No issues under this Article have arisen in the Cayman Islands. However, it is anticipated that any alleged violations will be dealt with under the forthcoming Bill of Rights.

#### **Falkland Islands**

703. In the law of the Falkland Islands marriage is a voluntary union between a man and a woman to the exclusion of all others. The Falkland Islands Government has no current plans to introduce legislation to permit same-sex marriages or legislation permitting civil partnerships to be entered into in the Falkland Islands.

704. No legal measures have been introduced to date to address the question of birth certificate changes for transsexual people.

#### **Gibraltar**

705. There are no further developments to report under this article.

### **Montserrat**

706. There are no further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

707. The institution of marriage is governed on Pitcairn by the Marriage Ordinance 1952, which provides for the appointment of a Registrar and Deputy-Registrar. Previous offences in the Justice Ordinance of living as man and wife without being lawfully married and of adultery have now been repealed.

### **Turks and Caicos Islands**

708. The Constitution (Section 8) protects the right to have a family environment. It is Government policy to preserve the family unit. Under the immigration law, a child or dependent children travelling together with, or separately from, their parent who is entitled to enter the islands, shall be granted leave to enter and remain on the same terms as their parents.

## **Crown Dependencies**

### **Isle of Man**

709. The Matrimonial Proceedings Act 2003, which came into force on the 1 April 2004, re-enacts with amendments the Acts listed in the Isle of Man Government's fourth report under this Article (including those parts of the Family Law Act 1991 relating to matrimonial proceedings). The 2003 Act also repeals the Married Women's Property Dower and Widowright Act 1921 and the Married Women's Property Act 1965 and re-enacts certain relevant provisions thereof with amendments in terms conferring jurisdictional opportunity on both spouses. The Act also makes new provision for family homes and domestic violence; and for connected purposes.

710. The Isle of Man Government expects to shortly begin a public consultation exercise on amending and updating Isle of Man marriage and civil registration legislation with a view, inter alia, to:

- Creating an all Island registration district (as opposed to the present four), which should help give greater customer access;
- Updating the prohibited degrees of relationship (to bring the Island into line with other jurisdictions and to take account of recent judgements in the European Court of Human Rights);
- Allowing approved places (hotels, etc) to hold civil weddings.

711. Following the judgement against the State party in the cases of *Goodwin & I vs UK* in the ECtHR, the United Kingdom enacted the Gender Recognition Act 2004, which allows transsexual persons to be recognised in their acquired gender and marry a person who is the opposite to that gender.

712. The Isle of Man Government accepts the international human rights obligation established by the judgement of the European Court and legislation based on that in the United Kingdom has been included in the legislative programme with a view to it being progressed in the next session.

713. The next administration also will consider whether legislation equivalent to the United Kingdom's Civil Partnership Act 2004, which allows homosexual couples to register civil unions, should be progressed.

## **Bailiwick of Jersey**

### **Marriage and Civil Status (Jersey) Law**

714. The Marriage and Civil Status (Jersey) Law 2001 was brought into force on 1 May 2002. It replaced the Loi (1842) sur l'Etat Civil and is designed to update the procedures for the registration of births, deaths and marriages. The changes introduced by this Law will be of benefit to a wide cross-section of the community.

715. The new Law provides for the conduct of civil marriages in approved venues other than the Register Office, and will allow ministers and priests of all churches to celebrate marriages in their churches without the parish registrar being present. It will also provide couples with a wider choice of location in which to marry.

716. The Law also updates and introduces improved provisions relating to the rights and responsibilities regarding registration of births.<sup>93</sup>

## **Bailiwick of Guernsey**

717. The Matrimonial Causes (Guernsey) (Amendment) Law, 2003 allows the Matrimonial Causes division of the Royal Court to make interim occupation orders in respect of the matrimonial home. It also makes provision in respect of wage arrests to support maintenance orders. Subject to that, there is nothing to add to comments set out in previous reports.

718. There are no factors or difficulties which prevent the free disposal of a person's natural wealth and resources during his lifetime. Certain restrictions apply to dispositions after death the purpose of which is to protect the rights of the surviving spouse and children. In April 2003 the States of Guernsey appointed a committee to carry out a comprehensive review of the Island's laws of inheritance. The review includes, but is not restricted to (a) illegitimacy and intestate inheritance, and (b) unascertained heirs to real property. Pursuant to that review the States of Deliberation will in September 2006 consider the Law Reform (Inheritance and Miscellaneous

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<sup>93</sup> Full details of the Law are available on the Jersey legal information website [http://www.jerseylegalinfo.je/Law/display.aspx?URL=lawsinforce per cent5cconsolidated percent5csuperseded per cent5c12 per cent5c12.600\\_MarriageandCiviStatusLaw2001\\_Revised Edition\\_31August2004.htm](http://www.jerseylegalinfo.je/Law/display.aspx?URL=lawsinforce%20per%20cent5cconsolidated%20percent5csuperseded%20per%20cent5c12%20per%20cent5c12.600_MarriageandCiviStatusLaw2001_RevisedEdition_31August2004.htm).

Provisions) (Guernsey) Law, 2006. In our previous report it was stated that on the Island of Sark realty devolved to the eldest son. Under the Real Property (Succession) (Sark) Law, 1999 all rules of law or custom under which, for the purposes of succession to real property, males were preferred to females, were abolished.

#### **Article 24**

719. Protection of the rights of children is also provided under other international instruments ratified by the United Kingdom:

- European Social Charter (1961);
- International Covenant on Economic, Social and Cultural Rights (1966);
- ILO Convention No. 138 concerning minimum age for admission to employment (1973);
- Convention on the rights of the child (1989) and Optional Protocol on the involvement of children in armed conflict (2000) and Optional Protocol on the sale of children, child prostitution and child pornography (2000);
- ILO Convention No. 182 on worst forms of child labour (1999).

#### **Progress since the fifth periodic report**

##### **United Kingdom**

720. See also the response to article 8.

721. The United Kingdom has ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol on the sale of children, child prostitution and child pornography.

##### **Anti-Social Behaviour Act 2003**

722. Measures in the Anti-Social Behaviour Act 2003, which came into force in 2004, gave the police and key local agencies new powers to deal with anti-social behaviour. Key provisions in the Act include:

- Expanding the Fixed Penalty Notices scheme to cover noise nuisance, truancy, graffiti, and apply them to 16-17 year olds;
- Enabling schools, local authorities and youth offending teams to offer a package of support and sanctions for parents to help them address anti-social behaviour by their children;
- Allowing swift action from the police to close 'crack houses' causing serious nuisance to the community;

- Restricting the use of air weapons and replica guns and banning air cartridge weapons that are easily converted to fire live ammunition;
- Tackling environmental crime - making it an offence to sell spray paints to under 16s and stronger powers for local authorities to tackle graffiti and fly-posting;
- Extending the powers of environmental health officers to shut down noisy establishments, such as pubs and clubs;
- Ensuring courts consider the impact of anti-social behaviour on the wider community in all housing possession cases;
- Improving the operation of Anti-Social Behaviour Orders;
- Enabling the police to disperse groups behaving in an anti-social way.

### **Children Act 2004**

723. The Children Act 2004 (CA) has introduced significant changes in child protection in England and Wales by providing the legal underpinning of the Government programme “Every child matters”.<sup>94</sup> In particular, the CA has:

- Imposed a duty to cooperate among the Government agencies involved in child protection;
- Provided for the development of a strategic plan by local authorities, the “Children and Young People’s Plan”, to promote children’s well being;
- Emphasized the key leadership roles and responsibilities of the director of children’s services and lead member for children’s services, both within the local authority and in building the children’s trusts partnership;
- Established local safeguarding children boards under each local authority (they have all been established since 1 April 2006);
- Established the Office of the Children’s Commissioner, an independent body who has a duty to promote awareness of the views and interests of children and young people. The Children’s Commissioner works by exposing issues informed by children and young

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<sup>94</sup> Department for Education and Skills, *Every Child Matters*, September 2003, [http://www.everychildmatters.gov.uk/\\_files/EBE7EEAC90382663E0D5BBF24C99A7AC.pdf](http://www.everychildmatters.gov.uk/_files/EBE7EEAC90382663E0D5BBF24C99A7AC.pdf).

people themselves; provoking and facilitating quality discussion and debate; influencing the public, parents, carers and politicians through effective advocacy, particularly through the media; informing and scrutinizing Government policy; holding organizations to account; celebrating and promoting the participation of children and young people.<sup>95</sup>

### **Safeguarding Vulnerable Groups Bill**

724. Legislation is going through the legislative process in the form of the Safeguarding Vulnerable Groups Bill which provides the legislative framework for a new vetting and barring scheme for people who work with children and vulnerable adults. The purpose of the new scheme is to minimize the risk of children and vulnerable adults suffering harm at the hands of those employed to work with them.

### **Child witnesses**

725. The Criminal Justice Acts of 1988 and 1991 admitted testimony by child witnesses through live television links and video-recorded interviews as evidence-in-chief in cases involving sex offences and offences of violence, cruelty and neglect. In 1994, an interdepartmental Steering Group on Child Evidence was established to monitor the implementation of these provisions, oversee their evaluation and resolve any issues arising.

726. The Government is determined to ensure that children and other vulnerable witnesses can give their best evidence with the minimum of distress and that court practices should be adapted to afford greater protection to children without undermining the defendant's right to a fair trial. In June 1998 the Government published for consultation *Speaking Up For Justice*, the report of an interdepartmental working group on vulnerable or intimidated witnesses. It highlighted the need for all those involved in the criminal justice system to be trained to help them respond to the needs of vulnerable witnesses.

727. Several of the report's recommendations were incorporated in the Youth Justice and Criminal Evidence Act 1999. The 1999 Act provides for a number of 'special measures' to assist vulnerable or intimidated witnesses (VIWs) give their best evidence in court. Both adults and children can be VIWs, but children are automatically deemed to be vulnerable by virtue of their age (if under 17 at the time of the hearing, under section 16 (1)(a)). It is for the prosecution or the defence to make an application for special measures for the child, and for the court to consider whether the measures(s) would be likely to improve the quality of their evidence (section 19). In assessing 'quality', the court will look at the completeness, coherence and accuracy of the evidence (section 16(5)). A child is in need of "special protection" if they are a witness in proceedings relating to a sexual offence or one of kidnapping, assaults, etc. The court must then allow them to have a video-recorded interview admitted as evidence-in-chief and any other evidence to be given via a live link, effectively taking them out of the court room (section 21).

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<sup>95</sup> <https://www.childrenscommissioner.org/adult/index.cfm>.

## Overseas Territories

### British Virgin Islands

728. There are no developments to report under this article.

### Cayman Islands

729. A comprehensive review of the domestic law and existing policies is currently underway with a view to modernizing procedures for the protection and enforcement of the rights of children in the Cayman Islands. The Children Law, 2003 has been passed but is not yet in force. The Law will come in to force once the regulations thereunder have been promulgated. To date, however, there is no evidence of any serious issues relating to the rights of children.

### Falkland Islands

730. A Children and Young People's Strategy Group ('CYPSG') has been formed to champion and be an advocate for the rights of children in compliance with the Convention on the Rights of the Child (CRC). With regular monthly meetings, there is an expectation that the CYPSG will monitor progress and outcomes and report on a regular basis to the Executive Council. The fundamental purpose of the CYPSG is to devise and manage the overall strategy to implement the principles of the CRC, to monitor compliance with the CRC and to facilitate a mutually supportive communication and reporting channel between young people, and those who work with and for them, and the Executive Council of the Falkland Islands. Thus, there is a clear route through to Government whereby the views, concerns and aspirations of children and young people can be heard.

731. The CYPSG comprises representatives from all sections of society who engage with children and young people of the Islands. Adult volunteers who work with youth groups (such as the scouts and guides), parent association representatives, children elected from school councils, Legislative Council members, a representative of the religious groups and Government officers come together and are charged with progressing the strategic action plan and effecting the necessary developments for improvement.

732. There is, currently, a small resource allocation, £5,000, which is to facilitate the appropriate infrastructures of the CYPSG and raise awareness of the CRC across the whole community of the Falkland Islands. Consideration is being given to the best way in which this can be achieved. The weekly newspaper, radio interviews and public meetings are forum which are currently being considered.

733. In respect of the strategy as a whole, it is too early to have collected or analysed any meaningful data. The CYPSG is engaged upon a task which will determine which data should be collected on an annual basis, how it will be collected, what design of database will support its interrogation and who will have access to the information and what restrictions on the level of access there should be. In order to make those decisions, the Key Performance Indicators which will illuminate compliance with the CRC are being determined. Full consultation with the community, including children and young people, will take place before any actions are implemented.

734. The Employment of Children Ordinance 1966, as amended in 1968, 1985 and 2006 governs child labour. The Ordinance provides that no child, male or female, shall be employed under 14 years of age; before the close of school hours on any day when he is required to attend school; to do any work which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children or to lift, carry or move anything so heavy as to be likely to cause the child injury or harm; before 7am or after 7pm on any day; for more than 2 hours on any day when the child is required to attend school; and for more than 2 hours on any Sunday. Further amendments to the Ordinance were made in 2006 to state that a chorister taking part in a religious service or choir practice for a religious purpose is not deemed to be employed, whether or not he/she receives any reward; none of the above provisions apply to a child of 14 years of age or older who is employed as a baby-sitter. If a person is employed in breach of these provisions the employer, and any other person to whose act or default the contravention is attributable to (but not the child), commits a criminal offence and is liable to a fine not exceeding £800 level 3 on the standard scale i.e. currently £800 (the fine was increased in 2006 from £20).

735. Stanley Prison, housed in the Stanley Police Station, is governed by the Prison Ordinance 1966. The Ordinance provides for the segregation of male and female prisoners, prisoners under the age of 17 years from prisoners over that age, criminal and trial prisoners from civil prisoners, trial prisoners from convicted prisoners and any other such class may be separated into such divisions as may be prescribed. The present prison has a female cell on the first floor of the prison totally separating it from the main cell area, on the ground floor. This cell has been designated a Young Offenders Institute. It is a self-contained cell with toilet and wash-basin facilities and is connected by a call button to the Police control desk. Segregation of children from adult prisoners is simply achieved by the use of this cell. However, following the visit of Mr Christopher Gibbard, Prison Adviser, UK Overseas Territories, from 24 September 2003 to 3 October 2003, there are now plans to build a new prison facility on the east end of Stanley Police Station. The proposed lay out of the prison allows for the segregation of all types of prisoner including young persons.

736. One of the primary objectives of the Sexual Offences Ordinance 2005 is the protection of children. Children under the age of 13 will not be capable in law of giving consent to any form of sexual activity. In particular, sexual activity with children under 13 is treated as a “strict” liability offence, regardless of any consent or the state of mind of the defendant. The burden remains on the Crown to establish that the act in question took place. See also the response to Article 12.

### **Gibraltar**

737. The Government of Gibraltar is in the process of drafting legislation that will enable the extension of the ILO’s Worst Forms of Child Labour Convention (C182) and Recommendation 190 (the prohibition and immediate action for the elimination of the worst forms of child labour) to Gibraltar.

### **Montserrat**

738. There are no further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

739. Previous reports of the rights and welfare of children in Pitcairn should now be read in the light of the Children Ordinance which was enacted on 10 July 2003. This law supersedes the application of English law under section 16 of the Judicature (Courts) Act and is thus better attuned to the particular circumstances of the Island. It is intended to provide a balance between workable simplicity and a code of care and protection for children. An appointed Children's Officer (the Governor's Representative on the Island) is the principal guardian of the rights and safety of children and a "place of safety" has been designated for emergency care (currently the residence of the Governor's Representative). Jurisdiction to hear applications and to make orders thereon is vested in the Magistrate's Court by section 5(a)(1)(iii) of the Justice Ordinance. The Island Magistrate has initial jurisdiction under the ordinance and recourse may be had in certain cases to a professional non-resident magistrate. The immediate supervision of child safety is in the hands of resident social workers seconded from New Zealand. A more detailed report will be included in the Island's forthcoming report in the implementation of the convention on the Rights of the Child.

### **Turks and Caicos Islands**

740. No further developments to report under this Article at this stage but the Government of the Turks and Caicos Islands will send a more detailed report under the Convention on the Rights of the Child.

## **Crown Dependencies**

### **Isle of Man**

741. The principal legislation concerning the welfare of children is now contained in the Children and Young Persons Act, which became law in 2001. This Act also re-enacts Parts I and II of the Family Law Act 1991. This Act has amended and reformed existing child-care legislation and made new provision concerning the welfare of children. The Act follows very closely the principles contained in the Convention on the Rights of the Child.

742. The main principles and provisions embodied in the Children and Young Persons Act 2001 are as follows:

- The welfare of children must be the paramount consideration when the courts are making decisions about them;
- The concept of parental responsibility has replaced that of parental rights;
- Children have the ability to be parties, separate from their parents, in legal proceedings;
- The Department of Health and Social Security (DHSS) is charged with the duty to safeguard and promote the welfare of children who are suffering, or who are likely to suffer, significant harm;

- Certain duties and powers are conferred upon the DHSS to provide services for children and families;
- The DHSS is charged with the registration and regulation of children's homes;
- The DHSS is charged with the regulation of privately fostered children, child minding and day care for children;
- Delays in deciding questions concerning children should be avoided as this is likely to prejudice their welfare;
- There are new provisions for human fertilization, embryology and surrogacy.

743. The Employment of Children Regulations 2005 revised and updated the level of protection afforded to all young people on the Island who are under 18 years of age and engaged in either full or part-time employment. The provisions of the new Regulations are in line with the requirements of the International Labour Organisation Minimum Age Convention (ILO 138).

744. The Isle of Man Government will make a full report on all matters relating to the rights of children under this Article in its next update to the Committee on the Rights of the Child, which has been requested and is presently being drafted.

#### **Bailiwick of Jersey**

745. See the response to article 23.

#### **Bailiwick of Guernsey**

746. The States of Deliberation have resolved to re-enact in its entirety the legislation dealing with the care and protection of children and young persons, including the manner in which children at risk can be taken into care and the dealing with young offenders by the courts. It is anticipated that this legislation will be enacted in early 2007. Subject to that, there is nothing to add to comments set out in previous reports.

### **Article 25**

747. Progress on the rights of citizens since the fifth periodic report is set out below.

#### **United Kingdom**

748. See also response to paragraphs 10 and 13 of the concluding observations (chap. II.A).

## **The Electoral Administration Act 2006**

749. The Electoral Administration Act 2006 aims to tackle four key areas at the core of a healthy democracy: improving access and engagement to voting, improving confidence in the electoral process, extending openness and transparency in party financing and maintaining the professional delivery of elections. Each area will be addressed in turn.

750. Improving Access and Engagement. The Electoral Administration Act provides the basis for access to registration, postal votes, and voting on polling day by making the following changes:

- Introducing a duty on Electoral Register Officers to undertake steps to maximise the register;
- Extending the last date someone can register after an election has been called (11 days before polling day);
- Enabling voters to register anonymously if they meet the relevant criteria;
- Introducing a framework for the Co-ordinated Online Record of Electors to improve the accuracy and integrity of electoral registers;
- Reducing the age required for a candidate to stand at an election from 21 to 18;
- Establishing a framework for administrators to review polling stations regularly to ensure that they provide people with proper access;
- Improving information available to voters by enabling administrators to provide guidance in a variety of languages and formats;
- Extending the right for detained mental health patients (other than those detained under criminal powers) who have been given permission to leave hospital on a temporary basis to vote in person, as well as by post or proxy;
- Allowing parents or those with caring responsibilities to take children into polling stations with them when they go to vote;
- Giving Returning Officers a new power to promote elections and providing a ring fenced fund for publicity and promotional activity;
- Providing for pre-poll information to be sent to all electors ahead of polling day, including details about their vote;
- Introducing a simpler and more convenient declaration of identity for postal voters, removing the need for a witness;
- Introducing clearer rules for candidates and political parties participating in elections and reduces bureaucracy for smaller parties and independent candidates;

- Allowing for the piloting of photographs on ballot papers, following a full policy consultation;
- Abolishing the common law rule that prevented certain people with mental impairments from voting, in order to ensure that they are not prevented from participating in the electoral process;
- Allowing for the extension of service voter declarations up to 5 years and for the Ministry of Defence to maintain a record of registration options of service personnel.

751. Improving confidence: The Electoral Administration Act will improve security and transparency by making the following changes:

- Creating two new elections offences in order to provide stronger deterrents against electoral fraud. These are for supplying false information or failing to supply information to the electoral registration officer at any time and for falsely applying for a postal or proxy vote;
- Providing for signatures and dates of births to be provided on postal vote applications and postal vote statement, enabling checks to be carried out;
- Introducing a marked register of postal votes received, similar to that currently used for polling station voters;
- Revising the offence of undue influence, enabling the offence to be effective even where influence has not led to any action being taken;
- Improving the security of ballot papers, replacing stamping instruments with a security mark and enabling the use of barcodes on ballots to help with the administration of lost or stolen postal votes / replacement ballot papers;
- Allowing accredited observers into polling stations to observe the electoral process, and at other parts of the process, such as the count;
- Requiring voters to sign for their ballot paper at the polling station to deter fraud;
- Increasing the length of time available for the police to carry out investigations into electoral fraud;
- Providing for statutory secrecy warnings to accompany postal and proxy voting papers to deter anyone from unlawfully attempting to influence another person's vote.

752. Extending openness and transparency in party financing: The Electoral Administration Act brings into line the reporting of loans from political parties with the donations regime by introducing a new regime for regulation of loans to political parties based on the existing donations rules.

753. Maintaining professional delivery of elections: The Electoral Administration Act will support top quality administration of elections, providing a clear vision of good electoral services and how they are delivered by making the following changes:

- Providing a new power for administrators to rectify clerical and administrative errors (such as mismatched serial numbers on postal votes) during the course of the election, and on polling day;
- Supporting the administration of postal votes by enabling automated production of postal vote documents, including by replacing the counterfoil on ballot papers with a separate list to record ballots issued to electors;
- Introducing simpler and more flexible funding arrangements for national elections by reducing micro-management by central Government;
- Establishing performance standards to promote best practice in the administration of elections;
- Introducing a power for the Electoral Commission to obtain from returning officers statements of expenditure on elections, ensuring greater transparency and providing accurate data on overall electoral spending;
- Improving the nominations process, providing administrators with a dedicated period of 24 hours to check nominations before the publication of the statement of persons nominated and enabling administrators to correct minor errors on nomination papers;
- Giving new powers to the Electoral Commission, enabling it to fulfil its statutory duties to monitor and advise on electoral law and processes;
- Allowing for pre-consolidation changes to be made to existing electoral law, to facilitate any possible future consolidation of electoral law.

### **Overseas Territories**

#### **British Virgin Islands**

754. There are no developments to report under this article.

#### **Cayman Islands**

755. No issues under this article have arisen in the Cayman Islands.

### **Falkland Islands**

756. There are no further developments to report under this article.

### **Gibraltar**

757. In the Gibraltar legislature, of the 15 elected members there are two women (1 in the Government opposition). There are no impediments to women of voting age from standing for election nor, voting in whatever manner they wish. The Gibraltar legislature has a long history of women serving on it, as was the case with its predecessor, the Legislative Council, which had a woman at its inception in 1964.

### **Montserrat**

758. There are no further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

759. There are no developments to report under this article.

### **Turks and Caicos Islands**

760. In general elections only belongers are eligible to vote and hold high office. Non-belongers, mainly from neighbouring Caribbean islands, can join the police force. Women take an active part in public life, and are well represented in the public sector.

## **Crown Dependencies**

### **Isle of Man**

761. The Representation of the People (Amendment) Act 2006 has lowered the age at which a person may vote in Isle of Man Elections from 18 to 16 years. The Act also now allows a person to exercise their vote through a proxy or as an absent voter upon request, whereas formerly this could only be done under specific circumstances. Although those persons detained in the prison were not previously disenfranchised under statute, they were not entitled to either a proxy or absent vote and, through practical considerations, it may have not have been possible to escort them to a polling station to exercise their right to vote. The new provisions mean that all detainees can vote, should they choose to do so, without having to attend at a polling station.

762. Two further initiatives introduced by the Isle of Man Government in 2006 to enable more people to be able to exercise the right to vote are the extension of the opening hours of polling stations during a General Election, and the change from a single annual updating of the electoral register to updating the register on a rolling basis.

### **Bailiwick of Jersey**

763. See response to paragraph 17 of the concluding observations (chap. II.B).

## **Bailiwick of Guernsey**

764. The constitution of the Sark legislature, known as Chief Pleas, is currently under review and is likely to result in all, or at least the majority of, the members being directly elected.

### **Article 27**

765. Protection for the rights of minorities is also provided under other international instruments ratified by the United Kingdom:

- International Covenant on Economic, Social and Cultural Rights (1966);
- European Charter for regional or minority languages (1992);
- Framework Convention for the protection of national minorities (1995).

## **Progress since the fifth periodic report**

### **United Kingdom**

#### **Non-indigenous minority languages**

765. The Government recognizes the benefits of cultural and linguistic diversity within minority ethnic communities. Many of these communities have set up study support initiatives, usually called supplementary, complimentary or mother tongue schools, that provide a range of additional support for children. This support could cover National Curriculum subjects, the teaching of home languages, or other issues outside of mainstream schooling. The benefits of these initiatives have long been recognized and work is now ongoing with the supplementary school sector to encourage greater collaboration with mainstream schools, and to identify how best to work with the sector to enable them to be more effective.

#### **Indigenous minority languages**

766. In 2001, the **United Kingdom** ratified the European Charter for Regional or Minority Languages. Since then, the United Kingdom has recognized six indigenous minority languages under the Charter: Scottish-Gaelic, Welsh, Irish, Scots, Ulster Scots, Cornish and Manx Gaelic.

#### **1. Welsh in Wales**

##### **General**

767. The Welsh Language Act 1993 establishes the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality. Under the Act, public and crown bodies prepare Welsh Language Schemes which set out how they intend to give effect to that principle, so far as is both appropriate in the circumstances and reasonably practicable in the provision of services to the

public. The Act established the Welsh Language Board to oversee the preparation and implementation of Welsh Language Schemes and to promote and facilitate the use of the Welsh language. The Welsh Assembly Government's own Welsh language Scheme was approved in October 2002 and is currently being reviewed.

768. As a result of the devolution of power within the United Kingdom, the Welsh Assembly Government has responsibility for the Welsh language. In 2003 the Assembly Government launched "Iaith Pawb" (Everyone's Language) which is a National Action Plan for a Bilingual Wales.<sup>96</sup> The measures set out in Iaith Pawb are aimed at achieving a number of key targets by 2011 with the aim of achieving a sustained increase in both the number and percentage of people able to speak Welsh. Iaith Pawb is structured in 3 parts and focuses on a national policy framework, the language at a community level and the individual and language rights. The Welsh language is being mainstreamed across the Assembly Government with an additional £28m spent between 2003-06 to develop the Welsh language. This includes an additional £16m the Welsh Language Board, an Assembly Sponsored Public Body which promotes and facilitates the use of the Welsh language. Iaith Pawb and the Assembly Government's Welsh Language Scheme are subject to an annual report.<sup>97</sup>

769. The Welsh Language Board<sup>98</sup> was established as a statutory body by the Welsh Language Act 1993, with the specific remit of promoting and facilitating the use of the Welsh language. The Welsh Language Board oversees the development and implementation of language schemes by public bodies. It grant aids organisations which promote the language, promotes the language through community initiatives, carries out positive marketing campaigns, and gives advice and information to the public on the use of Welsh. It works with the private and voluntary sectors to encourage the use of Welsh by those sectors. The Welsh Language Board currently employs over 70 members of staff and receives funding of £13m from the Welsh Assembly Government.

## **Education**

770. Pre-school education is available to all parents/guardians through the medium of Welsh: there is a statutory entitlement to at least half-time provision from the child's 3rd birthday. Voluntary sector provision (by Mudiad Ysgolion Meithrin (MYM)<sup>99</sup>) for under-threes is available in 435 nursery groups throughout Wales and for 3+ age group in 586 groups. Local Education Authorities co-ordinate pre-school provision on a County Basis via Early Years Education and Childcare Partnerships. Welsh Language Board funding to MYM in 2004-05 was £1.03 million, compared with £1 million in 2003-04.

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<sup>96</sup> [http://new.wales.gov.uk/topics/welsh\\_language/;jsessionid=EA81FB2CFB663408AE87BF926D44F168.www2?lang=en](http://new.wales.gov.uk/topics/welsh_language/;jsessionid=EA81FB2CFB663408AE87BF926D44F168.www2?lang=en).

<sup>97</sup> [http://www.new.wales.gov.uk/topics/welsh\\_language/welsh\\_language\\_scheme/?lang=en](http://www.new.wales.gov.uk/topics/welsh_language/welsh_language_scheme/?lang=en).

<sup>98</sup> [www.welsh-language-board.org.uk](http://www.welsh-language-board.org.uk).

<sup>99</sup> [www.mym.co.uk](http://www.mym.co.uk).

771. Welsh occupies a central position in the National Curriculum for Wales. All pupils of statutory school age (5-16) in maintained schools are, apart from very limited statutory exemptions, required to study Welsh either as a first or second language. In addition, it is a common requirement of the National Curriculum for Wales that pupils should be given opportunities, where appropriate, in their study of a subject to develop and apply knowledge and understanding of the cultural, economic, environmental, historical and linguistic characteristics of Wales. This is known as the Cwricwlwm Cymreig.

772. Welsh is widely used as a medium of instruction in schools. In 2003-04 some 32 per cent of primary schools either has Welsh as the sole or main medium of instruction or use Welsh as a medium of teaching for part of the curriculum. In the secondary sector, about 23 per cent of schools meet the statutory definition of a Welsh speaking school which is one where more than half of the foundation subjects of the National Curriculum, other than English, Welsh and Religious Education, are taught wholly or partly in Welsh.

773. Welsh also features at further and higher levels of education. Learning the language is a significant adult learning activity, with nearly 20,000 course registrations in 2004-05. With regard to Welsh medium provision in Further Education, the target of 9,000 learners was met in 2004-05. Provision of Higher Education through the medium of Welsh varies between institutions within Wales. Overall 3.2 per cent of students undertook at least part of their degree through the medium of Welsh in the 2003-2004 academic year. The Welsh Assembly Government is committed to making bilingualism a reality and has a target of 7 per cent of students undertaking at least part of their degree studies through the medium of Welsh by 2010. Recent actions to support this have been the announcement of a £2.9 million investment over 7 years to provide more lecturers who can teach through the medium of Welsh.

## **Media**

774. BBC Radio Cymru started broadcasting as an entirely Welsh language radio station on 1 January 1977. Other regional and commercial stations also broadcast certain amounts of Welsh language programming. Radio Cymru broadcasts around 140 hours of Welsh language programming per week.

775. S4C, the Welsh language fourth television in Wales first broadcast on November 1982. S4C has created 2 digital television channels, the first of which broadcasts around 80 hours of Welsh language programming per week, and the second, which provides coverage of the proceedings of the National Assembly for Wales, and certain cultural festivals. Viewers possessing the correct digital reception apparatus may choose the language of the soundtrack whilst viewing this second S4C channel.

776. A large number of news publications are available in Welsh. *Y Cymro* and *Golwg* appear weekly, *Barn*, a current affairs magazine, monthly, and over 50 local (mostly monthly) regional papers, or *Papurau Bro*.

777. OFCOM (Office of Communications), has established an office in Wales and there is a Welsh representative on Ofcom's Content Board. There is also an Ofcom advisory committee for Wales created so that Wales will have a say in the field of broadcasting, telecommunications and wireless communications. Both Ofcom and the British Government have stated its commitment to a sustainable future for Welsh language broadcasting.

778. BBC Cymru Wales makes over 16 hours of English language television programmes a week tailored to a Welsh audience, shown on BBC One Wales and BBC Two Wales and the digital service BBC 2W. It also runs comprehensive online services in both English and Welsh. BBC Radio Wales broadcasts 19 hours every day through the medium of English throughout Wales.

779. ITV1 Wales provides 10 hours a week of programming for viewers in Wales on TV through the medium of English. The TV programmes range from News and Current Affairs to Comedy, Music and Features.

### **The Government of Wales Act 2006**

780. The Government of Wales Act 2006 includes provision whereby the Welsh Ministers must adopt a strategy setting out how they propose to promote and facilitate the use of the Welsh language. The Welsh Ministers must also adopt a Welsh Language Scheme specifying measures which they propose to take as to the use of the Welsh language in connection with the provision of services to the public in Wales by the Welsh Ministers, or by others acting on behalf of the Crown or are public bodies within the meaning of the Welsh Language Act 1993. The measures specified in the Welsh Language Scheme are for the purpose of giving effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business in Wales the English and Welsh languages should be treated on a basis of equality.

781. The Act also states that in the conduct of Assembly proceedings and in the exercise of the functions of the Assembly Commission, effect must be given so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.

### **Overseas Territories**

#### **British Virgin Islands**

782. There are no developments to report under this article.

#### **Cayman Islands**

783. There are no issues under this article have arisen in the Cayman Islands.

#### **Falkland Islands**

784. The Government's policy is that English should be the medium of teaching in State schools in the Falkland Islands.

785. Under s.14 of the Education Ordinance 1989 there is no requirement on the Director of Education, the Board of Education, or any committee of the Board for education to be provided in any language of instruction other than English.

786. There is a need to consider specific support to children for whom English is a second language in order that they can fully access the school curriculum and not be disadvantaged as a consequence of language barriers. First steps have been taken in the Stanley Infant and Junior School to provide intensive support to these pupils. Recent analysis shows that the provision is effective in that these children are maintaining progress and are in some instances attaining higher marks than their English-speaking counterparts. This provision, provided on a somewhat ad hoc basis, will be regularised in Stanley's Community School, the senior school in September 2006.

### **Gibraltar**

787. There are no developments to report under this article.

### **Montserrat**

788. There are no further developments to report under this article.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

789. There are no developments to report under this article.

### **Turks and Caicos Islands**

790. English remains the official language and is used widely throughout the islands. It is the medium of teaching in all State schools.

## **Crown Dependencies**

### **Isle of Man**

791. In 2003 the Isle of Man Government agreed, as part of its support for the Manx language, to the extension of the United Kingdom's ratification of the European Charter for Regional or Minority Languages in respect of Part II of the Charter protection for users of Manx Gaelic.

### **Bailiwick of Jersey**

792. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

793. There is nothing to add to comments set out in previous reports.

## **APPENDICES**

### **Appendix A**

#### **Report from the Bailiwick of Jersey**

#### **International Covenant on Civil and Political Rights**

#### **Sixth periodic report of the States of Jersey**

This is the sixth report submitted by the States of Jersey under Article 40, paragraph 1 of the Covenant. Since the fifth report, progress listed below has been made which is relevant to the provisions of the Covenant.

In accordance with the Guidelines for States reports under the ICCPR (revised 2001), the report is structured so as to follow the articles of the Covenant and refers specifically to the paragraph numbers of the Committee's concluding observations on the previous report.

#### **Article 1**

1.1 There are no further developments to report under this Article.

#### **Article 2**

Paragraph 8: "The Committee strongly urges the State party to ensure that all Covenant rights are given effect in domestic law (art. 2)."

2.1 Jersey will continue to give consideration from time to time to introducing the Covenant into the domestic law of the island but has no present intention of doing so. However, the Covenant rights receive consideration in the drafting of new legislation which is put before the States Assembly for its approval.

Paragraph 9: "The Committee recommends that human rights education be extended to members of the police force, the legal profession and other persons involved in the administration of justice, with a view to making it a part of their regular training. Human rights education should also be incorporated at every level of general education (art. 2)."

2.2 Human rights education has been offered across the whole of the States public sector services in Jersey. Independent evaluations have demonstrated significantly increased awareness of the implementation of human rights in the public service. Literature has been published providing human rights guidance for staff in the public service and further information is available on the States of Jersey web site [www.gov.je](http://www.gov.je).

2.3 Specific human rights training has also been available for all members of the States police force and the honorary police. It is provided for all new probationer recruits and is a continuing thread throughout their training programme. It is included as a key principle in other courses provided by the police, for example investigative interviewing, community relations and firearms training.

- 2.4 Within the judiciary, human rights training is a core requirement for all members of staff, including the Magistrate's Court, and the Judicial Greffe, the court offices.
- 2.5 School education at various levels incorporates, as part of the personal, social and health education curriculum, preparation for citizenship, and developing knowledge and information for citizenship including a sense of justice. Amongst other issues, pupils are taught:
- The legal and human rights and responsibilities underpinning society and how they relate to citizens, including the role of the criminal and civil justice systems;
  - The origins and implications of the diverse national, regional, religious and ethnic identities within the Island and the need for mutual respect and understanding.

### **Article 3**

Paragraph 16. "The Committee notes that consideration has been given in Jersey to amending the Separation and Maintenance Orders (Jersey) Law 1953 and recommends that all three jurisdictions introduce legislation and other effective measures to prohibit discrimination between women and men (arts. 3 and 26)."

- 3.1 The Separation and Maintenance Orders (Jersey) Law 1953 empowers the Petty Debts Court to make orders with respect to the separation of married persons, and the maintenance of either party to and the children of the marriage. On 20th October 2000, the Separation and Maintenance Orders (Amendment No. 2) (Jersey) Law 2000 came into force. It provided for the jurisdiction of the Court to be exercised on an equal footing between either party to the marriage.

### **Articles 4-5**

- 4.1 There are no further developments to report under these Articles.

### **Articles 6-8**

- 6.1 See report relating to Article 2 above.

### **Article 9**

Paragraph 12: "The Committee notes the information provided by the delegation that steps are being taken in the United Kingdom to ensure that its anti-terrorism laws comply with article 9 of the Covenant, and urges Jersey, Guernsey and the Isle of Man to take corresponding measures."

- 9.1 Although the United Kingdom has maintained the reservation to this Article in respect of Jersey, the Island has enacted provisions of similar effect to the Terrorism Act 2000 by the Terrorism (Jersey) Law 2002, and subsequently has requested the United Kingdom to withdraw the reservation.

### **Article 10**

10.1 There are no further developments to report under this Article.

### **Article 11**

Paragraph 13: "The Committee recommends that the authorities in Jersey consider amending relevant legislation to enable a withdrawal of the reservation to article 11 of the Covenant."

11.1 As a result of the Court of Appeal decision in the case of *Benest v. Le Maistre* [1998 JLR 213] the Royal Court is bound to exercise its discretion in relation to an application for an *acte à peine de prison* having regard to the provisions of article 11 of ICCPR. Thus there is now adequate protection to ensure that the United Kingdom will not be in breach of the Covenant if the derogation is removed.

11.2 Consequently, the derogation on behalf of Jersey in relation to article 11 ICCPR is no longer required and a formal request to the United Kingdom that it withdraws its derogation entered on Jersey's behalf in relation to article 11 has been made.

### **Articles 12-16**

12.1 There are no further developments to report under these Articles.

### **Articles 17 and 26**

Paragraph 14: "The Committee recommends that measures be taken to remove and prohibit any discrimination on grounds of sexual orientation (arts. 17 and 26)."

17.1 On 5th July 2006 the States passed the Sexual Offences (Jersey) Law 200- which when it comes into force will, amongst other things, reform the law relating to the circumstances in which anal sex is lawful by removing the discrimination between the sexes.

17.2 Thus, it will no longer be an offence at customary law for two consenting persons, both aged 16 or more, to engage in an act of sodomy in private. Furthermore, no offence will be committed by a person under the age of 16 who engages in an act of sodomy with a person aged 16 or more (but an act of sodomy committed in a public lavatory will still be treated as having been committed in public).

17.3 In addition, work is actively being progressed on the introduction of a new Discrimination (Jersey) Law, which it is hoped will be put before the Assembly of the States of Jersey in 2006 (see report in relation to Article 26). It is intended that during 2007, public consultation will take place on legislation to prohibit sex discrimination, on grounds of gender, sexual orientation and transsexuality.

### **Articles 18-19**

See report relating to Article 2 above.

## **Article 20**

### Crime (Racial Hatred) (Jersey) Law

- 20.1 In 2002 the States of Jersey resolved to create a criminal offence for acts involving incitement to racial hatred. Proposals for a Crime (Racial Hatred) (Jersey) Law are to be brought to the Assembly of the States of Jersey for debate in 2006. This legislation will create a criminal offence of using threatening, abusive or insulting behaviour, words or written material with the intention of, or with the likelihood of, stirring up racial hatred, and may include provision regarding acts of violence against racial groups.
- 20.2 The provisions will also extend, subject to certain defences, to publishing or distributing material, showing or playing a recording of visual images, broadcasting, and public performance of a play. Possession of racially inflammatory material with a view to carrying out any of the above actions will also be an offence.
- 20.3 Subject to adoption of the draft Law by the States, it is hoped the legislation would be brought into force during 2007. It is proposed to address the issue of racial hatred in this way, as a discrete piece of legislation separate from the Discrimination Law (see report on Article 26 below), because enforcement of the law will involve criminal sanctions rather than civil penalties.
- 20.4 It is already the position that in cases brought before the courts under the existing criminal law, the court takes into account when considering the appropriate sentence any racially aggravating characteristics of the offence. That has been the position for many years. The new Law would provide additional protection against racist behaviour by the creation of the new criminal offences.

## **Article 21**

- 21.1 There are no further developments to report under this Article.

## **Article 22**

### Employment Relations (Jersey) Law

- 22.1 Following extensive public consultation on a framework for good industrial relations in Jersey, the Employment and Social Security Committee lodged a Report in 2002 on Employment Relations Legislation. A draft Employment Relations Law was prepared, which the Committee released for public consultation in September 2004. Simultaneously the Employment Forum released a consultation document on the content of the codes of practice to accompany the draft Law. The draft Law was adopted by the States Assembly on 17 May 2005. Royal assent is awaited.
- 22.2 Amongst other matters, the draft Law will clarify the status of trade unions bodies as legal entities, with a definition wide enough to cover most trade unions, employer associations and staff associations. The Law will afford them the legal rights or responsibilities of other legal entities, and will clarify the obligations and immunities of trade unions and employers' associations, and their officials and members.

22.3 The new legislation is considered to be consistent with and promote the rights guaranteed under the International Labour Organisation Convention of 1948 to the extent that the island is bound by it. Full details of the draft legislation are available on the States of Jersey website [www.gov.je](http://www.gov.je).<sup>100</sup>

### Articles 23-24

#### Marriage and Civil Status (Jersey) Law

23.1 The Marriage and Civil Status (Jersey) Law 2001 was brought into force on 1 May 2002. It replaced the Loi (1842) sur l'Etat Civil and is designed to update the procedures for the registration of births, deaths and marriages. The changes introduced by this Law will be of benefit to a wide cross-section of the community.

23.2 The new Law provides for the conduct of civil marriages in approved venues other than the Register Office, and will allow ministers and priests of all churches to celebrate marriages in their churches without the parish registrar being present. It will also provide couples with a wider choice of location in which to marry.

23.3 The Law also updates and introduces improved provisions relating to the rights and responsibilities regarding registration of births. Full details of the Law are available on the Jersey legal information website [www.jerseylegalinfo.je](http://www.jerseylegalinfo.je).<sup>101</sup>

### Article 25

Paragraph 17. "With reference to the withdrawal of the State party's reservation to article 25, the Committee urges the authorities to introduce further reforms that secure all their inhabitants full right of participation in the conduct of public affairs."

25.1 On 24th February 2006 the Council of Ministers lodged a proposition in the States to agree that the present restrictions on the ability of public sector employees and office-holders to engage in political activities, including standing for election to the States, should be amended and that the following public sector employees and officeholders should be categorised as 'politically eligible' and, therefore, able to participate in political activities subject to certain conditions:

- Airport electricians;
- Airport rescue and fire-fighting service;

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<sup>100</sup> <http://www.gov.je/SocialSecurity/Employment/Jobs+In+Jersey/Employment+Relations/EmploymentRelationsLawTradeUnions.htm>.

<sup>101</sup> [http://www.jerseylegalinfo.je/Law/display.aspx?URL=lawsinforce per cent5cconsolidated per cent5csuperseded per cent5c12 per cent5c12.600\\_MarriageandCiviStatusLaw2001\\_RevisedEdition\\_31August2004.htm](http://www.jerseylegalinfo.je/Law/display.aspx?URL=lawsinforce%20per%20cent5cconsolidated%20per%20cent5csuperseded%20per%20cent5c12%20per%20cent5c12.600_MarriageandCiviStatusLaw2001_RevisedEdition_31August2004.htm).

- Civil servants graded 11 or below;
- Educational, technical and support staff graded 11 or below;
- Emergency ambulance service;
- Family support workers;
- Fire and rescue service;
- Highlands college lecturers;
- Manual workers;
- Medical staff;
- Nurses and midwives;
- Postal workers;
- Prison officers;
- Prison managers;
- Residential child care officers;
- Teachers;
- Youth workers.

25.2 The following employees and office holders would be categorised as ‘politically ineligible’, but would still be able to stand for election to the States subject to certain conditions:

- Civil servants graded 12 or above;
- Educational, technical and support officers graded 12 or above;
- Head-teachers;
- Police officers;
- Chief Officer and area managers of the Fire Service;
- Prison Governor and Deputy Prison Governor.

- 25.3 Under the proposals, employees designated as ‘politically eligible’ would be free to engage in any political activity, which would include - on certain terms - standing for election to the States or as a Connétable, publicly supporting someone standing for election or playing a public part in any political matter.

### Article 26

Paragraph 18. “The Committee recommends that the authorities complete the current process of enacting legislation outlawing all racial discrimination. In accordance with article 26, the authorities should also promulgate legislation which prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

#### Draft Discrimination (Jersey) Law

- 26.1 On May 14th 2002 the States of Jersey voted, overwhelmingly, in favour of a proposal<sup>102</sup> for the preparation of a Race Discrimination Law. On further consideration it was decided that it would be desirable to bring forward legislation which would promote not only the elimination of racial discrimination, but also other forms of discrimination. A public consultation paper<sup>103</sup> published in July 2006 promoted the idea of an over-arching enabling law and the introduction, in the first instance, of protection from race discrimination. The consultation period closes in October 2006.
- 26.2 The Discrimination Law is designed to establish the areas in which discrimination should not be tolerated. It will protect anyone who suffers a detriment as a result of discrimination or a range of prohibited acts such as victimisation, unlawful advertising, harassment and other discriminatory practices in certain conditions, and will provide an enforcement mechanism for complaints brought under the Law.
- 26.3 It is proposed that the scope of the law should extend to employment, including selection for employment, treatment of employees, contract workers, partnerships, professional or trade organisations, professional bodies and vocational training, and also discrimination in education, provision of goods, facilities and services, access to and use of public premises, disposal or management of premises and membership of clubs.
- 26.4 The first phase of discrimination legislation to be introduced in 2007 would comprise the principal Law together with Regulations to prohibit discrimination on the grounds of race, including colour, race, nationality, ethnic origin or national origin.

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<sup>102</sup> <http://www.statesassembly.gov.je> – Projets – 2002 No. 32.

<sup>103</sup> <http://www.gov.je/ChiefMinister/International+Relations/International+Agreements/Discrimination+per+cent28Jersey+per+cent29+Law+200+-+htm>.

26.5 Future legislation in Jersey will provide, as a minimum, further protection from discrimination on the grounds of sex, gender, sexual orientation, transsexuality, disability and age. However it is recognised that it is important to keep in perspective the need for legislation versus the size of the Island and the impact that legislation will have on resources. In order to achieve a wide range of protection and the necessary balance the legislation will need to be introduced in phases to allow for proper consultation and education about the effect of the law.

#### Succession Rights for Children Born out of Wedlock

26.6 A number of consultative documents have been issued but on 11 November 2003, the States Assembly approved in principle the following proposals:

- (a) To repeal the laws of succession so as to allow any person to dispose of moveable estate by will as he/she sees fit, subject to paragraph (b) below;
- (b) To create a jurisdiction in the Royal Court to make such order as it thinks fit in the administration of the moveable estate as provides a proper sum out of the estate for the maintenance and support of the dependents of the deceased;
- (c) To provide a new Law for succession to moveable estate on intestacy the result of which will be to confer a share on the surviving spouse and another share on all the children of the deceased whether legitimate or illegitimate in equal shares; and
- (d) To provide protection for executors and administrators dealing with the administration of the estate of the deceased in good faith.

26.7 A draft law has been prepared and is under consideration. It is anticipated that the draft may be presented to the Assembly of the States of Jersey during 2007.

#### **Article 27**

27.1 There are no further developments to report under this Article.

#### Dissemination of information about the Covenant

28.1 The Concluding Observations of the Human Rights Committee on the fourth and fifth periodic reports of the United Kingdom regarding the Crown Dependencies of Jersey, Guernsey and Isle of Man in 2000, were published in a report (R.C.1/2001) and presented to the States of Jersey in January 2001.

## **Appendix B**

### **Report from the Bailiwick of Guernsey and its dependencies**

#### **Sixth periodic report by the Bailiwick of Guernsey pursuant to article 40 of the International Covenant on Civil and Political Rights**

Response to the Committee on Civil and Political Rights' concluding observations of  
27th March 2000 (CCPR/C/79/Add.119)

#### **Paragraph 8**

The status of international conventions in the Bailiwick of Guernsey is the same as it is in the United Kingdom: they cannot be directly enforced by the courts unless specifically incorporated into domestic law. The Covenant has not been specifically incorporated into the domestic law of the Bailiwick. Should the United Kingdom decide to incorporate the Covenant into its domestic law then the matter would receive further consideration by the Bailiwick authorities.

#### **Paragraph 9**

All police officers currently receive training in law and procedure which incorporates human rights aspects, including, for example, law and procedure relevant to the arrest and detention of suspects. This law and procedure is now set out in the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, which is considered to be fully compliant with the European Convention on Human Rights and on which all police officers receive training. Similarly it is considered essential that prison officers also receive training in human rights issues. Police and prison officers receive training in the United Kingdom which includes human rights education. Judges and lawyers in Guernsey also fully aware of human rights issues following the enactment of the Human Rights (Bailiwick of Guernsey) Law, 2000 which came into force on the 1st September 2006 and which incorporates the European Convention on Human Rights into domestic legislation.

#### **Paragraph 10**

A review is presently being undertaken of the Administrative Decisions (Review) (Guernsey) Law, 1986, as amended. It is expected that proposals to introduce a fully independent body will be put to the States of Deliberation before the end of 2006. This review is without prejudice to the powers of the Bailiwick courts to judicially review and if necessary overturn administrative decisions (for example, on grounds of unreasonableness or lack of proportionality). In addition, a number of independent tribunals have been established to deal with particular classes of administrative decision (for example, in relation to housing, planning and, from 2007, property tax).

### **Paragraph 12**

In 2002 the States of Deliberation enacted the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 which repealed the Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990 and which came into force on the 16th July, 2002. This replicated in the Bailiwick the provisions of the Terrorism Act 2000 of the United Kingdom and removed the unilateral power of Her Majesty's Procureur to authorize the continued detention of a terrorist suspect after the initial detention period of 48 hours without bringing the detainee before a court. The legal position in respect of the Bailiwick is therefore the same as that in respect of the United Kingdom.

Enactment of the Law of 2002 meant that the Bailiwick was in a position to have the United Kingdom's ratification of two United Nations Conventions – for the Suppression of Terrorist Bombing (1997) and the Suppression of Financing of Terrorism (1999) – extended to it.

### **Paragraph 14**

A review of the Bailiwick's sexual offences legislation is being carried out and it is expected that proposals to equalise the age of consent for heterosexual and homosexual acts will be laid before the States of Deliberation towards the end of 2006/early 2007. See also the comments in relation to paragraph 16 below.

### **Paragraph 16**

Pursuant to the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004, the States of Deliberation have enacted the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005. This prohibits, and creates remedies in respect of, sex discrimination in the workplace.

### **Paragraph 17**

Sark is currently in the process of enacting a new Constitution of Sark Law, 2006 which will reform their electoral process and the constitution of their legislature. For further information please see paragraph 2 of the Sixth Report, set out below.

### **Paragraph 18**

The Racial Hatred (Bailiwick of Guernsey) Law, 2005 creates specific offences related to acts intended or likely to stir up racial hatred. Such acts include the use of words or behaviour or display of written material, the publishing or distributing of written material, the public performance of plays, distributing, showing or playing a recording, broadcasting programmes and possession of racially inflammatory material. Persons found guilty of an offence under this Law are liable to a maximum term of imprisonment of seven years or to an unlimited fine, or to both.

In addition the Protection from Harassment (Bailiwick of Guernsey) Law, 2006 creates civil and criminal remedies in respect of conduct which amounts to the harassment of another person. This includes putting people in fear of violence, alarming them or causing them distress.

The Bailiwick legislatures have also enacted legislation [The Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004] enabling them by secondary legislation to make provision for the prevention of discrimination. This Law includes powers to implement international agreements. In this Law discrimination means discrimination against any person by reason of race, colour, sex, sexual orientation, language, religion, belief, political or other opinion, national or social or ethnic origin, association with a national minority, age, disability, gender reassignment, property, birth or marital, family or other status.

## **PART ONE**

### **General**

1. The general framework under which the civil and political rights recognized by the Covenant are protected within the Bailiwick of Guernsey are set out in full in the Profile, appendix 1 hereto. The comments contained in Part I of the five previous reports remain valid.

## **PART TWO**

### **Article 1**

#### **Right of self-determination**

#### **Paragraph 1**

2. With effect from 1st May 2004 the size of Guernsey's legislature was reduced from 57 voting members to 47 voting members, of which 45 are directly elected by universal franchise in seven electoral districts each electing either six or seven members. The remaining two members are representatives of the States of Alderney. In Alderney all 10 members of the legislature are directly elected by universal franchise. In Sark 12 members of the legislature are directly elected by universal franchise. The remaining 40 members hold their seats by virtue of rights associated with the ownership of certain properties. However, the constitution of the Sark legislature, known as Chief Pleas is currently under review and is likely, when the Constitution of Sark Law, 2006 is enacted, to result in all, or in the majority of, the members being directly elected. In all three Islands the system of government and method of election reflects the wish of the respective populations.

#### **Paragraph 2**

3. There are no factors or difficulties which prevent the free disposal of a person's natural wealth and resources during his lifetime. Certain restrictions apply to dispositions after death the purpose of which is to protect the rights of the surviving spouse and children. In April 2003 the States of Guernsey appointed a committee to carry out a comprehensive review of the Island's laws of inheritance. The review includes, but is not restricted to (a) illegitimacy and intestate inheritance, and (b) unascertained heirs to real property. Pursuant to that review the States of Deliberation will in September 2006 consider the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006. In our previous report it was stated that on the Island of Sark

realty devolved to the eldest son. Under the Real Property (Succession) (Sark) Law, 1999 all rules of law or custom under which, for the purposes of succession to real property, males were preferred to females, were abolished.

### **Paragraph 3**

4. It is accepted both by the United Kingdom and the peoples of the Bailiwick that they have the right either to be fully independent or to retain their autonomous status as a Crown Dependency.

## **Article 2**

### **Implementation of the Covenant**

5. In relation to paragraph 1 (non-discrimination) the Bailiwick legislatures have enacted the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 enabling them by secondary legislation to make provision for the prevention of discrimination.

In relation to paragraph 2, the Human Rights (Bailiwick of Guernsey) Law, 2000 which came into force on the 1st September 2006 gives domestic effect to the European Convention on Human Rights and Fundamental Freedoms. Whilst not having a direct bearing on the Covenant it reflects the commitment to the principles of the Covenant and many of the rights set out correspond to rights set out in the Covenant.

## **Article 3**

### **Sex equality**

6. The States of Guernsey remain committed to adopt appropriate measures to ensure the equality of men and women in all spheres. In September 2003 the States resolved:

1. To enact legislation to make discrimination unlawful and to promote equality of opportunity and diversity;
2. To agree that once the new legislation is in place

(a) That subordinate legislation dealing with gender discrimination be brought forward for consideration;

(b) That the United Kingdom Government be requested to include Guernsey in its ratification of the International Convention on the Elimination of all forms of Discrimination against Women.

7. The legislation referred to in sub-paragraph 1 of the previous paragraph is the Prevention of Discrimination (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 which came into force on the 6th September, 2005. The subordinate legislation dealing with gender discrimination in employment was enacted by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2006.

8. The table in appendix 2 indicates the increasing economic activity of females in Guernsey since 1971.

9. 19.1 per cent of the members of the States of Guernsey are women. The comparative figures for the States of Alderney and Chief Pleas of Sark are 30 per cent and 37 per cent respectively. Of the 121 Advocates of the Royal Court 34 (28 per cent) are women.

10. There are 2,164 boys and 2,013 girls undergoing primary education in the state sector: those undergoing primary education in the private sector are 232 and 272 respectively. 1,693 boys and 1,505 girls are undergoing secondary education in the state sector whilst 420 boys and 625 girls are undergoing secondary education in the private sector.

11. There are 129 males and 172 females undergoing full time education at the Guernsey College of Further Education. 406 males and 490 females are undergoing higher education off the Island.

#### **Article 4**

##### **Derogations**

12. In March 2005 the States constituted a body called the Emergency Powers Authority comprising the Chief Minister and two other ministers who, in the event of a state of emergency may take necessary and expedient steps to preserve and maintain supplies and services essential to life and to protect the economic interests of the Bailiwick, the well-being and security of the community, the safeguarding of public health, the maintaining of security and law and order and the carrying out of all executive and administrative acts of government.

#### **Article 5**

##### **Interpretation**

13. There is nothing to add to comments set out in previous reports.

#### **Article 6**

##### **Right to Life**

14. The infant death rate of 1,000 live births averaged 4.5 over the five-year period from 1999 to 2003. Out of 525 deaths in Guernsey in 2005, 12 were due to violent or accidental causes including suicide. There were eight deaths in Sark in 2005 of which one was caused by an accident. The last case of murder in the Bailiwick occurred in January 2006.

At the request of the Island legislatures the United Kingdom's ratification of Protocol 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms was extended to the Bailiwick in April 2004. The effect of that Protocol is to abolish the death penalty including during times of war.

#### **Article 7**

##### **Prohibition of Torture, etc.**

15. The Optional Protocol to the Convention against Torture is currently under consideration by the Insular authorities.

#### **Article 8**

##### **Prohibition of Slavery and Forced Labour**

16. There is nothing to add to comments set out in previous reports.

#### **Article 9**

##### **Right to Liberty and Security of the Person**

17. Places of detention in Guernsey are

- (a) The prison (opened in 1989);
- (b) Detention cells at police station (opened 1993);
- (c) Short term (48 hours) customs detention cells;
- (d) Short stay unit for adolescents in need of care;
- (e) The mental hospital.

The Government's Mental Health Services provide for the treatment of a wide range of psychiatric and behavioural problems, with an open door policy prevailing. Whilst the vast majority of people attend for treatment on an informal basis, nevertheless a small number of patients considered to be a danger to themselves or others can be compulsorily detained under the Mental Treatment Law (Guernsey) 1939 (as amended). In 2005 there were 63 compulsory detentions to the Government's Mental Hospital, of which 25 were for periods exceeding seven days.

Juveniles may not be placed in secure accommodation unless certain criteria apply.

2005 statistics as follows:

	Prison	Police	Customs
Deaths in custody	1	0	0
Complaints against Officers	3	64	4
(a) Upheld	0	22	1
(b) Dismissed	0	34	3
(c) Resolved informally	0	8	0
(d) Other	3*	0	0
(e) Dismissed - Sark		1	
Strip searches		22	86
Intimate searches		0	0
Maximum Prison population - Guernsey	126		
Minimum Prison population - Guernsey	89		
Maximum Prison population - Sark	1		
Minimum Prison population - Sark	0		

\* 1 complaint withdrawn;  
2 complaints officers resigned prior to conclusion of investigation

The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 makes comprehensive provision relating to the powers of police officers and customs officers to stop and search suspects, to enter and search property and to arrest and detain individuals, and consolidates the rules relating to the questioning and treatment of individuals and the presentation and admissibility of criminal evidence. Codes of practice under the Law deal with stop and search, the detention, treatment and questioning of individuals, searches of premises, the identification of suspects, and the taping of interviews.

### **Article 10**

#### **Treatment of detainees**

18. The Bail (Bailiwick of Guernsey) Law, 2003 makes statutory provision for the right to bail and prescribes the rules governing the granting of bail in criminal proceedings. Subject to that, there is nothing to add to comments set out in previous reports.

### **Article 11**

#### **Prohibition of Imprisonment for inability to fulfil contractual obligations**

19. There is nothing to add to comments set out in previous reports.

## **Article 12**

### **Right to Freedom of Movement**

20. There is nothing to add to comments set out in previous reports.

## **Article 13**

### **Expulsion of aliens**

21. There is nothing to add to comments set out in previous reports.

## **Article 14**

### **Equality before the Courts**

22. There is nothing to add to comments set out in previous reports.

## **Article 15**

### **Retrospective punishment**

23. There is nothing to add to comments set out in previous reports.

## **Article 16**

### **Right to recognition as a person before the Law**

24. There is nothing to add to comments set out in previous reports.

## **Article 17**

### **Right to privacy**

25. The Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 sets out a comprehensive statutory scheme in respect of the interception of communications, the acquisition and disclosure of communications data, surveillance and covert investigations, the investigation of encrypted data, and the scrutiny of investigatory powers by an independent commissioner. Codes made under that Law deal with specific areas such as postal interception and covert surveillance.

The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 makes provision for criminal convictions to become spent and thereby non-disclosable by (for example) persons seeking employment. There are certain exceptions for particular classes of occupation (for example, for those involved in working with children). The exceptions are set out in the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006.

**Article 18**

**Right to freedom of thought, etc.**

26. There is nothing to add to comments set out in previous reports.

**Article 19**

**Right to freedom of opinion and expression**

27. There is nothing to add to comments set out in previous reports.

**Article 20**

**Prohibition of war propaganda, etc.**

28. There is nothing to add to comments set out in previous reports.

**Article 21**

**Right of peaceful assembly**

29. There is nothing to add to comments set out in previous reports.

**Article 22**

**Right of freedom of association**

30. The comments set out in the first report continue to apply. There are no political parties in the Bailiwick but no restrictions exist which would prevent the establishment thereof if it was desired to do so.

**Article 23**

**Rights of family and marriage**

31. The Matrimonial Causes (Guernsey) (Amendment) Law, 2003 allows the Matrimonial Causes division of the Royal Court to make interim occupation orders in respect of the matrimonial home. It also makes provision in respect of wage arrests to support maintenance orders. Subject to that, there is nothing to add to comments set out in previous reports.

## **Article 24**

### **Rights of children**

32. The States of Deliberation have resolved to re-enact in its entirety the legislation dealing with the care and protection of children and young persons, including the manner in which children at risk can be taken into care and the dealing with young offenders by the courts. It is anticipated that this legislation will be enacted in early 2007. Subject to that, there is nothing to add to comments set out in previous reports.

## **Article 25**

### **Participation in public life**

33. The constitution of the Sark legislature, known as Chief Pleas, is currently under review and is likely to result in all, or at least the majority of, the members being directly elected.

## **Article 26**

### **Equality before the Law**

34. There is nothing to add to comments set out in previous reports.

## **Article 27**

### **Minority rights**

35. There is nothing to add to comments set out in previous reports.

**Appendix 1 of the Report from the Bailiwick of Guernsey**  
**Core document forming part of the reports of States parties**

**BAILIWICK OF GUERNSEY**

**I. LAND AND PEOPLE**

1. The Channel Islands are a group of islands, islets and offshore rocks located in the English Channel within the Gulf of St Malo off the north-west coast of France. Although the Islands form part of the British Isles they do not form part of the United Kingdom. They are divided into the Bailiwicks of Guernsey and Jersey. The Bailiwick of Jersey comprises the largest and most southerly island of the group and two small reefs of islets and rocks known respectively as the Ecrehous and the Minquiers.

2. The Bailiwick of Guernsey (hereafter referred to as ‘the Bailiwick’), and with which this profile is concerned, comprises the islands of Guernsey (including Herm, Jethou and Lihou), Alderney and Sark (including Brecqhou), together with their associated islets and offshore rocks. The inhabited islands are as follows:

	Population	Area (sq. miles)
Guernsey (including Herm, Jethou & Lihou) (2004)	60,382	24.50
Alderney (2001)	2,294	3.07
Sark (including Brecqhou) (2001)	591	2.11
Entire Bailiwick	63,297	29.68

The split of population is in the ratio of 100 women to 98 men.

Population aged under 15: 15.7 per cent

Population aged over 65: 15.5 per cent

Population in urban areas: 27.6 per cent

The 2001 Census analysed the population by place of birth as follows:

Guernsey Bailiwick	38,485
Jersey	403
United Kingdom	16,400
Republic of Ireland	391
Portugal	1,116
Other European Union	944
Other Europe	411
Other	1,484
	59,807

There is no censal statistic on religious adherence. The predominant religion is Christianity and there relatively small numbers of adherents to the Islamic, Jewish and other faiths.

3. The Islands are dependencies of the Crown (being neither part of the United Kingdom nor colonies) and enjoy full independence, except for international relations and defence which are the responsibility of the United Kingdom Government. Guernsey, Alderney and Sark are each governed by separate elected Legislative Assemblies. The actual day to day administration, however, is conducted through various Departments and Committees formed predominantly by members elected from the Legislatures. The Departments and Committees are given specific portfolios of responsibilities and are supported by an efficient, skilled and dedicated Civil Service.

4. Background statistical information, using the most up-to-date figures available, in relation to Guernsey, is as follows:

Gross domestic product (GDP)	£1,508 million (2004 estimates)	
GDP per capita	£24,538 (2004 estimate)	
Gross national product	£1,568 million (2004 estimate)	
Rate of inflation	3.4 per cent (June 2006)	
Government surplus:	£9.223m (2004)	
External debt	none	
Rate of unemployment	0.59 per cent (March 2006)	
Literacy rate	not available - assumed to be approximately 100 per cent	
Percentage of population assumed to be speaking mother tongue	not available - assumed to be approximately 100 per cent	
Life expectancy	Males 77.5 years Females 82.1 years	
Infant mortality rate	4.5 per 1,000 births (1999/03 mean)	
Maternal mortality rate	none for over 20 years	
Fertility rate	1.54 (2001)	
Percentage of population	males under 15	8.8 per cent
	females under 15	8.4 per cent
	males over 65	6.6 per cent
	females over 65 (2001 census)	9.1 per cent

## **II. GENERAL POLITICAL STRUCTURE**

### **A. System of Government**

5. The system of government in the Bailiwick has evolved over a long period from origins of great antiquity. Nevertheless, the system is based upon the democratic principle and the authority of each Legislative Assembly in Guernsey, Alderney and Sark is undisputed in each respective Island. The system of government reflects the conservative and law-abiding characteristics of the Bailiwick community.

#### **The Crown and the Bailiwick**

6. The British Crown retains ultimate responsibility for the good government of the Bailiwick acting through the Privy Council on the recommendation of Ministers of the United Kingdom Government in their capacity as Privy Councillors. However, the Crown is fully mindful of the Bailiwick people's right of self-determination, and is unlikely to attempt to exercise any theoretical power to legislate at last resort without the consent of the Bailiwick authorities. The United Kingdom's Secretary of State for Constitutional Affairs is the member of the Privy Council primarily concerned with the affairs of the Bailiwick and is the channel of communication between the Bailiwick, the Crown and the United Kingdom Government. He is responsible for forwarding Bailiwick Laws to the Privy Council (after consultation with any other Government Ministers who may be concerned) for Royal Assent.

#### **The Bailiwick and Parliament**

7. The Bailiwick is not represented in the United Kingdom's Parliament and Acts of Parliament do not apply automatically to it. However, on the rare occasions when it may be agreed necessary for United Kingdom legislation to be applied in the Bailiwick, consultations are held between the United Kingdom Government and the Bailiwick Authorities concerning not only the content and purpose of the legislation, but also the appropriate method for applying the legislation in the Bailiwick.

#### **Constitutional relationship with the United Kingdom**

8. The constitutional and economic relationship between the United Kingdom and the Bailiwick was examined by a Royal Commission appointed in 1969. It accepted the convention that the United Kingdom's Parliament does not legislate on domestic matters for the Bailiwick without the consent of the Bailiwick Authorities, but nevertheless concluded that the United Kingdom must have powers in the last resort to intervene in any Bailiwick matter, including power to legislate, so long as it remains responsible for the external relations of the Bailiwick and for its good government.

9. "Good government" was defined by Lord Bach, in the British House of Lords on the 3rd May 2000 as meaning that "in the circumstances of a grave breakdown or failure in the administration of justice or civil order, the residual prerogative power of the Crown could be used to intervene in the internal affairs of the Channel Islands and the Isle of Man." However, these comments repeat the perceived wisdom of the 1969 Royal Commission. As mentioned

at 6 above, the constitutional relationship is now considered to have moved on, and any residual power to legislate at last resort without consent of the Bailiwick authorities is now perceived as being little more than theoretical.

### **Constitutional relationship with the European Union**

10. The position of the Bailiwick was further examined when the United Kingdom Government applied in 1971 to join the European Economic Community. The negotiated settlement granted the Channel Islands, of which the Bailiwick is an integral part, a special relationship with the European Community by virtue of Protocol 3 to the Treaty of Accession. The effect of this Protocol is that the Islands of the Bailiwick are within the Common Customs Area and the Common External Tariff of the European Community, and are also subject to (and enjoy the benefit of) the provisions of articles 28 to 31 of the EC Treaty which prohibit quantitative restrictions on imports and exports. Pursuant to Regulation 706/73 they are also bound by certain rules for the protection of competition in trade in agricultural products, but only to the extent that the islands are engaged in importing and exporting such products. However, the remaining clauses of the EC Treaties do not apply to the Channel Islands and therefore for all purposes other than Customs measures and quantitative restrictions on imports and exports they are effectively 'third countries'. The coming into effect of the Treaty on European Union on 1 November 1993, and the Treaty of Amsterdam on 2 October, 1997 have not altered the constitutional position as enshrined by Protocol 3 to the Treaty of Accession.

11. Protocol 3 secured and formalised the Bailiwick's constitutional relationship with the United Kingdom within the European Economic Community. This cannot be changed unless the Protocol is changed, and to change the Protocol requires the unanimous agreement of all Member States of the European Community as well as the consent of the people of the Channel Islands.

### **Offices held under the English Crown**

12. The offices held under the Crown either within the Bailiwick or in Guernsey are those of Lieutenant-Governor, Bailiff, Deputy Bailiff, Procureur (Attorney-General), Comptroller (Solicitor-General), Greffier, Receiver-General, Sheriff and Sergeant.

13. The Lieutenant-Governor is the Queen's personal representative in the Bailiwick and serves as the official channel of communication between the Crown and the Bailiwick Authorities. He is Commander-in-Chief in the Bailiwick, though the duties relating thereto only arise in times of hostilities.

14. The Bailiff is the head of the judiciary and non-political presiding officer of the Island's parliament. Traditionally he is the defender and upholder of the immunities and privileges of the Island. He is also, with the Lieutenant-Governor, a channel of communication between the Guernsey Government and the Crown. He is assisted in his duties by the Deputy Bailiff.

15. The Procureur and Comptroller are legal advisers to the Crown and to all three legislative Assemblies of Guernsey, Alderney and Sark. The Procureur and to a lesser extent the Comptroller are also responsible for criminal proceedings and for the drafting of legislation. Both are debarred from private practice. They act independently of government.

16. The Greffier is clerk to both the Legislature and the Judiciary in Guernsey. He also serves as Registrar-General of births, deaths and marriages in Guernsey and Sark.

17. The Receiver-General is concerned with the collection of and accounting for dues to the Crown and generally with Crown revenues and Crown property throughout the Bailiwick. He acts under the directions of the Lords of Her Majesty's Treasury.

18. The Sheriff and Sergeant are officers of the Legislature and Judiciary in Guernsey. The Sheriff is responsible for executing the judgments and sentences of the Courts and for assisting in the maintenance of order in the Courts and in the Island's Legislative Assembly. The Sergeant is responsible for serving summonses and other legal process in Guernsey, to act as judicial attorney for persons absent from the Island, and to discharge such other duties as may be assigned to him by the Courts and the Legislative Assembly.

### **Powers of each Legislative Assembly**

19. The government of the Bailiwick is administered by three separate jurisdictions. Guernsey, Herm and Jethou are administered by the States of Guernsey (to be distinguished from the States of Deliberation, which is their legislature), Alderney by the States of Alderney, and Sark and Brecqhou by the Chief Pleas of Sark. However, the States of Guernsey exercise financial and administrative responsibility for certain public services in Alderney, and apply in that Island Guernsey taxes, duties and impôts (which accrue to Guernsey general revenues), as well as legislation in respect of those services for which Guernsey has assumed responsibility. Guernsey has responsibility for the airfield, immigration, police, social services, health, education, child-care and adoption in Alderney.

20. The Legislative Assemblies are responsible for initiating domestic legislation, and the States of Deliberation (the Guernsey assembly) has power to enact criminal legislation throughout the Bailiwick and also, for Alderney, legislation relating to the reserved services mentioned in 19 above. Subject to that, the respective governments are responsible for determining levels of expenditure and taxation, establishing fiscal and economic policy and generally exercising good government. Each Legislative Assembly enjoys complete independence from the United Kingdom Parliament, both to legislate and to levy taxes, subject only to the British Crown's ultimate responsibility for the good government of the Bailiwick (as to which see the comments at paragraphs 6, 8 and 9 above).

### **Composition of each Legislative Assembly**

#### **Guernsey**

21. The States of Guernsey are constituted under the Reform (Guernsey) Law, 1948, as amended and consist of two bodies namely, the States of Deliberation and the States of Election. The only function of the States of Election is to act as an Electoral College for Jurats, the office of which is unknown in the United Kingdom but which is akin to a permanently sitting juror.

22. The States of Deliberation are Guernsey's legislative assembly deriving their authority and powers from the common law and from the Reform (Guernsey) Law, 1948, as amended. They comprise the Bailiff as ex-officio President, forty five People's Deputies, two Representatives of

the States of Alderney, and the two Law Officers (HM Procureur and HM Comptroller) who have a voice but no vote.

23. The People's Deputies are elected by universal adult suffrage. The States of Deliberation (hereinafter referred to as 'the States') sit for a term of four years after which there is a general election. The States exercise executive or administrative functions through ten Departments every one of which is answerable to the States and in the States for its acts. The Departments are established by the States by Resolution with specific mandates or are constituted by legislation with statutory powers and duties. The ten departments are:

- Treasury and Resources;
- Commerce and Employment;
- Culture and Leisure;
- Education;
- Environment;
- Health and Social Services;
- Home;
- Housing;
- Public Services;
- Social Security.

In addition to the ten departments there are a number of committees which deal with non-executive functions such as scrutiny, review of draft legislation and the functioning of the legislature.

24. The States over a period of time have constructed a permanent civil service under the immediate control and direction of Departments of the States. In Guernsey, therefore, the civil service derives its authority from the States and not from the Crown as in the United Kingdom.

25. The States meet monthly to consider proposals placed before them from the Departments and Committees. These proposals will range from economic and fiscal policy to initiating and approving proposed legislation, as well as various items of expenditure. However, in the decisions taken by the States, no States can bind a future States, and as there is nothing in Guernsey equivalent to Cabinet Government, no Department or Committee of the States can force the States to adopt any particular measure however important it may be. Party politics do not exist in Guernsey, consequently the legislative process demands a majority consensus from independent members of the States if a proposed measure is to be approved.

26. The Policy Council comprises an elected Chief Minister and the ministers of the ten Departments and is mandated to examine all proposals and reports which are to be placed before

the States for deliberation. The elected States Departments and Committees are supported by a professional civil service of some 1,800 staff. Each States Department and Committee has a Chief Officer. The Chief Executive of the States is Head of the Guernsey Civil Service and Chief Officer of the Policy Council. The Departments also directly employ approximately 3,000 non-civil service staff which includes manual workers (1,300), nurses (760), teachers (550), police officers (150) and customs officers (70).

### **Alderney**

27. The States of Alderney are the legislative assembly for Alderney and derive their authority and powers from the Government of Alderney Law, 2004. The States comprise the President of Alderney who is the civic head and representative of the Island, is elected by universal suffrage and holds office for four years; and ten Members who are also elected by universal adult suffrage for a period of four years. Except for those services legislated for and administered by Guernsey, the remaining functions of government in Alderney are administered by Committees of the States. The system of government in Alderney is closely modelled upon that of Guernsey, and is supported by a small civil service. The States of Deliberation, however, may legislate for Alderney in any matter with the consent of the States of Alderney and, in criminal matters and in respect of the reserved services referred to at 19 above, without the consent of the States of Alderney. In recognition of Guernsey's responsibilities for these reserved services Alderney is represented by two members in the States of Deliberation.

### **Sark**

28. The Chief Pleas of Sark are the legislative assembly for Sark and derive their authority and powers from the Reform (Sark) Law, 1951. The constitution of Chief pleas is currently under review but presently comprises:

- (i) The Seigneur of Sark;
- (ii) The Seneschal;
- (iii) The forty tenants of Sark who, together with the Seigneur and a few owners of freehold property, are the sole owners of all land on Sark; and
- (iv) Twelve Deputies elected by universal adult suffrage for a period of three years.

29. The Seigneur of Sark is the civic head and representative of the Island. The office is hereditary. The Seneschal, however, is the ex-officio President of the Chief Pleas, and is appointed by the Seigneur with the approval of the Lieutenant-Governor of the Bailiwick.

30. The Chief Pleas of Sark generally meet four times a year and, by means of a committee system, administer the functions of government in a manner very similar to the States of Guernsey and the States of Alderney. As with Alderney, the States of Deliberation may legislate for Sark in criminal matters without the agreement of Chief Pleas, but only on any other matter with the prior agreement of Chief Pleas.

### **Question Time**

31. As the time of the States in Guernsey is devoted mainly to public business when it meets on a monthly basis, then the best means of eliciting information (to which members might not otherwise have access), about the intentions or practice of Departments and Committees of the States, is by the use of Question Time. Rules of Procedure allow any member of the States, with prior notice, to have questions answered verbally by the Minister or Chairman of the Committee concerned before the commencement of official business at the meeting of the States. Alternatively questions can be dealt with in writing, the written replies being circulated to all members of the States and to the media.

### **B. The Law**

32. The judiciary in the Bailiwick is entirely independent of the Government and is not subject to direction or control by either the States of Guernsey, the States of Alderney or the Chief Pleas of Sark. The Bailiff of Guernsey is the President of both the Royal Court and the Court of Appeal. The Bailiff is the sole judge of law in the Royal Court.

33. HM Procureur and HM Comptroller are the Bailiwick's principal advisers on Bailiwick law and represent the Crown in all criminal proceedings. HM Procureur, and to a lesser extent HM Comptroller, are responsible for enforcing the criminal law, and for criminal proceedings which are brought by and in the name of the Law Officers of the Crown. Guernsey has its own police force which is under the general direction of the Home Department of the States of Guernsey, and which is modelled upon police forces in the United Kingdom. From time to time the Guernsey police force will be asked to assist in matters of law and order in the smaller islands of Alderney and Sark. The police force is subject to periodic inspection by HM Inspector of Constabulary.

34. The administration of all Guernsey courts is the responsibility of the Bailiff, whilst in Alderney it is the responsibility of the Chairman of the Court of Alderney, and in Sark it is the responsibility of the Seneschal.

### **The Courts**

35. The judicature of Guernsey is divided into three parts namely, the Court of Appeal, the Royal Court and the Magistrate's Court. In addition there is an Ecclesiastical Court of great antiquity which, in addition to ecclesiastical matters, deals with non-contentious probate matters. In Alderney there is the Court of Alderney, and in Sark the Court of the Seneschal. These courts, like the Royal Court of Guernsey, have unlimited civil jurisdiction.

### **The Court of Appeal**

36. The Guernsey Court of Appeal was constituted by the Court of Appeal (Guernsey) Law, 1961, and has both civil and criminal jurisdiction in accordance with the provisions of that Law. It may be distinguished by the addition of the words 'Civil Division' or 'Criminal Division' according to the jurisdiction that is being exercised.

37. The Bailiff is ex-officio a judge of the Court of Appeal and a President of the Court. He is precluded from sitting in the Court of Appeal in any case in which he presided in the lower courts. The other judges (called ordinary judges) are appointed by the Crown and will normally comprise eminent Queen's Counsel practising at the Bar in England and Wales, Scotland and Northern Island, as well as the Bailiff of Jersey. The Court of Appeal is duly constituted if it consists of an uneven number of judges, but not less than three.

38. In civil matters appeals lie to the Court of Appeal from decisions of the Royal Court sitting as an Ordinary Court and from decisions of the Matrimonial Causes Division of the Royal Court, subject to specific exceptions set out in the Court of Appeal (Guernsey) Law, 1961.

39. In criminal matters a person convicted on indictment or summarily convicted in the Royal Court sitting as a Full Court may appeal to the Court of Appeal against his conviction on a question of law alone; or in certain circumstances on a question of fact alone, or on a question of mixed law and fact; or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal; and with the leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law. The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 also provides a further right of appeal in criminal cases from the Royal Court (on appeal from the Magistrate's Court) to the Court of Appeal on a point of law.

40. In civil matters an appeal lies to Her Majesty in Council from a decision of the Court of Appeal, but subject to the leave of Her Majesty in Council or the Court of Appeal where the value of the matter in dispute is less than £500. Any such appeal is heard by the Judicial Committee of the Privy Council which is the supreme court of appeal for the Bailiwick.

41. In criminal matters appeals lie to Her Majesty in Council from decisions of the Court of Appeal, and nothing in the Court of Appeal (Guernsey) Law, 1961, affects the Crown's prerogative of mercy.

### **The Royal Court**

42. The Royal Court administers both the civil and the criminal law in Guernsey. It sits as:

- (i) A Court of Chief Pleas; or
- (ii) A Full Court; or
- (iii) An Ordinary Court; or
- (iv) A Court of Matrimonial Causes.

43. The Royal Court is presided over by the Bailiff or Deputy Bailiff and comprises the Bailiff or Deputy Bailiff and twelve Jurats. The Bailiff or Deputy Bailiff are sole judges of law in the Royal Court and have invariably been Advocates by profession. The office of Jurat is of great antiquity and is unknown in the United Kingdom. It is akin to a permanently sitting juror.

44. The Royal Court sitting as a Court of Chief Pleas comprises the Bailiff or Deputy Bailiff and at least seven Jurats. The Court sits three times a year when the Seigneurs of Fiefs who owe

homage direct to the Crown, the Advocates, and the Constables of the ten parishes must appear and answer in person when the Roll is called. The Court also receives and considers certain reports presented to it by the authorities concerned under a statutory duty, for example, on the condition of the water courses of the Island, or presented to it at the specific request of the Court, for example, on licensed public halls. However, the sittings of Chief Pleas have become largely ceremonial, and two of the annual sittings are now dispensed with (unless the Bailiff specifically convenes them).

45. The Royal Court sitting as a Full Court comprises the Bailiff or Deputy Bailiff and not less than seven Jurats. The Full Court does not have original jurisdiction in civil matters, but it does deal with certain statutory appeals from decisions of States Departments and Committees. The Full Court has original jurisdiction in criminal matters:

- (a) In respect of all indictable offences committed anywhere in the Bailiwick;
- (b) Where the Guernsey Magistrate's Court considers that an offence is outside its competence to try, or that the appropriate punishment would exceed that which that Court could impose;
- (c) Where the Ordinary Court is of a similar view in respect of an offence referred to it by the Court of Alderney or Sark;
- (d) Where a person charged with an offence for which he can be imprisoned for more than three months (other than an assault) elects trial by the Full Court.

46. The Royal Court sitting as a Full Court also has appellate jurisdiction in criminal matters. A person has a right of appeal to the Full Court against conviction or sentence on conviction or both by the Magistrate's Court or the Ordinary Court unless appeal is specifically precluded by law. The prosecution also has a right of appeal to the Full Court against the acquittal of any person by the Magistrate's Court or the Ordinary Court. Except in the case of acquittals, all decisions in criminal matters of the Court of Alderney and the Court of the Seneschal of Sark are subject to appeal to the Full Court.

47. The Royal Court sitting as an Ordinary Court comprises the Bailiff or the Deputy Bailiff or a Lieutenant-Bailiff and at least two Jurats. The Ordinary Court has original jurisdiction as regards all civil suits commenced in Guernsey, including those emanating from a Clameur de Haro (see paragraph 60), and deals with a wide variety of non-contentious matters including conveyancing of property, (when it convenes as the Conveyancing Court), registration of Wills of Realty, Patents, Designs and Trade marks, Memoranda and Articles of Association of Limited Liability Companies, and the appointment of guardians of the person and property of minors and of persons of unsound mind and prodigals.

48. There is a right of appeal to the Ordinary Court from the determination of the Magistrate's Court in most civil actions. In addition, decisions of the Court of Alderney and the Court of the Seneschal in Sark in civil matters are subject to appeal to the Ordinary Court. Whilst the Ordinary Court has no appellate jurisdiction in criminal matters, it does have certain original jurisdiction in criminal matters relating to Alderney and Sark when it is considered that a

particular offence or the punishment appropriate to it is considered to be outside its competence either by the Court of Alderney or by the Court of the Seneschal of Sark.

49. The Matrimonial Causes Division of the Royal Court was set up under the terms of the Matrimonial Causes (Guernsey) Law, 1939, and comprises the Bailiff or Deputy Bailiff and four Jurats or the Bailiff or Deputy Bailiff sitting alone. Alternatively, the Royal Court has power to appoint a person of at least ten years standing at the Bar in Guernsey, England, Scotland, Northern Ireland or Jersey, as a Commissioner of the Royal Court with power to exercise the function and jurisdiction of the Court concurrently with the Matrimonial Causes Division.

50. Subject to certain exceptions, the Court has original jurisdiction in respect of all suits for divorce, judicial separation or nullity of marriage; applications for decrees of presumption of death and dissolution of marriage thereupon; and all other causes, suits and matrimonial matters under the Matrimonial Causes (Guernsey) Law, 1939. The Court also has appellate jurisdiction in respect of suits for judicial separation and related matters originating in the Court of Alderney or in the Court of the Seneschal of Sark.

### **The Magistrate's Court**

51. The Magistrate's Court is presided over by a Magistrate or a Jurat as an Assistant Magistrate, and has summary jurisdiction in criminal matters and in civil suits where the amount claimed does not exceed £2,500. There is an appeal from the Magistrate's Court to the Full Court of the Royal Court in criminal matters (see also paragraphs 39 and 46) and to the Ordinary Court in civil matters. A Magistrate may also act as Coroner, but only at the instance of the Law Officers.

### **The Ecclesiastical Court**

52. The Ecclesiastical Court is made up of the Judge who is the Dean of Guernsey and Commissary of the Bishop of Winchester, and his nine assessors who are the rectors of the other Parishes in Guernsey. In addition to ecclesiastical business of various kinds the Court grants probate of wills and letters of administration in relation to personal estate, and has jurisdiction to decide upon the disposal of movables belonging to a suicide.

### **The Court of Alderney**

53. The Court of Alderney comprises not less than three Jurats from among the Jurats in Alderney appointed by one of Her Majesty's Secretaries of State. One of the Jurats is designated as Chairman of the Court. The Court has unlimited original jurisdiction in civil matters arising in Alderney. Judgments of the Court in civil matters are subject to a right of appeal to the Royal Court of Guernsey sitting as an Ordinary Court.

54. In criminal matters, except in certain cases, the Court has original jurisdiction by virtue of the Government of Alderney Law, 2004 to impose fines currently not exceeding £5,000 or imprisonment for periods not exceeding 6 months or both, although if more than one sentence is passed the aggregate of the fines is currently £10,000. There is a right of appeal in these criminal

matters to the Royal Court of Guernsey sitting as a Full Court. Original jurisdiction in respect of all other criminal matters in Alderney, however, rests with the Royal Court of Guernsey sitting as an Ordinary Court.

### **The Court of the Seneschal in Sark**

55. The Court of the Seneschal is presided over by the Seneschal. The Court has unlimited original jurisdiction in civil matters with a right of appeal against its judgments to the Royal Court of Guernsey sitting as an Ordinary Court.

56. In criminal matters, the Court has original jurisdiction to impose fines currently not exceeding £2,500 or imprisonment for periods not exceeding one month or both, although if more than one sentence is passed the aggregate of the fines is currently £5,000. There is a right of appeal in these criminal matters to the Royal Court of Guernsey sitting as a Full Court. Original jurisdiction in respect of all other criminal matters in Sark, however, rests with the Royal Court of Guernsey sitting as an Ordinary Court.

### **Trial**

57. The Criminal Law and Procedure in the Bailiwick is generally similar to that of England and Wales. Criminal trials take the form of a contest between the prosecution and the defence. Since the law presumes the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant has the right to employ legal counsel or in the case of a Royal Court trial to have legal counsel assigned to him/her, and if remanded in custody the person may be visited by legal counsel to ensure a properly prepared defence.

Pursuant to the Legal Aid (Bailiwick of Guernsey) Law, 2003, a formalised and comprehensive system of legal aid is now available, administered by an independent Legal Aid Commissioner with services provided by the private Bar and funded by the States.

58. Criminal trials are normally in open court and rules of evidence concerned with the proof of facts are rigorously applied. If evidence is improperly admitted, a conviction can be quashed on appeal. During the trial the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through a lawyer; to call his or her own witnesses who, if they will not attend voluntarily, may be legally compelled to attend; and to address the court in person or through a lawyer. The defendant cannot be questioned without consenting to be sworn as a witness in his or her own defence. When he or she does testify, cross-examination about character or other conduct may be made only in exceptional circumstances; generally the prosecution may not introduce such evidence.

59. The jury system does not operate in the Bailiwick. When a trial is held in the Royal Court the case is heard before the Bailiff or Deputy Bailiff and at least seven Jurats. The Bailiff, as President of the Court, is the sole judge on questions of law and procedure, sums up the evidence for the Jurats and instructs them on the relevant law. The Jurats decide whether the defendant is guilty or not guilty and determine sentences, but it is the Bailiff who announces them. The verdict may be reached by a simple majority. If the Jurats return a verdict of 'not guilty' the

prosecution has no right of appeal and the defendant cannot be tried again for the same offence. In the event of a 'guilty' verdict, the defendant has a right of appeal to the Court of Appeal.

### **Coroner's Court**

60. In Guernsey the Magistrate or Acting Magistrate may act as coroner, but only at the instance of the Law Officers. Coroners investigate violent and unnatural deaths or sudden deaths where the cause is unknown. If a death is sudden and the cause unknown, however, an inquest may not be necessary if after a post-mortem examination has been made the Law Officers are satisfied that the death was due to natural causes. Where the Law Officers have reason to believe that the deceased died a violent or unnatural death or died in prison or in other specified circumstances they will cause the Magistrate, acting as coroner, to hold an inquest, and it is the duty of the coroner's court to establish how, when and where the deceased died. The coroner sits alone to hear the case.

### **The Civil Law**

61. The common law in the Bailiwick derives from the customary law of Normandy. However, in recent times the law in Guernsey has become more and more anglicised. Statute law is enacted in English and is frequently derived from the comparable statute law of England. The significance of the Norman customary law has declined and the English common law which is only persuasive authority, is increasingly applied where the custom is irrelevant or non-existent. Nevertheless, the customary law of Normandy still has great significance in relation to the law of real property and inheritance in Guernsey. The sources of legislation in the Bailiwick are:

- (i) Laws passed by the States of Deliberation, the States of Alderney or the Chief Pleas of Sark, which obtain the Sanction of Her Majesty in Council;
- (ii) Ordinances passed by the States of Deliberation, the States of Alderney or the Chief Pleas of Sark;
- (iii) Regulations and Orders made under the Provisions of the Laws passed in the manner above;
- (iv) Acts of the United Kingdom Parliament and statutory instruments made thereunder as extended by Order-in-Council with the consent of the States of Deliberation, the States of Alderney and the Chief Pleas of Sark;
- (v) Acts of the United Kingdom Parliament that are expressly applied to the Bailiwick;
- (vi) Regulations of the European Community applicable under Protocol 3 - although it is normally necessary to enact local legislation to provide penalties and enforcement.

Relevant judicial decisions also form a source of law in the Bailiwick. Where no clear precedent can be drawn from Bailiwick law, the Courts in the Bailiwick generally have regard to the laws of Normandy and the Laws of England when deciding the cases before them.

62. Injunctions may be granted under specific legislative provisions and also customary law powers.

### **Advocates of the Royal Court**

63. The practitioners of law in the Bailiwick are known as Advocates of the Royal Court of Guernsey. Before a person may be admitted to the Guernsey Bar as an Advocate of the Royal Court, he is required to have been ordinarily resident in the Bailiwick of Guernsey for at least two years after attaining the age of sixteen years and to be:

(1) (a) A member of the Bar of England and Wales, of the Bar of Northern Ireland, or of the Faculty of Advocates in Scotland, or

(b) A Solicitor of the Supreme Court of England and Wales, of the Supreme Court of Judicature of Northern Ireland, or in Scotland;

and

(2) Holds either

(a) Licence or maitrise en droit of one of the universities of France, or

(b) A “Certificat d’Études Juridiques Françaises et Normandes” from Caen University (or equivalent qualification)

and

(3) Has undertaken pupillage in Guernsey whilst accredited to an Advocate of the Royal Court of at least five years’ standing,

(a) In the case of a member of the Bar of England and Wales, the Bar of Northern Ireland, or the Faculty of Advocates in Scotland, who is unable to satisfy the Royal Court that he has completed at least six months’ pupillage within the jurisdiction concerned, for a period of not less than twelve months, or

(b) In any other case, for a period of not less than six months;

and

(4) Has passed an examination conducted by a Committee under the authority of the Royal Court.

An Advocate in the Bailiwick combines the functions of an English barrister and the English solicitor. Although any lawyer may practise in the Bailiwick, only an Advocate of the Royal Court has the right to plead in the Courts in Guernsey, Alderney and Sark, and to advise on local law within the Bailiwick.

### **Administrative Tribunals**

64. Guernsey has adopted a system of tribunals which exercise judicial functions separate from the courts. Generally the tribunals are set up under statutory powers which govern their

constitution, functions and procedure. Compared with courts, they tend to be more accessible, less formal and less expensive. They also have expert knowledge in their particular jurisdictions.

65. The introduction of the tribunal system in the Bailiwick has been comparatively recent. Independent of the Government, tribunals rule on disputes between private citizens - for example, the industrial disputes tribunal has a major part to play in employment disputes. That concerned with social security resolves claims by private citizens against the public authority concerned, whilst the tax tribunal decides disputes by the public authority concerned against private citizens. Tribunal decisions may either be binding upon the public authority concerned or be in the form of recommendations.

66. Tribunal members are appointed from panels of independent persons established after consultation in the manner specified by law. There are other tribunals dealing with employment protection, sex discrimination, housing appeals, planning, the regulation of utilities and (from 2007) property tax.

67. Another form of tribunal known as an administrative decision Review Board hears complaints by private citizens against areas of government administration where there is no right of appeal or reference to a court of law. The membership of each Review Board is determined on an ad-hoc basis. The Board comprises States Members who must not be members of the Department or Committee whose decisions are the subject of the appeal or who do not have any other conflicts of interest. The Deans of the Douzaines may also be members of Review Boards.

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

#### **A. Authorities having jurisdiction affecting human rights**

68. The following Conventions have been ratified on behalf of the Bailiwick:

- (i) European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- (ii) International Covenant on Civil and Political Rights;
- (iii) International Covenant on Economic, Social and Cultural Rights;
- (iv) UN Convention on the Elimination of Racial Discrimination.

Under the constitution of the Bailiwick, as well as its constitutional relationship with the United Kingdom, the possession of rights and freedoms is an inherent part of being a member of such a society. They can only be restricted by a democratic decision of the States or ultimately by Her Majesty in Council. The rôle of the States, therefore, is not to confer rights, but rather to balance the needs of society against those of the individual. The mechanisms and legal safeguards through which human rights in the Bailiwick are protected are set out in the following paragraphs.

## **Legal Aid**

69. Pursuant to the Legal Aid (Bailiwick of Guernsey) Law, 2003, a formalised and comprehensive system of criminal and civil legal aid is now available, administered by an independent Legal Aid Commissioner with services provided by the private Bar and funded by the States.

## **Compensation for wrongful conviction/detention**

70. There is no statutory provision in the Bailiwick for the payment of compensation to persons who have suffered wrongful conviction or detention. However, complainants may sue for damages as a civil action through the civil courts in the islands.

## **Compensation for victims of crime or accident**

71. Statutory provision for the payment of compensation in respect of damages to the victims of crime or to families of persons whose death was caused by an accident, is available through:

- (i) The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990; and
- (ii) Loi relative à la Compensation qui pourra être accordée aux Familles de Personne dont la Mort aura été causée par Accident, 1900, as amended by the Fatal Accidents (Guernsey) Law, 1960 and by the Fatal Accidents and Law Reform (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 1965.

72. With regard to the victims of crime the courts in the Bailiwick may order an offender, upon conviction, to pay the victim for personal injury, loss or damage (including terror and distress directly occasioned by the commission of the offence) resulting from that offence or any offence which is taken into consideration by the court in determining sentence. Where a court makes a compensation order against an offender under seventeen years of age at the time of the offence it may, and shall if the offender is under fourteen years of age, order that the compensation be paid by the father, the mother or the guardian of the offender. Compensation for a victim must come ahead of a fine if the court is considering both, and the recovery of amounts awarded in compensation must be put ahead of the recovery of fines. In addition, victims of crimes of violence are entitled to pursue civil law for damages in tort. Proposals for a comprehensive compensation scheme are being formulated and it is anticipated that they will be in force in 2001.

73. With regard to the family of a person whose death was caused by an accident, the courts may make a compensation order against a person should it be concluded that either his fault, or his negligence, or his incompetence or incapacity, could have caused the death of the person concerned.

## **B. Incorporation of human rights instruments into national legislation**

74. The Bailiwick does not comprise a sovereign state, but is a Crown Dependency. Under international law Her Majesty's Government is responsible for the Bailiwick's international relations. The position of the Bailiwick in relation to international agreements entered into by Her Majesty's Government is a matter to be determined by the agreement itself. It is accepted

practice for the Bailiwick authorities to be notified and consulted before an international agreement is ratified on behalf of, or is extended to, the Bailiwick.

75. With one exception noted below, treaties and conventions are not incorporated directly into local legislation. Instead, if any change in the law is needed to enable the Bailiwick to comply with a treaty or convention, the relevant department of the States will sponsor legislation designed to give effect to the relevant articles of the treaty or convention. For example, under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994, the States may by Ordinance implement in domestic law any European Community provision. In other cases if a *Projet de Loi* is needed then it is subject to the normal procedures for passage through the States and the Privy Council for Sanction by Her Majesty in Council.

76. Incorporation into domestic legislation of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) has not been ruled out, but the Bailiwick authorities wish to ensure (as does the United Kingdom) that they do not over-commit themselves and thereby jeopardize the successful incorporation of the European Convention on Human Rights and Fundamental Freedoms (ECHR). However, ECHR incorporation will ensure that corresponding ICCPR and ICESCR rights are directly enforceable in insular courts, and that public servants will have to act consistently with them.

### **C. Enforcement by courts of human rights instruments**

77. Courts in the Bailiwick interpret only those laws made by the States or Acts of Parliament which have been extended to the Bailiwick. However, when interpreting local laws in relation to human rights the courts will have regard to relevant provisions of applicable human rights instruments, and will endeavour to interpret legislation in a manner consistent with the Bailiwick's international obligations.

### **D. Domestic machinery for implementation of human rights**

78. It has not always been found necessary to translate human rights instruments into local legislation as society and the democratic form of government in the Bailiwick are such that certain basic rights and freedoms are found to be naturally in place. Everyone residing in the Bailiwick is regarded as equal before the law, and as the population is not a multi-racial society, racial discrimination has not become a problem. A buoyant economy and generally relatively full employment provide for an efficient society with a good standard of living. As the Bailiwick is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, individuals residing in the Bailiwick have the right to petition the European Court of Human Rights at Strasbourg. Legislation has now been enacted to incorporate the ECHR into domestic legislation ("the Human Rights (Bailiwick of Guernsey) Law, 2000").

### **Data Protection**

79. The Bailiwick authorities have shared the general concern since the early 1970s about the growing power of computers to collect and redistribute information about individuals. The Data Protection (Bailiwick of Guernsey) Law, 2001, applied safeguards to the handling of personal data on computer and manual filing systems, which in turn enabled the provisions of the 1981

Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data to be extended to the Bailiwick. The 2001 Law is compatible with the European Parliament and Council Directive 95/46/EC and provided for the appointment of an independent Data Protection Commissioner.

80. The 2001 Law requires that personal data should be processed fairly and lawfully, be used only for specified purposes, be kept for no longer than necessary, be subject to proper security and not be transferred to territories with inadequate protection. Additional constraints apply to the processing of sensitive personal data (such as racial and ethnic origin, political opinions, religious beliefs, trade union membership, health, sexual life and criminal convictions). Those who wish to process data must (with some exceptions) notify the Data Protection Commissioner, who has powers to enforce compliance with the legislation. Although the legislation and the parent Convention are concerned with data protection, they are also designed to facilitate the flow of data. Safeguards are provided, however, so striking a balance between the right to know and individual privacy by restricting the disclosure of data to those third parties who are specified as recipients.

### **Complaints against the police and prison officers**

81. Legislation is currently being prepared which will establish a statutory Complaints Commission in Guernsey. Pending that, the position is as follows. The Police Complaints Authority which operates in the United Kingdom has no jurisdiction in the Bailiwick. However, the Guernsey Police Force has adopted as a Code of Practice, the Home Office Document entitled "Guidance to Chief Officers on Police Complaints and Discipline Procedures". This sets out clear procedures for the receipt and investigation of complaints against the conduct of the police.

82. In addition, as a safeguard, the complaints procedure is regularly inspected by Her Majesty's Inspector of Constabulary during his inspection of the Island Police Force. The Complaints Register is also periodically laid before the Committee for Home Affairs for inspection.

83. Should a complainant be dissatisfied with the outcome of a complaint investigated by the Police, the Complaints Register is endorsed accordingly. At that point the complainant, or indeed any person who at any time is dissatisfied generally with the conduct of the Police, has the right to make representations to the Home Department.

84. However, all complaints which allege acts of criminality by the police such as the use of unreasonable force to achieve an arrest, are referred to the Law Officers of the Crown.

85. Complaints against the conduct of prison officers concerning persons detained in the Guernsey Prison are subject to established procedures, whereby complaints may be submitted to the Prison Governor, any member of the Home Department or any member of the Panel of Prison Visitors. All complaints have to be recorded and are thoroughly investigated. In addition a prisoner has the right at any time to submit a written petition to the Home Department which also must be recorded and dealt with.

#### **IV. PUBLICATION AND PUBLICITY**

86. All legislation of the States, Billets d'État and relevant official documents are retained for public inspection and purchase at the official records office of the Bailiwick, namely the Greffe Office. The Official Journals of the European Union are available for public inspection through the Islands Archives Service. Much legislation and many official documents are freely accessible by means of the States' websites.

87. The Bailiwick's reports to the bodies established under the various United Nations human rights instruments to monitor State party compliance with treaty obligations are prepared by the States of Guernsey drawing on such information as may be available from government departments and copies of the reports are made available to the general public through government departments, the Citizens' Advice Bureau and public libraries.

## **Appendix C**

### **Report from the Isle of Man**

#### **Sixth Report of the Isle of Man Government under Article 40 (1) (b) of the International Covenant on Civil and Political Rights**

##### **PART I**

###### **General**

1. Set out in this Report is the Isle of Man Government's update on legislation, policy and practice on matters covered by the International Covenant on Civil and Political Rights since the fifth report was submitted. In accordance with the consolidated guidance for State reports under the ICCPR relevant developments are described under the most appropriate Article. Where a development is relevant to more than one Article it is generally only referred to in one place.
2. In Part C of the Concluding Observations of the Human Rights Committee (Crown Dependencies): United Kingdom of Great Britain and Northern Ireland. 27/03/2000. CCPR/C/79/Add.119 (hereinafter referred to as "the Concluding Observations") the Committee set out its "Principal subjects of concern and recommendations". The Isle of Man Government addresses each of the matters which are relevant to the Isle of Man under the appropriate Article.

##### **PART II**

###### **The Articles**

###### **Article 2**

3. In paragraph 8 of the Concluding Observations the Committee strongly urged the State party to ensure that all Covenant rights are given effect in domestic law. It should be emphasised that whilst the United Kingdom is the State party and it is responsible for the Isle of Man's international relations, the Island is internally self-governing and the responsibility for ensuring that all Covenant rights are implemented domestically rests with the Isle of Man Government.
4. The Human Rights Act, which incorporates into Manx domestic law rights from the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention), was passed in 2001 and it will come fully into effect on 1st November 2006. The rights and freedoms of the European Convention incorporated into Manx law apply to all Island residents without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
5. As is the case in the United Kingdom there are currently no plans to incorporate the Covenant itself into domestic legislation. However, the Isle of Man Government remains committed to developing Isle of Man legislation that both implements and complies with the Covenant's provisions.

6. In paragraph 9 of the Concluding Observations the Committee recommended that human rights education be extended to members of the police, the legal profession and other persons involved in the administration of justice. The Committee also state that human rights education should be incorporated at every level of general education.
7. Following the passing of the Human Rights Act 2001 a programme of education about the European Convention and the Act was delivered to all sections of public service. This included the publication of guidance to both public servants (including members of judiciary and of the Constabulary) and members of the public on the rights enshrined in Manx law by the Act. With the Act coming into force on 1st November that documentation has been updated and it is available free of charge on the Isle of Man Government website. Paper copies are also available upon request. The Isle of Man Law Society has been carrying out a programme of training for Manx advocates. This is in addition to the training which is an integral part of the professional qualifications which have to be obtained before a person can enter into Articles to become a Manx advocate.
8. The present Report, the Committee's Concluding Observations and any comments the Isle of Man Government may wish to make about those Observations will be published in due course as part of the process of maintaining public awareness of human rights issues.
9. In addition to the basic training to all police officer following the passing of the Human Rights Act, specialist detective training (including training for senior investigating officers) contains detailed modules on human rights. A Police Inspector is currently preparing a second wave of training to coincide with the implementation of the Human Rights Act.
10. In the Island's prison, training on human rights issues is provided as a part of the initial training for all staff. Also, all new members of staff are issued with an information booklet covering the Human Rights Act.
11. Human rights education now forms an integral part of the personal, social and health education curriculum delivered to all pupils of compulsory school age (5 to 16 years) in provided and maintained schools in the Isle of Man.
12. In paragraph 10 of the Concluding Observations the Committee recommended that the consideration be given to the establishment of an independent body to review administrative decisions. The Isle of Man Government would note that there are presently a range of formal and informal appeal mechanisms available in respect of administrative decisions, including appeals to the Minister and the raising of issues through constituency Members.
13. However, in July 2004 Tynwald approved the establishment of a statutory Ombudsman Service to provide a fair and impartial assessment of complaints which is divorced from either political or administrative involvement. Tynwald agreed that members of the public should have the right of direct access to the Ombudsman rather than by reference from a member of Tynwald. Drafting instructions have been given to the Attorney General's Chambers and it is expected that this issue will be progressed by the next administration.

14. It is intended that the Ombudsman will be empowered:
- To investigate maladministration in Departments, Statutory Boards and Local Government, as well as complaints regarding the Code of Practice Regarding Access to Government Information;
  - To make binding recommendations as to how the complaint can be remedied;
  - To make suggestions as to improvements in Administration.
15. In addition, Tynwald agreed at its sitting in July 2006 that an Auditor General should be appointed. The Auditor General would undertake responsibility for the following functions:
- (a) Ultimate responsibility for auditing all statutory bodies (including local authorities), with the power to delegate some of the audit work to firms of local accountants;
  - (b) Value for Money Investigations;
  - (c) Regular consultation with the PAC (Tynwald Public Accounts Committee) and provision of assistance with investigations;
  - (d) Identification of issues which may be appropriate for PAC investigations;
  - (e) Examination of issues referred by Tynwald. The Auditor General will be able to decide whether or not to undertake a full investigation, but will report to Tynwald in any event;
  - (f) Examination of issues referred by individual Members of Tynwald or the public. The Auditor General will be able to decide whether or not to undertake a full investigation, but will include in the Annual Report a list of all the matters referred to the Office and the action taken.

### **Article 3**

16. In addition to the Human Rights Act 2001 referred under Article 2, the Employment (Sex Discrimination) Act 2000 has been passed and is in force. The Act provides protection against discrimination on grounds of a person's sex or because he or she is married. The Act applies to all stages of the employment process including advertisements and the process of obtaining a job. The Act also gives men and women the right to receive equal pay for doing the same work or work which has been rated equivalent by a job evaluation study.

17. The Employment (Sex Discrimination) Act 2000 also brought into being the post of Discrimination Officer, which was created in order to assist employers and individuals to understand the requirements of the new law.

### **Article 4**

18. There have been no significant changes in respect of this Article.

### **Article 5**

19. There have been no significant changes in respect of this Article.

### **Article 6**

20. The ratification of Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances was extended to the Isle of Man in August 2004. Although as stated in a previous Report the death penalty was abolished in Manx law in 1993, the right under Protocol 13 has also been incorporated into the Human Rights Act 2001.

### **Article 7**

21. In paragraph 11 of the Concluding Observations the Committee recommended the adoption of legislation to outlaw corporal punishment. The use of corporal punishment in schools provided and/or maintained in the Isle of Man by the Department of Education has been prohibited by statute since 2004 when the Education Act 2001 (and specifically section 10(b)) came into force.

22. However, this statutory prohibition does not apply to independent schools (that is, schools which are outside the state education system) and, at this point in time, the Department of Education has no proposals to bring forward legislation extending the prohibition to those (very few) schools.

### **Article 8**

23. There have been no significant changes in respect of this Article.

### **Article 9**

24. In paragraph 12 of the Concluding Observations the Committee noted steps being taken by the United Kingdom to ensure that its anti-terrorism legislation complies with Article 9 of the Covenant and it urged the Crown Dependencies to take corresponding measures. The Isle of Man's legislation in this area continues to broadly follow that of the United Kingdom but it is not as severe in relation to periods of detention without charge. The Island's Anti-Terrorism and Crime Act 2003 came fully into operation on 1st January 2005. This allowed a derogation that existed in respect of Article 5 of the European Convention to be withdrawn.

25. The Department of Home Affairs is presently in the process of bringing forward amending anti-terrorism legislation, based on provisions already in force in the United Kingdom.

### **Article 10**

26. The construction of a new modern prison is presently underway. It is scheduled to become operational in late 2007 / early 2008. The new prison will significantly improve conditions for detainees. It will house all types of offenders, and will have five separate wings, including a wing for female prisoners and a wing for sex offenders.

27. However, due to the relatively small numbers of un-convicted persons held in the prison it is impractical to segregate these prisoners from convicted prisoners in terms of accommodation. Even if it were practically possible, it could lead to un-convicted prisoners being held in conditions akin to solitary isolation. Wings for the various categories of prisoner will therefore hold both convicted and un-convicted prisoners, although in the new prison all prisoners will have a single cell and will not be required to share with another prisoner.

28. The treatment and conditions of un-convicted prisoners will be different to convicted prisoners. This will include no requirement to work, greater ability to attend education and greater access to private money.

29. The new prison will have a regime which will challenge prisoners and encourage rehabilitation. All convicted prisoners will have sentence plans and receive regular reviews during the term of their sentence. All sentenced prisoners will be expected to work, participate in programmes and adhere to sentence plans. There will be more opportunities for prisoners to receive training and recognised qualifications in vocational skills.

30. The Children and Young Persons Act 2001 provides that every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person. A court may not remand a child or young person in custody unless he is charged with homicide, or it is of opinion that only his detention in custody would be adequate to protect members of the public from death or serious personal injury occasioned by offences committed by him.

31. The Department of Health and Social Security opened a 5 bedded secure unit (plus one emergency bed) for children in February 2003. This unit is for children referred via both the criminal route and the welfare route (i.e. who are at risk to themselves or others).

32. A court remanding a young person to accommodation provided by the Department of Health and Social Security may, after consultation with the Department, impose on the Department a requirement that the person in question be placed and kept in secure accommodation (a "security requirement"). A court may not impose a security requirement in respect of a young person unless he is charged with or has been found guilty of a violent or sexual offence, or an offence punishable in the case of an adult with custody for a term of 10 years or more; or he has a recent history of absconding while being looked after by the Department, and is charged with or has been found guilty of an offence alleged or found to have been committed while he was being looked after by the Department; and (in either case) the court is of opinion that only such a requirement would be adequate to protect the public from harm from him.

33. In 2003 the Youth Justice Team was formed. Since the formation of the team, there has been a reduction in youth offending, and the number of custodial sentences and remands in custody imposed on young people have been reduced.

#### **Article 11**

34. There have been no significant changes in respect of this Article.

### **Article 12**

35. The Isle of Man is currently in the process of updating its immigration legislation. In December 2005 Tynwald agreed that the provisions of the Nationality, Immigration and Asylum Act 2002 and Asylum and Immigration (Treatment of Claimants etc.) Act 2004 legislation (of Parliament) be extended to the Isle of Man with appropriate modifications, adaptations and exceptions. This legislation will also consolidate the provisions of previous British law extended to the Isle of Man, namely the Immigration Act 1971, the Immigration Act 1988, the Asylum and Immigration Act 1996 and the Immigration and Asylum Act 1999. It is anticipated that the updated legislation will be in place by the end of 2006.

36. It will therefore continue to be the case that in general the Island's immigration laws mirror those of the United Kingdom.

### **Article 13**

37. There have been no significant changes in respect of this Article.

### **Article 14**

38. The Tribunals Act 2006 is scheduled to come fully into force on 1st November 2006. This Act will provide that the members of tribunals are appointed by an independent Appointments Commission to ensure that such tribunals are constituted and operate in a manner that is consistent with human rights principles.

### **Article 15**

39. There have been no significant changes in respect of this Article.

### **Article 16**

40. There have been no significant changes in respect of this Article.

### **Article 17**

41. On 1st April 2003, the Data Protection Act 2002 came into force and the Data Protection Act 1986 was repealed. The Act is designed to balance the legitimate needs of businesses and organisations to process personal information with an individual's right to privacy. The Act is based upon the United Kingdom's Data Protection Act 1998 and was drawn up to be compliant with the EC Data Protection Directive 95/46/EC. The European Commission made a formal decision on 28th April 2004 recognising the Isle of Man as a jurisdiction with an adequate level of protection for personal data.

42. On 1st October 2005, the Unsolicited Communications Order and the Unsolicited Communications Regulations 2005 came in to effect. The order implements Article 13 of the EU Privacy and Electronic Communications Directive (2002/58/EC) in the Island and the regulations make provisions to prevent unsolicited marketing communications to an individual via telephone, fax, email or text message.

43. The Regulation of Surveillance Bill is presently awaiting Royal Assent. Although practice in the Isle of Man is presently based on best practice in the United Kingdom, this legislation will place all procedures and restrictions relating to covert surveillance and associated matters on a statutory footing.

#### **Article 18**

44. The Education Act 2001, which came into force in 2004, safeguarded the rights of teachers in provided and maintained schools. No teacher in such a school may be required to teach religious education, for example, or be given a lower salary because of their religious beliefs or their desire not to attend acts of religious worship held at the school.

45. The Education Act 2001 also safeguarded the legal rights of parents or guardians to withdraw their children from religious education or religious worship and to have access to denominational teaching of their choice.

46. The Employment Act 2006 re-enacts the existing right in the Employment Act 1991 of employees not to be dismissed on grounds of their religious belief or related reasons, but removes the one year qualifying period, presently necessary to claim unfair dismissal on such grounds.

#### **Article 19**

47. In paragraph 15 of the Concluding Observations the Committee noted with concern that the archaic and discriminatory provisions of the Criminal Code which make blasphemy a misdemeanour are still in force and the Committee recommended that they be repealed. The legislation referred to dates from 1872 and, in practice, it is not enforced. However, the repeal of the relevant provisions will be considered when legislation in this area is next reviewed.

48. The Data Protection Act 2002 makes provisions in relation to the special purposes of journalism, literature and art. These provisions are based on similar provisions in the Data Protection Act 1998 and are intended to ensure that the Data Protection Act 2002 can not be used to prevent freedom of expression.

49. The Isle of Man Government has agreed that the rights of the public set out in the Code of Practice on Access to Government Information should be placed on a statutory footing, through an Access to Information Bill. The Government will be holding a public consultation shortly to inform the drafting of such a Bill.

#### **Article 20**

50. The Department of Home Affairs' Crime and Disorder Committee is to consider the provisions within the United Kingdom's Racial and Religious Hatred Act 2006 for possible inclusion in a future Isle of Man Bill.

51. The Department of Home Affairs' Crime and Disorder Bill will contain a provision which will provide for an increase in sentence based on aggravation related to sexual orientation, disability, or membership of a racial or religious group. The court must then treat the fact that the offence was so aggravated as increasing the seriousness of the offence, and that it must be stated in open court that the offence was so aggravated.

### **Article 21**

52. There have been no significant changes in respect of this Article.

### **Article 22**

53. The Employment Act 2006 re-enacts and strengthens existing rights in the Employment Act 1991 and the Employment (Amendment Act) 1996 which provide protection against discrimination on trade union grounds. Examples of the increased protection are as follows:

- Protection against discrimination at recruitment is extended to cover the applicant's past trade union membership and activities;
- Inducements by employers to workers to be, or not to be, trade union members or involved in union activities, or not to have their pay or conditions negotiated by collective bargaining are made unlawful;
- Existing protection against any detriment (e.g. demotion, dismissal) for exercising trade union rights is now extended to cover some other types of trade union activities such as use of trade union services;
- Protection for employees taking industrial action is strengthened; and
- The remedies for dismissal on trade union (and other) grounds are strengthened and the Employment Tribunal is given new powers to order re-employment.

### **Article 23**

54. The Matrimonial Proceedings Act 2003, which came into force on the 1 April 2004, re-enacts with amendments the Acts listed in the Isle of Man Government's fourth report under this Article (including those parts of the Family Law Act 1991 relating to matrimonial proceedings). The 2003 Act also repeals the Married Women's Property Dower and Widowright Act 1921 and the Married Women's Property Act 1965 and re-enacts certain relevant provisions thereof with amendments in terms conferring jurisdictional opportunity on both spouses. The Act also makes new provision for family homes and domestic violence; and for connected purposes.

55. The Isle of Man Government expects to shortly begin a public consultation exercise on amending and updating Isle of Man marriage and civil registration legislation with a view, inter alia, to:

- Creating an all Island registration district (as opposed to the present four), which should help give greater customer access;

- Updating the prohibited degrees of relationship (to bring the Island into line with other jurisdictions and to take account of recent judgements in the European Court of Human Rights);
- Allowing approved places (hotels, etc) to hold civil weddings.

56. Following the judgement against the State party in the cases of *Goodwin & I vs UK* in the European Court of Human Rights, the United Kingdom enacted the Gender Recognition Act 2004, which allows transsexual persons to be recognised in their acquired gender and marry a person who is the opposite to that gender.

57. The Isle of Man Government accepts the international human rights obligation established by the judgement of the European Court and legislation based on that in the United Kingdom has been included in the legislative programme with a view to it being progressed in the next session.

58. The next administration also will consider whether legislation equivalent to the United Kingdom's Civil Partnership Act 2004, which allows homosexual couples to register civil unions, should be progressed.

#### **Article 24**

59. The principal legislation concerning the welfare of children is now contained in the Children and Young Persons Act, which became law in 2001. This Act also re-enacts Parts I and II of the Family Law Act 1991. This Act has amended and reformed existing child-care legislation and made new provision concerning the welfare of children. The Act follows very closely the principles contained in the UN Convention on the Rights of the Child.

60. The main principles and provisions embodied in the Children and Young Persons Act 2001 are as follows:

- The welfare of children must be the paramount consideration when the courts are making decisions about them;
- The concept of parental responsibility has replaced that of parental rights;
- Children have the ability to be parties, separate from their parents, in legal proceedings;
- The Department of Health and Social Security (DHSS) is charged with the duty to safeguard and promote the welfare of children who are suffering, or who are likely to suffer, significant harm;
- Certain duties and powers are conferred upon the DHSS to provide services for children and families;
- The DHSS is charged with the registration and regulation of children's homes;
- The DHSS is charged with the regulation of privately fostered children, child minding and day care for children;

- Delays in deciding questions concerning children should be avoided as this is likely to prejudice their welfare;
- There are new provisions for human fertilisation, embryology and surrogacy.

61. The Employment of Children Regulations 2005 revised and updated the level of protection afforded to all young people on the Island who are under 18 years of age and engaged in either full or part-time employment. The provisions of the new Regulations are in line with the requirements of the International Labour Organisation Minimum Age Convention (ILO 138).

62. The Isle of Man Government will make a full report on all matters relating to the rights of children under this Article in its next update to the Committee on the Rights of the Child, which has been requested and is presently being drafted.

### **Article 25**

63. The Representation of the People (Amendment) Act 2006 has lowered the age at which a person may vote in Isle of Man Elections from 18 to 16 years. The Act also now allows a person to exercise their vote through a proxy or as an absent voter upon request, whereas formerly this could only be done under specific circumstances. Although those persons detained in the prison were not previously disenfranchised under statute, they were not entitled to either a proxy or absent vote and, through practical considerations, it may have not have been possible to escort them to a polling station to exercise their right to vote. The new provisions mean that all detainees can vote, should they choose to do so, without having to attend at a polling station.

64. Two further initiatives introduced by the Isle of Man Government in 2006 to enable more people to be able to exercise the right to vote are the extension of the opening hours of polling stations during a General Election, and the change from a single annual updating of the electoral register to updating the register on a rolling basis.

### **Article 26**

65. In paragraph 14 of the Concluding Observations the Committee recommended that measures be taken to remove and prohibit any discrimination on the grounds of sexual orientation. The Sexual Offences (Amendment) Act 2006, which came into force on 1st September 2006, has equalised the age of consent for homosexual males with that of other persons at 16 years. The Act also repealed section 38 of the Sexual Offences Act 1992, which prohibited the “promotion” of homosexuality.

66. The Employment Act 2006 (awaiting Royal Assent at the time of writing) will give employees a right not to be dismissed on the ground of their sexual orientation. In contrast to the general rules on unfair dismissal, employees will not have to serve a minimum qualifying period to be protected from dismissal for this reason and there will be no upper age limit to bring a claim.

67. In paragraph 18 of the Concluding Observations the Committee recommended that the process of enacting legislation outlawing racial discrimination be completed. The Race Relations Act 2004 makes unlawful discrimination in the provision of goods and services on the grounds of race. The Act is not yet in force pending the commencement of Codes of Practice under the Act which are presently being drafted.

68. The Disability Discrimination Act 2006 recently received Royal Assent. When in force it will provide a framework for making unlawful discrimination against people with disabilities in the provision of goods and services, education and access to buildings.

69. The Isle of Man Government also has plans to bring forward an Employment Equality Bill. This legislation will deal comprehensively with any discrimination in employment on a number of grounds including race, religion and disability.

70. In 2003 the Isle of Man Government agreed, as part of its support for the Manx language, to the extension of the United Kingdom's ratification of the European Charter for Regional or Minority Languages in respect of Part II of the Charter protection for users of Manx Gaelic.

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