



House of Lords
House of Commons
Joint Committee on
Human Rights

Government Responses to Reports from the Committee in the last Parliament

Eighth Report of Session 2005–06



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*Report, together with formal minutes and
appendices*

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Lord Lester of Herne Hill
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Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm.

Current Staff

The current staff of the Committee are: Nick Walker (Commons Clerk), Ed Lock (Lords Clerk), Murray Hunt (Legal Adviser), Róisín Pillay (Committee Specialist), Jackie Recardo (Committee Assistant), Pam Morris (Committee Secretary) and Tes Stranger (Senior Office Clerk).

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Report

Under cover of a letter of 10 January 2006 from Rt Hon Harriet Harman QC MP, Minister of State at the Department for Constitutional Affairs, we have received responses from the Government to the following three Reports from the Joint Committee on Human Rights in the last Parliament—

(i) Twenty-first Report of Session 2003–04, *The International Covenant on Economic, Social and Cultural Rights*, HL Paper 183/HC Paper 1188

(ii) First Report of Session 2004–05, *Protocol No.14 to the European Convention on Human Rights*, HL Paper 8/HC Paper 106

(iii) Seventeenth Report of Session 2004–05, *Review of International Human Rights Instruments*, HL Paper 99/HC Paper 264.

We publish these responses as Appendices to this Report.

Appendices

Appendix 1 – Government Response to the Committee’s Twenty-first Report of Session 2003–04, on The International Covenant on Economic, Social and Cultural Rights

1. The Government is grateful to the Committee for this wide-ranging report, and would like to apologise for the delay in providing this response.

2. Although this response does not deal individually with every single point made by the Committee, it attempts to address the Committee’s most important observations, which are listed in the summary to its Report. The Government’s responses to the Committee’s individual observations and recommendations are numbered to correspond with the paragraph numberings used in the Committee’s report. The Committee’s observations and recommendations are reproduced in bold type.

15. [The Government’s] commitment to economic, social and cultural rights in the international context contrasts with an apparent reluctance to use the language of these rights when addressing relevant issues in domestic law and policy.

3. The Government does not recognise the existence of a contrast between its international and domestic policies on economic, social and cultural rights. The Government is fully committed to a vigorous development of economic, social and cultural policy within the UK. It has consistently pursued a progressive agenda on social and economic policy and can point to sustained progress on social inclusion, reduction in unemployment, and increased funding for education and healthcare as evidence of its commitment to domestic realisation of the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

23. ... many of the rights which the Covenant guarantees are protected in [UK] domestic legislation. However, where there are gaps in this legislative protection, the domestic legal system cannot always provide redress.

4. No legal system is perfect, and the Government does not contend that there is no room for further improvement in the development of economic, social and cultural rights policy in the UK. On the contrary, the Government continues to set challenging targets for improvement in those policy areas, and has taken a range of measures, including legislation and the adoption of policies and programmes, which advance the principles and objectives set out in the Covenant. The Government believes that its progressive social policy is generally in compliance with the ICESCR, but in cases where existing provisions in the UK do not fully meet a particular requirement of the Covenant, its practice is to bring them into line with the relevant obligation to ensure its implementation in national law.

59. In assessing the justiciability or potential for domestic level protection of the Covenant rights, it is wrong to impose a rigid demarcation between civil and political rights on the one hand, and economic and social rights on the other, and to classify all economic and social rights as inherently vague and unenforceable ...

... A classification of all aspects of all economic, social and cultural rights as beyond the reach of the courts is, as the CESCR has pointed out, arbitrary.

5. The Government believes that social and economic rights are as important as civil and political rights. It does not accept that because the two sets of rights are not treated in identical ways (eg incorporated directly into domestic law) it does not view them as equal in importance.

6. However, it is simply a fact that there are significant differences in the ways civil and political rights are set out in the International Covenant on Civil and Political Rights (ICCPR) and economic, social and cultural rights are set out in the ICESCR. That suggests strongly that the two sets of rights neither can nor should be implemented in precisely the same way. The Government's approach to economic and social rights reflects the fact that although some economic and social rights require immediate realisation, most are required to be realised progressively—and their realisation is not a precise art.

7. The Government recognises its obligation to take steps to achieve the standards set out in the Covenant, but those standards are not always expressed in concrete terms: the Covenant refers to 'adequate' and 'highest attainable' levels of protection. Clearly, this raises a particular set of issues not present with civil and political rights.

8. For the purposes of this response, the Government takes 'justiciable' to mean that if an individual complained that a particular Article of the Covenant had been breached, a court or other judicial body would be able to rule on the individual's complaint. It believes that, if the UK courts were asked to make decisions about the implementation of economic and social rights, then no doubt they could do so. However, given the way in which many of the rights in the Covenant are expressed, it is not obvious that such decisions would be meaningful and beneficial for UK society.

9. Clearly, it is an ongoing primary goal of every Government to improve the social and economic environment in which it operates. The Government believes the right way forward is to protect and develop economic and social rights through a variety of administrative and legislative measures. The UK has a collection of laws, regulations and administrative rules which individuals can use to challenge Government policy, so there is already a wide-ranging system of justiciable processes for the protection and enforcement of economic, social and cultural rights, although in a variety of forms.

73. ... the case for incorporating guarantees of the Covenant rights in UK law, either by incorporating the terms of the Covenant itself, or by developing domestic formulations of the Covenant rights as part of a UK Bill of Rights, merits further attention.

10. The Government believes it is important to recognise that economic and social rights are the very stuff of government policy. They are the issues on which Governments are elected and unelected. Decision-making by the courts on economic and social rights to the extent envisaged by full incorporation of the treaty into domestic law would have profound implications for the role of Parliament in scrutinising Government's policies. Incorporation of ESC rights into the UK legislation would take decision-making on the basic policy agenda and priorities away from an elected government, counter to the fundamental principles of our democracy.

11. But the Government does not believe that, even by solving the problem of democratic accountability, incorporation would improve on the existing legal framework. It believes that there would be real difficulties with full legal incorporation, as there are issues for which there is no absolute standard, eg adequate food, clothing and housing rights, the standards for which are rightly the business of governments to determine, and for democratically elected legislatures to oversee.

12. It is also important to remember that the Covenant does not require or recommend such incorporation. The UN Committee has said that it is for each State to decide the manner of justiciability and that comprehensive incorporation is not essential so long as measures are taken to protect the Covenant rights. A corollary of this is that the justiciability of economic, social and cultural rights is ultimately a political rather than a legal question. That is to say, the language of the Covenant affords sufficient scope to States parties to determine for themselves how economic, social and cultural rights are to be protected in the domestic legal order.

88. We recommend that the government should build on existing practice by extending the aspects of explanatory notes to Bills which enlarge on the ... statement [under Section 19 of the Human Rights Act] to include a discussion of conformity or non-conformity with international human rights obligations. We further recommend that a timely opportunity be sought to introduce legislation to make such a human rights impact assessment a duty.

13. It is difficult to see how this would work, or how meaningful such a statement might be. Statements under Section 19 give clear indications of whether new legislation is or is not compatible with the European Convention on Human Rights. In view of the progressive nature of many of the rights in the ICESCR, a statement of bare compatibility with the ICESCR would seem to be of little value. But a more precise statement, perhaps giving a prognosis for achievement of a developmental target, would seem to be excessive for every piece of new legislation. In the absence of a more detailed explanation, the Government is not persuaded of the need for legislation of the kind the Committee recommends.

89–101. We recommend that the government should give consideration to how [several functions of the new CEHR, proposed in the White Paper *Fairness for All*,] might be provided for under the Commission's founding legislation.

14. The human rights duties of the Commission for Equality and Human Rights (CEHR) are set out in clause 9¹ of the Equality Bill, currently before Parliament. Subsections (1) and (2) read:

(1) The Commission shall, by exercising the powers conferred by this Part:

(a) promote understanding of the importance of human rights,

(b) encourage good practice in relation to human rights,

(c) promote awareness, understanding and protection of human rights, and

¹ References to Equality Bill clauses are as in the House of Commons Introduction print of 11 November 2005

(d) encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights).

(2) In this Part “human rights” means:

(a) the Convention rights within the meaning given by section 1 of the Human Rights Act 1998, and

(b) other human rights.

15. The CEHR has therefore been given a broad remit that extends well beyond the Convention rights, and must definitely include, for example, the major United Nations human rights treaties, including the Covenant on Economic, Social and Cultural Rights.

16. The powers that are conferred upon the Commission in respect of human rights include the power:

- to conduct inquiries and make recommendations (clause 16);
- to monitor the law and advise Government about changes in the law (clause 11); and
- to provide information, advice and training, and conduct research (clause 13).

17. Insofar as economic, social and cultural rights are reflected in the Convention rights, the Commission will also have the power to rely on the Convention rights in the course of legal proceedings for judicial review which it institutes or in which it intervenes (clause 30).

18. The Commission is also enabled, by virtue of the broad power of co-operation in the fulfilment of its human rights duties in clause 18, to contribute to examinations of the United Kingdom’s performance of its international human rights obligations.

103. The CESCR raised concerns under Article 11 ICESCR, which protects the right to an adequate standard of living, including the right to adequate housing. It noted the persistence of high levels of poverty, particularly in Northern Ireland and amongst ethnic minorities, people with disabilities and older persons, and the increasing gap between rich and poor.

19. With regard to ethnic minorities in Northern Ireland, there are no robust poverty measures. This is due primarily to the low proportion (less than 1%) of the overall population that this group comprises. As a result, population-wide household surveys, from which poverty estimates are generated, do not include sufficient numbers of responses from people belonging to ethnic minorities to enable poverty estimates to be calculated for them.

20. The risk of poverty and the composition of poverty amongst individuals living in households with one or more disabled adults in Northern Ireland (using the 60% below median income poverty measure²) is little different from Great Britain.

2 Source: Households Below Average Income, Northern Ireland report for 2003/04 Department for Social Development

21. Independent research commissioned by the OFMDFM found that between 1990/1994 and 1999/2002 the low-income *risk* of individuals living in a household with somebody with a longstanding disability or illness increased slightly. However, the *number* of these individuals comprised significantly more of those in poverty in 1999/2002 than in 1990/1994.³

22. As far as older people are concerned, the evidence suggests that in Northern Ireland compared to Great Britain, pensioner couples and single pensioners have a slightly higher *risk* of income poverty but they comprise a lower *proportion* of all those who are actually in poverty.⁴

23. Independent research commissioned by the OFMDFM found that, between 1990/1994 and 1999/2002, single pensioners were at less risk of low income and made up less of those in low income households. But pensioner couples were more at risk of low income, and comprised a higher proportion of those in low-income households.⁵

24. Overall, analysis of the distribution of household income and expenditure within households in Northern Ireland (using the Gini Coefficient measure) indicates stability in the distribution of income and expenditure from 1994/95 onwards.⁶

25. The Central Anti-Poverty Unit of the Office of the First Minister and Deputy First Minister (OFMDFM) is currently developing an Anti-Poverty Strategy for Northern Ireland which will seek to address issues affecting vulnerable individuals, vulnerable groups (including ethnic minorities), and also areas at risk of poverty and social exclusion.

26. The next stage in the development of the strategy will be to work with Departments to agree the Northern Ireland Regional Action Plan. Specific targets and linkages to other strategies (such as the Racial Equality Strategy for Northern Ireland) will be included at this stage.

27. A ministerial led cross-sectoral Forum is to be established to oversee the implementation of the strategy and the development of the Regional Action Plan. It is anticipated Ethnic Minority groups will be represented on this Forum.

111. We urge the Government to give a higher priority to the development of a single Equality Act designed to ‘level up’ the laws against discrimination on all grounds, and in particular to extend protection against age, sexuality and religious discrimination to the provision of goods and services, and to place a positive duty on public authorities to promote equality across all the equality strands.

28. The Government’s commitment to a Single Equality Act is signalled in the last manifesto. A Bill will be introduced in this Parliament ‘to modernise and simplify equality legislation’. In preparation for the legislative process, two reviews are under way. The Equalities Review is chaired by Trevor Phillips and is due to report to the Prime Minister in

3 Source: Low Income Households in Northern Ireland 1990-2002, Dignan T (2003) www.research.ofmdfmi.gov.uk

4 Source: 60% below median income poverty measure – Households Below Average Income, Northern Ireland report for 2003/04 Department for Social Development

5 Source: Low Income Households in Northern Ireland 1990-2002, Dignan T (2003) www.research.ofmdfmi.gov.uk

6 Source: Indicators of Social Need for Northern Ireland, OFMDFM (2004) www.research.ofmdfmi.gov.uk

the Summer of 2006. In parallel, a thorough review of discrimination law is being carried out by the DTI. A green paper is expected to appear in 2006.

113. We recommend that the Government should ratify Protocol 12 to the European Convention on Human Rights, and that Protocol 12 should be included amongst the rights protected under the Human Rights Act.

29. The UK has not signed or ratified Protocol 12, and has no plans to do so in the near future. The Government agrees in principle that the ECHR should contain a provision against discrimination that is free-standing and not parasitic on the other Convention rights. However, the Government felt unable to accept the text of Protocol 12 when it was proposed for this purpose by a majority of the Council of Europe.

30. The Government has reviewed its position but, in the absence of any case law from the European Court of Human Rights, considers that there remain unacceptable uncertainties regarding the impact of Protocol 12 if it were incorporated into UK law:

- The drafting of the Protocol is very wide, covering any difference in treatment. It would apply to everything done by a public authority, and its application to “rights set forth by law” would cover many, perhaps almost all, provisions in statute or common law. This could lead to an explosion of litigation as people sought to clarify the extent of the new law.
- Moreover, the coverage of “rights set forth by law” as cited in the Protocol may have the unintended effect of including other international instruments to which the UK is a party.
- Finally, until the European Court of Human Rights addresses the new Protocol, there cannot be complete certainty that it permits a defence of objective and reasonable justification on the same basis as under Article 14 ECHR.

116. The government should consider the need for the right of individual petition under [the UN] treaties in light of the concerns about *de facto* inequality highlighted by the Committee on Economic, Social and Cultural Rights.

31. The Government reviewed the question of the optional right of individual petition to the United Nations in 2004 as part of a comprehensive review of the United Kingdom’s position under international human rights treaties. It published its conclusions on 22 July 2004. These can be accessed at <http://www.dca.gov.uk/hract/ngo/reviews/appendix5.pdf>

32. Successive UK Governments have 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 that could not come to juridical conclusion in any case.

33. The Government’s decision to accept the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) was to enable it to consider on a more empirical basis the merits of the right of individual petition under the

other three UN treaties. The Government proposes to review this experiment two years after the coming into force of this Protocol.

34. The UK believes some questions remain over a proposed optional protocol providing rights of individual petition under the ICESCR, and how such an optional protocol would function in practice. Some elements of the ICESCR may well lend themselves to an individual complaints mechanism, but a detailed legal analysis is needed to identify which provisions are in fact amenable to being made subject to such individual complaints.

121. We reiterate ... that the application of section 55 of the Nationality, Immigration and Asylum Act 2002 is likely to breach human rights standards. The levels of homelessness and destitution which reliable evidence indicates have in practice resulted from section 55 are very likely to breach both the obligation of progressive realisation of rights under Articles 9 and 11 ICESCR (since they represent a regression in the protection of these rights for asylum seekers), and the obligation to ensure minimal levels of the Covenant rights to the individuals affected by section 55.

35. The Government does not believe that it is in breach of Articles 9 and 11 of the ICESCR, as it is taking active steps to reduce the levels of homelessness. In March 2002, the Homelessness Directorate was established to investigate the underlying causes and trends of homelessness, to collect information more effectively, and to test new and innovative approaches that can be taken to reduce and prevent homelessness.

36. In particular, the Government is taking forward a challenging new approach that focuses as much on the problems homeless people face as on the places in which they live. This approach was set out in the Government's March 2002 publication *More than a roof*.

37. Investment of £125 million in 2002–2003, together with changes to Housing Benefit subsidies, are helping local authorities support new approaches that help people tackle the problems that are making and keeping them homeless. These include helping them to rebuild family relationships, to access training or employment, to overcome debt, or to address their physical or mental health needs. Most importantly, the programmes are providing immediate practical help to local authorities in reducing use of poor quality bed and breakfast accommodation and ensuring that they can meet the target that no family with children should be placed in bed and breakfast accommodation (except in an emergency and only for a maximum of six weeks).

38. Targeted work is also being maintained on rough sleeping to ensure that the number of people on the streets continues to diminish.

123. In its implementation and review of the Higher Education Act 2004, the government should explicitly recognise the obligation of progressive realisation of access to higher education under Article 13 (2)(c) of the ICESCR.

39. The Government is committed to ensuring that as many young people attend university as possible. It has abolished up-front fees. From 2006, these will be, replaced by fees which, although likely, to be increased under variable fees provision, do not have to be repaid until a graduate is in paid employment. A Student Finance Campaign will ensure that potential students and their influencers are aware of the abolition of up-front fees and of the enhanced student support packages available. *Aimhigher*—a national outreach

programme has been designed to widen participation in HE and to increase the number of young people who have the abilities and aspirations to benefit from it.

40. In addition, universities charging higher fees will need, through access agreements with the Office for Fair Access, to say how they propose to use some of the additional income generated from fees to reach out to people from under-represented backgrounds, and what bursaries they might offer to them. A “Widening Participation” allocation, administered by the Higher Education Funding Council for England, is available to reimburse universities for the additional costs of reaching out to and retaining students from under-represented backgrounds.

41. The Government has particular concerns about the wording of ICESCR Article 13(2)(c), which states: “Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education”. The key issue is whether this paragraph is intended to mean equal access to higher education by:

(i) the progressive introduction of free higher education, or

(ii) the progressive introduction of free education up until the point at which higher education commences.

42. The UK government’s position on financial provision for higher education students would directly conflict with interpretation (i) because it does not provide “free higher education”. However, higher education is equally accessible to all in the UK on the basis that fees are not charged at the outset but paid by means of loans at a later stage in the student’s life, if interpretation (i) is correct, the Government believes other signatory countries (such as Australia and New Zealand) would also have problems with its implementation.

128. We agree that the unavailability of education that is not segregated along religious lines, in Northern Ireland or indeed elsewhere in the UK, may raise issues in relation to education rights under the ICESCR ...

We recommend that the financial support provided for integrated education should be assessed having regard to human rights considerations under the ICESCR.

43. In law, all schools in Northern Ireland are open to all pupils regardless of religion. In practice, the vast majority of Protestant children attend state (controlled) schools, while most Catholic children are enrolled in separate Catholic (maintained) schools. To date, Government has accepted this as an expression of parental wishes and has not attempted to impose integrated schools.

44. Under the 1989 Education Reform (NI) Order, the Department of Education has a statutory duty to “encourage and facilitate the development of Integrated Education”.

45. The Department of Education (DE) funds the Northern Ireland Council for Integrated Education (grant for the 2005/06 financial year will be £505k) to encourage the growth of integrated education.

46. The Department facilitates the sector by responding positively to parental demand for integrated education provided this does not involve unreasonable public expenditure.

47. In 2004/05 the accrual capital expenditure in the integrated sector was £11.460m. In 2005/06 it is expected the allocation will be approximately £5.243m.

48. The total General Schools Budget for Grant Maintained Integrated schools in 2005/06 is £52m.

49. DE has also provided a total of £3.55m to the Integrated Education Fund to provide assistance with the capital costs of new schools in the period prior to capital grants being available.

50. The Department also provides a budget annually to help existing schools with the process of transformation to integrated status. The budget for 2005/06 is £265k. This level of funding is consistent with the Department's statutory duty.

51. Since 1997, the number of integrated schools has increased from 34 to 56 and pupil numbers are up from 8,182 to 16,691.

131. We welcome progress in raising the level of the minimum wage, and the introduction of a minimum wage for 16 and 17 year olds, but note the continuing inequality of protection for younger workers, identified by the CESCRC as of concern under Article 7(a)(ii). We recommend that this should be taken into account in the Low Pay Commission's review of the national minimum wage.

52. The Low Pay Commission is free to make recommendations on the relative levels of the minimum wage rates, or the creation of a single rate. However young workers experience much less favourable employment prospects than older ones, and moving them onto the same wage rates as adults might make matters worse.

53. In February 2005 the Commission published its latest report to the Government on the National Minimum Wage. The Government accepted the following main recommendations made by the Commission: The Adult Rate of the minimum wage (for workers aged 22 and over) should increase from its present hourly rate of £4.85 to £5.05 in October 2005, and to £5.35 in October 2006. The 2006 increase is subject to confirmation by the Commission in February 2006 that the economic conditions continue to make it appropriate.

142. The CESCRC concludes that current law places undue restrictions on the right to strike, as protected in Article 8 ICESCR. We consider that the Government should take seriously the successive findings of the authoritative international bodies overseeing treaties to which the UK has become party, and should review the existing law in the light of them.

54. The Government values the Concluding Observations of the Committee on Economic, Social and Cultural Rights on the issue of the right to strike. However, having re-assessed UK law in light of the points raised, the Government believes that the UK does fulfil its obligations under Article 8 of the ICESCR.

55. The Committee's first proposition is that the UK may be in breach of the Covenant because a right to strike is not enshrined in its law. The Government does not share this view. The Government submits that it is not in breach of article 8. Although UK law—in common with that of many other countries—does not include an explicit right to strike, it does uphold workers' freedom to take industrial action, including by striking. Article 8 allows states to enforce their laws in relation to strikes, and in common with virtually the law of all states signatory to the Covenant, UK law provides a framework and boundaries for the freedom to take industrial action, appropriate to the tradition and practice of industrial relations in this country.

56. Other than restrictions on certain groups of workers for security reasons, which are explicitly provided for by the terms of article 8, the freedom to withdraw labour is enshrined in law.

57. Section 236 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) ensures that courts cannot order employees to work or attend at any place for the doing of work. This section has the effect of ensuring that employers cannot use the courts to compel a worker to work or to return to work. In so doing, the law ensures that workers are free to withdraw their labour if they wish.

58. In addition to this freedom for individuals, UK law also upholds the freedom of trade unions to organise industrial action. If a union organises industrial action by workers in contemplation or furtherance of a trade dispute with their employer, and follows proper procedures for balloting its members and notifying the employer, it is protected from civil proceedings.

59. A union organising industrial action will avoid civil liability for its actions which are included in the list of torts in section 219 of TULRCA. The actions must be in contemplation or furtherance of a trade dispute between workers and their employer. Secondary or solidarity action is not protected, therefore; nor are 'political' strikes. The protection afforded by section 219 can be lost if the requirements relating to ballots and notices are not satisfied.

60. While the Government took the decision in 1997 to retain the essential features of employment law, it has made some important reforms which further uphold the freedom of workers to strike, including by protecting them from loss of employment.

61. It is important to stress that the Employment Relations Act 2004 ("the 2004 Act"), which received Royal Assent on 18 September 2004 addresses unions' concerns about the alleged complexity of notice and balloting requirements as the provisions further simplify and clarify the law on pre-ballot and pre-strike notices. Previously, in the 1980s and 1990s, unions were subject to a complex series of requirements when organising industrial action, and could mean the union had to give the employer the names of employees involved, in the ballot and strike. The Employment Relations Act 1999 ("the 1999 Act") simplified and clarified the law. Notable changes included re-designing the requirements on unions to disclose information to employers in pre-ballot and pre-strike notices, thereby ensuring that unions are not required to release the names of their members to employers.

62. The Employment Relations Act 2004 has further extended these protections. These latest changes were introduced following a full-scale review of the 1999 Act. Unions were closely involved in the consultation.

63. The Government's review of the 1999 Act found that, following the amendments, the provisions generally worked well overall and helped parties to re-open negotiations to avoid strike activity. However, there was evidence that the requirements on unions were becoming more onerous. The judgment in the case of *National Union of Rail, Maritime and Transport Workers v London Underground Ltd* highlighted a difficulty in the way information required to be given in ballot and industrial action notices should be presented. Also, the case of *National Union of Rail, Maritime and Transport Workers v Midland Mainline Ltd* revealed that there was a lack of clarity as to the union members to whom the union was required to give an entitlement to vote in an industrial action ballot.

64. The Government therefore concluded in its review that the law on pre-strike and ballot notices could be simplified and clarified further. Measures in the 2004 Act, which took forward the findings of the review of the 1999 Act, have made various important changes to ensure this is achieved. Measures aimed at greater certainty include:

- a more precise definition of the information to be disclosed,
- deleting references to the purposes of the notices—previously the requirements in TULRCA where unions were required to supply information which would help employers “to make plans” left it open to the employer to assert that extra information was needed.

65. Various changes to simplify the information burden on unions include:

- removing the previous obligation to produce matrices. Instead unions are required to identify the total number of employees involved and to list the categories and workplaces affected,
- notices need to be based only on that information held by, or accessible to, more senior union figures. Decentralised information held by lay officials does not need to be incorporated.

66. The Government is satisfied that the 2004 Act clearly defines what information the union needs to provide, whilst making it less burdensome and onerous on them. Unions broadly welcomed the changes and appreciated the Government steps towards simplification.

67. The Government has introduced new protections to limit the circumstances in which employees who strike can be lawfully dismissed for breach of contract. Before the 1999 Act came into effect, employees taking industrial action were protected only from selective dismissals. This meant that all those breaching their contract by striking could be dismissed as soon as they started the action.

68. The 1999 Act provided a major extension of protection for employees dismissed for taking lawfully organised official industrial action. It inserted section 238A into TULRCA, which made it unfair to dismiss an employee for taking such action during the eight-week period following the start of such action. The 1999 Act established other important

protections for employees taking lawfully organised official industrial action, including making it unfair for an employer to dismiss such employees, where industrial action lasted for more than eight weeks, if they had not taken all reasonable procedural steps to resolve the dispute with the union. Such steps would include the use of dispute resolution mechanisms such as conciliation or mediation to resolve the dispute.

69. The Government looked closely at the only case (Friction Dynamics) where strikers have been dismissed since the 1999 Act came into effect—a case which the employees won when their complaint was decided by an employment tribunal. First, the 2004 Act extends the protected period during which it is unfair to dismiss an employee for taking lawfully organised official industrial action from eight weeks to twelve weeks. This is not an arbitrary figure. The Government wanted to ensure that the bulk of industrial action is covered—in fact, 96.5% of all industrial action lasts less than 12 weeks.

70. It is also important to stress that the 2004 Act contains measures to ensure that days on which employees are locked out from their workplace by their employer do not count towards the protected period. This stops employers from, in effect, sitting out the 12-week period by locking out the workforce involved.

71. The Act also defines more closely the reasonable procedural steps which the employer should take to resolve the dispute when using the services of a conciliator or mediator. These ensure that the parties have to engage with third parties and actively assist the conciliator or mediator in their work.

72. The Government recognises that there will be a small number of cases where the protection will not apply. Under UK law, employees can be dismissed in protracted disputes where the employer has taken all reasonable procedural steps to resolve the dispute with the union. The Government recognises that it needs to maintain a fair balance, and provide necessary rights and freedom for employers, to manage their own business needs, as well as providing important protections for employees.

73. The Government contests the view that individuals taking unofficial industrial action should also be accorded the same protection. The UK, in common with virtually all states party to the ICESCR places some legal requirements on the organisation of industrial action.

74. UK law has for many years differentiated between official and unofficial actions. In part, these arrangements are designed to discourage unofficial action which can be especially damaging, and to encourage employees to follow established procedures via their unions to resolve disputes. Nonetheless, the right to take either unofficial or official action is respected under the law insofar as it forbids the courts from ordering individuals to work.

75. The Government therefore maintains that, taken together, these protections mean that a right to strike that complies with the Covenant is already enshrined in UK domestic law. The Government is unable to accept the view of the Committee that the Covenant requires the right to be made more specific than it is at present. Moreover, given the established system of protections and obligations—which build on the traditions and practice of industrial relations—it is uncertain what effect an additional explicit right would have.

144. In our Thirteenth Report, we pointed out that provisions of the Employment Relations Act could lead to incompatibilities with ECHR rights. In our view the Act is also likely to leave incompatibilities with Article 8 ICESCR, as identified by the CESCR in its 1997 concluding observations (HL Paper 183, HC 1188, Paragraph 144).

76. The Government's view is that providing a specific remedy to a union in a *Wilson, Palmer* type situation could open the floodgates to claims that other rights and associated remedies granted to union members should be mirrored by rights for the union itself. This could lead to many extra claims and time-consuming proceedings.

77. The Government believes that the protection of the rights of individual members of a union ensures that the rights of the union are also adequately protected in a manner compliant with Article 8 ICESCR. It is the Government's view that the requirement to provide an effective avenue for redress or remedy can be satisfied in a variety of ways.

78. Decisions of the European Court of Human Rights have shown this to be the case in relation to Article 13 ECHR (which provides that everyone, whose Convention rights have been violated shall have an effective remedy before a national court). In particular, it has been held that an aggregate of remedies may satisfy the requirements of Article 13. Further, it has been held that the application of Article 13 in a given case will depend upon the manner in which the State in question has chosen to discharge its obligation to secure a particular right.

79. Applying this reasoning in respect of Article 8 ICESCR, the Government has chosen to discharge its obligation by providing strong protection for individual union members and thereby protecting the position of the union. Choosing this route to protect the union means that there is no requirement for a freestanding remedy for the union itself. Such an approach is consistent with the case law of the European Court on Article 13 ECHR. It is the Government's view that the same arguments apply in the case of Article 8 ICESCR.

148. In our further report on the Children Bill we concluded that whilst the restriction of the reasonable chastisement defence proposed by the amendments introduced in the House of Lords was likely to satisfy Article 3 ECHR as currently interpreted by the European Court of Human Rights, and went some way towards achieving compatibility with the Convention on the Rights of the Child (CRC), it did not fully meet the CRC obligation, as interpreted by the UN Committee on the Rights of the Child, or the obligation under the ICESCR, as interpreted by the Committee on Economic, Social and Cultural Rights. We reiterate that conclusion here.

80. The measure to which this paragraph refers has now been expressed by section 58 of the Children Act 2004.

81. The Government believes that it is vitally important that children are protected with adequate safeguards from violence and abuse. That is the whole thrust of the 2004 Act.

82. In allowing the passage of section 58, the Government has not advocated the use of physical punishment as a means of disciplining children. The Government believes that, within the boundaries set by law, the use of physical punishment is a matter for individual parents to decide. It is an insult to ordinary, decent parents to suggest that they cannot distinguish between smacking and criminal violence, or that one usually leads to the other.

83. The Government supports parents' freedom and responsibility to choose what is best for their own families. Nevertheless, criminal violence or abuse will not be tolerated: adults whose actions overstep the mark must be dealt with by the Courts.

84. The Government notes that the CRC respects contracting states' rights in relation to retain their own national systems and legal rules. The Government takes very seriously its legal obligations in this matter, and therefore welcomes the JCHR conclusion that there is no incompatibility between Section 58 and Article 3 of the European Convention.

85. The Government notes the comments of the UN Committees, but considers that the law in England and Wales provides children with effective protection from violence, without unnecessarily interfering with parents' discretion as to the upbringing of their children.

86. In particular, the Government does not accept that there is a gap between the standards set by the CRC and those reflected in Section 58. This provision meets the United Kingdom's obligations under Article 19 and Article 37(a) of the CRC. Article 19 requires state parties to take "appropriate legislative, administrative, social and educational measures" to protect children against maltreatment while in the care of a parent or other carer. Article 37(a) requires that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". Neither provision obliges a state to criminalise responsible and loving parents or carers for disciplinary acts that have relatively minor and transient physical or mental effects.

155. We recommend that the co-ordination of the reporting process under the ICESCR should be transferred to the Department of Constitutional Affairs.

87. Lead responsibility for the reporting process was transferred to the DCA in December 2004.

157. There should be a body within government that drives progressive implementation of the Covenant rights, and that works in conjunction with the CDESCR, through responding to the concluding observations, to do this. In our view, more active coordination in the implementation of the Covenant is needed. In particular, the coordinating department should follow up with other government departments on their response to the concluding observations, and on the implementation measures they propose. The DCA human rights unit would in our view be well placed, given its responsibility for implementation of human rights in government, to take an active role in ensuring implementation of the Covenant rights, in the context of the CDESCR concluding observations.

88. Part of the remit of the DCA Human Rights Division is to co-ordinate responses from Government Departments, the Devolved Administrations, the Crown Dependencies and UK Overseas Territories to concluding observations of the CDESCR. The Division also organises meetings of three subcommittees of the DCA Ministerial Forum on Human Rights, at which officials from relevant departments meet with representatives of civil society to discuss progress on implementation of the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and CERD (although the policy lead for CERD lies with the Home Office). It is envisaged that similar subcommittee meetings on the ICESCR will take place during 2006, preliminary to the

preparation of the UK's 5th report to CESCR, and that discussion at these will take the concluding observations of the CESCR as their starting point.

158. We recommend that the devolved administrations should also identify a department with lead responsibility for implementation of obligations under the ICESCR, and for taking forward the concluding observations.

89. In Scotland, no department has overall responsibility for ensuring compliance with the ICESCR, as departments are responsible for observance of international instruments at a local level. The Human Rights and Law Reform Branch is the lead contact for issues relating to the ICESCR. However, the Scotland Act 1998, Section 7(2)(a) charges ministers with “observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law”, imparting a specific function of ensuring compliance.

90. At present, there are no plans to assign lead responsibility for implementation of ICESCR obligations in Scotland to any particular department.

91. The Human Rights & Equality Unit in the Northern Ireland Office will coordinate matters in conjunction with the devolved administration in Northern Ireland.

Appendix 2 – Government Response to the Committee’s First Report of Session 2004–05, on Protocol No. 14 to the European Convention on Human Rights

1. I am grateful to the Committee for this report, and I am pleased to note that the Committee broadly welcomes Protocol 14 to the European Convention on Human Rights (ECHR) as providing many positive measures that should improve the functioning of the control system of the Convention.
2. I would like to apologise to the Committee for the delay in providing this response.
3. As the Committee’s report is largely factual and informative, and the information it provides is not in dispute, this response is correspondingly brief.
4. The Government was pleased to accede to the request of the Committee (referred to at paragraph 1 of the Report) not to proceed to ratify the Protocol before the Committee had reported to Parliament. Accordingly, we delayed ratification of the Protocol until 28 January 2005.
5. We welcome the Committee’s intention (at paragraph 7 of the Report) to report to Parliament in future on the Government’s action on all human rights treaties and amendments to such treaties. We agree that this will facilitate properly informed Parliamentary debate, and the effect will be to enhance the democratic legitimacy of any new human rights obligations that the Government incurs on behalf of the United Kingdom. We will bear this in mind in future as a predictable procedural step in the timetable for parliamentary approval of human rights treaties and amendments.
6. We understand the concerns of the Committee (at paragraph 34 *et seq.* of its report) that the new admissibility requirement introduced by Protocol 14 would amount to a restriction on the right of individual petition and therefore inhibit access to the European Court of Human Rights (ECtHR) by people in the UK. However, we believe those concerns are misplaced. As the Foreign Secretary said in his letter of 13 May 2004 to the Committee, the new admissibility requirement is an essential, measure to preserve the right of individual petition, not as an illusory or theoretical right but as a practical and effective one. Without it, the right of individual petition is likely to suffer dramatically as the Court is increasingly unable to deal with the volume of applications placed before it in our opinion, that would indeed result in a diminution of access to the Court by people in the UK.
7. We agree with the Committee’s view (at paragraph 40 *et seq.* of the report) that Protocol 14 should be seen as only one of a package of measures necessary to preserve the long-term effectiveness of the ECtHR and to guarantee the protection of human rights throughout Europe. Effective national measures by the legislature, the executive and the judiciary at domestic level to reduce the flow of cases to Strasbourg will have a crucial role in reducing the burden on the Court.
8. We believe that effective action is already being taken within the UK with regard to verification of Convention compatibility of draft laws, existing laws, and administrative practice (referred to at paragraphs 50 *et seq.* of the Committee’s report). The provision of ministerial certificates under section 19 of the Human Rights Act, and the Committee’s

own scrutiny of all new legislation ensure that all draft laws are verified for compatibility with the ECHR; and the requirement Under Section 3 of the Human Rights Act that primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights ensures a practical ongoing verification of existing laws. Action to ensure ECHR compatibility in administrative practice has been summarised in a communication to the Council of Europe Steering Committee on Human Rights, and is copied at Annex 1 to this document.

9. We aim to implement all judgments in which the ECtHR has found a violation with the minimum of delay (This is referred to at paragraph 80 of the Committee's report). Officials of my Department are currently working with other relevant government departments to compile a centralised list of all such judgments.

10. Information on ongoing university education and professional training on the ECHR (referred to at paragraphs 81 *et seq.* of the Committee's report) has been summarised in a communication to the Council of Europe Steering Committee on Human Rights, and is copied at Annex 2 to this document.

11. Our Strategic Review of Departments' arrangements for implementing the Human Rights Act (referred to at paragraph 63 of the Committee's report) is nearing its final stages, and is expected to conclude by the end of the year. The good practice that it has identified will be shared with Departments across Whitehall.

12. We look forward to a continuing discussion with the Committee on the best way to create a culture of respect for human rights in the UK, so that the number of cases needing referral from the UK to the ECtHR is kept to an unavoidable minimum.

Annex 1 to Appendix 2 - Protocol No.14 to the European Convention on Human Rights

DH-PR(2005)005rev

Response to new questions asked in 18 October letter (page 3).

Compatibility of draft laws with the standards laid down in the ECHR

See responses given in DH-PR(2005)005rev.

Compatibility of existing laws with the standards laid down in the ECHR

Before the Human Rights Act came into force in October 2000, all Government departments were invited to assess all existing laws for which they were responsible for their compatibility with the Convention rights, and to propose amendments as necessary.

Section 3 of the Human Rights Act requires that primary and subordinate legislation must, so far as possible, be read and given effect in a way which is compatible with the Convention rights. If primary legislation cannot be read in a manner that is compatible with the Convention rights, the courts may not strike it down. Instead, a higher court may make a declaration under section 4 of the Act that an Act of Parliament is incompatible with the Convention rights. A declaration of incompatibility does not affect the validity or enforcement of the legislation, nor does it bind the parties in the case in which it is made.

However, the relevant minister is then obliged to consider whether they ought to amend the legislation in question.

If a minister chooses to amend the legislation that has been found to be incompatible (and in each case so far in which the declaration has not been overturned on appeal, they have), they may use either primary legislation or the remedial order process in section 10 of the Act.

Compatibility of administrative practice with the standards laid down in the ECHR

Section 6 of the Human Rights Act provides that it is unlawful for a public authority to act in a manner that is incompatible with the Convention rights drawn from the ECHR. Section 7 of the Human Rights Act allows administrative policies and practices to be challenged as incompatible with the Convention rights.

Annex 2 to Appendix 2 - Protocol No. 14 to the European Convention on Human Rights

DH-PR(2005)004rev

Update to United Kingdom response:

University education and legal professional training

Anyone seeking to qualify as a solicitor or as a barrister in the UK must first undergo a course of academic study in the field of law. The conditions that a law course must meet in order to be recognised as a 'qualifying law degree' are set out in the Joint Statement on Qualifying Law Degrees, which is prepared jointly by the Law Society and the Bar Council, and approved by the Lord Chancellor. The most recent statement came into effect in September 2002.

The academic stage of legal education is compulsory for all solicitors or barristers, and as outlined in Schedule 2, includes a number of foundation subjects such as contract, tort, criminal law, property law and public law. Schedule 2 specifies that human rights must be one of the key areas covered by the public law foundation subject.

Persons who complete the academic stage of training must then progress onto either the Legal Practice Course (LPC) or the Bar Vocational Course (BVC), depending on whether they wish to become a solicitor or barrister. The Law Society's Legal Practice Course Written Standards sets out the criteria that must be met by all LPC providers. The BVC Specification Requirements and Guidance, issued by the Bar Council, contains similar criteria for all BVC providers. It is a requirement for students on both the LPC and the BVC to demonstrate a thorough understanding of the Human Rights Act and the European Convention on Human Rights.

Between January and October 2000 (entry into force of the Human Rights Act), the Judicial Studies Board co-ordinated training in the Human Rights Act for all judges. Training was by seminars, consisting of introductory lectures, case studies and plenary session. Speakers included Sir Nicholas Bratza, the UK judge on the European Court of Human Rights, and Judge Luzius Wildhaber, President of the Court.

From September 1999 onwards, training along similar lines was provided for magistrates' legal advisers—justices' clerks and court clerks—with a refresher day in the early autumn of 2000, immediately ahead of the implementation of the Act. Training for magistrates was then organised and delivered by the legal advisers.

Before the introduction of the Human Rights Act the Bar Council of Great Britain provided formal training in human rights for some 6000 barristers. The Crown Prosecution Service provided three days' training for all prosecutors, and issued a manual of guidance to its entire staff listing all relevant European cases, with legal updates on new case law every fortnight.

Human rights may additionally be studied as a part of other relevant university courses, and a number of specialist postgraduate courses consider the subject in greater depth.

Training for Immigration officers

Following the commencement of the Human Rights Act the immigration and Nationality Directorate (IND) Instituted professional training on the United Kingdom's ECHR obligations under the Human Rights Act for immigration officials and immigration officers. This covers induction training for immigration officers working on border controls, in enforcement and in removals, as well as for IND's decision makers and policy officials.

Human rights training was also rolled out across the Joint Entry Clearance Unit (now UK Visas—a joint Home Office/Foreign and Commonwealth Office unit) and for entry clearance officers based outside the UK when the Human Rights Act came into force.

In addition, IND staff receive ad hoc training on particular human rights issues from the Legal Advisers Branch when a training need is identified. For example, specialised human rights training has been conducted where immigration officials have had to be accredited in order to exercise the statutory power to certify claims as clearly unfounded to raise awareness of the particular legal issues arising in that context and human rights training on Articles 3 and 8 in a managed migration context has been carried out for managed migration caseworkers.

Finally, IND is involved in a legal awareness programme and lawyers are rolling out the legal awareness human rights workshop across the IND estate in order to raise awareness in IND of how the Human Rights Act affects Home Office business.

Training for Prison Staff

The ECHR is not dealt with explicitly as part of the basic training for prison service staff; however, the basic principles of human rights relating to all of those in custody are dealt with on the entry-level course.

The entry-level training programme for prison officers includes an examination of the Prison Service statement of purpose, which includes looking after all prisoners with humanity. Officers go on to discuss the importance of respect dignity, decency and a healthy environment for all of those in our care, and the importance of diversity and equal opportunities are also highlighted. In their induction week, within their establishment, all

staff will be given details regarding the role and function of the Independent Monitoring Board (IMB) and the rights of all prisoners in relation to the IMB.

In addition, the Prison Service receives ad hoc training on human rights issues both from legal adviser's branch and from Treasury Solicitors. The prison service is also involved in a legal awareness programme.

Finally there are various written training manuals for non-lawyers such as 'The Judge Over Your Shoulder' and 'The Judge at Your Gate', which is written specifically for the Prison Service and is currently being updated to include material on human fights.

Training for Police Officers

In preparation for the implementation of the Human Rights Act in October 2000, a communication and training strategy was developed in consultation with the police service, the government, the Crown Prosecution Service and legal services. Within the programme a process of consultation and quality assurance was established which involved service professionals, non-governmental organisations (Liberty and Justice), academics and independent legal advisors. A revision of police training in light of the Human Rights Act was examined.

Current police training programmes are supported by the development of a national Competency Framework, which provides standards and guidelines to enable forces and individuals to improve the quality and consistency of performance and behaviour. Several national police training programmes include as part of their assessment framework the necessity for officers and staff to be competent against National Standards relating to Race and Diversity as well as to be continuously assessed in their annual performance reviews. Human rights issues are central to these aims and standards. Information is provided below on two core national police training programmes and how they relate to the Human Rights Act.

Recruit training is a centrally designed course delivered by forces and provides new recruits with initial police training. It contains extensive material on human rights issues, including equal opportunities and community and race relations, and recruits are made aware of the extent and limitations of their powers as police officers.

Recruit training consists of three types of modules, all of which incorporate specific learning outcomes relating to human rights issues. The first two modules (induction and operational modules) are concerned with personal values, attitudes and beliefs of student officers as well as operational practice. The induction modules underpin the operational modules, which include dealing with people in an ethical manner, recognising their needs with respect to race, diversity and human rights.

The third set of modules relates to legislation, policy and guidelines. All modules within this area have as a prerequisite the requirement of an understanding of the relevant parts of the Human Rights Act 1998; however one module deals specifically with human rights issues.

The Human Rights Act underpins race and diversity training in the police force. The Police Race and Diversity Learning and Development Programme, for example, seeks to ensure

improvements in race and diversity performance across the police service in England and Wales, through the Strategy for improving performance in race and Diversity 2004–2009. The Race and Diversity learning strategy addresses all diversity areas, including race, gender, sexual orientation, disability, age and religion and belief. It applies to officers at all ranks as well as all police staff and the wider police family. Race and diversity learning and development is tailored to the particular needs of the individual and their local communities, and assessed by the achievement of a national race and diversity standard. Race and diversity training is also planned to be incorporated into all national training packages.

A new programme is being made available across the service for officers and staff who have completed their probationary period. The Core Leadership and Development Programme is supported by distance learning packages and e-learning modules. It is particularly aimed at front-line supervisors and includes a module on Diversity and Professional Practice.

The Human Rights Act underpins a vast amount of police training undertaken in forces—from training surrounding the Police and Criminal Evidence Act to laws governing ‘Stop and Search’ in the street.

In addition to the national training packages above, the Service has fostered a human rights culture in police custody suites. National standards and accredited training have been developed for custody officers in police stations and a key area of this training is awareness of human rights—including the right to privacy and the right to life. Police follow an interventionist approach, with regular checks and risk assessments made on mentally vulnerable detainees.

Training programmes are updated in the light of new legislation and case law. The National Police Library held by the national police training provider includes an information service regarding ECHR case law.

Training for health professionals

The curricula for health professional training is a matter for the Regulatory Bodies (eg the General Medical Council, the Nursing and Midwifery Council or the Health Professions Council). Post-registration training and development needs for NHS staff are decided against local NHS priorities, through appraisal processes and the needs of the service. However the Department of Health shares a commitment that all health professionals are trained in equality and human rights, so that they have the skills and knowledge to deliver a high quality health service to all groups of the population with whom they deal, regardless of their age, disability, faith, ethnicity, gender and sexual orientation.

Other initiatives

The Department for Constitutional Affairs provided a series of awareness-raising seminars for local authority staff in towns and cities through the UK. This is now being upgraded into a series of larger regional conferences for the same target audience.

The Government sponsors the Institute of Global Ethics, which works to support and supplement citizenship education through the “Impetus” project. This project aims to increase awareness of human rights amongst children and young people, and to celebrate

and promote good practice. Following a successful pilot scheme in 2002, involving around 100 school and 45 youth organisations, the scheme is now rolling out nationally.

Appendix 3 – Government Response to the Committee’s Seventeenth Report of Session 2004–05, on The Review of International Human Rights Instruments

1. I am grateful to the Committee for its report on the Interdepartmental Review of International Human Rights instruments, which we carried out between March 2002 and July 2004. I would like to apologise to the Committee for the delay in sending this response.

2. The Government does not share the Committee’s understanding that “The scope of the Government’s Review included whether the UK should continue to be bound by human rights obligations incurred by the Executive in the past without any effective parliamentary scrutiny of those decisions”.¹ The Review was confined to the terms of reference announced by the then Lord Chancellor, Lord Irvine, on 7 March 2002: “To review the UK’s position on international human rights instruments in the light of experience of the operation of the Human Rights Act, the availability of existing remedies within the UK, and law and practice in other EU Member States”.² Within those terms of reference, the focus of the Review was entirely positive and progressive: the question of withdrawal from any of the UK’s existing obligations was never considered. Indeed, we received no suggestions for any such withdrawal.

3. The Committee reports that the outcomes of the Review have been seen as disappointing by many.³ However, we would like the Committee to know that we have received several positive reactions to the review, not least from the United Nations Committee Against Torture, which welcomed its early ratification of the Optional Protocol to the Convention Against Torture (OPCAT), and from women’s organisations, who warmly welcomed the decision to accept the right of individual petition under Elimination of Discrimination Against Women (CEDAW).

4. Indeed, we believe that the new obligations we incurred on behalf of the UK during the course of the Review—in particular ratification of the OPCAT, accession to the Optional Protocol to CEDAW, Ratification of Protocol 13 to the European Convention on Human Rights, and ratification of the Optional Protocol to the Convention on the Rights of the Child relating to Children In Armed Conflict—as well as its modifications of existing obligations, show that we continue to press ahead with the establishment of a culture of respect for human rights in the UK, and to provide leadership internationally on human rights.

5. The Committee reports that much of the disappointment it detects is based on our decision not to accept a number of rights of individual petition to the United Nations. The Committee is critical that the Government “stated its conclusions [on individual petition] in brief terms, and supported those conclusions with only very general reasons”.⁴ We would take issue with that. We believe that, although the explanation contained in the

1 Joint Committee on Human Rights, *Review of International Human Rights Instruments*, 17th Report of Session 2004–05, paragraph 6

2 Official Report, Lords, 7/3/02; WA33.Official Report, Commons, 7/3/02; 526W

3 JCHR 17th Report, paragraph 7

4 *ibid.*, paragraph 7

Report on the Review was indeed brief, the reasons contained within it are clear—namely that:

- The UK has strong legislation against discrimination, including discrimination against ethnic minorities and the disabled. In addition, the Human Rights Act 1998, gives further effect in the United Kingdom to civil and political rights in the European Convention on Human Rights (ECHR). These cover many of the rights in the UN treaties and allow access to these rights in the UK domestic courts.
- Given that the UN monitoring committees which would receive individual petitions from citizens are not courts, and cannot award damages, or produce a legal ruling on the meaning of the law, the practical value to the individual UK citizen is unclear.
- Extensive use of individual petition as a means of seeking to explore the legal meaning of a treaty's provisions could lead to a significant cost to public funds in preparing submissions of the governments opinion on the subject matter of the petition.

6. As our concerns about the value of Individual petition to the United Nations apply to all the major UN treaties that provide that right, our concerns are expressed in generic terms, rather than treaty by treaty.

7. We also take issue with implied criticism in the Committee's statement that "These matters ... deserve the serious attention of the Government".⁵ I can assure the Committee that the arguments for and against acceptance of individual petition were considered at length and with great seriousness by Ministers and officials during the course of the Review. As the Committee is aware, in order to enable further consideration on a more empirical basis we decided, as one of the major conclusions of the Review, to accept the right of individual petition under CEDAW. And as with all international obligations we enter into on behalf of the United Kingdom, we undertook this commitment with the greatest seriousness.

8. The Committee reports that it perceives a "clear change of position from that stated in the Review"⁶ from remarks by David Lammy MP, that the Government's undertaking to review how individual petition had worked under CEDAW two years after the CEDAW Optional Protocol had come into force in the UK should not be taken to imply a reconsideration of individual petition under the ICCPR, CERD and CAT. We do not agree with the Committee's interpretation of Mr Lammy's remarks. Our position on this was set out in Appendix 5 to our report on the Review: "The Government proposes to review *this experiment* [italics inserted] two years after the coming into force of this Protocol". Our intention to review only the CEDAW experiment was, and is, clear. We gave no commitment beyond that, and there has been no change in our position.

9. In view of that commitment, we will review the UK experience with regard to the Optional Protocol to CEDAW after 17 March 2007— two years from the date on which the

5 *ibid.*, paragraph 8

6 *ibid.*, paragraph 11

Protocol entered into force in the UK. At this time we have no plans to carry out a further review of rights of individual petition under the other UN treaties.

10. We do not accept that our decision not to directly incorporate the UN human rights treaties into UK law results in a significant lack of protection for people in the UK. Nor do we agree with the opinion of Redress, quoted by the Committee, that a gap exists which would enable the implementation of legislation in the UK that might violate the rights protected in the Convention Against Torture.⁷ UK law already contains extensive safeguards against torture. They are found in the common law; they flow from the Human Rights Act; and they are contained in statute.

11. We do not accept that its position with regard to acceptance of rights to individual petition undermines the credibility of the UK in promoting and protecting human rights internationally.⁸ This is entirely to overlook our significant decision to ratify the Optional Protocol to CEDAW.

12. We do not agree that we need to present more compelling reasons for any continuation of its position—which is not an inflexible one—rather that proponents of change will need to provide convincing arguments to show real advantage for UK citizens. We have not yet been convinced by the arguments we have seen, but we are open-minded on this issue, as our decision on the CEDAW Optional Protocol shows.

13. We do not agree with the Committee that, in wishing to see how the case-law of the European Court of Human Rights develops with regard to Protocol 12 to the ECHR, we are showing unwarranted caution.⁹ We have held a consistent position on Protocol 12 right from the original discussions on the drafting of the Protocol in the Steering Committee for Human Rights in Strasbourg in 1999.

14. This is that:

- We would welcome any non-discrimination measure that is practical and broadly consistent with UK law.
- We are sympathetic to the inclusion of a free-standing Protocol to the ECHR to prohibit discrimination.
- However, we are concerned that any measure we sign up to should actually provide a workable solution that will deliver the desired result, and make a real difference to combating discrimination.

15. We do not agree with the Committee that, in choosing not to sign Protocol 12, we fail “to give sufficient effect in national law to the UK’s international human rights obligations”.¹⁰

16. On the contrary, we believe the UK’s record on combating discrimination is a good one. The UK has strong legislation against discrimination based on race, gender and

7 JCHR 17th Report, paragraph 17

8 *ibid.*, paragraph 27

9 *ibid.*, paragraph 34

10 *ibid.*, paragraph 34

disability, and in Northern Ireland, on religion. In December 2003 we introduced new legislation to outlaw discrimination on grounds of religion or belief and sexual orientation at work and in training. We will also outlaw age discrimination at work and in training in 2006.

17. We are convinced that, although anti-discrimination law is a key part of the struggle against inequality; it is also necessary to examine the causes of that inequality. That is being done through a major Equality Review, which is examining the fundamental causes of inequality in British society.

18. In choosing not to sign Protocol 12, we are not neglecting the problem of discrimination, nor are we merely standing still on dealing with it in its many forms. We continue to follow a pro-active and energetic programme against discrimination and inequality. Indeed there are instances in which we are actually doing more than Protocol 12 demands—for example, in providing, by the Race Relations (Amendment) Act 2000, for a positive duty on public authorities to Promote racial equality and good community relations.

19. We do not in any sense underestimate the seriousness of the problem of discrimination, but we have very real concerns that Protocol 12 really would do the job it is intended to do. Employers, providers of goods and services and public authorities must be clear exactly what it is that anti-discrimination law requires of them. Similarly, individual employees, consumers and users of public and private services must be clear about what exactly their legal rights are. Protocol 12 does not make this clear.

20. Our position remains that, in due course, the interpretation of Protocol 12 by the European Court of Human Rights may allay our concerns, and we have not ruled out future signature or ratification. Now that Protocol 12 has entered into force, we will study with great interest the judgments of the Court with regard to the Protocol.

21. On protocol 4 to the European Convention on Human Rights, we have already given some consideration to the possibility, recommended by the Committee,¹¹ of ratifying the protocol with reservation in respect of Articles 2 and 3.

22. However, in order to comply with Article 57 of the Convention, any reservation would need to satisfy 3 tests:

- (a) it would have to relate to “any law then in force in [UK] territory”;
- (b) it could not be a reservation of a “general character”; and
- (c) it would need to “contain a brief statement of the law concerned”.

23. We doubt whether it would be possible to draft a reservation preserving the effects of the current immigration legislation on rights of entry of British nationals to the United Kingdom and at the same time satisfy the tests in Article 57 of the Convention. That would entail freezing an important part of the legal position and surrendering the freedom to legislate differently in the future. We do not believe it would be sensible, in as sensitive an area as immigration, to do this. We are also mindful of the possibility that the European

11 *ibid.*, paragraph 38

Court could strike down any reservation we might put in on Protocol 4 but still consider the United Kingdom bound by its act of ratification. If Article 3 of the Protocol became fully binding on the United Kingdom in this way, the immigration consequences could be considerable.

24. We do not agree with the Committee's view that the interpretative declaration by the United Kingdom on the Optional Protocol to the Convention on the Rights of the Child on Children in Armed Conflict is overly broad, or that it undermines the UK's commitment, undertaken in the Protocol, not to deploy under-18s in conflict zones.¹²

25. The interpretative declaration included a clear commitment to take all feasible measures to ensure that members of the armed forces who have not yet reached the age of 18 years old do not take a direct part in hostilities. Accordingly, administrative guidelines and procedures are in place to ensure that under-18s are withdrawn before their units are deployed on operations. Although there may be some situations where, exceptionally, there will be a risk of direct involvement in hostilities by under 18s and in which it will not be practicable to remove them from their units without undermining operational effectiveness or risking the successful completion of the mission and/or the safety of other personnel, we do not consider their deployment in these circumstances to be inconsistent with the obligations set out in the Optional Protocol. The declaration is therefore a statement to clarify our understanding of these obligations: it in no way undermines our commitment and merely seeks to identify the type of exceptional and well-defined circumstances in which it might not be feasible to prevent the direct involvement of under-18s in hostilities.

26. With regard to the Revised European Social Charter, we feel compelled to point out that, contrary to the Committee's report, Mr. Lammy did not tell the Committee when he appeared before it that "there was an intention to ratify the Revised Charter at a future date".¹³ The Committee's minutes of evidence show quite clearly that Mr. Lammy gave no such assurance. In response to a question from Lord Judd, he did assure the Committee that a decision on the Charter would not be "put in the eternally pending file" (to borrow Lord Judd's metaphor), and that is an accurate reflection of the actual position. We continue to keep the question of ratification of the Revised Charter and the collective complaints mechanism under review, particularly in the light of the evolving interpretation of the revised Charter by the experts appointed to oversee compliance with it—as Mr Lammy explained to the Committee.

27. We do not agree with the Committee that the maintenance of the United Kingdom's reservation to the Convention on the Rights of the Child (UNCRC) (with regard to immigration and nationality) undermines our record in the advancement of children's rights, nor that it calls into question the UK's commitment to the Convention.¹⁴

28. As we have said on previous occasions, we believe that without this reservation the interpretation of the UNCRC might come into conflict with the UK's own domestic legislation on immigration. For this reason we believe it is right to retain the Reservation as

12 *ibid.*, paragraph 39

13 *ibid.*, paragraph 44

14 *ibid.*, paragraph 49

presently worded. The retention of the reservation, however, does not mean that vulnerable children do not have the protection of law.

29. We are satisfied that asylum-seeking children in the UK receive adequate care, protection and support. Domestic legislation also provides protection under the Human Rights Act and the Children Act. Given our commitment to the welfare of children as evidenced by domestic legislation, the Government does not believe that the reservation leads to neglect of such children's care and welfare. We consider that, notwithstanding the reservation, there are sufficient checks and balances in place to ensure that such children receive an adequate level of protection and care while they are in the United Kingdom.

30. This is particularly the case in respect of unaccompanied children—whether they are seeking asylum, or leave to enter, or to remain on another basis. We fully appreciate the potential vulnerability of unaccompanied children and the distress they may experience while awaiting a decision. Particular priority and care is, and always will be, given to the handling of their applications. The need for sensitivity is stressed in training and guidance to all staff involved in the casework process. Caseworkers dealing with applications from unaccompanied children are specially trained and are also provided with comprehensive instructions setting out areas to consider when dealing with such applications. We do not believe that this reservation means that such children are denied their basic rights.

31. Each application involving a child is considered on its individual merits. All asylum-seeking children have access to primary health care and education facilities and also receive housing and other support where they need it. They are also referred to the Refugee Council Panel of Advisors for any support they may need in pursuing their claim. Furthermore, the duty of care owed by local authorities to children in need within their areas is the same for all children, regardless of immigration status. The United Kingdom's nationality law is consistent with its obligations under the 1961 United Nations Convention on the Reduction of Statelessness.

32. Nevertheless, we will continue to keep the reservation under review.

33. We are also planning to review in the near future the UK's reservation against Article 37(c) of the UNCRC, on which the Committee has recommended withdrawal.¹⁵

34. In the meantime, as recommended by the Criminal Justice Review, the ambit of the Youth Court in Northern Ireland has been extended to include 17 year olds from 30 August 2005. From that date, Courts have discretion to commit vulnerable 17 year olds to the Juvenile Justice Centre, which currently accommodates young people up to the age of 16, where the regime would better meet their particular needs.

35. Other 17 year olds requiring custody will, again as recommended by the Criminal Justice Review, be accommodated in the Young Offenders Centre (YOC) where special and separate provision is made for them. The YOC also accommodates young adults up to the age of 21 and serving a sentence of less than 4 years. All female prisoners are now accommodated in the Centre.

¹⁵ *ibid.*, Report, paragraph 53

36. The bulk of 16 year olds who require custody are accommodated in the Juvenile Justice Centre. In practice, the small number in this age group who are detained in the YOC are charged with, or convicted of, the most serious offences such as murder or rape.

37. 15 year olds cannot be sentenced to detention in the YOC but can be remanded there if a court determines that they are at risk of injuring themselves or others. Incidents of this kind are rare and there have been no cases since the up-grading of the facilities in the current Juvenile Justice Centre two years ago. The need to use the YOC for this purpose will further diminish with the opening of the planned new Juvenile Justice Centre in January 2007.

38. In Scotland, young offenders institutions are used to detain offenders between the ages of 16 and 21. Young offenders are kept apart from adult prisoners.

Formal Minutes

Monday 23 January 2006

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Campbell of Alloway	Mary Creagh MP
Lord Judd	Dr Evan Harris MP
Lord Lester of Herne Hill	Dan Norris MP
Baroness Stern	Mr Richard Shepherd MP

* * * *

Draft Report [Government Responses to Reports from the Committee in the last Parliament], proposed by the Chairman, brought up, read the first and second time, and agreed to.

Resolved, That the Report be the Eighth Report of the Committee to each House.

Ordered, That several papers be appended to the Report.

Ordered, That the Chairman do make the Report to the House of Commons and that Baroness Stern do make the Report to the House of Lords.

* * * *

[Adjourned till Wednesday 1 February 2006 at 4 pm.]

Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004–05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766
Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787
Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829