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.

Current membership

<table>
<thead>
<tr>
<th>HOUSE OF LORDS</th>
<th>HOUSE OF COMMONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lord Bowness</td>
<td>John Austin MP (Labour, Erith &amp; Thamesmead)</td>
</tr>
<tr>
<td>Lord Dubs</td>
<td>Mr Andrew Dismore MP (Labour, Hendon) (Chairman)</td>
</tr>
<tr>
<td>Lord Lester of Herne Hill</td>
<td>Dr Evan Harris MP (Liberal Democrat, Oxford West &amp; Abingdon)</td>
</tr>
<tr>
<td>Lord Morris of Handsworth OJ</td>
<td>Mr Virendra Sharma MP (Labour, Ealing, Southall)</td>
</tr>
<tr>
<td>The Earl of Onslow</td>
<td>Mr Richard Shepherd MP (Conservative, Aldridge-Brownhills)</td>
</tr>
<tr>
<td>Baroness Prashar</td>
<td>Mr Edward Timpson MP (Conservative, Crewe &amp; Nantwich)</td>
</tr>
</tbody>
</table>

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

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: Mark Egan (Commons Clerk), Rebecca Neal (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), Emily Gregory and John Porter (Committee Assistants) and John Turner (Lords Secretary).

Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee’s e-mail address is jchr@parliament.uk
The Work of the Committee in 2007-08

Contents

Report

Summary 3

1 Overview 5
   Introduction 5
   Our remit and the core tasks 5
   Overview of our work 6

2 The state of human rights in the UK 10
   Introduction: response to last year’s report 10
   Human rights in 2007-08 11

3 Legislative scrutiny 15
   Scope of legislative scrutiny 15
   Government amendments to Bills 15
   Statutory Instruments 15
   Pre- and post-legislative scrutiny 16
   Timeliness 17
   Recurring themes 17
   Quality of Explanatory Notes 18
   Committee amendments to Government Bills 19
   Civil society input into legislative scrutiny work 21

4 Thematic inquiries and other work 23
   Core task 1: examination of policy proposals 23
   Core task 2: emerging policy 23
   Core task 3: draft bills 23
   Core task 4: specific output from the department 23
   Core tasks 7 and 8: scrutiny of relevant public bodies and major appointments 24
   Core task 9: implementation of legislation and major policy initiatives 24
   Core task 10: debates in the House 25

5 Working practices 27
   Recent changes 27
   Informal meetings and visits 27
   Following-up previous work 29
   Relations with government 29
   Informing Parliament 30
   Outreach 30
   International dimension 31

Formal Minutes 32

Annex 1: Sessional Return 2007-08 33

Annex 3: Committee amendments to bills

Written Evidence

Letter to Liam Byrne MP, Minister of State, Home Office, on the Highly Skilled Migrants Programme, dated 25 June 2008

Letter from Liam Byrne MP, Minister of State, Home Office, on the Highly Skilled Migrants Programme, dated 8 September 2008

Letter to Rt Hon Jacqui Smith MP, Secretary of State, Home Office, on the Highly Skilled Migrants Programme, dated 17 December 2008

Letter from the Minister of State for Health Services to Stephen O’Brien MP on the Health and Social Care Bill dated 29 July 2008

Letter to the Chairman from the National Secular Society on the Education and Skills Bill dated 12 September 2008


Letter from Alan Campbell MP, Parliamentary Under-secretary, Home Office, on Human Trafficking, dated 7 October 2008

Letter to Alan Campbell MP, Parliamentary Under-secretary, Home Office, on Human Trafficking, dated 9 December 2008

Letter from Rt Hon John Hutton MP, Secretary of State for Defence on UN Convention Against Torture, dated October 2008

Letter from the Chairman to Trevor Phillips, Chair of the Equality and Human Rights Commission, dated 5 November 2008

Letter from the Chairman to the Rt Hon Jacqui Smith MP, Home Secretary, dated 11 November 2008

Letter from Rt Hon Jacqui Smith MP to the Chairman, Home Secretary, dated 10 November 2008

List of Witnesses

Reports from the Joint Committee on Human Rights in this Parliament
Summary

Human rights are for everyone: over the last year we have examined issues relating to the human rights of a wide range of groups including adults with learning disabilities, asylum seekers, older people in healthcare and children.

In this Report, we provide an overview of our work during the 2007-08 parliamentary session and draw attention to improvements in the human rights landscape of the UK and areas of continuing concern.

Public authorities

Public authorities need to promote human rights to make sure that service users understand their rights and that those rights are respected. The Government should build on its success in establishing the Equality and Human Rights Commission and take further steps to encourage public authorities to promote the human rights of service users.

Changing laws

Laws proposed by Government are not always fully compatible with the Human Rights Act and other international human rights standards. Over the last year we contributed to ensuring that human rights were better protected, particularly in the bills dealing with counter-terrorism, health and social care, criminal justice and immigration and trade union membership.

We played a major role in persuading the Government to change the law so that publicly-funded residents of privately owned care homes would be protected by the Human Rights Act.

Emerging policy: UK Bill of Rights

There is much debate at present about whether the UK needs a Bill of Rights. We believe that it does, and we set out our view for what a UK Bill of Rights should contain in a Report published in August. In particular, we recommend that a UK Bill of Rights should contain economic and social rights, relating, for example, to housing and education. We will pursue follow-up work on this in the coming months.

Children

Children featured in three positive human rights developments. The Secretary of State now has a legal duty to promote the well-being of children, as set out in Children and Young Persons Act 2008; the Government has withdrawn its reservations to the UN Convention on the Rights of the Child; and it is seeking to ratify the Optional Protocol on this Convention to protect children from prostitution, pornography and slavery. We criticised the Government for continuing with the use of restraint in secure training centres, however.

Future Work

We will, over the next year, inquire into children’s rights and carry out follow-up work on human trafficking and asylum seekers. In addition we will scrutinise all Government legislation, focusing on Borders, Immigration and Asylum, Coroners and Justice and
Equalities Bills.
1 Overview

Introduction

1. This is the second annual report by the Joint Committee on Human Rights, in which we set out our activities during the 2007-08 parliamentary session. We also highlight areas in which the Government has enhanced human rights during the year as well as areas of concern, and comment on our working practices, which continue to evolve. In addition, we are publishing with this Report the oral evidence we heard from the Chair of the Equality and Human Rights Commission on 14 October and from the Home Secretary on 28 October, memoranda associated with that evidence, and other papers we received during the session but have not published elsewhere.

Our remit and the core tasks

2. The Joint Committee on Human Rights is comprised of twelve Members, drawn equally from the House of Commons and the House of Lords. Our remit is broad: “to consider matters relating to human rights in the UK”, although we are unable to deal with individual cases. We are also required to report to the House in relation to remedial orders (as well as proposals for remedial orders and draft remedial orders), which are statutory instruments made under the Human Rights Act 1998 in order to deal with legislative provisions which the courts have ruled to be incompatible with the European Convention on Human Rights. Remedial orders have been brought forward infrequently and there were none for us to consider in 2007-08.

3. As a joint committee, with a remit which cuts across the responsibilities of all Government departments, we do not have a specific department to hold to account in terms of service delivery or expenditure. As a consequence, not all of the core tasks first elaborated by the Commons Liaison Committee in 2002 are relevant to our work. The relevance of specific core tasks to our work is set out in Table 1.

Table 1: JCHR and the core tasks set out by the Commons Liaison Committee

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 1</td>
<td>To examine policy proposals from the UK Government and the European Commission in Green Papers, White Papers, draft Guidance etc, and to inquire further where the Committee considers it appropriate.</td>
<td>Relevant</td>
</tr>
<tr>
<td>Task 2</td>
<td>To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals.</td>
<td>Relevant</td>
</tr>
<tr>
<td>Task 3</td>
<td>To conduct scrutiny of any published draft bill within the Committee’s responsibilities.</td>
<td>Relevant</td>
</tr>
<tr>
<td>Task 4</td>
<td>To examine specific output from the department expressed in documents or other decisions.</td>
<td>Relevant</td>
</tr>
</tbody>
</table>


2 The session ran from 6 November 2007 to 26 November 2008. There is a little overlap with our annual report for 2007, which covered the calendar year and was agreed by the Committee on 21 January 2008.

3 For more on the core tasks see Liaison Committee, Third Report of Session 2007-08, The work of committees in 2007, HC 427.
The Work of the Committee in 2007-08

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Relevance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task 5:</td>
<td>To examine the expenditure plans and out-turn of the department, its agencies and principal NDPBs.</td>
<td>Not relevant</td>
</tr>
<tr>
<td>Task 6:</td>
<td>To examine the department’s Public Service Agreements, the associated targets and the statistical measurements employed, and report if appropriate.</td>
<td>Not relevant</td>
</tr>
<tr>
<td>Task 7:</td>
<td>To monitor the work of the department’s Executive Agencies, NDPBs, regulators and other associated public bodies.</td>
<td>Relevant only in relation to Human Rights Division of the Ministry of Justice, the Equality and Human Rights Commission and other human rights institutions</td>
</tr>
<tr>
<td>Task 8:</td>
<td>To scrutinise major appointments made by the department.</td>
<td>Relevant only in relation to the Equality and Human Rights Commission</td>
</tr>
<tr>
<td>Task 9:</td>
<td>To examine the implementation of legislation and major policy initiatives.</td>
<td>Relevant</td>
</tr>
<tr>
<td>Task 10:</td>
<td>To produce reports which are suitable for debate in the House, including Westminster Hall, or debate in committees.</td>
<td>Relevant</td>
</tr>
</tbody>
</table>

Overview of our work

4. Our work can broadly be divided into three distinct categories:

- Legislative scrutiny: the scrutiny of Government Bills, in particular, as well as other bills, draft bills, statutory instruments, consultation documents and other legislative proposals for compatibility with human rights;

- Thematic inquiries: inquiries into issues relating to human rights in the UK, similar to the inquiries undertaken by departmental select committees in the Commons except that we frequently consider issues which cut across departmental boundaries;

- Scrutiny of Government responses to adverse judgments by the European Court of Human Rights and declarations of incompatibility by the UK courts: we monitor, and periodically report on, the action arising from all relevant court cases, including those which lead to remedial orders, as mentioned above.

These strands of work are closely inter-related. For example, our scrutiny of the Government’s counter-terrorism proposals has involved both thematic investigation and the scrutiny of specific legislative provisions. We have also raised adverse Strasbourg judgments in the context of our legislative scrutiny work. Nevertheless, the distinction between these types of work is useful in understanding the way in which we undertake our scrutiny of the Government.

5. Further, cross-cutting, aspects to our work concern consideration of the international human rights instruments to which the UK is a signatory, including the extent to which the UK meets its international obligations under those instruments, and scrutinising new human rights treaties prior to their ratification; the implementation of the Human Rights Act; and the work of the UK’s human rights institutions, in particular the Equality and Human Rights Commission (EHRC).

---

6. Table 2 shows the main issues we have considered across all the different strands of our work in 2007-08, illustrating the considerable breadth of our activity.

**Table 2: JCHR activity in 2007-08, by theme**

<table>
<thead>
<tr>
<th>Subject</th>
<th>Activity</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults with learning disabilities</td>
<td>Thematic inquiry</td>
<td>Report, February</td>
</tr>
<tr>
<td>Anti-social behaviour</td>
<td>Legislative scrutiny</td>
<td>Report, January</td>
</tr>
<tr>
<td>Bill of Rights</td>
<td>Thematic inquiry</td>
<td>Report, August</td>
</tr>
<tr>
<td>Blasphemy</td>
<td>Legislative scrutiny</td>
<td>Reports, January, March, March</td>
</tr>
<tr>
<td>Child maintenance</td>
<td>Legislative scrutiny</td>
<td>Report, December</td>
</tr>
<tr>
<td>Children and young people</td>
<td>Legislative scrutiny</td>
<td>Reports, January, March, May</td>
</tr>
<tr>
<td>Counter-terrorism policy</td>
<td>Legislative scrutiny and thematic inquiry</td>
<td>Reports, December, February, May, June, October; mini-conference, May</td>
</tr>
<tr>
<td>Court judgments finding breaches of human rights: Government response</td>
<td>Ongoing scrutiny</td>
<td>Report, October; debate in House of Lords, November</td>
</tr>
<tr>
<td>Criminal justice matters</td>
<td>Legislative scrutiny</td>
<td>Reports, January, March, July</td>
</tr>
<tr>
<td>Data protection</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
</tr>
<tr>
<td>Deaths in custody</td>
<td>Follow up of previous inquiry</td>
<td>Correspondence</td>
</tr>
<tr>
<td>Disability Rights Convention</td>
<td>Scrutiny of UN human rights instruments</td>
<td>Oral evidence, November; report in preparation</td>
</tr>
<tr>
<td>Equality and Human Rights Commission</td>
<td>Ongoing scrutiny</td>
<td>Oral evidence, October</td>
</tr>
<tr>
<td>Housing</td>
<td>Legislative scrutiny</td>
<td>Report, April</td>
</tr>
<tr>
<td>Human fertilisation and embryology</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
</tr>
<tr>
<td>Human rights policy</td>
<td>Ongoing scrutiny</td>
<td>Oral evidence with EHRC, October; correspondence</td>
</tr>
<tr>
<td>Human trafficking</td>
<td>Follow up of previous inquiry</td>
<td>Correspondence; mini-conference, July</td>
</tr>
<tr>
<td>Immigration policy and rules</td>
<td>Legislative scrutiny</td>
<td>Report, January; oral evidence, February and October; correspondence</td>
</tr>
<tr>
<td>Industrial action by prison officers</td>
<td>Legislative scrutiny</td>
<td>Reports, January, March</td>
</tr>
<tr>
<td>Meaning of public authority under the Human Rights Act</td>
<td>Follow up of previous inquiry</td>
<td>Reports, February, March, April; mini-conference, January</td>
</tr>
<tr>
<td>Mental health</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
</tr>
<tr>
<td>Miscarriages of justice, compensation for</td>
<td>Legislative scrutiny</td>
<td>Report, January</td>
</tr>
<tr>
<td>NHS premises, nuisance or disorder on</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
</tr>
<tr>
<td>Older people in healthcare</td>
<td>Follow up of previous inquiry</td>
<td>Reports, February and March; correspondence; mini-conference, October</td>
</tr>
<tr>
<td>Policing and protest</td>
<td>Thematic inquiry</td>
<td>Oral evidence ongoing</td>
</tr>
<tr>
<td>Pornography, extreme</td>
<td>Legislative scrutiny</td>
<td>Reports, January, March</td>
</tr>
<tr>
<td>Public health, protection of</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
</tr>
<tr>
<td>Secure training centres, use of restraint in</td>
<td>Legislative scrutiny</td>
<td>Report, March; debate in House of Lords, July</td>
</tr>
<tr>
<td>Sex offenders</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
</tr>
<tr>
<td>Sexual orientation, incitement on grounds of</td>
<td>Legislative scrutiny</td>
<td>Reports, January and March</td>
</tr>
<tr>
<td>Student loans</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
</tr>
<tr>
<td>Trade union membership</td>
<td>Legislative scrutiny</td>
<td>Report, April</td>
</tr>
<tr>
<td>Travellers and Gypsies</td>
<td>Legislative scrutiny</td>
<td>Report, April</td>
</tr>
<tr>
<td>Treatment of asylum seekers</td>
<td>Follow up of previous inquiry</td>
<td>Correspondence; debate in Westminster Hall, December; mini-conference, July</td>
</tr>
</tbody>
</table>
The Work of the Committee in 2007-08

<table>
<thead>
<tr>
<th>Subject Activity</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>UN Convention Against Torture</td>
<td>Follow up of previous inquiry Report, July</td>
</tr>
<tr>
<td>Violent Offender Orders</td>
<td>Legislative scrutiny Reports, January, March</td>
</tr>
</tbody>
</table>

7. Table 3 shows the core tasks relevant to each inquiry or activity undertaken during the year.

Table 3: JCHR activity in 2007-08, by core tasks set out by the Commons Liaison Committee

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Adults with learning disabilities</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Court judgments finding breaches of human rights</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Counter-terrorism policy</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Data protection and human rights</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability Rights Convention</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Human rights policy/work of EHRC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human trafficking</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Immigration policy and rules</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Legislative scrutiny</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meaning of public authority</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Older people in healthcare</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Policing and protest</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Secure training centres, use of restraint</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Treatment of asylum seekers</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>UK Bill of Rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UN Convention Against</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
8. The remainder of this report deals in more detail with our work in 2007-08, drawing out some of these themes from our legislative scrutiny and illustrating some of the more controversial and innovative aspects of our other work. We also comment on developments in our working practices and indicate some of the issues we intend to scrutinise further during the remainder of the current Parliament.

9. More detailed information about the Committee and our work in 2007-08 can be found in annex 1.
2 The state of human rights in the UK

Introduction: response to last year’s report

10. In last year’s annual report we drew attention to two general problems with the protection and promotion of human rights in the UK. Firstly, we noted that “human rights” and the Human Rights Act were often blamed – wrongly – for unpopular judicial or administrative decisions. We said that it was “essential that Ministers refrain in future from misleading the public by continuing the practice of blaming the Human Rights Act for judicial or other decisions with which they disagree or which embarrass them.”

11. Secondly, we commented on the potential of the Human Rights Act to “act as a lever to improve the way in which services are delivered to the public, underpinning good practice with an enforceable legal obligation.” We concluded that the Government had “done nowhere near enough over the past decade to use the Human Rights Act as a tool to improve the delivery of public services” and that this failure had “contributed to the poor public image of the Act and ‘human rights’ in general.”

12. In response, Michael Wills MP, the Human Rights Minister, said he had seen no evidence of ministers misleading the public about the effect of the Human Rights Act. He also stated that the establishment of the Equality and Human Rights Commission “contradicts your claim of Government failure to promote human rights.”

13. We note that during 2008 Ministers generally refrained from making critical or misleading remarks to the press or Parliament about human rights or the Human Rights Act. Nevertheless, there have still been occasions where the Human Rights Act has come under fire and Ministers have been slow to respond. The recent speech by Paul Dacre, editor-in-chief of the Daily Mail, to the Society of Editors on the laws on libel and privacy included the following passage:

“If Gordon Brown wanted to force a privacy law, he would have to set out a bill, arguing his case in both Houses of Parliament, withstand public scrutiny and win a series of votes. Now, thanks to the wretched Human Rights Act, one judge with a subjective and highly relativist moral sense can do the same with a stroke of his pen.”

14. Mr Dacre was wrong on a number of counts. The Human Rights Act – which was, of course, passed by Parliament – incorporated Articles 8 (right to a private life) and 10 (right to freedom of expression) of the European Convention on Human Rights into UK law. Parliament required the judiciary to balance these sometimes conflicting rights in making decisions in libel and privacy cases. Far from creating a privacy law to suit his own “moral sense”, Lord Justice Eady was implementing legislation passed by Parliament in deciding cases such as the recent action by Max Mosley against the News of the World. Indeed English courts have long protected confidential information, good reputation and aspects

---

5 2007 annual report, paragraph 4.
6 Ibid, paragraph 6.
7 Ibid, paragraph 8.
of personal privacy at common law and in equity, quite apart from Article 8 of the European Convention and the Human Rights Act.

15. It would seem that no current Minister publicly defended the Human Rights Act or the judiciary following Mr Dacre’s speech. When the Human Rights Act or the concept of ‘human rights’ come under fire from senior public figures – such as the editor-in-chief of one of the UK’s most popular newspapers – a senior Minister should respond, quickly and powerfully, otherwise the argument for human rights may be lost by default.

16. We do not accept the Minister’s response to our charge that the Government has not done enough to use the Human Rights Act as a tool to improve public services. We of course welcome the establishment of the Equality and Human Rights Commission and recognise that this is evidence of the Government’s commitment to promoting human rights; but we have called for something more fundamental. We want to see all public authorities focus on the promotion of the human rights of service users, rather than simply comply with the minimum requirements of the Human Rights Act.

17. Some public authorities have already sought to focus on the promotion of the human rights of service users – for example, the NHS organisations involved in a pilot programme sponsored by the Department of Health and the British Institute for Human Rights. These are very much the exception, however, and our overwhelming impression is that most public bodies regard ‘human rights’ as a matter solely of legal compliance. During the passage of the Health and Social Care Bill, which established the Care Quality Commission, we sought to add a clause that “the protection and promotion of human rights shall be central to the performance of the functions of the Commission”. The Minister resisted this clause on the grounds that “the commission will of course be subject to the Human Rights Act and will have to carry out its functions in ways that are compatible with it.”

This episode reinforces our view that the Government is reluctant to require public authorities to promote the human rights of service users, perhaps because it does not understand what this would add to the existing law or because of fears about legal or financial consequences. We welcome the opportunity to engage the Government in further debate on this issue, beginning with scrutiny of the report on the pilot of the human rights based approach to management in the NHS.

**Human rights in 2007-08**

18. We publish as an annex to this report (annex 2) a table showing positive human rights developments in 2007-08 and areas of concern.

19. We have welcomed provisions in a number of Government bills during 2007-08 as measures which enhance human rights, including:

---


12 HC Deb, 18 Feb 08, c59.
• the abolition of the offences of blasphemy and blasphemous libel (included in the Bill during its passage through Parliament); the new offence of incitement to hatred on the grounds of sexual orientation; and the clarification of the law on self defence and the use of force in the home;

• the general duty on the Secretary of State to promote the well-being of children in the Children and Young Persons Bill;

• aspects of the Human Fertilisation and Embryology and Criminal Evidence (Witness Anonymity) Bills; and

• provision in the Employment Bill dealing with expulsion or exclusion from trade union membership, in response to the judgment of the European Court in the Aslef case.\textsuperscript{13}

20. Although we were unable to report on the bill during its passage through Parliament, we also welcome the Forced Marriages (Civil Protection) Act which was originally introduced in the House of Lords by Lord Lester of Herne Hill, one of our Members.

21. Another very welcome development was the Government’s decision to withdraw its reservations to the UN Convention on the Rights of the Child, which related to immigration and nationality matters and to the detention of children in adult detention facilities. We had called for the reservations to be withdrawn on a number of occasions, arguing that they were unnecessary and were not compatible with the requirement in the Convention for the welfare of the child to be paramount.\textsuperscript{14} The Home Secretary told us in a letter dated 10 November that “no additional changes to legislation or significant amendments to guidance and practice are currently envisaged but all relevant UKBA [UK Border Agency] staff will be advised through our internal communications network when the formal process of withdrawing the reservation is completed”.\textsuperscript{15} We intend to monitor the implementation of policy in this area to ensure that the UK’s commitments under the UN Convention are fully met.

22. We have continued to scrutinise Government policy on human trafficking, following the major report we published in October 2006. The Government pledged on 14 January 2008 to ratify the Council of Europe Convention on Human Trafficking and we have written a number of letters to Home Office Ministers about the steps which need to be taken ahead of ratification. The Government’s intention was to ratify before the end of the year and this commitment was reiterated in letters we received from Alan Campbell MP, the Parliamentary Under-Secretary of State at the Home Office, in October and December.\textsuperscript{16}

23. We also note that the Government has made a commitment to ratify the Optional Protocol to the UN Convention on the Rights of Child on the sale of children, child

\textsuperscript{13} See paragraph 51.


\textsuperscript{15} Letter to the Chair from the Home Secretary, dated 11 November 2008, Ev 25

\textsuperscript{16} Letter to the Chair from Alan Campbell MP, Parliamentary Under-Secretary of State at the Home Office, dated 7 October 2008, p 55.
prostitution and child pornography. We strongly support this decision and will seek to scrutinise the measures necessary to ensure speedy ratification.

24. Another welcome step was the Government’s announcement that it would ratify the UN Disability Rights Convention by the end of 2008. We commented on the Convention in our Report on the human rights of adults with learning disabilities, describing it as presenting “a valuable opportunity to confirm that disabled people, including adults with learning disabilities, are entitled to full respect for their human rights”. The Minister for Disabled People wrote to us in September to indicate that the Government was considering a number of reservations to the Convention and we heard oral evidence from the Minister on this issue in November. We will publish a Report on the Convention early in the new year, but register our disappointment now that the Government has not been able to ratify before the end of the year. We also recommended that the Government publish its explanation for any proposed reservations and consult disabled people and their organisations, and engage with Parliament, on proposed reservations and the timetable for ratification.

25. Our work during the session has focused on a number of significant human rights concerns, in particular:

- provisions in the Counter-Terrorism Bill to extend the maximum period of pre-charge detention for terrorism suspects to 42 days and to reform the law on coroners’ inquests where issues of national security are involved, both of which were dropped from the Bill;
- the use of restraint in secure training centres, particularly following the introduction of the Secure Training Centre (Amendment) Rules, which were quashed by the Court of Appeal following a judicial review;
- failures in data protection in Government and concerns about the adequacy of safeguards for sharing data between Government departments and other state bodies; and
- the effect of court decisions which mean that the protections of the Human Rights Act are not enjoyed by people receiving public services from private providers.

---

17 ALD report, paragraph 68.
18 Ibid, paragraph 66.
23 For example, HSC Bill first report, paragraphs 1.6-1.24.
26. A number of reports from UN bodies detailed areas where the UK’s human rights record raises concerns: these are detailed in Annex 2. The report of the Committee on the UN Convention on the Rights of the Child was particularly challenging and we intend to hear oral evidence on children’s rights in the new year.

27. We have also continued to call on the Government to ratify Optional Protocols to international treaties which provide for a right of individual petition to monitoring bodies. The Government signed the Optional Protocol to the UN Convention on the Elimination of Discrimination Against Women in 2005 on a trial basis and we were told in August 2007 that a report on the outcome of the trial would be available “when Parliament returns” in autumn 2007. Mr Wills told us in November 2007 that the report was “imminent”.24 It was finally published on 4 December 2008 and concluded that the Government lacked “sufficient empirical evidence to decide either way on the value of other individual complaint mechanisms”.25 In our view, the Government has nothing to fear from enabling UK citizens to complain to UN monitoring bodies and this would ensure that the UK complied with international best practice. We have written to the Prime Minister urging him to commit to reviewing whether the UK should sign other Optional Protocols giving a right to individual petition and we await his reply with interest.

28. A major strand of our work during the session concerned the Government’s proposal to consult on a Bill of Rights for the UK. Our Report was published in August.26 We welcome this debate and now await the Government’s much delayed Green Paper and its response to our Report.

29. Our work priorities for 2008-09 will be driven by the Government’s legislative programme;27 the follow-up of previous work – for example on a Bill of Rights, human trafficking, and the treatment of asylum seekers; and the most significant issues which have been identified in the concluding observations of UN monitoring bodies. We intend to decide on the subject for our next thematic inquiry in January.

---

24 Data protection report, Qq78-80.
25 HC Deb, 4 Dec 08, c11WS.
27 See paragraph 56.
3 Legislative scrutiny

30. We scrutinise all Government bills to assess whether or not they comply with the UK’s human rights obligations and to consider ways in which bills can enhance human rights in the UK. We focus our efforts on bills which raise the most significant human rights issues, founding our work on detailed analyses of bills undertaken by our legal advisers. In considering whether a bill crosses our “significance threshold” we take into account the latest reports of international monitoring bodies and human rights NGOs as well as significant court judgments.

31. In 2007-08 we reported on twelve bills and cleared another eight from scrutiny. The Political Parties and Elections Bill, which completed its Committee stage in the Commons towards the end of the session and was carried-over into the 2008-09 session, remains under scrutiny.

Scope of legislative scrutiny

32. We do not scrutinise private members’ bills unless they have a realistic prospect of becoming law and raise significant human rights concerns. Nor do we report on private bills unless they raise significant issues, although we may write to the Chairman of a committee on a private bill to draw attention to less significant human rights points which that committee may wish to address.

Government amendments to Bills

33. Last year, we recommended that Government amendments to bills should be accompanied by full explanatory material on any human rights issues they raise. In response, the Human Rights Minister said that “the provision of such information is already something that my officials encourage where appropriate” and that internal guidance could reflect this requirement in relation to amendments which “significantly alter or augment the policy or implementation of a Bill, or a Bill’s human rights compatibility”. We welcome this encouraging reply. During the session we received helpful explanatory letters about Government amendments tabled to the Pensions Bill and we were able to report on significant amendments to the Criminal Justice and Immigration Bill in time to influence parliamentary debate.

Statutory Instruments

34. We have previously indicated our wish, in principle, to scrutinise more statutory instruments which raise significant human rights concerns. In his reply to our previous annual report, the Human Rights Minister supported this intention but noted that “it is almost always ultra vires for a Minister to seek to make secondary legislation that is

---

28 In clearing a bill from scrutiny we decide not to engage in further work on the Bill – such as writing to the appropriate Minister or publishing a report – because we consider that the bill does not raise significant human rights issues.

29 For more details of our working practices see Working practices report and 2007 annual report.

The Work of the Committee in 2007-08

incompatible with the Convention Rights”. During 2007-08 we published a critical report on the Secure Training Centres (Amendment) Rules 2007 which were later quashed by the Court of Appeal, in part because they were not compatible with the European Convention on Human Rights. We have also continued to monitor changes to the Immigration Rules relating to the Highly Skilled Migrant Programme, on which we reported in August 2007, and where the criticisms we made of the Government’s policy were reflected in the judgment of the High Court in April 2008. Our evidence session with the then Immigration Minister, Liam Byrne MP, in February 2008, focused in particular on that issue and we also asked the Home Secretary about it in our evidence session in October.

We have also reported on the statutory instruments which renew the framework of control orders for terrorism suspects and extend the maximum period of pre-charge detention for such suspects to 28 days, both of which raise serious human rights concerns.

Pre- and post-legislative scrutiny

35. We are committed to undertaking pre-legislative scrutiny where a proposed policy or legislative measure raises serious human rights concerns and we can find time in our programme to undertake an effective inquiry which supplements work by other parliamentary bodies. We published a detailed Report on the Government’s new proposal to extend the maximum period of pre-charge detention for terrorism suspects to 42 days on 14 December 2007, only eight days after the proposal was first published. We continued to scrutinise the Government’s justification for the proposal after it was included in the Counter-Terrorism Bill and we tabled amendments to the Bill for it to be left out. After a comprehensive defeat in the House of Lords, the Government dropped the relevant clauses from the Bill.

36. We have tended not to scrutinise draft bills which are the subject of scrutiny by other parliamentary committees but we are prepared to assist such committees when human rights issues emerge. We wrote to the Committee on the draft Constitutional Renewal Bill, following a request from the Chairman of that Committee, to comment on human rights issues relating to protest around Parliament. We have taken evidence on this issue ourselves as part of our ongoing Policing and Protest inquiry. We have also taken a close interest in the draft (partial) Immigration and Citizenship Bill, in anticipation of scrutiny of the bill proper when it is formally introduced to Parliament.

37. Post-legislative scrutiny is a theme of much of our work – for example, our inquiry into policing and protest has looked at how public order offences relating to protest have...
worked in practice. We will be considering further options for post-legislative security during 2008-09.

**Timeliness**

38. We aim to report on bills before Report stage in the first House, if possible, or before Second Reading in the second House. During the session we reported on six Bills before report stage in the first House and a further four Bills before Second Reading in the Second House. Reports on two other Bills were published before Committee stage in the Second House.

39. Where we are unable to publish a Report in time for Report stage in the first House we make our correspondence with the relevant Minister available on the internet and in Parliament.\(^3^9\)

**Recurring themes**

40. During our legislative scrutiny work we often comment positively that a particular provision is to be welcomed as a human rights enhancing measure. Examples during 2007-08 can be found at paragraph 19 above. Last year, however, we drew attention to a range of human rights compatibility issues which had arisen during scrutiny of a number of bills. The list bears repeating:

- The adequacy of the safeguards contained on the face of Bills conferring powers to disclose, share or match personal information;\(^3^9\)
- Lack of clarity about whether private bodies are “public authorities” for the purposes of the Human Rights Act where Bills confer powers and functions on them;\(^4^0\)
- The adequacy of judicial and procedural safeguards to protect liberty;\(^4^1\)
- The danger of discrimination in the operation of certain provisions;\(^4^2\)
- The right of access to a fair hearing before a court;\(^4^3\)
- The adequacy of safeguards against powers to search the person or property;\(^4^4\)
- The adequacy of procedural safeguards on preventative orders;\(^4^5\)

---

38 See table 4.
40 E.g. Health and Social Care Bill, Children and Young Persons Bill, Human Fertilisation and Embryology Bill, Housing and Regeneration Bill.
41 E.g. Counter-Terrorism Bill, Health and Social Care Bill, annual renewal of control orders, annual renewal of 28 days pre-charge detention.
42 E.g. Housing and Regeneration Bill, annual renewal of control orders.
43 E.g. Health and Social Care Bill, annual renewal of control orders, annual renewal of 28 days pre-charge detention.
44 E.g. Education and Skills Bill.
45 E.g. annual renewal of control orders, Criminal Justice and Immigration Bill (Violent Offender Orders).
• The adequacy of the powers and independence of human rights institutions;\textsuperscript{46}

• The adequacy of protection for children and young persons.\textsuperscript{47}

41. We have published Reports devoted to two of these themes in recent years. Our March 2007 Report on the meaning of public authority in the Human Rights Act drew attention to the consequences of the YL judgment, in which it was found that the Human Rights Act did not apply to care home services paid for by the public purse but contracted out to private sector providers. We continued to raise this issue with the Government during 2007-08, including in a mini-conference in January and during the passage of the Health and Social Care Bill. Although the Government used that Bill to deal with the problem in relation to care homes, the YL judgment has implications in other contexts, such as social housing and social work functions. We drew attention to this in our Reports on the Housing and Regeneration and Children and Young Persons Bills and await the Government’s consultation paper on this issue with interest.

42. In March we published a Report on data protection and human rights, following oral evidence from the Human Rights Minister and the Information Commissioner.\textsuperscript{48} The Report pulled together criticisms we had made of the legislative arrangements for data sharing and data protection in numerous legislative scrutiny reports during the current Parliament. We will continue to seek opportunities to report on themes such as this arising from our scrutiny of bills.

Quality of Explanatory Notes

43. We have consistently asked the Government to provide a dedicated human rights memorandum with every bill it publishes. We have suggested that this could easily be done by providing us with a copy of the human rights memoranda on bills circulated within Government, but with any legally privileged material excised.\textsuperscript{49} This would provide us with more detailed information about the human rights issues raised in bills than is often provided in the explanatory notes to bills, making our scrutiny work more efficient and enabling us to focus more easily on the most significant issues. The Government would benefit in providing this information on a routine basis at the time a bill is published because we would not need to write to Ministers to ask for it and would be able to clear bills from scrutiny at an earlier stage.

44. The Government has rejected this suggestion and concentrated instead on improving the references to human rights issues in explanatory notes. Last year we noted examples of both good and bad practice in this regard.\textsuperscript{50} \textit{Although we have continued to notice a general improvement in the explanatory material on human rights published with bills we still draw attention in our Reports to deficiencies in explanatory notes.} A particularly common problem is for explanatory notes to assert that a provision complies with the

\textsuperscript{46} E.g. Criminal Justice and Immigration Bill.

\textsuperscript{47} E.g. Criminal Justice and Immigration Bill, Children and Young Persons Bill, Secure Training Centre (Amendment) Rules, Education and Skills Bill.

\textsuperscript{48} Data protection report.

\textsuperscript{49} 2007 annual report, paragraph 24.

\textsuperscript{50} Ibid, paragraph 26.
European Convention on Human Rights without giving any justification for that point of view.  

45. A new development this year has been for Ministers to write to us after the introduction of a bill to set out in more detail than in explanatory notes their view of the human rights issues it raises. We have also received memoranda from Government dealing with proposals for bills in the draft legislative programme for 2008-09. We welcome this approach, which comes close to providing Parliament with a dedicated human rights memorandum. We encourage Ministers to write to us in this way immediately after a bill is introduced and to let our secretariat know that a letter is on its way. This will help us identify those bills which warrant further scrutiny and reduce the number of issues on which we will need to press Ministers for further information.

46. Last year we indicated that we wished to follow the example of the House of Lords Delegated Powers and Regulatory Reform Committee and draw up our own Guidance for Departments, setting out what we expect from departments in the explanatory material dealing with the human rights issues raised by a Bill. The Human Rights Minister expressed interest in this suggestion. Work is progressing on draft guidance, which we will wish to discuss with the Human Rights Division in the Ministry of Justice and with other relevant parts of Government. We aim to bring this work to a conclusion during 2008-09.

**Committee amendments to Government Bills**

47. Last year we said that we would “suggest amendments to give effect to our recommendations where possible, with a view to Members of our Committee tabling and speaking to them in debate in both Houses”. This followed our initial experience in tabling amendments to three bills in the 2006-07 session. In doing this we aim to raise the profile of human rights issues, and our work, in both Houses by connecting more closely the reports we publish with the legislative process and to enable Members of both Houses to join the debate on the issues we have raised.

48. In his reply to our last annual report, the Human Rights Minister struck a decidedly unenthusiastic note. Although “in principle” he could “see the merit in creating an opportunity, particularly during the Committee stage of a Bill in either House, for Members to discuss major issues raised by the Joint Committee in its report on that Bill” he went on to suggest that:

> “the Committee considers carefully the implications of tabling large numbers of amendments, particularly at Report stage in the House of Commons, that give effect to all of the Committee’s recommendations on a Bill, or which relate predominantly

---

51 For example, the provisions in the Counter-Terrorism Bill relating to post-charge questioning.

52 For example, see Seventeenth Report, Session 2007-08, Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills, HC 501, HL Paper 95, appendix 4.

53 We will be publishing the submissions we have received on our website during January 2009.


56 2007 annual report, paragraph 42.
The Work of the Committee in 2007-08

to the Committee’s conclusions in a thematic report. In practice, this would lead to the Government responding twice to the Committee’s recommendations – once in writing and again in debate – and taking up valuable time on the floor of the House without giving any opportunity for a focussed debate on a point of significant human rights interest.”

49. These comments reflected remarks by Ben Bradshaw MP, Minister of State at the Department of Health, in replying to amendments we tabled to the Health and Social Care Bill at Report stage in the Commons in February. He said:

“I understand that proposing a large number of amendments in this way represents a new approach for the Joint Committee, but in this instance I am not sure that it is the most effective way to proceed. Where the Government are giving undertakings or are already pursuing a particular policy, I hope that the Committee will accept those undertakings rather than pursue the course of specifying every last detail directly in the legislation.”

50. Our response was to remind the Minister that we would decide on the effectiveness of the initiative in the light of experience and that the Minister’s reaction was “encouragement to continue”.

51. A list of issues on which we tabled amendments to Bills, a brief account of how the amendments fared, and their outcome, can be found in Annex 3. Our main achievements were as follows:

- We played a major role in persuading the Government of the need to bring private sector care homes within the ambit of the Human Rights Act, in relation to publicly-funded residents. Our amendment to the Health and Social Care Bill was debated in both Houses before the Government brought forward its own amendment in the House of Lords.

- Other amendments to the Health and Social Care Bill – on the Care Quality Commission and regulation making powers in relation to public health – were made by the Government in the House of Lords in response to points we had pressed in debate.

- We tabled amendments to the Counter-Terrorism Bill to remove the provisions relating to 42 days pre-charge detention and coroners’ inquests. The relevant clauses were withdrawn by the Government.

- We persuaded the Government to bring forward amendments in the House of Lords to the Criminal Justice and Immigration Bill on Youth Rehabilitation Orders, Premises Closure Orders, Violent Offender Orders and the sentencing of children.

- We proposed an amendment to the Employment Bill to clarify the circumstances in which a trade union can exclude or expel a person from membership because of their membership of a political party, in order to comply with the judgment of the

57 HC Deb, 18 Feb 08, c58.

58 Fifteenth Report, Session 2007-08, Legislative Scrutiny, HC 440, HL Paper 81, paragraph 3.6.
European Court of Human Rights in the Aslef case. Two of our Members – Lord Morris of Handsworth and Lord Lester of Herne Hill – were involved in discussions with the Government about the precise wording before a final version, similar to the amendment we had proposed, was agreed by both Houses.

52. The publication and tabling of Committee amendments has, in our view, raised our profile in both Houses, raised the profile of human rights issues – particularly on the Counter-Terrorism, Health and Social Care and Criminal Justice and Immigration Bills – and been effective in contributing to changes to legislation. We intend to continue tabling amendments to Bills, focusing as before on what we consider to be the most significant issues. We also intend to continue framing amendments which give effect to recommendations in our thematic reports and deal with adverse court judgments on human rights issues.

53. Parliamentary rules do not provide for amendments to be tabled by a Committee, so our amendments are tabled in the names of individual Members in the relevant House. This could make it difficult to distinguish amendments which have been agreed and published by the Committee from those tabled by our Members in their individual capacities, particularly in the Commons where the pressure on debating time is most intense. We see merit in exploring whether Committees could table amendments to Bills in the House of Commons in their own name, rather than in the names of individual Members, and will raise this matter with the Commons Liaison Committee.

54. Another problem in the Commons is the scarcity of debating time at Report stage, especially for backbench amendments and often for Government new clauses and amendments. We tabled an amendment to the Children and Young Persons Bill intended to bring private sector providers of social work services within the ambit of the Human Rights Act, but the amendment was not called because of lack of time. The House was deprived of the opportunity to debate an important human rights issue raised by the bill because the programme motion did not provide sufficient time. We intend to continue monitoring occasions in the House of Commons where our amendments, and Government new clauses and amendments raising significant human rights concerns, are not reached because of lack of time and communicate our concerns to the Modernisation Committee when it next considers the operation of programming.

Civil society input into legislative scrutiny work

55. We publish a considerable volume of information about our work on our website, including a summary of the main points we intend to raise about a bill and our detailed letters to Ministers. This often elicits memoranda from NGOs and others about bills and we also often receive the briefings prepared by such organisations for parliamentary debates.

56. The publication in draft of the Government’s legislative programme has helped us plan our work and attract more civil society input. We announced in July that we were likely to focus in particular on the Coroners and Death Certification, Equality and Immigration and Citizenship Bills and that there were a number of other bills also likely to raise human rights concerns. We published a call for evidence on these proposed bills and have so far received over 50 submissions, principally in relation to the draft (partial)
Immigration and Citizenship Bill. In addition, we included sessions in our awayday in November on immigration and equality issues and organised briefing meetings on the draft (partial) Immigration and Citizenship Bill with the bill team and the Immigration Law Practitioners Association. The contents of the Queen’s Speech included some significant changes since the publication of the draft legislative programme, most notably a less comprehensive Borders, Immigration and Citizenship Bill and the dropping for now of the Communications Data Bill. Nevertheless, we welcome the Government’s decision to publish its legislative programme in draft because it has enabled us to scrutinise its proposals more effectively. We encourage the Government to continue this practice and to publish more bills in draft.
4 Thematic inquiries and other work

Core task 1: examination of policy proposals

57. As discussed in the preceding chapter, a central element of our work is the examination of policy proposals in Government bills to assess their compatibility with the European Convention on Human Rights and the UK’s international human rights obligations. We have already commented on several aspects of this work, including our scrutiny of Government counter-terrorism policy, on which we published seven substantive reports during the session; our ongoing work on the UN Convention on the Rights of Persons with Disabilities; and follow-up to our 2006 and 2007 reports on human trafficking.

Core task 2: emerging policy

58. Our thematic inquiries have generally dealt with areas where human rights concerns have not been adequately taken into account in the development of policy. We published a substantial report in February into the human rights of adults with learning disabilities, including in easy read and audio versions. The report drew on some of the findings from our inquiry into older people in healthcare as well as considering issues such as independent living and the criminal justice system. We are currently seeking an opportunity to debate this report in Westminster Hall.

59. During the spring and summer we undertook a major inquiry into the Government’s emerging proposals to introduce a Bill of Rights for the UK. Our report was published in August and made the case for the introduction of economic and social rights. We also questioned the validity of linking rights and responsibilities. We intend to follow up this report once the Government’s Green Paper is published.

Core task 3: draft bills

60. Our pre-legislative scrutiny work is dealt with in paragraphs 35-37 above.

Core task 4: specific output from the department

61. We pay close attention to the work of the Human Rights Division in the Ministry of Justice and the minister in that department with responsibility for human rights policy. We have called the Secretary of State for Justice and the Human Rights Minister to give oral evidence on human rights policy and related matters (such as the Government’s Bill of Rights proposal) in January 2009. Other examples of work in this area include our scrutiny of the Government’s proposal to extend the maximum period of pre-charge detention for terrorism suspects to 42 days (see paragraph 35); our report on the use of restraint in secure training centres, which was debated in the House of Lords in July (see paragraph 34); our scrutiny of the Government’s response to adverse human rights judgments (see paragraph 67); and our report on data protection and human rights (see paragraph 42).
Core tasks 7 and 8: scrutiny of relevant public bodies and major appointments

62. Our predecessors in the last Parliament led the campaign for the establishment of the Equality and Human Rights Commission and we have taken a close interest in its launch, in October 2007, and its early work. We met informally with Commissioners at a working lunch hosted by the EHRC in January and heard oral evidence from Trevor Phillips, the Chairman of Commissioners, in October. The EHRC has been represented at our mini-conferences and awayday and has contributed written evidence to a number of our inquiries.

63. The Commons Liaison Committee has agreed arrangements for Commons Committees to hold pre-appointment hearings with candidates for certain high-level public offices after a ’preferred candidate’ has been selected but before the appointment is confirmed. We proposed that the Chairman of the EHRC should be added to the list of appointments subject to this new procedure and we look forward to the Committee being involved in this process at some point in the future.

64. Last year we indicated that we would consider approaching the appropriate authorities in both Houses to add the word “equality” to our remit to confirm that we could scrutinise the work of the EHRC. Following further consideration of this issue, and in the light of the scrutiny relationship we have developed with the Commission, we decided not to pursue this matter.

65. We have continued to maintain contacts with the Northern Ireland Human Rights Commission and visited the Commission in October. We will pay close attention to the Commission’s advice to the Secretary of State for Northern Ireland on a Bill of Rights for Northern Ireland and on the progress made with this initiative in the new session.

Core task 9: implementation of legislation and major policy initiatives

66. Much of our thematic work has been concerned with the implementation of the European Convention on Human Rights in specific areas (for example, older people in healthcare) or the impact of particular legislative provisions which have raised human rights concerns (for example in relation to asylum seekers).

67. Our work in scrutinising the Government response to adverse judgments by the European Court of Human Rights as well as declarations of incompatibility under the Human Rights Act by domestic courts relates to core task 9. We aim to scrutinise all the relevant cases by asking the relevant department how they intend to act and then reporting on the adequacy of the Government’s response. We published a report in October dealing with around 20 issues. We continue to scrutinise both outstanding and new cases, as and when they emerge. Our work in this area has been held up as a model for other parliaments to emulate by the President of the Parliamentary Assembly of the Council of Europe.\(^\text{59}\)

---

68. Our 2007 report on human rights judgments also dealt with systemic issues, relating, for example, to the co-ordination of action dealing with adverse European Court of Human Rights judgments within Whitehall and the provision of information to Parliament. In our view, these are crucial to improving the Government’s disappointing record on dealing with such judgments in a timely fashion. In our last annual report we drew attention to the Government’s failure to respond to these recommendations, although seven months had then elapsed since the publication of our report. Despite repeated requests the Government had still not responded by the time we published our 2008 report, in which we called for a response to the outstanding recommendations from 2007 by the end of the 2007-08 session. The Government failed to respond within that timescale. *We draw the attention of both Houses to the Ministry of Justice’s failure to respond to recommendations in our 2007 Report on human rights judgments concerning the co-ordination of action within Government in response to adverse judgments of the European Court of Human Rights and the provision of information on such matters to Parliament. The Report was published in June 2007 and the department’s response to these recommendations is now 16 months late. A delay of this length is entirely unacceptable and we will be questioning the Secretary of State about the reasons for it when he gives oral evidence in January.*

**Core task 10: debates in the House**

69. Occasions on which our reports were listed on the House of Commons Order Paper as relevant to a debate are set out in table 4 below.

<table>
<thead>
<tr>
<th>Date</th>
<th>Debate</th>
<th>JCHR Report etc “tagged”</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 December 2007</td>
<td>Child Maintenance and Other Payments Bill, Consideration</td>
<td>Correspondence</td>
</tr>
<tr>
<td>9 January 2008</td>
<td>Criminal Justice and Immigration Bill: Consideration</td>
<td>Correspondence</td>
</tr>
<tr>
<td>18 February</td>
<td>Health and Social Care Bill, Consideration</td>
<td>8th Report, 2007-08</td>
</tr>
<tr>
<td>21 February</td>
<td>Motion to approve the draft Prevention of Terrorism Act 2005 (Continuance in Force of sections 1 to 9) Order 2008</td>
<td>10th Report, 2007-08</td>
</tr>
<tr>
<td>13 March</td>
<td>Westminster Hall debate on Older People in Healthcare Report</td>
<td>18th Report, 2006-07</td>
</tr>
<tr>
<td>1 April</td>
<td>Counter-Terrorism Bill, Second Reading</td>
<td>2nd, 9th, and 10th Reports, 2007-08</td>
</tr>
<tr>
<td>12 May</td>
<td>Human Fertilisation and Embryology Bill [Lords], Second Reading</td>
<td>15th Report, 2007-08</td>
</tr>
<tr>
<td>13 May</td>
<td>Education and Skills Bill:</td>
<td>19th Report, 2007-08</td>
</tr>
</tbody>
</table>

60 With thanks to Kesang Ball for preparing this information.

61 Consideration is the formal term for “Report stage”.

<table>
<thead>
<tr>
<th>Date</th>
<th>Consideration</th>
<th>Oral evidence/Correspondence</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 May</td>
<td>Motion to consider Statement of Changes in Immigration Rules</td>
<td>Oral evidence</td>
</tr>
<tr>
<td>21 May</td>
<td>Regulatory Enforcement and Sanctions Bill [Lords], Second Reading</td>
<td>17th Report, 2007-08</td>
</tr>
<tr>
<td>2 June</td>
<td>Planning Bill, Consideration</td>
<td>Correspondence</td>
</tr>
<tr>
<td>10 and 11 June</td>
<td>Counter-Terrorism Bill, Consideration</td>
<td>2nd, 9th, 10th, 20th and 21st Reports, 2007-08 and correspondence</td>
</tr>
<tr>
<td>23 June</td>
<td>Motion to approve the draft Terrorism Act 2006 (Disapplication of Section 25 Order) 2008</td>
<td>2nd, 19th and 20th Reports, 2007-08</td>
</tr>
<tr>
<td>8 October</td>
<td>Children and Young Persons Bill [Lords], Consideration</td>
<td>15th Report, 2007-08</td>
</tr>
</tbody>
</table>

70. As the table shows, our Reports on the treatment of asylum seekers and the human rights of older people in healthcare were debated in Westminster Hall during the year.

71. Our reports are frequently listed on the House of Lords Order Paper as relevant to debates on the stages of bills and were frequently cited in debate.⁶² In addition, our Report on the use of restraint in secure training centres was debated on the floor of the House on 22 July and our Report on human rights judgments was debated in Grand Committee on 24 November.⁶³

---

⁶² See paragraph 51.

⁶³ HL Deb, 22 Jul 08, cc1659-75 and 24 Nov 08, cc123-44GC.
5 Working practices

Recent changes

72. We published a substantial report on our working practices in July 2006 in which we set out changes intended to focus our work on the most significant human rights issues and enable us to undertake a broader range of activity, including more thematic inquiries.64 We discussed the implementation of these changes at an awayday in November 2007, which was attended by a number of our specialist advisers and representatives from NGOs, and again at our 2008 awayday.65 Further changes were made to our legislative scrutiny work – such as the introduction of Committee amendments to bills – which were discussed in chapter 3 of this report.66

73. Another major change during 2007-08 was the introduction of ‘mini-conferences’ – short seminars attended by NGOs, specialist advisers and, where possible, Ministers. We have used mini-conferences to follow up our reports (or aspects of them) and held four during the session, as the table below shows.

Table 5: JCHR mini-conferences 2007-08

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 January</td>
<td>Meaning of public authority in the Human Rights Act</td>
</tr>
<tr>
<td>14 May</td>
<td>Counter-Terrorism policy</td>
</tr>
<tr>
<td>9 July</td>
<td>Healthcare for asylum seekers and trafficking victims</td>
</tr>
<tr>
<td>8 October</td>
<td>Human rights of older people in healthcare</td>
</tr>
</tbody>
</table>

74. We intend to discuss our plans for mini-conferences early in the new session and will use them to discuss potential new subjects for inquiry as well as to follow up previous work.

Informal meetings and visits

75. Tables 6 and 7 set out the informal meetings we held during the year (other than mini-conferences) and the visits we undertook.

Table 6: JCHR informal meetings, 2007-08

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Northern Ireland Human Rights Commission, 13 November</td>
<td>Bill of Rights inquiry</td>
</tr>
<tr>
<td>Professor Bill Lewinski, 17 December</td>
<td>Deaths in Custody follow up</td>
</tr>
<tr>
<td>Thomas Hammarberg, Council of Europe Human Rights Commissioner, 6 February</td>
<td>Overview of UK human rights policy</td>
</tr>
<tr>
<td>Tajik delegation, 20 May</td>
<td>Child welfare issues</td>
</tr>
<tr>
<td>Mexico National Human Rights Commission, 24 June</td>
<td>Overview of UK human rights policy</td>
</tr>
<tr>
<td>Lianne Dalziel MP, Associate Minister of Justice, New Zealand, 7 July</td>
<td>Overview of UK human rights policy</td>
</tr>
<tr>
<td>Turkmen delegation, 8 July</td>
<td>Overview of UK human rights policy</td>
</tr>
</tbody>
</table>

64 Working practices report.
66 See paragraphs 47-54.
The Work of the Committee in 2007-08

<table>
<thead>
<tr>
<th>Visit</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nepalese delegation, 15 July</td>
<td>Overview of UK human rights policy</td>
</tr>
<tr>
<td>Victoria Colloby, Yarl’s Wood immigrant removal centre, and Alan Hollett, Border and Immigration Agency, 8 October</td>
<td>Follow up of treatment of asylum seekers inquiry</td>
</tr>
<tr>
<td>Committee awayday, 4 November</td>
<td>Review of working practices and possible future work</td>
</tr>
<tr>
<td>Marie Staunton and Sarah Cooke, UK representatives on the management board of the EU, Fundamental Rights Agency, 11 November</td>
<td>Scrutiny of EU Fundamental Rights Agency</td>
</tr>
<tr>
<td>Home Office officials, 11 November</td>
<td>Scrutiny of forthcoming immigration bill</td>
</tr>
<tr>
<td>Northern Ireland Human Rights Consortium, 20 November</td>
<td>Follow up of Bill of Rights inquiry</td>
</tr>
<tr>
<td>Immigration Law Practitioners Association, 24 November</td>
<td>Scrutiny of forthcoming immigration bill</td>
</tr>
</tbody>
</table>

Table 7: JCHR visits, 2007-08

<table>
<thead>
<tr>
<th>Visit</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Africa, 17-22 November</td>
<td>Bill of Rights inquiry</td>
</tr>
<tr>
<td>Equality and Human Rights Commission, London, 29 January</td>
<td>Scrutiny of EHRC</td>
</tr>
<tr>
<td>Vienna, 13-14 Feb (representative capacity)</td>
<td>Scrutiny of EU Fundamental Rights Agency</td>
</tr>
<tr>
<td>Edinburgh, 9-10 March</td>
<td>Bill of Rights inquiry</td>
</tr>
<tr>
<td>Strasbourg, 31 March – 1 April (representative capacity)</td>
<td>Adverse judgments of the European Court of Human Rights</td>
</tr>
<tr>
<td>Stockholm, 8-10 June (representative capacity)</td>
<td>Council of Europe human rights colloquy</td>
</tr>
<tr>
<td>Brussels, 25 June (representative capacity)</td>
<td>Meeting of chairmen of human rights committees in national Parliaments of EU member states</td>
</tr>
<tr>
<td>Belfast, 26-27 October</td>
<td>Bill of Rights and Policing and Protest inquiries</td>
</tr>
<tr>
<td>Vienna, 16-17 November</td>
<td>Scrutiny of EU Fundamental Rights Agency plus follow up of human trafficking and counter-terrorism inquiries</td>
</tr>
</tbody>
</table>

76. Informal meetings with interested parties, at Westminster or on visits within the UK or abroad, are an essential part of our work. Such meetings serve a number of purposes. Some, such as our meeting with Marie Staunton and Sarah Cooke, prepared us for our visit to the EU Fundamental Rights Agency. Others, particularly meetings on visits, enable us to hear from a broader range of views than is usually possible in oral evidence and offer perspectives which can be difficult or impossible to appreciate from formal written and oral evidence.

77. We are grateful for the assistance we receive in undertaking visits, both in the UK and abroad, from the people and organisations we meet. We particularly appreciate the work undertaken by the parliamentary branch of the Foreign and Commonwealth Office (FCO) and the FCO staff in the overseas posts we visited, whose help with our administrative arrangements and in putting together our work programme, as well as support and advice on the ground, were indispensable.

78. Our Chair gave evidence in October to the EHRC’s human rights inquiry, chaired by Dame Nuala O’Loan.
Following-up previous work

79. We are committed to following up our thematic inquiries so that our recommendations do not end up languishing on dusty shelves, forgotten by Government and parliamentarians. We have already alluded to a number of our follow up activities, including debates on our Reports in both Houses, mini-conferences, and correspondence on issues such as human trafficking. In addition, we have recently appointed Lord Bowness to replace Baroness Stern as the Committee’s observer on the Forum for the Prevention of Deaths in Custody, a body which was established as a direct result of a JCHR recommendation in 2004.67 Following a review by Robert Fulton, the Forum will shortly be replaced by a higher level Ministerial Board, on which the JCHR observer will sit.68

80. In July we published a report examining discrepancies between the evidence we received during our inquiry into the UN Convention Against Torture in 2006 about whether troops were aware of the prohibition on the use of certain interrogation techniques and the conclusions of the Aitken Report into allegations of torture and inhuman treatment in Iraq, which was published in January 2008.69 We concluded that the evidence we were given in 2006 by the then Minister for the Armed Forces, Adam Ingram MP, and Lieutenant General Brims, Commander Field Army, was incorrect and that, as a result, we were unable to give a full account to Parliament of the human rights issues relating to the use of such techniques. The issues relating to the death of Baha Mousa, an Iraqi civilian under British military detention, in 2003 are currently subject to a public inquiry and we expect to receive, when that inquiry concludes, an explanation for the discrepancies between the evidence we were given in 2006 and the facts which subsequently emerged.

Relations with government

81. We deal with most Government departments, some – such as the Ministry of Justice, the Department of Health and the Home Office – on a frequent basis. In general, we have established good relations with departments. We are appreciative of the depth and quality of the letters and memoranda we usually receive from Government when we raise human rights issues in bills with departments.

82. We do not require the Government to reply to our legislative scrutiny reports, given the timescale in which bills progress through Parliament, but we appreciate those replies we are sent. Departments replied more frequently to legislative scrutiny reports during this session than previously and we published many of the replies we received in one volume in June.70

83. The Government is obliged to reply to our other reports and timeliness has been an issue on a number of occasions during 2007-08:

---

68 Ministry of Justice, Review of the Forum for Preventing Deaths in Custody, by Robert Fulton, Feb 08.
69 Twenty-eighth Report, Session 2007-08, UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq, HC 527, HL Paper 157.
• First Report of 2006-07 on the Council of Europe Convention on Terrorism, published on 22 January 2007. We received a reply on 13 February 2008, over 10 months late, after we had drawn attention to the delay in our last annual report.

• Ninth Report of 2006-07 on the Meaning of Public Authority under the Human Rights Act, published on 28 March 2007. In November 2007, the Human Rights Minister said we would receive a reply to this Report “soon”. Our 2007 Report on the meaning of public authority under the Human Rights Act included 47 recommendations: although some relate to the debate about how to deal with the implications of the YL judgment, many do not. Although we were promised a reply “soon” in November 2007 – when a response was already six months late – we are still waiting and it is now 19 months late. We recommend that the Ministry of Justice reply to our report forthwith.


84. We recognise that there may be occasions when it is inappropriate to reply to a Committee Report within the two months normally provided for. On such occasions, we require the Government to keep us informed of the reasons for delay and its timetable for replying to the Committee. In the case of our report on a Bill of Rights for the UK, there has been some difficulty in co-ordinating publication of a Government Green Paper on the issue with the provision of a reply to issues not covered in the Green Paper (which was due in October). We welcome the steps taken by the Ministry of Justice to keep us informed of its plans and we look forward to seeing the Green Paper and a reply to our Report in the near future.

**Informing Parliament**

85. We set out above the parliamentary debates for which our reports were relevant, including the debates on our own reports which we initiated as part of our follow up activity.

86. In addition, our Chair, Andrew Dismore MP, again promoted a Private Members’ Bill – the Human Rights Act 1998 (Meaning of Public Authority) Bill – which sought to implement a solution we had recommended to the problem discussed above about the narrowing of the definition of public authority under the Act by a series of judicial decisions. The Bill did not make progress beyond Second Reading.

**Outreach**

87. Our main tool for communicating with the public is the Committee’s website (www.parliament.uk/jchr). As with other select committees, our reports and oral evidence can be found online. We also publish our correspondence with Government on bills, other

---

21 Data protection report, Q43.
22 See Table 4.
documents, and in relation to adverse European Court of Human Rights judgments and declarations of incompatibility. We have used the website to seek submissions from interested parties on the draft legislative programme and on specific bills, publishing a list of bills and issues we are scrutinising at an early stage.

88. We have worked with our select committee media adviser to promote our reports and gained a significant amount of media coverage during the year, especially for our counter-terrorism reports.

89. We have sought to extend our contacts with non-governmental organisations concerned with human rights issues, including private sector organisations, for example by inviting them to the Committee’s awayday and mini-conferences. We are grateful for the information and assistance we received from such bodies and would welcome further contact with groups wishing to raise UK human rights issues.

**International dimension**

90. Lord Dubs represented the Committee at a meeting of chairpersons of parliamentary human rights committees in the EU in Brussels in June. The Earl of Onslow spoke on behalf of the Chair at a Council of Europe colloquy on human rights in Stockholm in June.

91. Our work on adverse European Court of Human Rights judgments has attracted praise from the Council of Europe and we have maintained close links with the Council of Europe, its Parliamentary Assembly and the European Court during the year.

92. We visited the EU Fundamental Rights Agency, as well as UN and OSCE institutions in Vienna in November, to scrutinise their work. We have also sought to promote our work on human trafficking internationally by publishing correspondence with Government on this issue on the EU’s anti-human trafficking day (18 October).
Formal Minutes

Tuesday 16 December 2008

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness
Lord Dubs
Lord Lester of Herne Hill
Lord Morris of Handsworth
The Earl of Onslow

Dr Evan Harris MP
Mr Edward Timpson MP

******

Draft Report (The Work of the Committee in 2007-08), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 92 read and agreed to.

Annexes read and agreed to.

Summary read and agreed to.

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

Ordered, That the Chairman make the Report to the House of Commons and that Lord Dubs make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 7, 14 and 21 October.

******

[Adjourned till Tuesday 13 January at 1.45pm.]
Annex 1: Sessional Return 2007-08

Human Rights

**Commons Members**

<table>
<thead>
<tr>
<th>Member</th>
<th>Meetings attended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismore, Mr Andrew (Chairman)</td>
<td>36 out of 39</td>
</tr>
<tr>
<td>Austin, John (added 8.11.07)</td>
<td>22 out of 39</td>
</tr>
<tr>
<td>Carswell, Mr Douglas (discharged 13.10.08)</td>
<td>2 out of 33</td>
</tr>
<tr>
<td>Timpson, Mr Edward (added 13.10.08)</td>
<td>6 out of 6</td>
</tr>
<tr>
<td>Griffith, Nia (discharged 8.11.07)</td>
<td>0 out of 0</td>
</tr>
<tr>
<td>Harris, Dr Evan</td>
<td>32 out of 39</td>
</tr>
<tr>
<td>Sharma, Mr Virendra (added 8.11.07)</td>
<td>25 out of 39</td>
</tr>
<tr>
<td>Shepherd, Mr Richard</td>
<td>12 out of 39</td>
</tr>
<tr>
<td>Tami, Mark (discharged 8.11.07)</td>
<td>0 out of 0</td>
</tr>
</tbody>
</table>

**Lords Members**

<table>
<thead>
<tr>
<th>Member</th>
<th>Meetings attended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bowness, Lord (added 19.2.08)</td>
<td>21 out of 26</td>
</tr>
<tr>
<td>Dubs, Lord (added 26.11.07)</td>
<td>29 out of 38</td>
</tr>
<tr>
<td>Fraser, Lord of Carmyllie (discharged 19.2.08)</td>
<td>1 out of 11</td>
</tr>
<tr>
<td>Lester, Lord of Herne Hill</td>
<td>25 out of 39</td>
</tr>
<tr>
<td>Morris, Lord of Handsworth (added 26.11.07)</td>
<td>30 out of 38</td>
</tr>
<tr>
<td>Onslow, Earl of</td>
<td>29 out of 39</td>
</tr>
<tr>
<td>Plant, Lord of Highfield (discharged 12.11.07)</td>
<td>1 out of 1</td>
</tr>
<tr>
<td>Stern, Baroness</td>
<td>33 out of 39</td>
</tr>
</tbody>
</table>

**Overall Attendance:**

- Total number of meetings: 39
- Of which:
  - Number of meetings at which oral evidence was taken: 19
  - Number of times oral evidence was taken partly or wholly in private: 0
  - Number of wholly private meetings: 20
  - Number of concurrent meetings with other committees: 0

**Other activities**

- Informal meetings: 11
- Conferences/Seminars hosted: 6

**Staff**

Details of the permanent staff of the Committee during the Session can be found in the Committee's publications.

**Specialist Advisers during the Session**

Raju Bhatt, Frances Butler, Dr Heaven Crawley, Professor Philip Fennell, Professor Geoff Gilbert, Raza Husain, Professor Francesca Klug, Colm O’Cinneide, Dr Tomoya Obokata, Camilla Parker, Professor Linda Ward and Sue Willman.

**Witnesses**

Oral evidence was given during the Session by the following categories of witnesses:

**Number of appearances by:**

- Cabinet Ministers: 2

---

73 On one occasion the Committee’s meeting comprised two separate oral evidence sessions.
The Work of the Committee in 2007-08

Other Ministers 6
Members of the House of Commons 1
Members of the House of Lords 1
Members of the Scottish Parliament 1

Number of appearances by officials from, or representatives of:

Ministry of Justice 1
Home Office 1
Department for Work and Pensions 2

Number of appearances by officials from or representatives of public bodies and non-Ministerial departments comprising:

Association of Chief Police Officers 1
Bill of Rights Forum for Northern Ireland 2
Crown Prosecution Service 1
Equality and Human Rights Commission 2
Information Commissioner’s Office 2
Metropolitan Police Service 1
Scottish Executive 2

Appearances by other witnesses 33

Overseas Visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>Members</th>
<th>Staff</th>
<th>Purpose</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-22.11.07</td>
<td>Johannesburg and Cape Town, South Africa</td>
<td>Dismore, Austin, Harris</td>
<td>3</td>
<td>UK Bill of Rights</td>
<td>£13,428.16</td>
</tr>
<tr>
<td>13-14.2.08</td>
<td>Vienna</td>
<td>Dismore</td>
<td>0</td>
<td>EU Fundamental Rights Agency</td>
<td>£204.00</td>
</tr>
<tr>
<td>30.6-3.7.08</td>
<td>Madrid, Lyon and Paris</td>
<td>Dismore, Austin</td>
<td>2</td>
<td>Policing and Protest</td>
<td>£12,524.43</td>
</tr>
<tr>
<td>16-17.11.08</td>
<td>Vienna</td>
<td>Dismore, Austin</td>
<td>2</td>
<td>EU Fundamental Rights Agency</td>
<td>£4,983.45</td>
</tr>
</tbody>
</table>

A Travel in a representative capacity

Visits to European Institutions

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>Members</th>
<th>Staff</th>
<th>Purpose</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.3-1.4.08</td>
<td>Strasbourg^</td>
<td></td>
<td>2</td>
<td>ECHR Judgments</td>
<td>£401.30</td>
</tr>
<tr>
<td>8-10.6.08</td>
<td>Stockholm^</td>
<td></td>
<td>1</td>
<td>Colloqy on strengthening implementation of the European Convention on Human Rights</td>
<td>£996.18</td>
</tr>
</tbody>
</table>

\^ Estimated outturn

\^ The Earl of Onslow, a Lords Member of the Committee, took part in this visit
The Work of the Committee in 2007-08

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>Members</th>
<th>Staff</th>
<th>Purpose</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.6.08</td>
<td>Brussels</td>
<td>76</td>
<td>0</td>
<td>Conference of Chairpersons of Parliamentary Human Rights Committees in EU Member States</td>
<td>£155.60</td>
</tr>
</tbody>
</table>

\(^{\text{A}}\) Travel in a representative capacity

UK Visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>Members</th>
<th>Staff</th>
<th>Purpose</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.3.08</td>
<td>Edinburgh</td>
<td>Dismore, Austin</td>
<td>3(^{\text{A}})</td>
<td>UK Bill of Rights</td>
<td>£1,498.40</td>
</tr>
<tr>
<td>26-27.10.08</td>
<td>Belfast</td>
<td>Dismore, Harris</td>
<td>1</td>
<td>Policing and Protest</td>
<td>£1,341.84</td>
</tr>
</tbody>
</table>

\(^{\text{A}}\) Includes 1 shorthand writer

Reports and Oral and Written Evidence

<table>
<thead>
<tr>
<th>Title</th>
<th>HC No. (2007–08)</th>
<th>Date of publication</th>
<th>Government reply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Report: Counter-Terrorism Policy and Human Rights: 42 days</td>
<td>156</td>
<td>14.12.07</td>
<td>Cm 7344, published 1.3.08</td>
</tr>
<tr>
<td>Third Report: Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills</td>
<td>198</td>
<td>3.1.08</td>
<td>Received 28.1.08: published as Twelfth Report Session 2007-08</td>
</tr>
<tr>
<td>Fifth Report: Legislative Scrutiny: Criminal Justice and Immigration Bill</td>
<td>269</td>
<td>25.1.08</td>
<td>Received 30.4.08: published as Twenty-Third Report Session 2007-08</td>
</tr>
<tr>
<td>Sixth Report: The Work of the Committee in 2007 and the State of Human Rights in the UK</td>
<td>270</td>
<td>1.2.08</td>
<td>Received 8.4.08: published as Eighteenth Report Session 2007–08</td>
</tr>
<tr>
<td>Seventh Report: A Life Like Any Other? Human Rights of Adults with Learning Disabilities</td>
<td>73-I</td>
<td>6.3.08</td>
<td>Cm 7378, published 7.5.08</td>
</tr>
</tbody>
</table>

\(^{\text{76}}\) Lord Dubs, a Lords Member of the Committee, took part in this visit
<table>
<thead>
<tr>
<th>Title</th>
<th>HC No. (2007–08)</th>
<th>Date of publication</th>
<th>Government reply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oral and Written Evidence: A Life Like Any Other? Human Rights of Adults with Learning Disabilities</td>
<td>73-II</td>
<td>6.3.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Eighth Report: Legislative Scrutiny: Health and Social Care Bill</td>
<td>303</td>
<td>6.2.08</td>
<td>Received 16.4.08: published as Seventeenth Report Session 2007-08</td>
</tr>
<tr>
<td>Ninth Report: Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill</td>
<td>199</td>
<td>7.2.08</td>
<td>Cm 7344, published 1.3.08</td>
</tr>
<tr>
<td>Eleventh Report: The Use of Restraint in Secure Training Centres</td>
<td>378</td>
<td>7.3.08</td>
<td>Received 17.7.08: published as Twenty-Seventh Report Session 2007-08</td>
</tr>
<tr>
<td>Twelfth Report: Legislative Scrutiny : 1) Health and Social Care Bill and 2) Child Maintenance and Other Payments Bill: Government Response</td>
<td>379</td>
<td>11.3.08</td>
<td>Received 16.4.08: published as Seventeenth Report Session 2007-08</td>
</tr>
<tr>
<td>Fourteenth Report: Data Protection and Human Rights</td>
<td>132</td>
<td>14.3.08</td>
<td>Received 23.6.08: published as Twenty-Second Report Session 2007-08</td>
</tr>
<tr>
<td>Fifteenth Report: Legislative Scrutiny</td>
<td>440</td>
<td>25.3.08</td>
<td>Received 29.4.08, 1.5.08, 7.5.08, 16.5.08, 4.6.08 and 5.6.08: published as Twenty-Third Report Session 2007-08</td>
</tr>
<tr>
<td>Sixteenth Report: Scrutiny of Mental Health Legislation: Follow Up</td>
<td>455</td>
<td>31.3.08</td>
<td>Received 30.7.08: published as Thirty-Second Report Session 2007-08</td>
</tr>
<tr>
<td>Seventeenth Report: Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; and 3) Other Bills</td>
<td>501</td>
<td>28.4.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Eighteenth Report: Government Response to the Committee’s Sixth Report of Session 2007–08: The Work of the Committee in 2007 and the state of Human Rights in the UK</td>
<td>526</td>
<td>6.5.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Nineteenth Report: Legislative Scrutiny: Education and Skills Bill</td>
<td>553</td>
<td>13.5.08</td>
<td>Received 6.6.08: published as Twenty-Third Report Session 2007-08</td>
</tr>
<tr>
<td>Title</td>
<td>HC No. (2007–08)</td>
<td>Date of publication</td>
<td>Government reply</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------------------</td>
<td>---------------------</td>
<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Twentieth Report: Counter-Terrorism Policy and Human Rights (Tenth Report): Counter Terrorism Bill</td>
<td>554</td>
<td>14.5.08</td>
<td>Received 26.6.08: published as Twenty-Fourth Report Session 2007–08</td>
</tr>
<tr>
<td>Twenty-First Report: Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 Days and Public Emergencies</td>
<td>635</td>
<td>5.6.08</td>
<td>Received 26.6.08: published as Twenty-Fourth Report Session 2007–08</td>
</tr>
<tr>
<td>Twenty-Third Report: Legislative Scrutiny: Government Replies</td>
<td>755</td>
<td>26.6.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twenty-Fourth Report: Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-First Reports of Session 2007–08</td>
<td>756</td>
<td>26.6.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twenty-Fifth Report: Counter-Terrorism and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008</td>
<td>825</td>
<td>30.6.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twenty-Sixth Report: Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill</td>
<td>950</td>
<td>15.7.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twenty-Seventh Report: Use of Restraint in Secure Training Centres: Government Reply to the Committee's Eleventh Report of this Session</td>
<td>979</td>
<td>17.7.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twenty-Eighth Report: UN Convention Against Torture: Discrepancies in Evidence Given to the Committee About Use of Prohibited Interrogation Techniques in Iraq</td>
<td>527</td>
<td>27.7.08</td>
<td>Received 10.11.08: published on the internet</td>
</tr>
<tr>
<td>Twenty-Ninth Report: A Bill of Rights for the UK?</td>
<td>150</td>
<td>10.8.08</td>
<td>Awaited</td>
</tr>
<tr>
<td>Oral and Written Evidence: A Bill of Rights for the UK?</td>
<td>150-II</td>
<td>10.8.08</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Thirtieth Report: Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill</td>
<td>1077</td>
<td>8.10.08</td>
<td>Awaited</td>
</tr>
<tr>
<td>Thirty-Second Report: Scrutiny of Mental Health Legislation: Government Response</td>
<td>1079</td>
<td>8.10.08</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
### Government replies to Reports for Session 2006–07

Reply to the Committee’s First Report: *The Council of Europe Convention on the Prevention of Terrorism*, received 13.2.08 and published as the Committee’s Thirteenth Report, Session 2007-08

Reply to the Committee’s Twentieth Report: *Highly Skilled Migrants: Changes to the Immigration Rules*, published as Cm 7268 (27.11.07).

### Formal Minutes

The Formal Minutes of the Committee were published electronically after each meeting of the Committee. They are available on the Committee’s website at http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm.

### Divisions

<table>
<thead>
<tr>
<th>Date</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.6.08</td>
<td>Nine, on consideration of the Committee’s Twenty-First Report</td>
</tr>
<tr>
<td>21.7.08</td>
<td>One, on consideration of the Committee’s Twenty-Ninth Report</td>
</tr>
</tbody>
</table>

### Debates

Committee reports were tagged on the Order Paper as being relevant to debates in the House of Commons or Westminster Hall on 21 occasions. Further details can be found in the Committee’s Sessional Report.
### Number of oral evidence sessions for each inquiry during the Session

<table>
<thead>
<tr>
<th>Inquiry</th>
<th>Number of oral evidence sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Bill of Rights for the UK?</td>
<td>6</td>
</tr>
<tr>
<td>A Life Like any Other? Human Rights of Adults with Learning Disabilities</td>
<td>1</td>
</tr>
<tr>
<td>Counter-Terrorism Policy and Human Rights</td>
<td>2</td>
</tr>
<tr>
<td>Criminal Evidence (Witness Anonymity) Bill</td>
<td>1</td>
</tr>
<tr>
<td>Data Protection and Human Rights</td>
<td>2</td>
</tr>
<tr>
<td>Equality and Human Rights Commission</td>
<td>1</td>
</tr>
<tr>
<td>Human rights issues relating to the Home Office</td>
<td>1</td>
</tr>
<tr>
<td>Immigration and Human Rights</td>
<td>1</td>
</tr>
<tr>
<td>Policing and Protest</td>
<td>3</td>
</tr>
<tr>
<td>UN Disability Rights Convention</td>
<td>1</td>
</tr>
<tr>
<td>UNCAT: Allegations of torture and inhuman treatment by British troops in Iraq</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Issue</th>
<th>Positive developments</th>
<th>Outstanding Concerns</th>
</tr>
</thead>
</table>
| **Children**               | Withdrawal of the reservation to the UNCRC (with regard to asylum seeking children and separation of children from adults in detention centres)  
Commitment to ratify the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography  
Introduction of a new asylum procedure (new asylum model (NAM) - each asylum seeker will have a named “case owner” who will be responsible for dealing with all aspects of their case from initial interview to final integration or removal)  
Adoption of children’s action plan (December 2007)                                                | Smacking of children  
General discrimination and social stigmatisation of Roma and Irish traveller children; migrant, asylum-seeking and refugee children; lesbian, gay, bisexual and transgender, children (LGBT)  
Children with disabilities continue to face barriers in the enjoyment of their rights guaranteed by the UNCRC, particularly the right to access health services, leisure and play  
Widespread usage of ASBOs  
Use of restraint against children in detention  
Detention of asylum seeking children (as well as unaccompanied children)  
Comparatively low age of criminal responsibility  
Detention of juvenile offenders and asylum seeking children together with adults  
Child deaths in custody  
Youth Rehabilitation Orders (YRO) implemented by the Criminal Justice and Immigration Act 2008  
Lack of appropriate pupil right of withdrawal from collective worship and religious education in school |
| **Counter-terrorism**       | Proposals for 42 days detention without trial for suspected terrorists (Counter-Terrorism Bill) withdrawn by Government following defeat in the House of Lords                                                                 | Glorification of terrorism offence  
Control orders regime  
Continuing practice of stop and search without suspicion (s. 44 Terrorism Act 2000)                                                                                                                                |
| **Equality and discrimination** | Pledge to ratify the UN Convention on the Rights of Disabled Persons  
New offence of incitement to hatred on the grounds of sexual orientation (Criminal Justice and Immigration Act 2008, s. 13(1)) | High rate of teenage pregnancy  
Inadequate facilities and services for mental healthcare  
Continuing violence, harassment and negative stereotyping of disabled persons  
Inequalities with regard to the school achievement of disabled persons                                                                                                                                         |
<table>
<thead>
<tr>
<th>Freedom of expression</th>
<th>Development of a common law right to respect for private life</th>
<th>Scope of exemptions to equality legislation relating to religious discrimination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abolition of blasphemy and blasphemous libel crimes</td>
<td>Libel law (“UK applies the law of libel to discourage critical media reporting on matters of serious public interest; it also adversely affects the ability of scholars and journalists to publish their work, including through the phenomenon known as ‘libel tourism’”78) Glorification of terrorism offence (s. 1 Terrorism Act 2006) Constraints on protest around Parliament</td>
<td></td>
</tr>
<tr>
<td>Immigration and asylum</td>
<td>Removal of the reservation to the UNCRC with regard to asylum seeking children</td>
<td>Detention of child asylum seekers Policy of destitution in relation to failed asylum seekers No progress on improving healthcare for asylum seekers Media reporting of asylum issues Judicial oversight of detention decisions</td>
</tr>
<tr>
<td>Pledge to incorporate EU Asylum Qualification Directive into domestic law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>High Court judgment on Highly Skilled Migrants Programme</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Torture</td>
<td>European Court judgment in the Saadi case, which reaffirmed absolute nature of Article 3 protection against torture and inhuman or degrading treatment</td>
<td>Memorandum of understanding and deportation of terrorist suspects when Article 3 ECHR concerns exist Allegations of torture in UK-run military detention facilities outside the UK No designated national preventative mechanism (NPM) under the UN Optional Protocol to the Convention Against Torture (OPCAT) Prolonged pre-charge detention of terrorist suspects in inappropriate facilities</td>
</tr>
<tr>
<td>Trafficking</td>
<td>Pledge to ratify the Council of Europe Convention on Human Trafficking (14 January 2008) Update of national trafficking action plan (2008)</td>
<td>Closure of Metropolitan Police Team Provision of victim support on the basis of co-operation with the authorities</td>
</tr>
<tr>
<td>Women</td>
<td>Introduction of a gender equality duty for public authorities (2006) New gender equality public service agreement; Adoption of new law on Forced Marriages (Civil Protection Act, 2007, in force on 25 November 2008)</td>
<td>Under-representation of ethnic minority women in all areas of the labour market, particularly in senior or decision-making positions; high rates of unemployment and a greater pay gap in their hourly earnings compared to men Under-representation of women of different ethnic minority communities in political and public life Low level of female engagement in public affairs; as well as low representation in the judicial system High maternal mortality in traveller communities Situation of women in prisons (especially family visits and</td>
</tr>
</tbody>
</table>

78 UN Human Rights Committee concluding observations (CCPR/C/GBR/CO/6), paragraph 25.
| childcare arrangements) as well as detention of young female offenders with adult women |
| High number of women prisoners |
| Continuing incidence of domestic violence |
## Annex 3: Committee amendments to bills

<table>
<thead>
<tr>
<th>Bill</th>
<th>Issue raised in amendments</th>
<th>How dealt with in Commons</th>
<th>How dealt with in Lords</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Children and Young Persons</td>
<td>Scope of the HRA (social work services)</td>
<td>New Clause tabled on Report but not called.</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Counter-Terrorism</td>
<td>Pre-charge detention</td>
<td>Chair contributed to day’s debate on this issue.</td>
<td>Committee: Lords Members contributed to debate.</td>
<td>42 days proposal defeated in the Lords and withdrawn.</td>
</tr>
<tr>
<td></td>
<td>Derogation from the right to liberty</td>
<td>-</td>
<td>Committee: Not moved. Pre-empted by vote on 42 days.</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Charging threshold</td>
<td>Amendment tabled but not called.</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Bail in terrorism cases</td>
<td>Amendment tabled but not called.</td>
<td>Committee: Debated, Government to look at issue.</td>
<td>Government commitment to look at issue.</td>
</tr>
<tr>
<td></td>
<td>Post-charge questioning</td>
<td>Chair contributed to debate on Government new clause on Report and decided not to press JCHR new clause to vote.</td>
<td>Committee: debated, withdrawn.</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Control orders</td>
<td>JCHR new clauses led well-supported debate at Report. Chair spoke. NCS (control orders to be used only if no prospect of prosecution) divided on. Amendments also discussed in annual debate on renewal of control orders.</td>
<td>Committee: detailed debate. Government to look again at a couple of issues.</td>
<td>Government commitment to look at issue.</td>
</tr>
<tr>
<td></td>
<td>Coroners’ inquests</td>
<td>JCHR amendments led well-supported debate at Report. Chair and Mr Shepherd spoke. Amendment to leave out principal clause negatived on division.</td>
<td>-</td>
<td>Government withdrew relevant clauses before Lords Committee. Will be brought back in Coroners and Justice Bill in 08-09 Session.</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
<td>Notes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of information involving the intelligence services</td>
<td>New clause tabled but not called.</td>
<td>Committee: amendment debated and withdrawn. No concessions from Government.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal Justice and Immigration</td>
<td>Custody of children</td>
<td>Committee: amendment debated and withdrawn.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Youth rehabilitation Orders:</td>
<td>a) legal representation;</td>
<td>a) Committee and Report debates, support from opposition parties, amendments withdrawn.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) breach</td>
<td>b) Committee debate, support from opposition parties, amendment withdrawn.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentencing of children</td>
<td></td>
<td>Government brought forward concessions in Lords.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Blasphemy</td>
<td>Lords Amendment reflecting Committee recommendation subject of major debate,</td>
<td>Government introduced amendment at Committee.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>including Evan Harris</td>
<td>Commons agreed to Lords amendment. Bill was amended in line with JCHR concerns.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violent Offender Orders</td>
<td>Amendments to Lords Amendments tabled but not called</td>
<td>Report: JCHR amendments were preempted.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Government brought forward amendments in both Houses reflecting some JCHR concerns</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Premises Closure Orders</td>
<td></td>
<td>Report: amendments debated, support from across the House, withdrawn.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>JCHR amendment led to concession from Government, agreed in Lords.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Self defence and use of force to prevent crime</td>
<td>Amendments to Lords Amendments tabled but not called</td>
<td>Report: amendment moved, some concern expressed about it by other Lords. Adt withdrawn.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibition on industrial action by prison officers</td>
<td></td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------</td>
<td>---</td>
<td>----------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Health and Social Care</td>
<td>Scope of the HRA (YL case)</td>
<td>Moved on Report by Chair: first group of amendments in debate, attracted several speakers. Government dismissed most amendments as unnecessary and criticised Committee for tabling them. On YL, Minister agreed to consider issue and report back in Lords. Chair spoke on this issue at Lords Amendments stage and JCHR work was cited by others in debate.</td>
<td>Committee: JCHR amendment debated.</td>
<td>YL issue dealt with by Government amendment, in relation to care homes.</td>
</tr>
<tr>
<td>Operation of health and social care providers</td>
<td>Moved on Report by Chair: first group of amendments in debate, attracted several speakers. Government dismissed amendments as unnecessary and criticised Committee for tabling them.</td>
<td>Committee: amendments debated and withdrawn.</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Care Quality Commission</td>
<td>Moved on Report by Chair: first group of amendments in debate, attracted several speakers. Government dismissed amendments as unnecessary and criticised Committee for tabling them.</td>
<td>Report: amendments debated and withdrawn.</td>
<td>Government brought forward concessions meeting some of JCHR concern.</td>
<td>-</td>
</tr>
<tr>
<td>Care standards</td>
<td>Moved on Report by Chair: first group of amendments in debate, attracted several speakers. Government dismissed amendments as unnecessary and criticised Committee for tabling them.</td>
<td>Report: amendments debated and withdrawn.</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Qualifications of professionals</td>
<td>Moved on Report by Chair: first group of amendments in debate, attracted several speakers. Government dismissed amendments as unnecessary and criticised Committee for tabling them.</td>
<td>Report: amendments debated and withdrawn.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
</tbody>
</table>

**Housing and Regeneration**

| Scope of the HRA (social housing) | - | *Committee:* amendment debated, Government spoke against |  |
| Office for Tenants and Social Landlords | - | *Committee:* amendment debated and withdrawn. |  |
| Eligibility for housing assistance (*Morris* and *Gabaj* cases) | - | *Committee:* moved and withdrawn by a non-JCHR member. Government promised to correspond with Committee. | Issue dealt with by Government amendment, subject to further correspondence with JCHR. |
Written Evidence

Letter to Liam Byrne MP, Minister of State, Home Office, on the Highly Skilled Migrants Programme, dated 25 June 2008

You will recall that my Committee published a Report last summer on the changes to the Immigration Rules relating to the Highly Skilled Migrants Programme (“HSMP”) (20th Report of 2006-07). We recommended (para. 51) that the Immigration Rules be urgently amended so that the relevant changes apply only prospectively, that is, to future applicants to the HSMP. We recommended that those who had already been granted leave as a highly skilled migrant on the HSMP when the relevant changes took effect should be treated according to the rules which applied before those changes.

In its Reply to our Report (at para. 26) the Government said that it did not intend to amend the Immigration Rules as we suggested.

In our Report we also noted that those changes were subject to judicial review. The High Court found against the Government on 8 April, holding (para. 61) “that the terms of the original scheme should be honoured and that there is no good reason why those already on the scheme shall not enjoy the benefits of it as originally offered to them. …. Not to restrain the impact of the changes would … give rise to conspicuous unfairness and an abuse of power.” It found that there was no overriding public interest which could outweigh the unfairness which the changes to the rules would visit on those already admitted under the programme.

It would be helpful if you could confirm that the Government is not intending to appeal the judgment.

If the Government is not appealing the judgment, I would be grateful if you could inform the Committee as to whether the Government now intends to amend the Immigration Rules as we suggested in our report. If not, please explain why not, and set out how the Government has responded to the judgment, including any legislative and policy changes you are making in order to comply with the court’s ruling.

Letter from Liam Byrne MP, Minister of State, Home Office, on the Highly Skilled Migrants Programme, dated 8 September 2008

Thank you for your letter of 25 June regarding the changes made to the Highly Skilled Migrant Programme (HSMP) in November 2006 and how these changes have been affected by the High Court ruling on the case brought by the HSMP Forum Limited.

As you are aware, the High Court found against the Government on 8 April and remedies have now been put into place for those affected by the judgment. The Home Office made the decision not to appeal the HSMP Forum JR ruling and the requirements for an extension of stay for this group will be those that were in place before 7 November 2006.

The immigration rules were not amended to implement these remedies, rather they were published on the UK Border Agency website at www.ukba.homeoffice.gov.uk/sitecontent/documents/workingintheuk/hmspjudicialreview
on 9 July in a policy document entitled HSMP Forum Ltd Judicial Review. Due to the time delays caused by any change to the immigration rules, this was considered to be the fastest way to communicate the required changes.

Further details of how an application may be made can be found on the UK Border Agency website.

**Letter to Rt Hon Jacqui Smith MP, Secretary of State, Home Office, on the Highly Skilled Migrants Programme, dated 17 December 2008**

My Committee continues to be concerned by the Government’s approach to the High Court’s judgment in April 2008 concerning the Highly Skilled Migrants Programme (“HSMP”) and I would be grateful if you could answer the following questions.

Following the High Court decision upholding the judicial review challenge to the changes to the Immigration Rules concerning the HSMP, the Government has adopted a new policy which provides that for those that entered the HSMP before November 2006 the requirements for an extension of stay are the same as those which applied at the time they entered. The new policy does not, however, provide for a 4 year qualifying period before settlement for those that entered the HSMP before April 2006. The 5 year qualifying period still applies in such cases.

When you gave evidence to my Committee on 28 October we asked you what distinction of principle there is between the April 2006 and November 2006 changes to the Programme. You drew a distinction between changing the criteria to be satisfied by those on the path to settlement and extending the time period for which they must be on that path in order to qualify for settlement. We are concerned that this is a distinction without a difference. The length of the qualifying period for settlement is one of a number of criteria which have to be satisfied in order to qualify for settlement.

The High Court held that “the terms of the scheme, properly interpreted in context and read with the guidance and the rules, contain a clear representation, made by [the Home Secretary], that once a migrant had embarked on the scheme he would enjoy the benefits of the scheme according to the terms prevailing at the date he joined.”

The High Court held that the terms of the original scheme should be honoured and that there was no good reason why those already on the scheme should not enjoy the benefits of it as originally offered to them. The generality of this reasoning seems to be as applicable to the April 2006 changes as to those made in November 2006.

1. Please indicate the precise part of the judgment of the High Court which supports the distinction the Government has drawn between “criteria” for settlement and the length of the qualifying period for settlement?

---


80 Qs 55 and 56

81 R (on the application of HSMP Forum Ltd.) v Secretary of State for the Home Department [2008] EWHC 664 (Admin) at para. 57.
2. Please explain the principle behind your distinction between “criteria” and length of qualifying period which justifies applying the April 2006 changes to those who had already entered on the HSMP at the time of the changes.

We understand that some people who entered on the HSMP in 2004 and applied for settlement in 2008 based on 4 years on the HSMP have had their applications for indefinite leave to remain refused because they do not satisfy the new longer requirement of 5 years before settlement and have been threatened with removal, notwithstanding the High Court’s judgment.

The HSMP Forum has commenced another judicial review, challenging the Government’s implementation of the High Court’s judgment, and we understand that permission has been granted. I asked you on 28 October if you would agree not to remove anybody while the case is underway, but you did not agree to do so. Now that permission has been granted to proceed with the judicial review, it is even more important to ensure that nobody is removed pending the resolution of the case.

3. Can you give us an unequivocal undertaking that, pending the final determination of the current judicial review, the Government will not remove from the UK anybody who has completed 4 years on the HSMP but had their application for indefinite leave to remain refused on the ground that they do not satisfy the new longer requirement of 5 years?

Letter from the Minister of State for Health Services to Stephen O’Brien MP on the Health and Social Care Bill dated 29 July 2008

Following Commons Consideration of Lords Amendments to the Health and Social Care Bill on 15 July, I wanted to write to you with clarification of a number of issues you raised that I was unable to address fully during debate.

Proper exercise of powers regarding entry rights

During the debate on Lords amendment 27 (now section 96 of the Health and Social Care Act 2008), you expressed concern about the scope for the Care Quality Commission’s powers of entry to be limited if the Secretary of State considered that to be “in the interests of national security.” You asked for assurances that the power would not be used to cover up poor practice or poor Government policy, and asked what checks and balances there are on the exercise of that executive power.

The Secretary of State is required to exercise his powers in section 96(5) for a proper purpose, taking account of all relevant considerations and not irrelevant ones. His exercise of the power would be challengable by judicial review if there was evidence that it had been abused. The scope of the limitation does not generally extend to the premises of PCTS or other health service bodies which do not count as part of the Crown.

Information sharing with the Welsh Ministers

Lords amendment 22 (which is now section 69(3) of the Act) confirms that the new Care Quality Commission and Welsh Ministers can share information with each other for the
efficient and effective discharge of their corresponding functions. This does not alter your rights of audience with Welsh Ministers on behalf of your constituents.

During the debate on Lords amendment 68 (now paragraph 48 of Schedule 5 to the Act) you asked whether data passed from English bodies to Welsh Ministers would be handled with the same level of security as they are by English bodies. Welsh Ministers are, of course, bound by the provisions of the Data Protection Act 1998. There are additional rules relating to the processing of sensitive personal data by elected representatives (which to a certain extent include Ministers acting in their Ministerial role) under the Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 (SI 2002/2905).

The Welsh Ministers are also subject to their “Ministerial Code.” While this does not specify how to handle personal data it does (section 1(1)) prescribe that Ministers should adhere to the relevant legislation and the Assembly’s Code of Practice on Access to Information (COPAI) when sharing/disclosing information. The COPAI governs the processing of information, including personal data, by Welsh Ministers.

Under the Data Protection Act, any individual has the right to request access to their personal data from whoever is processing that data, to have inaccuracies corrected, and so on. Individuals also have the right to appeal to the Information Commissioner should they believe a data processor is incorrectly using their data. The Data Protection Act applies to the whole of the UK and the Information Commissioner has the right to investigate any such complaints across the whole of the UK. There are no “cross-border” barriers to such appeals.

**Commencement of Schedule 8**

I promised to clarify the effect of Lords amendment 62 (which is now section 170(2) of the Act) and in particular my comment that “Schedule 8 will need to be commenced prior to the order-making power being used.” I apologise that the explanation that follows is necessarily technical.

This related to the steps that need to be taken in terms of commencement to allow a regulation or order making power to be exercised.

As you will know provisions of an Act normally come into force by commencement order, rather than on Royal Assent itself. But it is common for an Act to provide that the power to make orders or regulations is available from Royal Assent. If that power were not available on Royal Assent, it would be necessary to commence the power to make regulations first and then commence the substantive provisions after that (as you will know subordinate legislation is normally made some time before it actually comes into force).

In the case of orders made under section 60 of the Health Act 1999, however, the process leading to the making of the order is very complicated and can include statutory consultation, debates in both Houses, and sometimes approval by the Scottish Parliament. The effect of section 170(2) is that before we can embark on making an order under section 60 of the 1999 Act as amended it is necessary to commence the provisions amending section 60 (i.e. section 111 of and Schedule 8 to the Health and Social Care Act) using a commencement order. We thought that is was less confusing for people if we simply
commenced the order making power itself at the same time as the substantive provisions, all in one instrument.

**Letter to the Chairman from the National Secular Society on the Education and Skills Bill dated 12 September 2008**

**Collective Worship and Religious Education – withdrawal by pupils themselves**

We would like to place on record once more our gratitude for the recommendations of the JCHR in this area in 2006 following representations from the Society. However I am writing to express my concerns from a Human Rights perspective arising from the Lords’ Committee stage of the Education and Skills Bill debate on 21 July 2008.

We would like the JCHR to make further representations to the Government to point out the shortcomings from a Human Rights perspective of the Government’s position in the debate. Other recommendations are shown in bold. We have no objections to this letter being published.

**Burden of testing for maturity**

The letter from Jim Knight MP, Minister of State at the DCSF, dated 10 January 2008 (Appendix 2 of the JCHR’s 19th Report) relies heavily on the operation of the right to withdraw needing not to be “disproportionately burdensome”. Lord Adonis made a similar point at Col 1607 (21 July 2008): “the need to deliver a practicable and workable solution for schools, so that they can function effectively, requires the maintenance of the status quo”.

It does seem that both Ministers seem to rely very heavily on the slightest practical difficulty as being sufficient to excuse the Government from according pupils their human rights. Yet the Committee points out on page 16 para 1.45 that “Administrative burdens alone do not meet the necessity requirement for interference with the rights of children to respect for their Article 9 ECHR rights.”

We of course endorse that position, but even if disproportionately burdensome were acceptable as a basis for denying fundamental human rights for young people, it is difficult to envisage how it can be argued that such an arrangement would be unduly burdensome. The general view is that “English pupils are among the most tested in the world”. (the title of an article in the Daily Telegraph dated 29 August 2008 [http://www.telegraph.co.uk/news/2638871/English-pupils-among-the-most-tested-in-the-world.html](http://www.telegraph.co.uk/news/2638871/English-pupils-among-the-most-tested-in-the-world.html). Could the Government be challenged to ask if it is seriously claiming that this expensive testing regime is incapable of being harnessed to identify pupils with sufficient maturity, intelligence and understanding? And as Baroness Walmsley said in col 1605 of the debate: “However, school nurses have to make such assessments every day of the week when asked for contraceptive services by underage girls who do not want their parents to know. While I do not underestimate the time and care taken over these deliberations, they do not bring schools to a halt.”

If a secondary school pupil says they do not believe in God (or that their religion is different from the one they are assumed to be) then the default position should be to believe them. The alternative is to say that despite the child expressing their view they will
be forced to worship a God they don’t believe in. If a child is deemed old enough to be able to pray (ie that they are sincere when they pray) or worship then they should be capable of seeking to resist being insincere!

**Collective Worship (CW)**

Lord Adonis asserts in col 1607 that: “We had a long debate on this issue on 17 October 2006 during the passage of the Education and Inspections Act. The Government’s position has not changed since then.” Since then the JHCR has registered continued objections but Lord Adonis seems unwilling to provide objective reasons, even to fellow peers, why the status quo should be retained in the light of them.

One aspect not brought up in the debate is that Schools Standards and Framework Act S70 requires pupils to “take part in” a daily act of worship, not imply to attend worship which the school is obliged to provide. It is manifestly obnoxious to require older children to worship a god or according to rites in which they may not believe. We contend that this increases burden to provide older pupils the opportunity to withdraw themselves. **We recommend SSFA S70 should be amended to remove a requirement to “take part in” worship at any age, while we accept that pupils not excused should still attend.** Perhaps the requirement could be replaced with an invitation to take part in worship, as it does seem unacceptable for a child of any age to be punished for not praying or participating.

**Religious Education (RE)**

Both ministers also make similar justifications for not conceding on self withdrawal from RE. Jim Knight MP wrote in his letter, referred to above: “We do not believe that teaching children about religion in an objective, critical and pluralistic manner in religious education lessons (especially where, as here, there is a parental right of withdrawal from RE) is a breach of their human rights.” Similarly, Lord Adonis refers to “a non-statutory national framework for religious education which seeks to ensure that it constitutes a broad and balanced understanding of religion”. What neither minister volunteered was that the thousands of Voluntary Aided schools of a religious character are not required to adhere to the Framework, SACREs, or even mention the existence of any other denomination, religion or belief – far less what their adherents believe.

Indeed, the outgoing Bishop of Lancaster prided himself, indeed insisted, on the “one true faith” of Religious Instruction (euphemistically called Religious Education) in schools in his diocese. He says: “I would be failing in my duty as bishop if I did not point out that we may not condone or encourage lack of practice of the faith in our schools and colleges.” (“Fit for Mission” [1] Page 12) and “Therefore, it is expected that the Word of God is proclaimed at all collective worship. It must never be replaced by another secular or religious text. (Page 40)

And even in other maintained schools, we echo Lady Walmsley’s comment at col. 1606: “However, we believe that many schools are not teaching about religion in this [an objective non-proselytising] way”. All these concerns point to the need to empower pupils of sufficient maturity to make up their own mind.

After all if religion education –like history - was taught in “an objective, critical and pluralistic manner” then why does the Government feel the need to provide for a right of parental opt-out?

**Points applicable to both CW and RE**

Levels of non-belief and the proportion of the religiously unconcerned have been rising strongly for decades to the point that two thirds of children do not define themselves as religious, and religion is ranked only ninth in importance to identity. We should show much greater sensitivity to these factors in the nature of our schools, our assemblies, citizenship and philosophy. These are further powerful reasons why the state should not impose worship on older pupils, as the Government position is seeking to do for many of them.

Additionally, however important Ministers believe RE (or indeed CW) is to pupils, the pupils will have attended approaching ten years of both before being eligible for self-exemption. If this is not thought long enough to instil the requisite knowledge it says little for the quality of the teaching, nor does it give any confidence that a further year or two would make any beneficial difference.

We cannot understand the logic of the provisions of Section 55(9) of the Education and Inspections Act 2006 which refers to pupils being above compulsory school age as part of the requirement for self-exemption. If this were to rise, which is a distinct possibility, the age of self-withdrawal would do so too, making it even more non-compliant with the Fraser/Gillick competence age than currently.

**We recommend that the references to “compulsory school age” are removed from Section 55(9) of the Education and Inspections Act 2006 and in any other statute in which it appears in this context.**

**Letter to Vernon Coaker MP, Parliamentary Under-secretary of State, Home Office, on Human Trafficking, dated 17 September 2008**

You will be aware of my Committee’s continuing interest in human trafficking, since we published our major report on the issue in October 2006. We have taken note of the Westminster Hall debate on 8 July 2008 and your letter to Anthony Steen MP of 18 August; the Government’s revised action plan; and the explanatory memorandum on the Council of Europe Convention (Cm 7465). We now have a number of questions for which we would be grateful to have your replies.

You stated in the debate in July that the Government was on track to ratify the Council of Europe Convention by the end of the year. **Do you have a specific target date for ratification?**

It would also be helpful if you could specify the provisions in the Criminal Justice and Immigration Act 2008 which are related to ratification of the Convention; and the

---

[2] Home Office Research Study 274 Religion in England and Wales: findings from the 2001 Home Office Citizenship Survey Table 3.1: Which of the following things would say something important about you, if you were describing yourself? Religion was ranked as the ninth factor with 20% of respondents claiming it to be a factor.
issues which are being dealt with in the secondary legislation mentioned in your speech as well as the timetable for bringing these measures into force.

The Government’s draft action plan refers to “further amendments” to immigration legislation which have been proposed by the Crown Prosecution Service (page 16). Could you provide a fuller explanation of these proposed amendments and indicate when they will be published?

The July debate and your letter of 18 August both provide a range of information about the outcome of the Pentameter 2 operation. My Committee has noted with concern the points made by Mr Steen about the children picked up during Pentameter 2 who apparently went missing, were deported without a welfare assessment or were issued with an asylum registration card based on a false passport; and about what happened to the women not referred to the Poppy project. It would be helpful if we could be provided with a comprehensive account of the outcome of Pentameter 2, focusing in particular on how many victims of trafficking were discovered and what subsequently happened to them.

We would be grateful to receive more information about the ongoing operation targeting trafficking for labour exploitation which is mentioned in the action plan (page 21).

We also note that Mr Steen’s question about when we will have some reliable statistics on human trafficking that bring together information from the various police forces and the UK Border Agency was not answered in the debate or in your letter of 18 August. We note that money has been made available to enhance the UK Human Trafficking Centre’s data collection and analytical capability. When will more up-to-date and comprehensive statistics about the prevalence of human trafficking and the disruption of trafficking networks be available?

In you letter to Mr Steen you said that the Government had “developed proposals for a system of Convention compliant victim support based on the existing Poppy project model.” Could you provide more details of these proposals, including their geographic extent and the level and duration of funding arrangements?

Your letter also referred to a “strategy refresh” by the Foreign and Commonwealth Office which had “reduced or refocused” a UK Human Trafficking Centre (UKHTC) campaign in Romania and Bulgaria to build capacity to fight organised crime and raise awareness of the dangers of trafficking. Could you provide more details of the UKHTC campaign in Bulgaria and Romania which has been “reduced or refocused,” including the objectives of the campaign’s success. It would also be helpful if you could explain how the work undertaken during the campaign is being continued despite the withdrawal of FCO funding and whether you consider that the new arrangements will be more successful in achieving their objectives than the previous campaign.

The concluding observations of the Committee on the Elimination of the Discrimination against Women, which were issued in July, include calls for the UK “to give consideration to granting victims of trafficking indefinite leave to remain” and “to increase its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination in order to prevent trafficking, to bring perpetrators to justice and to improve
re-integration programmes to prevent victimisation.” **What is your response to these two observations by CEDAW?**

**Letter from Alan Campbell MP, Parliamentary Under-secretary, Home Office, on Human Trafficking, dated 7 October 2008**

Thank you for your letter of 17 September to my predecessor Vernon Coaker MP.

I am pleased to write to you in answer to your questions following the publication of the updated Action Plan on Tackling Human Trafficking, the explanatory memorandum to the Council of Europe Convention on Action against Trafficking in Human Beings and Vernon Coaker’s response to Anthony Steen MP of 18 August in reply to the Westminster Hall debate of 8 July.

Please refer to Annex A as the attached answer to your questions.

**Annex A**

**Q. Do you have a specific target date for ratification?**

As the Home Secretary announced on Monday 14\textsuperscript{th} January 2008, our intention is to ratify the Convention before the end of the year. We remain on track to do so. I am unable to provide an exact date as the plans for implementation still lie before Parliament in the form of an Explanatory Memorandum.

**Q. It would also be helpful if you could specify the provisions in the Criminal Justice and Immigration Act 2008 which are related to ratification of the Convention; and the issues which are being dealt with in the secondary legislation mentioned in your speech as well as the timetable for bringing these measures into force.**

The provisions of the Criminal Justice and Immigration Act 2008 which are related to the Convention are in Section 146. This amendment provides that the Secretary of State does not automatically deport a person where she thinks this would be contrary to the United Kingdom’s obligations under the Convention – three full calendar months after ratification.

Secondary legislation introduced by the Department of Health and the Devolved Administrations will ensure victims of trafficking can access appropriate health care in accordance with the Convention. All is due to be in force before the end of the year. The Scottish Statutory Instrument 2008/259 on Human Tissue legislation entered into force on 24\textsuperscript{th} June 2008 and makes and amendment to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in section 4(4)(b) where reference to offences committed under the 1989 Act is replaced with a reference to the 2006 Act.

The Governments action plan refers to “further amendments” to immigration legislation which have been proposed by the Crown Prosecution Service (page 16). **Could you provide a fuller explanation of these proposed amendments and indicate when they will be published?**

The CPS proposed amendments to immigration legislation to improve our ability to investigate and prosecute trafficking cases. These amendments were subsequently made
within the UK Borders Act 2007, which came into force at the end of January 2008. The
 provision to extend our powers to enable us to prosecute non-British Nationals who
 commit offences outside the UK will overcome difficulties in prosecuting cases where the
 trafficking has been arranged by non-British citizens who are resident outside the UK.

There are no current plans for further amendments to the existing legislation. We shall of
course consider any proposed amendments in order to ensure the legislation remains as
effective as possible.

Q. It would be helpful if we could be provided with a comprehensive account of the
outcome of Pentameter 2, focusing in particular on how many victims of trafficking
were discovered and what subsequently happened to them.

The police reported that 167 victims of trafficking for sexual exploitation were discovered
under Pentameter 2, of which 13 were identified initially as being under 18yrs. Five
possible victims of trafficking victims for forced labour were also uncovered during the
campaign (predominantly for trafficking for domestic servitude).

According to the latest information from the UK Human Trafficking Centre:

- Of the 13 minors originally encountered, 6 remain in the care of social services, 6
  voluntarily returned home and 1 currently lives with friends, having been
  subsequently confirmed as being over 18yrs.

- Out of the adults recovered: 37 initially accepted supported accommodation (with
  4 currently remaining in these services and 3 moving into private living
  arrangements); 36 returned home voluntarily; and 16 have been returned home
  using immigration powers. Even with the cases that involved removal using
  immigration powers these individuals refused any form of support and many
  requested to be returned home quickly (and this was the most suitable
  mechanism).

There is no information on the other victims. Despite having the support arrangements in
place, a significantly high number of victims were unwilling to engage. This is not a
problem that is unique to the UK. The police and NGO’s cannot force adults to accept
support or report a crime. What they can do is let them know that there is protection
available if they need it. We now have to take the lessons learnt from P2 and work with
communities and the women that are recovered to understand the issues around the
different forms of coercion and improve our intervention strategies.

Intelligent date on victims

The police have identified a range of nationalities of victims from China/South East Asia,
Europe, both EU and non EU, South America and the Indian Sub-Continent. In respect of
the adults discovered a high number were from China, Thailand, and Romania.

For sexual exploitation the ages of victims ranged from 14-49yrs with the highest number
of victims identified by the police as being aged between 18 and 13. For trafficking for
forced labour the ages ranged between 13 and 45 (with 3 out of the 5 victims recovered
children).
Victims were recovered across the United Kingdom in both urban and rural areas. There appears to be a fairly equal spread amongst a number of the regional areas (London, East Midlands, South West and the Eastern Region). Fifteen victims were recovered in Scotland (all for sexual exploitation). A high number of residential premises were visited (582 out of the 822) representing the covert nature of these crimes.

Q. We would also be grateful to receive more information about the ongoing operation targeting trafficking for labour exploitation.

The operational phase of the pilot was completed on 5 September. The results of the pilot are currently being assessed and will be used to inform decision making on the implementation of the Council of Europe Convention, including in terms of providing appropriate victim care arrangements and training for front line staff.

Whilst the pilot had its limitations both in terms of geographical scope and the agencies it engaged, it did reveal more information about the nature and extent of trafficking for forced labour in the UK. The picture is still very partial and further work is ongoing to improve the knowledge. The pilot found very limited firm evidence of trafficking for forced labour but other intelligence suggests that does exist. There was more evidence of low level labour exploitation than of mistreatment of workers so serious as to make it the crime of trafficking.

Q. When will more up-to-date and comprehensive statistics about the prevalence of human trafficking and the disruption of trafficking networks be available?

The secretive and deceptive nature of the crime itself makes it very difficult to provide an entirely accurate estimate of the scale of the problem faced by the UK. However, we are currently in the process of reviewing our estimate of the number of trafficking victims in the UK and will publish the outcome of this review as soon as is practicable. We have no plans to publish details of work undertaken to disrupt trafficking networks.

Q. Could you provide more details of these proposals (for Convention compliant victim support based on the Poppy model), including their geographic extent and the level and duration of funding arrangements?

The Inter-Departmental Ministerial Group on Human Trafficking agreed to implement a holistic three-stage approach to supporting adult victims. It has been agreed that in the short term an adult Victim Support model similar to the existing POPPY Project will be used, where Third Sector or other agencies are funded to provide support, including accommodation and living expenses for individuals with no recourse to public funds, during the reflection period. We expect the enhanced model to be on a national scale (perhaps through a consortium arrangement) and may require competitive tendering. The long-term intention is to explore the feasibility of devolving responsibility and funding (at least in part) to a regional or local level, in line with other Government policy.

Q. Could you provide more details of the UKHTC campaign in Bulgaria and Romania which has been “reduced or refocused,” including the objectives of the campaign’s success. It would also be helpful if you could explain how the work undertaken during the campaign is being continued despite the withdrawal of FCO funding and whether
you consider that the new arrangements will be more successful in achieving their objectives than the previous campaign.

The campaign in Bulgaria and Romania was a time limited project that took place at the time of both countries accession to the EU prior to the FCO strategy refresh. Following the strategy refresh FCO posts abroad continue to assist the UK’s strategic objective to combat human trafficking.

The campaign managed by the UKHTC and the International Organisation for Migration was supported by funds from the FCO Drugs and Crime Fund and was aimed at raising awareness among the general population of the dangers of human trafficking and to build the capacity of forced in both those countries to deal with such issues. As a result of this campaign there has been a sustained and improved relationship between the Romanian and Bulgarian police forces with the relevant UK law enforcement agencies. There has been no formal evaluation of the awareness raising campaign which at the time received widespread coverage via the media, both written and television in those countries.

Q. CEDAW request for UK to give consideration to “granting victims of trafficking indefinite leave to remain” and to “increase its efforts at international, regional and bilateral cooperation with countries of origin, transit and destination in order to prevent trafficking, bring perpetrators to justice and to improve reintegration to prevent victimisation.”

We maintain our belief that where appropriate repatriation is central to assisting the victims in their recovery. We are also aware that a significant number of victims want to leave the UK once they have been recovered. However, we accept that there may be cases where it is appropriate to grant permission to remain and each case will be considered on its own merits.

The UK will continue to work with all countries in order to further the UK strategy as set out in the UK Action Plan. DfID continues to play a leading role in the fight against poverty and injustice to address factors that make people vulnerable to trafficking and continues to support programmes that are specifically focussed on the prevention of trafficking such as Save the Children’s Cross-Border Project Against Trafficking. The UK continues to build capacity in source and transit countries to deal with organised immigration crime as part of the UK Organised Crime Control Strategy. SOCA coordinate a multi agency programme which includes work to develop bilateral and multi lateral operational strategies and plans with source and transit countries. This includes the management of 140 liaison officers based in 40 countries.

Finally, the UKHTC prevention subgroup continues to provide strategic level direction in the planning and implementation of prevention and awareness raising campaigns in identified transit and source countries. Following Pentameter 2 and other operations on source countries this group will target efforts where they are most needed.

Letter to Alan Campbell MP, Parliamentary Under-secretary, Home Office, on Human Trafficking, dated 9 December 2008

As you know, my Committee has long taken an interest in human trafficking. We published a major report on the subject in 2006 and have been in regular correspondence
with you and your predecessor about the arrangements for ratifying the Council of Europe Convention on Human Trafficking.

We wrote to your predecessor on 17 September to ask when the Government would ratify the Council of Europe Convention on Human Trafficking and you replied to say that the Government remained on track to ratify by the end of the year. You were unable to provide a target date for ratification, however. Given that we are now days away from the end of the year, I would be grateful if you could advise the Committee of when ratification is likely to take place.

We also noted press reports in November that the Metropolitan Police’s human trafficking team will be closed down next year because it will no longer receive funding from the Home Office. I would be grateful if you could send us a memorandum explaining the funding arrangements for the team and the reasons why Home Office funding will cease in 2009. I note from your answer of 26 November to a parliamentary question tabled by Damian Green MP that “additional funding provided to forces to tackle human trafficking has always been on a time limited, pump priming basis to encourage forces to mainstream this work into their existing budgets”. I would be grateful if you could indicate what assessment you have made of whether the Metropolitan Police is now tackling human trafficking as part of its mainstream work and how the team’s work will be carried on in future.

**Letter from Rt Hon John Hutton MP, Secretary of State for Defence on UN Convention Against Torture, dated October 2008**

In its twenty-eighth report of Session 2007-08, the Joint Committee on Human Rights has suggested that there are “discrepancies between the evidence given to the Joint Committee in 2004 and 2006 on the use of prohibited conditioning techniques and the facts that have emerged from the Payne court martial and the Aitken report.”

The Committee recommended that the Ministry of Defence should provide a detailed explanation of these alleged discrepancies as soon as possible after the conclusion of Lord Justice Gage’s public inquiry, and I confirm that we shall do so. This does not imply an acceptance that there were any such discrepancies.
List of Witnesses

Tuesday 14 October 2008

Mr Trevor Phillips OBE, Chairman, and Mr John Wadham, Legal Director, Equality and Human Rights Commission

Ev 1

Monday 3 December 2007

Rt Hon Jacqui Smith MP, Secretary of State, Home Office

Ev 11

List of Written Evidence

1 Letter from the Chairman to Trevor Phillips, Chair of the Equality and Human Rights Commission, dated 5 November 2008 Ev 10
2 Letter from the Chairman to the Rt Hon Jacqui Smith MP, Home Secretary, dated 11 November 2008 Ev 25
3 Letter from Rt Hon Jacqui Smith MP, Home Secretary, dated 10 November Ev 26
Oral evidence

Taken before the Joint Committee on Human Rights

on Tuesday 14 October 2008

Members present:

Bowness, L
Dubs, L
Lester of Herne Hill, L
Morris of Handsworth, L
Stern, B
Dr Evan Harris
Mr Virendra Sharma
Mr Edward Timpson

In the absence of the Chairman, Lord Lester of Herne Hill was called to the Chair.

Witnesses: Mr Trevor Phillips OBE, Chairman, Equality and Human Rights Commission, and Mr John Wadham, Legal Director, Equality and Human Rights Commission, gave evidence.

Q1 Lord Lester of Herne Hill: Good afternoon, it is my pleasure to welcome Trevor Phillips, Chairman, and John Wadham, Legal Director, of the Equality and Human Rights Commission. I am not Andrew Dismore; he apologises that he cannot be here but he is on human rights work in Geneva. We are, of course, particularly interested in your Commission because this Committee played a key part for several years in helping persuade the Government that there should be an Equality and Human Rights Commission, so you are particularly welcome to us for that reason. More generally the purpose, as you know, is to look at the Commission’s work in 2007/08 and plans for the future especially in relation to human rights, including equality as part of the human rights agenda. Trevor, would you like to make any kind of opening statement?

Mr Phillips: Thank you very much, my Lord Chairman. If I may say, people have taken to apologising for not being somebody else, you are distinguished to the Committee and you are a distinguished Chairman; there is no reason to apologise for being anybody.

Q2 Lord Lester of Herne Hill: Flattery will get you everywhere.

Mr Phillips: My rejoinder these days is to apologise for not being Barack Obama. Thank you very much for inviting me to talk about some of the work the Commission has been doing during our first year; I hope it is going to be one of many such sessions building on the good relationship we have already created with the Committee. Two weeks ago the Commission celebrated its one year anniversary. We have some positive achievements to show for our first year: we have initiated a human rights inquiry to look at public attitudes towards the Act; commissioned a critical review of human rights in Britain since 1998; we have produced a plain English guide to the Human Rights Act entitled Ours to Own; we have used our legal powers to secure new rights for the UK’s six million carers; we have entered a partnership with the MoD to address bullying and inappropriate behaviour related to race, sexuality and religion as well as gender in the Armed Forces; we have made clear our intention—happily we may never have to act on this now—to prevent the Government’s 42-days proposal being implemented, had it been enacted; we have initiated three large research projects into, first of all, the impact of certain human rights cases on public service provision, secondly, the roles and responsibilities of regulatory bodies in fulfilling their duty to promote human rights standards and, thirdly, the implementation of human rights duties by public bodies. We think that building a positive culture of human rights is a central part of the Commission’s work as well as one of our biggest challenges; biggest challenges because human rights has become, we think, a dirty word for large swathes of the British population. We think one of the key reasons for this is that for a decade other than this Committee in some respects there has not been a body tasked with the promoting of human rights in a way that people could understand and embrace. That means that the value of human rights has really been couched largely in terms of litigation. Over the past month or so we have seen the political parties vying for ownership of what is called the fairness agenda. We think human rights should help us define what fairness means: to be treated with dignity, respect and to have autonomy over your own life. We believe that to develop a positive narrative about why human rights are central to the fairness agenda is crucial to Britain’s future. Part of the problem is that we have drifted to a place where human rights are publicly addressed only in their breach; we intend to try to make people understand that human rights are not there to protect just criminals or shelter people from the rule of law, but they are there and are used day in and day out for the most part to secure the basic rights of the most vulnerable in our society—disabled people, children in care and older people in care homes. Our plain English guide to the Human Rights Act is a first step but we intend to try to develop a clearer and...
distinctly British framework for human rights, one particularly framed around the defence of the individual against authority on the one hand and building mutual respect and good relations on the other. Our human rights inquiry and public consultation on the Green Paper and Bill of Rights will be an opportunity to explore how we can further develop and protect human rights and build on the Human Rights Act. Finally, a particular point for us as a Commission is that the tension between the rights of an individual and their interaction with others is a persistent theme in our diverse society, and it is expressed as good relations in the equality enactments. We think that a human rights framework can provide us with a common ground for engagement as well as a tool to promote integration and resolve disputes without recourse to expensive litigation. The Commission sees itself as an honest broker in this process and while this approach may not always produce perfect outcomes, if we can enable civilised negotiation and set the tone for future discussions we think this will be an extremely positive step, possibly an unprecedented step, towards the fostering of good relations in our society. We look forward to working with you on this and we hope other issues. John and I look forward to your questions.

Q3 Lord Lester of Herne Hill: Thank you for that very full statement which we will obviously want to think about afterwards. You have told us what you think are your main achievements, what about your disappointments?

Mr Phillips: It may seem a bit flip to say—and I do not mean this in a glib way—I do not think we have spent too much time thinking about the things that we have been disappointed by. Probably John may have something to say on some of the cases that we have proceeded with and so on, when we felt that there were things that could be done. If I had to cite a disappointment—it will not be anything new to you—it is that we think we have yet to achieve from the Government a clear and consistent advocacy for a human rights culture. We know that ministers have said that they would like to do more on this front, but I guess I would say from the vantage point of our human rights organisation. We have a new framework can provide us with a common ground for engagement as well as a tool to promote integration and resolve disputes without recourse to expensive litigation. The Commission sees itself as an honest broker in this process and while this approach may not always produce perfect outcomes, if we can enable civilised negotiation and set the tone for future discussions we think this will be an extremely positive step, possibly an unprecedented step, towards the fostering of good relations in our society. We look forward to working with you on this and we hope other issues. John and I look forward to your questions.

Mr Wadham: It is never attractive for lawyers to complain about the cases they lose so I will not say anything about them.

Q4 Lord Lester of Herne Hill: Or the ones that they might have brought. Part of your mandate is not confined in the Act to the European Human Rights Convention rights, it includes “other human rights”, in other words which are in the various human rights treaties by which we are bound even though they have not been made part of our law. What has the Commission done so far to fulfil that duty and, in particular, the specific duty to promote the protection of human rights in that broader sense—not just the Convention rights but the family of human rights that are in the various treaties: the rights of the child, international covenants, the torture convention, the convention in relation to women, race discrimination, all of those. Have you included that bundle of rights so far in your concerns and have you taken any steps to promote that broader bundle of rights?

Mr Phillips: John can say a bit about the submissions that we have made on some of the reviews of conventions that have taken place this year and perhaps a little bit about what we intend to do on the ones that are coming up in 2009, for example CERD and so on. I would just perhaps make two points. You are right to raise this point in this way because there is a misconception, even amongst those who are supposed to know, that when we talk about the human rights framework what we are talking about is the ECHR and the Act, but of course there is a whole bundle of conventions to which we are signatories and there are the optional protocols which we now need to consider and so on. The way that we approach some of these other parts of the framework should say quite a lot about what we are as a country. In particular I would like to briefly mention two things: one, the Convention on the Rights of Persons with Disabilities; we think it is extremely important the Government signs up to this wholly and without reservation this year. Secondly, we think it will be extremely important as a way of demonstrating that we as a country are not standing aside from the international obligations and the celebration of human rights for there to be a proper recognition of the 60th anniversary of the Universal Declaration and indeed the passage of the Human Rights Act in December this year, and we are taking some steps to try to do some things ourselves but also persuade others to play a part in that.

Mr Wadham: Yes, we are engaging in a wider sense than with just the European Convention on Human Rights. We played a little part in the Universal Periodic Review that the UN set up with the UK as one of the first participants. We were not in existence long enough to do the whole of the work on that but we also put in a separate shadow report on the ICCPR, CEDAW and on the Convention on the Rights of the Child. We attended the examination of the UK’s report in relation to all three of those—those are the three that have occurred since we existed. As Trevor says we have had a key role in discussing with the Government the Convention on the Rights of Persons with Disability and we are particularly concerned to ensure that that is implemented without reservation, but also with the optional protocol, allowing people to make complaints. Not surprisingly—I know Lord Lester is interested in this—we have also in the context of the three reports I have mentioned (ICCPR, CEDAW and CRC) suggested that the optional protocols in relation to making individual complaints should also be adopted where it is possible. Part of that process has been for us to ensure that we are accredited with the United Nations for the purposes of being an independent human rights organisation. We have a new application pending for November and we hope that
Mr Trevor Phillips OBE and Mr John Wadham

14 October 2008

Q5 Lord Lester of Herne Hill: You have mentioned Human Rights Day which is coming very close. Of course, if the Government were to accept the optional protocols to the ICCPR maybe it would put us in the same boat as the rest of Europe. I will not ask any more questions about that.

Mr Phillips: I agree with what you just said.

Q6 Mr Sharma: I have the list of the Commission’s membership and looking at the membership can you say how does the Commission reconcile different perspectives from different commissioners; for example, any tensions on sexual orientation and faith issues?

Mr Phillips: I know what lies behind this question, but let me just preface my remarks by saying actually there have not been any. I know it may seem rather strange for people to believe that but actually on almost all of the big questions on which the board has had to take a view—to pursue certain cases, where should we stand on 42 days—there has been no issue on which the board has been divided, not one. There is a reason for that. We do not sit around the board as individuals, nor do we sit as delegates from one constituency or another; we sit as guardians and custodians of the mandate which is set out in the Equality Act 2006 and in so far as our duty relates to the promotion of human rights we are guided by the Act and by the ECHR and the instruments we have just been discussing. Therefore, the discussion about what sometimes might, to some people, appear to be conflicting claims of right never, never comes down to what does one commissioner feels matters compared to another.

The way that we always approach this is what does our mandate tell us? That becomes often an issue of judgment and experience and sometimes there is a technical question. I am not trying to smooth over anything, but the way that we approach this means that so far there have been none of the sorts of tensions that I think many people anticipated might bedevil this Commission.

Q7 Mr Sharma: I can prejudge the next answer rather than the question but I still will be putting the question to you. Why do you think it is useful to have a commissioner—Joel Edwards—who considers homosexuality to be a sin and who chairs an organisation which has opposed equal treatment for homosexuals?

Mr Phillips: First of all the description of Commissioner Edwards’ views as you have read it out is not accurate and I would refer members to a speech he made eight days ago in which he set out his views. That is the first thing. The second thing is that no two commissioners have an identical set of views about anything. If I am completely honest with you, if I have a criticism of the Commission as a board, it is actually that we are too narrow both culturally and politically in the range of our views. I am not saying anything out of turn but as far as I know there is not an active supporter of any of the Conservative Party on our board; one may take a view about one party or another but if we are to do our job properly we have to have a wide range of opinions around our table. We have a responsibility which was never the responsibility of our predecessors which is to try to reconcile the different understandings and also different claims under equality and human rights legislation. If we cannot have the range of opinions around our own board how can we possibly expect other people to treat us as an honest broker when we try to reconcile, for example, the claims of an ethnic group to freedom of expression with the claims of an organisation that represents lesbian, gay and bisexual people. It would be hypocritical no less. In relation specifically to Joel Edwards, just for the record, let us remember that like all of us he is not appointed by me, he is appointed by the secretary of state and the secretary of state will answer for her judgment. However, I have an important part in recommending candidates for appointment and I recommended Joel Edwards for two reasons: one is, in an open process, advertised and all the rest of it, he was one of the best candidates—simple and straightforward—in terms of understanding, advocacy and so on. Secondly, he represents, in so far as any of us can be said to be representative, a very substantial body of opinion, particularly amongst ethnic minority communities, and here I just want to make a very straightforward point. The view that is attributed to Joel Edwards is held, we know, by significant sections of ethnic minority communities. If what we say is that there are certain specific views which are forbidden around our table then we can simply say that there are substantial groups of people in this country—and I am just using this as an example but I can suggest others—which should not be represented at the EHRC table and that seems to be absolutely wrong. We cannot put tests on individuals of this kind; that would be completely unacceptable for a body of our kind and would actually negate our effectiveness in terms of the mandate which we have been asked to fulfil.

Q8 Dr Harris: I personally think that is a very fair answer because you have to ensure that there is a range of views received and he is entitled to his views.
I just wanted to ask whether you say it is a fair summary that while individuals are entitled—not necessarily Joel Edwards, I am just generalising—to hold their views it would be not a good thing if they were to be manifested through the EHRC in a way that limited the rights to freedom of others. Would you say that is a fair way of putting it?

Mr Phillips: It is a fair way and let me quote you from memory what Dr Edwards himself said in his speech last week: “I believe in the rule of law as determined by Parliament. I also believe that the Commission has a duty to enforce that law to the best of its ability.” He would say all commissioners have to fulfil that duty. He then went on to say in his speech that that does not mean that he cannot have a view, but there is a distinction between having a view and the Commission not fulfilling its duty in this respect. We know what this is about and in the specific example of the fulfilment of the sexual orientation regulations and so on the position is completely clear: Parliament has decided what it has decided, the Commission has a duty to enforce it and I have been completely clear as chairman of the Commission where we stand on this. That is the end of the story.

Q9 Lord Lester of Herne Hill: On your point about cross-party membership I am sure you know that when the EOC was set up in 1976 Betty Lockwood, Labour, was joined by Elspeth Howe, Conservative, as prospective chair and deputy chair and when the CRE was set up the first chair was David Lane, Conservative, appointed by a Labour Home Secretary. In those days anyway that point was understood but you are saying perhaps we need to record history here and think back to that.

Mr Phillips: Yes. The secretary of state will make some new dispositions within the next 12 months and appoint or reappoint commissioners and the breadth, both culturally and politically, of the Commission should be an extremely significant factor in her decision.

Q10 Dr Harris: In the interests of transparency—this is something I raised with you informally in January—I do not know if you have been able to have a declaration of party membership like members of NHS trusts have or people who apply through the Appointments Commission in many other areas. While it is not your fault or responsibility and these are very good people, how do you answer the question if you do not know what the political affiliations are, even if they are not bringing them to the table, because it could be said that there are probably up to eight members of the Labour Party and no obvious members of any other party there, but no one would know if it is not declared as it were.

Mr Phillips: It is not required and although I have obviously breached my own principle here already this afternoon, I am a bit reluctant to have a sort of card in which people are required to declare their party membership. Some of us everybody knows, but the furthest I would go with this is that for my money a public body of our kind—and there is no other body really that compares to us—a public body that does what we do has to really pay careful attention to its credibility with the public. One of the markers or one of the things that may increase or decrease the body’s credibility is the manifest breadth of opinion around the table, and one of the things that would make it very difficult to sustain the body’s reputations if it appears that certain kinds of thought somehow appear to be forbidden, as though being a Muslim or being a Conservative or being a something else were somehow at odds with supporting equality or human rights.

Lord Lester of Herne Hill: In the interests of time let us move on. Lady Stern.

Q11 Baroness Stern: Can we move on to something really straightforward which is how you view your role in influencing legislation. Could I ask you first of all apart from the equality role which is obvious which do you think will be the key bills in the new session that will be most important from a human rights perspective?

Mr Phillips: From the human rights perspective?

Q12 Baroness Stern: Yes, aside from the Equality Bill, the human rights perspective.

Mr Phillips: That is a very interesting and difficult question.

Q13 Baroness Stern: It was not meant to be.

Mr Phillips: I do not have the list in mind but the answer to your general question is that it is first of all part of our function to keep the equality legislation under review, so we straightforwardly did that. Secondly, we are of course interested in any legislation that affects our capacity to function—to take what might seem a slightly exotic example, any variation in relation to the Regulation of Investigatory Powers Act is something that would matter a lot to us so we pay attention to all of that.

Q14 Baroness Stern: Do you want to say half a sentence as to why?

Mr Phillips: Because we do not have at the moment the right ranges of investigative powers. We are not, for example, amongst the bodies which are privileged enough to be able to undertake covert surveillance, which I think is absurd given the job that we have to do in seeking out and identifying discrimination, so any changes in that Act are important to us. There are other acts of various kinds that would be significant to us; the Government may bring forward some legislation for example following its White Paper on the community of Parliament. It is extremely important to us because if, for example, we want to think about how we might bring communities into play in enforcing the public duty for local authorities or in relation to health trusts, then giving local communities power through that act would actually be an excellent idea and an extremely important string to our bow. Other pieces of legislation which we think are coming into our territory are citizenship and immigration. We hear that following yesterday’s discussions there are two things: one is
that one of the provisions other than 42 days which we were concerned about in the Counterterrorism Bill is that relating to coroners’ inquests—we have a clear interest in that—and the Coroners Bill my colleague tells me we are very interested in and therefore we are really interested in it. He can explain in more detail why.

**Lord Lester of Herne Hill:** We understand that.

**Q15 Baroness Stern:** Let me ask you another practical question. I am sure we would agree with you that those bills have important human rights implications; do you do something to try and influence them before they are published? Does the Government consult you, do you see draft clauses, do you talk to ministers? Is there anything to report there?

**Mr Phillips:** On some of these bills we are consulted by ministers; it tends to depend on two things: first of all, the manner in which the relevant secretary of state or minister does their business and some are much better at consulting with a range of stakeholders than others. A more formal aspect of this is whether or not the bill has gone through the equality impact assessment which we may require a view of and we may be asked to take a view of, so there are two ways in which we can be involved, essentially either talking to the secretary of state or looking at the impact assessment. In terms of the way we influence a bill, of course we will talk to government—there is a range of discussions going on with government ministers the whole time; we see ministers and officials pretty much every day of the week frankly. Also, as you will know, we take the opportunity to communicate with and brief Members of Parliament on our views on bills that matter to us and we will write to pretty much everybody in this room, plus others, on our views on legislation that comes up. It is probably also worth saying that we now have what we call *Equality News* and that goes to 37,500 subscribers which include individuals, Members of Parliament, local politicians, other kinds of stakeholders and we also use that as a way of letting people know what we think should happen in this place and the other place.

**Q16 Baroness Stern:** Finally, we have read your business plan and it does say that evidence of your inputs on key legislation is one of your performance measures. It is quite difficult I would have thought to give us that evidence; could you give us an idea what sort of evidence it would be and how would we know? If the Government was going to do something objectionable and you stopped it before they are published? Do you get the Government to make some changes. Do you feel you had enough access to the Government? For example, did you manage to talk to Jacqui Smith in the course of your efforts to kill the 42 days?

**Mr Phillips:** The answer to the question is yes.

**Mr Phillips:** Some of it is subjective, of course; I hope we will never be as self-aggrandising as to claim that we made legislation go this way or that way. We will sometimes be able to say that we contributed and I would say—if I can put this delicately—from the reactions of the Government sponsors of yesterday’s 42-day clause our notification of what action we would take if the Bill were enacted did have some impact on the Government’s thinking; it did not make us their best friends, let us put it that way, but it was clearly important enough for them to communicate their views of our action quite directly to us. In that way you know you have some impact but there are other ways in which you know and a more practical and clear way is that before I took up this position, when I was still at CRE, we made it clear to the Department of Health that should they proceed with the Mental Health Bill we would seek judicial review and the then minister eventually said we accept it. I do not think we were the only reason but we were the last nail in the coffin; they just withdrew it and they said publicly that that is one of the reasons they withdrew it. So sometimes it is informal and sometimes it is procedural and it will be public.

**Mr Wadham:** The one that comes to mind—and it is always very difficult in areas where lots of people are involved—is the extent to which the Human Rights Act covered care homes where ministers have said publicly that they welcomed the work that we had done. That is not to say we were the only people involved because this Committee was very involved in that process, but there were points during the process where, by sitting down with people and trying to work out the best way forward, we were influential. It would be wrong to claim credit for the whole process but I think we can claim credit for part of that. There are many examples during the last year and I hope there will be many more next year.

**Q17 Lord Dubs:** You mentioned a moment or two ago that you had had some influence on the Counterterrorism Bill—by implication you softened it or got the Government to make some changes. Do you feel you had enough access to the Government? For example, did you manage to talk to Jacqui Smith in the course of your efforts to kill the 42 days?

**Mr Phillips:** The answer to the question is yes.

**Q18 Lord Dubs:** Can I ask you this: you took a judicial review against the Government on the 42 days; was it appropriate to do that before you knew whether the legislation had actually gone through Parliament? In other words, were you not jumping the gun a bit and therefore reducing your influence?

**Mr Phillips:** John can give you the technical answer, I will give you the political answer. That is, we thought this was wrong, it was not justified, the Government had not made the case and against that background, given our particular mandate, it was unacceptable. We are not a campaigning body, we are not engaged in the debate, but what we can do is to say that as a statutory body promoting human rights and mandated to prevent discrimination we would make this piece of legislation as proposed—which we thought breached at least two articles and certainly we thought would create greater discrimination—unworkable. That is our mandate. To me there is nothing complicated about this. I am asked by Parliament to do a particular thing, to chair this body, and that is what we did in this case.
Q19 Lord Lester of Herne Hill: Can I just say that this is a matter of some concern. I think I persuaded the Government to let you have judicial review powers and the idea was that you would use them to review abuses of power by other authorities in the human rights area without being a victim. It never crossed my mind that you would act like an NGO might act and threaten judicial review proceedings at a time when Parliament had not even passed the legislation. It does seem to me that there is a danger—it is a question of judgment but is there not a danger that you are seen to be, which you have just said you are not, a campaigning organisation and you are using the threat of judicial review in a context where it is not really appropriate. You would be better to use that power—or have used it—where you have inquired into something substantial, the public authority will not comply and you need judicial review in order to enforce your opinion in an independent court.

Mr Wadham: I understand that that is your view, Lord Lester. I should start by saying some of the newspapers reported our intended action as an action that would start before Royal Assent; there was no possibility either in law or in our heads that we could possibly challenge the responsibility of Parliament to pass legislation, so that was never going to be a possibility. Secondly, the reason that it was important to look at the human rights power in relation to the proposals was that if you think about how these proposals might have come into place there would have been some incident or some attempt by the police to prevent an incident. People would have been detained and in the context of that difficult circumstance, where the police were demanding powers to go beyond 28 days, if individuals had wanted to take proceedings then they would have had to take proceedings in a sense very quickly on the basis of what in fact are secret hearings to make decisions about authorisation. Whether that is the right way in which the legislation would have been tested or not I am not sure. In my view it would have been better for the principles of the legislation—the extent to which it is or is not proportionate and does or does not breach Articles 5 and 14—had been challenged as an issue of principle. To have asked an individual who is detained for longer than 28 days, whose real issues are going to be whether I am going to be prosecuted, whether I am going to be charged—and their lawyers obviously concentrating on that issue—and for them to say I am going to take this case in the public interest to test out legislation I think is not sensible. The better process will be for us or for someone else to take proceedings that test the issue before people are detained for longer than 28 days. I understand that that was not in your head when you put down the amendment that gave us this power but I think it is right—and for those people who do not agree with me we did publish the opinion of Rabinder Singh QC and Professor Aileen McColgan which sets out what our arguments are—and it is better for us to set those out both for Parliamentarians but also for the Government and to say that is our argument, you have the chance to tinker with the legislation to make it better so that there are not breaches, rather than for us to say that after the event we will then take proceedings on the basis of individual cases which, as I say, are problematic. We may disagree on this but that is where we are coming from.

Q20 Lord Lester of Herne Hill: Giving your opinion to Parliament is one thing: I was only concentrating on the threat of judicial review at that stage.

Mr Phillips: The problem here is we never used the word “threat”, we simply said this is what we will do if a certain set of circumstances occur. That is a rather different thing from a threat, we did not enter the debate as such but the point here is what would you rather have us do, sit and know that we are going to do something and not make it clear to the Government and to Parliamentarians, and then later on take this step? You would reasonably then say why did you not say this is what your view was? Frankly, in terms of the way you describe it as dealing with an abuse, our board would regard such an action, were it ever to take place, as exactly that, dealing with an abuse by a public body. It happens that the public body in this case is the Government and, if I may say, you yourself admirably advocated and have continued to insist on the Commission’s independence. This is why we are independent, so that we can do this kind of thing.

Q21 Lord Lester of Herne Hill: I must not abuse my position in the chair but the question was really directed to the role of Parliament and the role of the Commission. The role of Parliament is to pass laws and the role of the Commission is then to use its legal powers in concrete cases when the law has been passed. If you are to start using your threats (or whatever you want to call them) to judicially review any piece of legislation that you think threatens human rights seriously then I think you would be in difficulty in courts yourselves and that is therefore why the question arises. Can we move to less contentious territory, please; could you tell us in terms of the new Equality Bill—briefly, because it is a large subject—what is the Commission’s vision as to what that new Equality Bill should do?

Mr Phillips: We think this is an extremely important piece of legislation and that it should be treated as such. We think that the Government’s outline proposals set out by the secretary of state are a great improvement on the proposals that were implied by their response to the discrimination law review last year and we think it is extremely helpful that the Government has focused on four priorities which would be procurement, enforcement, positive action and transparency. That said, we think that the Government’s proposals so far do not match up to either the opportunity or the ambition they have expressed elsewhere. If I may add a coda here, we think that given the economic circumstances at present and what we see coming in the next three or four years there will be a temptation for people to say we do not need to worry too much about this equality business now; we think this is exactly the moment when we can see the likelihood of more
people being laid off—and we know what tends to happen there, that people being sacked becomes asymmetric by race, we can see the likelihood of advances that we have made in relation to flexibility in working practices being reversed to the detriment of women and disabled people for example. We think, actually, now is the moment to be more ambitious in the cause of equality and therefore we would like and will be looking for a bill which is more ambitious. You will know it is proposed that there should be at the heart of this a constitutional guarantee of equality; we also think that there needs to be a step change in the description and the setting out of a positive duty on the public sector and we think that there needs to be tougher strictures in relation to procurement which will ensure that the positive duty permeates the private sector. Also we need some extra powers particularly to make sure that the enforcement works properly. Finally, we think that there needs to be a very positive and definitive statement in the bill on what is meant by positive action and that it needs to be rather more than the Government currently has in mind.

Q22 Lord Lester of Herne Hill: You did not mention equal pay for women.

Mr Phillips: There are two aspects to the way that we have to deal with equal pay. First of all we need to deal with the current mess, particularly in relation to tribunals, and that means that we need to introduce a sensible approach to collective solutions which will deal with, as it were, past wrongs. In the bill itself we are very keen to push forward the idea of representative actions and we also think, though not this bill, that there needs to be some serious repair and reform in relation to the tribunal system itself. There are a number of things that we need to do on equal pay; this bill will not solve it all but it will make a contribution.

Q23 Lord Morris of Handsworth: Earlier you made reference to the Commission’s work on care homes and it is well reported that the Commission was involved in the campaign, which leads me to ask what you are doing with the YL problem in the wider context, for example the provision of social services to children and indeed young people?

Mr Wadham: The answer to that is at the moment, given that the Government has refused to amend the Human Rights Act itself, the only solution we have is to look at all the examples—and we have given a couple there—where we are going to have to repair the failure of the Human Rights Act to cover those other areas. For instance, I understand that there are cases pending with the Court of Appeal about housing association landlords where the same issue as arose in YL are going to arise there and we need to make a decision about whether or not we should try and intervene in those cases. We are looking for opportunities in relation to the example you gave to see whether you can patch those gaps up, but the key issue has got to be the extent to which the Government is willing, in relation to the Human Rights Act itself, to remedy the position by having a provision in section 6 of the Act that all of us, including of course Lord Lester, believed it to be in the first place. I would prefer that the Government cured the problem in one go and that is obviously something that your Chairman has been trying to do, but in the absence of that it is going to have to be bit by bit so we are looking forward to opportunities. If you have got opportunities I would be grateful to talk to you outside so that we can take those forward.

Q24 Lord Morris of Handsworth: Just following up, broadly speaking, the same point are you pressing the Government to bring forward the proposal that it promised during the debate on the Health and Social Care Bill; if not why not?

Mr Wadham: One of the things we have all been expecting—and this is something that the Government said themselves—is that they were going to bring forward a Green Paper on a Bill of Rights which might, as part of that process, deal with the gap that YL opened. One of my colleagues sitting behind me has been working on the whole of that process and has been looking forward to taking the action that you suggested.

Q25 Lord Lester of Herne Hill: This Committee—not that I had anything to do with it—in its report on a Bill of Rights and Responsibilities gave a definition that it was advocating would fill the YL gap. Firstly, have you had a chance to look at that and to let us know whether you think that is the right approach; secondly, if someone had a suitable case where they lost in the English courts would you think that the Commission might assist them in bringing a challenge in Strasbourg so that it would be left to the European Court to decide whether the UK was in breach of the Convention in not adequately dealing with what I will call private governments?

Mr Wadham: In relation to the first question, yes, I have obviously read the report of your Committee but I have not come with my views in relation to that specific point; I am very happy for us to take that away and to write to you specifically on whether or not we think that your definition should work and whether we would support it, so we will do that. In relation to taking a case at the European Court of Human Rights interestingly—and I have agonised about this as you can imagine—the Commission’s remit does not allow us to support a human rights case to the Strasbourg court itself but one of the things we might want to do is to see whether we would support a case by intervening to set out our views in the Strasbourg court.

Lord Lester of Herne Hill: You probably do not know this but the EOC and the former Ireland Human Rights Commission have both supported cases in Strasbourg under similar mandates.

Q26 Lord Bowness: You have seen the report the Committee produced on a UK Bill of Rights no doubt; can I ask you three questions that arise out of that really? One, are you going to respond to that report; secondly, do you share our view that any UK Bill of Rights should impose duties on the Government to bring about the progressive
realisation of economic and social rights, including the right to an adequate standard of living, and, lastly, are you working with the Ministry of Justice on the Government’s proposals or are you, like everybody else, just waiting and seeing what happens?

Mr Phillips: The answers to questions one and three are both yes. We are in the process of considering a draft response.

Mr Wadham: Just on the response issue the question for us, I guess, is whether we wait for the Government’s Green Paper which we have all been waiting for for a long time and whether we should respond separately to that. I understand the Government says the autumn is when they are going to publish this, but whether that is this autumn or next autumn I have no idea.

Mr Phillips: Obviously, we submitted evidence to the inquiry itself. As John says, the issue about whether we reflect back after the final outcome, to some extent, depends on what we think the timing of the Government is going to be; if it is going to be another six months we may well want to come back into the field with another intervention, but if they are going to come forward with something in the next couple of months we are all then going to be in another debate anyway. In relation to working with Government, yes, we are trying to; we have a dialogue all the time—I saw the Minister of State yesterday afternoon to discuss exactly this question and documents will be exchanged—and we will discuss views about principles, and so on. On the issue that you raise about social and economic rights, this is not an issue on which the Board has had any substantial discussion yet. I think we have to wait to see exactly what is proposed here. I am trying to choose my words carefully because this is quite difficult territory for us. I have read very carefully what the Committee has to say on this matter, which I think is carefully balanced, though clear—you are positive about this. I think there are issues for us about the scope of those rights and there are questions about what our locus is here. The only positive thing I think I would like to say today is that it would be hard for us not to agree that there should be some minimum thresholds set out. The question about to what extent such rights are judiciable, and so on, is complicated. There are some principles in all of that which we would want to consider, but what I would like to say definitively is that insofar as there was a consideration of social and economic rights in the human rights field, we think that a guarantee of equality is probably the way that we would like to get traction on this one. Whatever those rights might be, from our point of view, from our mandate, the important thing is the issue of equality of those rights and what equality means. That is to say, that equality is not necessarily the same, and so on (?).

Q27 Mr Timpson: Can I ask you just one or two questions about your relationship with government? You have already alluded, in one of your earlier answers, to how you are trying to achieve a rapport with them, and I know when you had an informal meeting with this Committee on 29 January you said you were doing your best to try and work alongside the Government Equalities Office. Now that we are eight or nine months down the line, and bearing in mind what you have told us today that you have yet to achieve a period of consistent advocacy with Government, how good are your relations with the Government Equalities Office, with the Human Rights Minister, and the Ministry of Justice? Is it still a work in progress?

Mr Phillips: Let me be precise about what I said earlier on. It is not so much about the relationship, it is simply I do not think the Government has a clear and consistent degree or approach to advocacy for human rights. Some months it is good, some months it is not so good and some months it does not exist. We would like to see a little bit more consistency from Government. In terms of our relationship with the Government Equalities Office, I think the background here is that we have now had, I believe, four different sponsor units since we have come into being—or, at least, since we have been in transition. So I think it is a little early for us to say we think that the relationship is good or bad. What I can say is that I think that we and the Government Equality Office are doing our best to make sure that we talk to each other; that we communicate properly and that we know each other better, but I think it is a little bit early to see whether this particular arrangement with this particular department is as good as it could be. All I can tell you today is that I think we have a pretty open relationship; our chief executive talks regularly to the director general; our officials meet regularly on the Equality Bill and other issues, and from my point of view that is all you can ask for at this point. We will see, when the Bill starts going through, how much that stands up.

Q28 Mr Timpson: Perhaps I could tackle it from a slightly different angle and ask you about the issue of policy responsibility. You have the two offices, the Government Equalities Office and the Ministry of Justice, and you almost fall between two stools. Where do you feel your natural home is? Would it be more helpful to you if you were adopted, if you like, by a government department so you could have a more consistent voice with Government?

Mr Phillips: This may not be the answer for all time but I think we are okay where we are right now. I think we have a pretty good relationship with all the departments with which we need to talk. It is worth just making this point about the Equality and Human Rights Commission: we are unlike any other NDPB that we have come across, in that our scope is virtually unlimited. There is no body and no individual which may not be subject to investigation or at least quasi-regulation by us. That is not true, I think, of any other NDPB. That means that we have to have a series of relationships with all kinds of government departments. So we are not desperately keen, I think, to belong to any particular government department because we have to have a working relationship with BERR, with DCSF—you name it, even the Treasury! This is not a really big issue for us. Where it will become a question is
whether our sponsoring department or lead department has the capacity to punch its weight in Whitehall, and that is not an issue about our relationship with them; it is an issue of whether they can fight the battle that your sponsoring department needs to have effectively.

Mr Wadham: Just to add to that, we have litigation either pending or resolved, both against the GEO (Government Equality Office) and the Ministry of Justice, and my guess is that wherever we are put we would have some conflicts, because, in a sense, the implementation of many of the equality measures from the Government Equality Office we would support but some we would not—similarly in relation to the Ministry of Justice. Specifically on the Equality Bill, of course, it is true I think we have got a happy relationship with many of the people on the Bill team, working on the Bill, and there is a very good and important relationship there. Whether they need to be our sponsor for us to have such a good relationship is a different question.

Q30 Lord Lester of Herne Hill: If we had a Ministry for Equality and Human Rights it would make life, in some sense—

Mr Phillips: If there were such a thing that would be much more helpful. The truth of the matter is we are not a delivery agency for any particular government department. My own worry would be—and this is the experience of our predecessors—that there is a tendency that if you belong to a particular government department pressure is brought to bear to turn you into a delivery agency for that department. Given our particular mandate, that would be catastrophic for us.

Q31 Dr Harris: In terms of the way Parliament scrutinises this area, do you think we should be splitting equality and human rights—so, for example, having an equality select committee as well as a human rights select committee—or do you think the role of select committees is not critical in this area?

Mr Phillips: I am going to offer you a personal opinion: I think this is a matter for Parliamentarians. I do not say that in a sort of glib way; it is simply that, actually, I do not think I am really qualified to know what is the best way to scrutinise the field that we are involved in. I guess the response I would offer is this: we have had to try to develop what you might call a new story, a new narrative, which explains why we are the body that we are. One aspect of that narrative, I believe very strongly, should be the way in which we describe the relationship between our equality powers and our promotion of human rights. There is a narrative which says: “These are two quite different things; they belong in different fields and we operate them separately”, and so forth. I do not think that is right.

We will produce in the next six months a proposal for a measurement framework for equality. If you hark back to the Equalities Review produced last year, you will see that the dimensions of the proposed measurement framework are based entirely on human rights principles. That is to say, when we think about equality how do we decide what matters? We decide what matters based on the list of human rights or a list which is generated by our consideration of the Human Rights Act and the ECHR. We think that in the development of our organisation, its story, its narrative, a critical part of what we do is to marry equality and human rights; make them part of the same story rather than separate stories.

Q32 Dr Harris: In your evidence and your submission to the Equalities Review before the 2006 Act and in evidence to the DCLG Select Committee in April you said that there was an argument for an equality select committee—in the latter you said “acting rather like the Public Accounts Committee”, which was an audit-type function. Does your experience of the close connections you have just described between equality and human rights tend to move you away from such a view, qualified by what you said at the beginning that it is not your area—not for you to decide how the field is scrutinised?

Mr Phillips: I think the answer to the question is yes, and the reason is because when you asked the question specifically about scrutiny the reason I made the comparison at that time with the Public Accounts Committee is that I think that the scrutiny of equality and human rights does not devolve to any particular department. Really, the work that you do spans the whole of government, because it is not about the way that a particular government department spends its parliamentary vote; the work that you do is about the way that government works—the principles by which all government departments carry out their business and the disciplines under which they operate. These are
cross-government, and in that sense the comparison I was making was, really, much more to do with the cross-government nature of scrutiny rather than to do with one department rather than another.

Dr Harris: I will leave it there for the moment because we are running out of time. I had one other question on human rights scrutiny, but I will try and come back later.

Q33 Lord Lester of Herne Hill: It is now time that we bring this to an end. We have many more questions but we would like to thank you both very much for answering the questions we have had time to put. May we also come back to you with any further questions in writing that we have not had time to put today? Obviously, whatever government departments are responsible, we regard you as a very close ally and we are delighted, whenever we can, to cement our ever-closer union with you.

Mr Phillips: I would echo that, my Lord Chairman. May I just say (and I think John would echo this), I would very much like to thank the Committee for the courteous way in which you have treated us, including the courtesy, I think, of having rather carefully studied what we actually do before you asked us the questions you have asked us today, which is not the experience that I have had with all Parliamentary committees.

Lord Lester of Herne Hill: Thank you very much indeed.

Letter from the Chair of the Committee to Trevor Phillips, Chair, Equality and Human Rights Commission, dated 5 November 2008

Thank you for appearing before the Committee last month. As we indicated at the time, we had further questions of interest which we did not have time to ask. Consequently, I would be grateful if you could send us a memorandum dealing with the following matters:

— the nature of your engagement with the Fundamental Rights Agency (Q4);
— recognition of the EHRC as a national human rights institution: could you let us know what progress is being made on this;
— what work you are doing to follow-up the concluding observations of UN human rights institutions, such as the UNCRC, CEDAW and the Universal Periodic Review; and
— whether you are pressing the Government to sign up to Optional Protocols to international treaties which provide for an individual right to petition.

I would be grateful if you could reply by Monday 24 November and if you could send a Word copy of your reply to jchr@parliament.uk, in addition to your signed letter.
Tuesday 28 October 2008

Members present:

Mr Andrew Dismore, in the Chair

Dr Evan Harris Dubs, L
Mr Richard Shepherd Lester of Herne Hill, L
Mr Edward Timpson Onslow, E
Bowness, L Stern, B

Witness: Rt Hon Jacqui Smith MP, Home Secretary, gave evidence.

Q1 Chairman: Good afternoon, everyone. We are joined by the Home Secretary, the Right Honourable Jacqui Smith, MP, for a witness session on the human rights issues relating to the Home Office. So welcome, Jacqui. Do you want to make any opening remarks?

Jacqui Smith: No, thank you, Chairman.

Q2 Chairman: I think, inevitably, we are going to start on counter-terrorism policy and human rights. When you withdrew the 42-day proposal, in your statement to the House of Commons you suggested that opponents of 42 days were “taking the security of Britain lightly” and “prepared to ignore the terrorist threat”, preferring “simply to cross our fingers and hope for the best”. Those were quite trenchant comments, which offended quite a few people. Lord West, in the House of Lords, sought to mollify people. What did you mean by those comments?

Jacqui Smith: I do not know if Lord West tried or not to mollify people, and I certainly did not try to upset people, but I was completely clear in the statement that I made in the House of Commons that, as we had argued throughout this, I felt that there was, as others did, a specific potential need to have in place a legislative basis in order, in exceptional circumstances, to be able to detain somebody for longer than 28 days. However, I recognised that others had taken a different attitude but that, nevertheless, I still wanted to ensure that that threat was covered, and that was the reason for, whilst withdrawing those provisions from this counter-terror bill in order that the other important elements of it could actually go through, putting in place the potential to introduce legislation if and when the need arose.

Q3 Chairman: You accept there could be a different point of view. Do you accept that those with other points of view do not take security lightly?

Jacqui Smith: I accept there could be a different point of view. I accept that some of those points of view are held, and I have said publicly, by people who not only do not take security lightly but actually have got a very significant record of countering terrorism; my comments specifically were aimed at opposition parties who, despite having numerous attempts to engage in the process of bringing us to a consensus, had failed to move one jot throughout the whole of the process that we had been engaged in, and thereby made it pretty difficult to develop a consensus on an issue which, incidentally, there had been a consensus about there being a problem around.

Q4 Earl of Onslow: Home Secretary, you have just said now that the opposition parties did not come to a consensus. What you mean is: “Opposition parties did not agree with me”. That is not what consensus means. I would also put to you that one of the people who voted against 42 days was Lord Carrington. Lord Carrington landed at D-day, he got a Military Cross on capturing a bridge over the Rhine and he was a very distinguished Minister of Defence. Are you seriously saying that he was someone who was taking security lightly?

Jacqui Smith: I think I have made clear my position about those people who have a record of countering terrorism and defending this country’s security. However, to return to your original point, the reason why I was disappointed was that actually opposition parties—well, to be fair, the Conservative Party had conceded that there may well be circumstances in the future where in order to fully investigate a terrorist suspect it may be necessary to detain them for longer than 28 days. That, presumably, is why they had brought forward the proposition of using the Civil Contingencies Act in order to do that—a proposal which not just this Committee but large numbers of people felt would be inappropriate for use to solve this particular problem. What they had failed to do, however, despite several meetings and numerous opportunities, was to actually engage in a constructive way forward to solve the problem that they themselves had agreed with the Government existed. That is my contention.

Q5 Lord Lester of Herne Hill: Home Secretary, I do not know whether you regard me as soft on terrorism because I am a Liberal Democrat, but I did have the privilege of working with Roy Jenkins on the first anti-terrorism legislation and in dealing with some terrible problems about terrorism. You say you are aiming at the opposition parties, but I have to put to you that that is a disappointing response from a Home Secretary. We have common aims, do we not? You accept that all the main parties in this country have a common aim of wishing to beat the barbaric scourge of terrorism. We disagree about aims. Your disagreement—
Jacqui Smith: Means.

Q6 Lord Lester of Herne Hill:—is with the former head of the security service, with the DPP, with this Committee—unanimous Committee—and with a vast number of people inside and outside Parliament. I do not understand why it is sensible for you then to attack the opposition parties as being soft on terrorism. Why is that in the public interest? Jacqui Smith: I think I have just outlined the reason why I was disappointed: that, given that there appeared to be—and I agree with you—a pretty common view about what the issue was that we were trying to solve here, there was not a willingness to engage in a process to determine what the means should be to solve that problem. That is my argument. That is the argument I made in the Commons; that is the argument I stand by. I am sorry if some feathers have been ruffled because of the language that I have used. My priority is not whether or not people’s feathers are ruffled; it is whether or not this country has available to it all of what I might consider to be the necessary legislative protections in the future.

Q7 Mr Shepherd: Home Secretary, why do you think your judgment is superior to those of others in this field: former heads of MI5, etc? Why are you more qualified than they and, therefore, so dismissive of all the political structures of this country to attack the Conservative Party, no less, for its supposed stance on this? This is the most serious issue that confronts our civil liberties and our freedoms in this country. The Chairman has just made reference to the language that you use: “take the security of Britain lightly”—to those of us who actually are very, very anxious about the way in which the Home office has careered through our civil liberties—and “are prepared to ignore the terrorist threat”. I have not met anyone that is prepared to ignore the terrorist threat. So why are you even Home Secretary and making assertions like this in an important speech? Jacqui Smith: I think I said I was not willing to lead—

Q8 Mr Shepherd: You accused others of being prepared to ignore the terrorist threat. Lord Lester has just set out some of the people who, by your language, supposedly—the head of the DPP, Lady Manningham-Buller. It is an incredible position for a very new Home Secretary to launch into an attack on people that have been protecting our liberties for a very long time. Jacqui Smith: I am sorry if people feel offended. I think I have made clear my position that, actually, my concern is less people’s feelings and more whether or not we have in place the necessary potential legislation. Incidentally, in response to your first point, on the advice of the most senior police officers, for example, who we tasked to investigate and to bring to the point of charge terrorist investigations in this country. So I do not accept the assertion that there was no support for my position. I have worked—

Q9 Mr Shepherd: No one said that.
Jacqui Smith: I think that was your suggestion.

Q10 Mr Shepherd: You clearly have the Prime Minister’s support.
Jacqui Smith: I think that was your suggestion at the beginning, incidentally—that I had not taken anybody’s advice. I am just pointing out that I did act on some people’s advice. Secondly, that I have throughout this whole process, which, of course, has been going on over a considerable period of time, sought to both identify what I consider the potential threat to be—a threat, incidentally, which has been recognised by the Home Affairs Select Committee and by others—and to work to find a consensus in order to develop, as Lord Lester puts it, the means with which to deal with that. So I have, throughout this process (I think it has been pretty widely recognised) worked to try to develop a consensus on this. What I have been clear about is that there is an issue that needs to be dealt with and we needed to find a way to do it. I am disappointed that it has not been possible to find a way to do that. I do not know if you are suggesting that you do not believe that there are any circumstances in the future in which it is conceivable that somebody might need to be held for longer than 28 days or not—whether or not you are in that position or whether or not you think it is conceivable that there are, and in those circumstances what you think the response should be.

Q11 Mr Shepherd: I am inquiring about your stance in public policy terms, not the individuals identified this way or that way. Jacqui Smith: I think I have made myself—

Q12 Mr Shepherd: What I am saying is that the burden of opinion—no, it is the language that you use.
Jacqui Smith: So, basically, you are commenting on my language not on my stance in public policy terms?

Q13 Mr Shepherd: I am—
Jacqui Smith: I think I have made my stance in public policy terms pretty clear.

Q14 Mr Shepherd: No, but it is the language and the means by which you make your stance clear: “prepared to ignore the terrorist threat”. I think the language is something that really angers and irritates people who have seen the retreat from a concern about defending our liberties and freedoms as well. We have those rights. Nothing that we are hearing from you—“prepared to ignore the terrorist threat”; “simply to cross our fingers and hope for the best”— I do not accept that language, obviously, and that is the tenor of the argument. It is the language that you employ to denigrate others.
Jacqui Smith: The line “crossing our fingers and hoping for the best”—let us remind ourselves of the process I have gone through here. First of all, those people who we task with investigating the most serious terrorist threats in this country and to bringing those people to charge have suggested to me, and have suggested in public, that there may come a time in the future where, because of the complexity and because of the nature of the plots that they are investigating, they may need to hold somebody for longer than 28 days in order to bring them to charge and through our criminal justice system. One. If that situation actually exists and it has been brought to my attention, then actually I think it is precisely my responsibility, as Home Secretary, to work through a process that will enable us to mitigate that potential future risk. My argument is that there are many people who have been willing to concede that risk but who have been unwilling to try to find a way through to actually be able to mitigate that risk in the future. Those are the people who I charge in this case with actually taking the approach that somehow or another we can just wait until that risk emerges to actually take the legislative steps that I believe are necessary. We, of course, are in that position now, but what I have been clear about, in publishing the Bill that I have, is that it would be my intention to bring forward that legislation. It remains, as it has been throughout the whole of this process, the decision of Parliament as to whether or not they actually pass that legislation. That, clearly, remains the situation.

Q15 Chairman: We need to move on: we have a lot of ground to cover. I would like to explore the level of the threat with you, if I may. I would simply end that discussion by reminding you that I think I was the first MP in early 1998 to start raising concerns about the terrorist threat. I tabled some 300 Parliamentary questions before 9/11, and up until 9/11 nobody was actually interested in anything I had to say, and afterwards people started to take notice. Anyway, let us talk about the threat. In your IPPR lecture you talked about the need of the Government to be more sophisticated in how it engages openly with the public on its work and how difficult it sometimes is to explain the scale of the urgency of the threat. Can you make more information available to the public—for example, a qualitative analysis of the cases that have gone through and resulted in convictions over the last few years? The security services may be reporting more threats or plots, but that might be because they are more aware of what was there to start with, which is good, or it may mean there are more plots in absolute numbers, which is bad. So which is it, and can we try and get some more detailed analysis about what has been going on? Jacqui Smith: Okay. Firstly, of course, we now have the threat assessment that is carried out by JTAC—on the basis of intelligence, on the basis of an analysis of both the capability and the intent and on an analysis of past events—in public. Of course, that JTAC threat assessment at the moment stands at “severe”. In other words, an analysis that suggests that an attack is highly likely and that an attack could well occur without further warning. That is the first way. I think, in which we are now clearer about what the potential level of the threat is and the basis on which that analysis has been made. Secondly, I think it is worthwhile as well pointing out, of course, that one of the important manifestations of the nature of the threat will clearly be the extent to which people have been brought to justice for those sorts of offences. We do now face a situation in this country where, since the beginning of 2007, 81 people have been found guilty in 33 major terrorist cases, and jail sentences handed down in those cases total over 870 years. We are now, by looking back at the nature of the threat, able to see some quite clear themes throughout that, demonstrating both the nature and the complexity of the threat: aspirations to use a dirty bomb; the targeting of shopping centres and our transport infrastructure; the desire to inflict mass casualties on the public without regard to race, creed or colour, and the aspiration to commit terrorist acts abroad. I think, Chairman, if what you are asking is whether or not there is more that we can do (and I think it would probably need to be after the event) to make clear the nature of what has been brought to justice, I think that is a fair argument and it is something that we are working on. Secondly, if there is more that we can do to explain to the public what the nature of the threat is and, therefore, what the response may well need to be, that has certainly been what I have aimed to do since I have been Home Secretary, and of course is part of the reason for the speech that I made to the IPPR. I spent some time during the course of that speech actually explaining the developing nature of the terrorist threat that we were facing and, therefore, the rationale for the response that we were making to it.

Q16 Chairman: I think what we are looking to do is get beyond the broad assertions and into some of the more detailed evidence that supports those assertions. If that can be done through analysis of what has happened already and what has been detected that would be helpful, but as much as possible, I think, is what we really need to see. Inevitably, we do not expect to see the detailed security briefings—that would be ridiculous—but there must be some ground where we can move forward to try and explain to the public a little bit more about what has been going on. Jacqui Smith: That is precisely why I pointed to the 81 convictions, of which, of course, nearly half were people who pleaded guilty. We are clearly looking backwards and we can analyse the nature of the threat in relation to those. It is why I also referred to JTAC, which I hardly think people could say was simply based on assertion. This is detailed, analytical work, based on both current intelligence and an analysis of the nature of the threat, the intent, the capability and what has gone before, which comes together to form the threat assessment which is published.
Q17 Chairman: I think the problem here is, perhaps, the backlash of what happened over Iraq, in that people are suspicious of assertions based on unpublished intelligence material. I think we need to try and get beyond that and try and do some of the detailed qualitative analysis which I think you have implicitly agreed needs to be done—certainly, on the cases that have gone through so far. One of the things that Lord West referred to in the House of Lords debates was a great plot which he saw as building up again. Is there specific intelligence about a particular specific threat, or is that, again, a more general assertion of what is going on?

Jacqui Smith: If I refer you back, Chairman, to what I have just said about the definition of the threat level that we face at the moment, a threat level that is “severe” means that (and I quote, in terms of the threat level): “an attack is highly likely; that it may well occur without further warning.” Clearly, as the Director General of the Security Service has relatively recently said, they believe that they are monitoring 30 plots, 200 networks and 2000 individuals. All of that suggests, I would argue, a pretty high—as we have described it, “a serious and sustained”—level of threat from terrorism that this country faces. Clearly, we would not talk about individual threats and plots that might be faced, but I do think that all of that evidence coming together, alongside (can I just reiterate) the 81 individuals who have been convicted of serious terrorist offences since the beginning of 2007, does not suggest that this is a threat that is being in any way “sexed-up” by the Government. I would resent any suggestion that it was being. I think it is pretty conclusive proof that we do face a serious and sustained threat from terrorism and that the action we are taking is, therefore, not only right but proportionate in relation to that threat.

Q18 Chairman: So when Lord West talks about “a great plot”, that is the generic; there is not a specific?

Jacqui Smith: I think it would be fair to say that relates to the generic threat that we face, yes.

Q19 Chairman: Last couple of questions from me—quite short ones, I think. The 42 days issue was never intended as a deterrent, as I understand it, to people engaged in terrorism.

Jacqui Smith: No.

Q20 Chairman: Nor was it a tool to help with pre-arrest investigation.

Jacqui Smith: I am not quite sure what you mean by that question, Chairman. I would argue it is a function of the nature of the threat that we face that an investigation is likely to be carried out in a different way. The fact that you face the threat of mass casualties in suicide bombing makes it much more likely that law enforcement will intervene far earlier in an investigation than might be the case in other forms of criminal activity, and that in itself, therefore, may well necessitate a longer period of detention before charge.

Q21 Lord Lester of Herne Hill: Home Secretary, I would not dream of casting any aspersions against you of the kind that I think you have cast on opposition parties. I fully respect what you have just said and I entirely accept that there is a very serious threat indeed of further terrorist activity. That is common ground. However, I wonder whether you could reflect on the point about reassuring the public? On the one hand, it would be easy to frighten the public on the basis of statements about plots and so on; on the other hand, it is very important to reassure the public by not indulging in party political games or rhetoric. Do you not, as Home Secretary, have a difficult but crucial responsibility in giving the assurance and showing your concern for civil liberty so that you do not actually alienate young British Muslims, in particular, by what you do, and, at the same time, making sure that your measures are only absolutely necessary to counter the threat? Is not all of that your responsibility and, therefore, should you not perhaps listen a bit more attentively to some of the critics you have heard round the table today?

Jacqui Smith: All of those things are my responsibility. I listen and have listened—and this was part of my argument—over quite a lengthy period of time to a large number of critics, and to quite a large number of people who supported, with respect to pre-charge detention, the approach we have taken. To come back to your original point, I wholeheartedly agree with you that the public, for reassurance, needs not only a realistic assessment of what the threat is that we face but, my argument is, actually, I think the public are reassured not by a description of the threat necessarily, or by anybody trying to downplay what is a serious threat, but actually by a response from Government that is as wide-ranging in countering that threat as it is possible to be. That is why, of course, we have always taken the approach that there is a short-term response that we need to make, which, in my view (although I accept it is not shared by others in this Committee), should have included the ability to be able to have an extended period of pre-charge detention, but includes a wide range of other things as well, but alongside that, also, has a longer-term approach to how we counter terrorism, which I think has been an important element of the way in which we have developed our counter-terrorism strategy over the last year, and that is to say that in the longer term probably the most effective way in which we counter terror is the element of our CONTEST strategy that we call the prevent element, which is that work which prevents people turning to violent extremism and supporting terrorism in the first place. So, I think, in order to ensure that the public are reassured, an exposition of the wide range of activity that we are taking across the range of our counter-terror strategy is probably the best way of doing it. That, of course, is why we are engaged at the moment in a refresh of our counter-terror strategy and it is why we will be publishing details about that later on this year, in order both to inform and to engage the public in a discussion about how we are responding to the threat from terrorism.
Q22 Earl of Onslow: Home Secretary, let us assume, for the sake of argument, that there may be some necessity for extending the 42 to 28 days (sic)—which, personally, I am not yet convinced of. Would it not be better to go down the derogation from the European Court of Human Rights road and set out circumstances under which you would have to derogate (because derogate you would have to if you want to increase the detention from above 28 days—or should do)? Would it not be more sensible, therefore, to ensure the necessary Parliamentary judicial safeguards are in place in the event of that emergency that the Government fears? What are the Government’s reasons for not wishing to legislate to provide such a detailed framework for derogation?

Jacqui Smith: Firstly, because I disagree with one of the elements of your question. You contended that in order to hold somebody for longer than 28 days, under the sorts of provisions we have set forward, it would be necessary to derogate. Our argument is precisely the opposite: the proposals we have brought forward are fully compatible with Article 5 and any other article, in my view, you care to mention. Therefore, it is not necessary to derogate—Earl of Onslow: Can I stop you there? You are in a minority on that view.

Q23 Mr Shepherd: Yes, on the interpretation.

Jacqui Smith: I do not believe that is the case, actually. There have been no—

Q24 Earl of Onslow: You can go on saying: “You are”, “You aren’t”, “You are”, “You aren’t”. We are of the opinion that you are.

Jacqui Smith: Okay. In this room—in this room I may well be.

Q25 Lord Lester of Herne Hill: Not just in this room. In the European Court of Human Rights in the Irish state case, where I represented the Crown, we had to derogate (or, rather, the Conservatives had to derogate) for long-term internment. I do not know of any legal authority, independently, who considers that indefinite detention without trial does not require a derogation from the right to liberty under Article 5. Where does that come from?

Jacqui Smith: That is because, of course, what we are not proposing is indefinite detention without trial; we are, in our view, fulfilling the requirements of Article 5, particularly with respect to judicial authorisation, which, if I understand correctly, I think, is the distinction between the Irish case that you refer to and our proposals. It is, of course, the case that judicial authorisation is needed from 48 hours onwards in the provisions that we are setting forward. It is on that basis that we believe—and others would support that contention—that we do not need to derogate, and because we do not need to derogate either for the period of extension that we have previously had, from 14 to 28 days or, in our view, because of the judicial authorisation in particular and the regular review in the process that we have brought forward, not only is it not necessary to derogate but, actually, it would not be possible to derogate because derogation, of course, implies a two-stage process: one, that you believe that there is a state of public emergency and, two, that it is necessary to derogate with respect to the specific provisions that you are bringing in place. Whilst we still believe the first is in place we do not believe that the second is.

Q26 Earl of Onslow: In our report we quote quite a few people who disagree with you on the 42 days being outside the Human Rights Act. If you are prepared to legislate on what is a hypothesis, and a remote hypothesis at that, to lock people up for something that might or might not happen, why can you not simply say, just to be doubly clear with ourselves and to make absolutely certain we are following the traditions of liberty and justice: “We will derogate to make sure that everybody is clear on what we are doing” as opposed to saying: “No, we won’t”?

Jacqui Smith: It is a strange argument, is it not, that we will claim that we are not fulfilling our responsibilities under the ECHR by derogating when we feel that we are fulfilling our responsibilities—and, in fact, we have precisely designed the system to fulfil our responsibilities. We are not talking about belt and braces here; we are talking about a situation where the braces are precisely not needed because the belt is working.

Q27 Lord Lester of Herne Hill: I think the problem is that the question is not as Lord Onslow has put it; the question is not: why not derogate (and you have answered that question and I understand what you have said); the question is: why not have in place a framework so that if in some future case it becomes necessary to derogate (and we can never tell) you have then got a framework with proper Parliamentary oversight built in so that there can be proper scrutiny at that time? That is why this Committee put down that amendment. It was not to do with what you are now, understandably, talking about, where you say you do not need now to derogate, but, given the future, would it not be better to have a proper system in place to deal with that, as we recommended?

Jacqui Smith: I believe that what we have done in the Counter Terrorism (Temporary Provisions) Bill is to put in place an ECHR-compliant way of achieving our objective, which therefore would not require us to derogate. That is my view and that is the advice that we have received. I accept—and I have seen your report—that Members of this Committee believe that this is something about which we should derogate. It is a straightforward difference of view. However, I would simply say that it was a similar argument. I think, that was made, for example, about the extension from 14 to 28 days. That has been proven, when tested, to be compatible.

Q28 Chairman: I do not think that is right, actually. It has never actually been checked or gone through the courts on that basis.

Jacqui Smith: All right; it has not been proven to be incompatible, and it is our view—
Q29 Chairman: It has never actually been tested because of the Catch 22 within the court system.

Jacqui Smith: I, nevertheless, would argue that that is compatible and so are the proposals which are also based on precisely the same safeguards as are within that proposal for any extension beyond 28 days.

Q30 Dr Harris: You have not garnered enough support, as yet, and I have to say I do not think party political comments will help in the future to support your approach. Therefore, is it not a good idea to consider compromising, as we have done because we are three parties represented on this Committee? We have come up with a report that shows a way forward which some Members of this Committee are likely to be unhappy with on both sides, and that might attract the support of other people in Parliament, and that would help you get a system through that you may feel was necessary in the event that some of your colleagues have talked about of three 9/11s. Would you look at this report that we have produced on that basis, as a constructive way forward which certainly has the potential to have a much wider consensus than your proposals and your repeat proposals?

Jacqui Smith: I am not sure I necessarily agree with the last part, although I would say that I have, as with the numerous reports that you have produced during the course of both the consultation and the process of this Bill, looked at this in some detail. I think it is fair to say, if I am not wrong, that we have responded in some detail on this as well, along the lines that I have just outlined, as to why I am not convinced that this is the sort of third way compromise that Members of the Committee obviously accept it is. I come back to the fundamental point: if it is our contention that what we are proposing does not require a derogation then it is not appropriate to propose a derogation. It seems to me a strange argument—

Q31 Dr Harris: If you can only get a majority for those who think it is requiring derogation—and the bonus is that the derogation provides the judicial safeguards and the definition of the trigger that also garners the majority—then is that not the constructive and pragmatic way forward in dealing with a real threat and, therefore, the most sensible approach for someone in your very important position with the interests of the country at heart, given that you have not got a majority for your current proposals?

Jacqui Smith: We did, of course, have a majority in the House of Commons for our current proposals. I return to my original point: that if there is not incompatibility in your proposals, then suggesting that you derogate as a way to sort of suggest that there is incompatibility with something that is not incompatible in the first place is not only illogical but, as I understand it, not an avenue that is actually open to you anyway.

Q32 Chairman: I think you are approaching this from the wrong perspective. We did not put forward derogation as an alternative to 42 days; 42 days we opposed and said that that was wrong. We said, however, another thing that ought to be considered is a system of statutory derogation with built-in statutory safeguards in circumstances where a derogation might become necessary. So if you did have three 9/11s on one day that clearly would be, arguably, a threat to the life of the nation for which emergency measures were needed, which could justify derogation. In those circumstances, at the moment, there is no statutory system to bring the derogation about, other than waving a magic wand. What we were proposing was that if you do get a threat to the life of the nation (put 42 days to one side—that is a separate argument), why do we not have a statutory process which would enable that to be brought into effect with the appropriate Parliamentary safeguard to check on it? It is actually a different issue to the 42 days one; it has got mixed up together.

Jacqui Smith: Right. Precisely my point, which is that—

Q33 Chairman: Then we do not have to argue about whether or not 42 days derogates—clearly you think it does not—

Jacqui Smith: Okay. So you accept my point that—

Q34 Chairman: No, I do not accept your point. For the sake of argument, I am saying it is irrelevant to the argument we advance on derogation.

Jacqui Smith: Okay. So, basically, your argument is if there were another set of circumstances—not those that I am envisaging the use of my temporary provisions for—it might be appropriate to derogate on the basis that that was a threat to the life of the nation. Let me just conclude. It is, of course, the case that the Human Rights Act provides us with the legal basis on which, if it were necessary, to derogate. So I am not quite sure what the argument is about what this other structure is that we should set up in order to be able to derogate. We already have in place through the Human Rights Act the provisions to enable us to derogate. My argument is I have put in place, in my view, a process for achieving the objective, if necessary, of being able to detain somebody for longer than 28 days, that is not incompatible and that, therefore, does not need a derogation.

Q35 Chairman: We understand that. We disagree on that point.

Jacqui Smith: We disagree—you are right.

Q36 Chairman: Let us just park that argument. The point about the derogation issue is this: that the Human Rights Act/European Convention permits derogation but it does not provide a Parliamentary network through the legislation to achieve that. It does not provide for Parliamentary oversight of the decision to derogate. You say three 9/11s could be covered by your existing proposals; we say three 9/11s is probably a threat to the life of the nation—that does not really matter; we are talking about a hypothetical circumstance where you do have a very, very, very serious terrorist threat that really
threatens the life of the nation, so something really serious has to be done and quickly. What we are saying is, in those circumstances you may wish to derogate. We have got provision to derogate in control orders, for example (it has not been used). Why can we not have in place a system to allow Parliamentary oversight of the Home Secretary’s decision to derogate—which is what we were proposing? 

**Jacqui Smith:** To a certain extent, were we come to a situation, my argument is still that we have passed through this House the process through which it is possible for us to derogate under the Human Rights Act. You seem to have moved away from the contention that, somehow or another, it is necessary to derogate in order to solve the particular issue around --

**Q37 Chairman:** I have not said that. What I am saying is--

**Jacqui Smith:** I thought you said you had separated out those two issues, Chairman.

**Chairman:** We have put 42 days as a separate issue anyway. It was not advanced as an alternative; it was a separate issue raised in our report. I am saying, let us park the 42 days, because we are never going to agree on that, but the point about the derogation issue is there will be circumstances, perhaps, where you would want to derogate, which go beyond 42 days even—the most horrible things could happen. Why can we not have in place Parliamentary oversight for that process, which we do not have now?

**Q38 Lord Lester of Herne Hill:** If I could just clarify. You are seeking, effectively, reserve powers for the future when a horror occurs and you want to have enough power to deal with it. That is your position. What we are seeking for the future is a reserve safeguard so that if you have such a power there would be adequate Parliamentary scrutiny of what you are doing. So what we are saying is we need checks and balances. If you want to have in your back pocket a Bill with futurepowers we want your Bill to include adequate safeguards against abuse involving derogation. So we are arguing for a systemic thing—nothing to do with 42 days—and you are not arguing about 42 days; you are arguing about some future horror where you want, maybe, 100 days, for all I know, and we are saying: “Please can you include check and balances that are not in the Human Rights Act?”

**Chairman:** I think we are going to have to move on.

**Jacqui Smith:** Yes, it came to my attention when I heard about the speech; it was not with respect to some of the cross-government work that we have been considering with respect to the communications data point that had ever been made more directly before that speech. How do I respond to it? Well, it is, of course, self-evidently the case that no government would want to break the back of freedoms on the objective of security. That, of course, is at the heart of what we have, certainly, aimed to do, whether or not it is through our Counter Terrorism Bill or through the provisions that we will consult on with respect to communications data. So I do not believe we were doing it and, therefore, I am not quite sure what you are expecting me to respond to. If you want me to spell out what I think the concerns are around communications data I would be very willing to do that, and also to outline, of course, the process that I have now put in place to ensure that there can be a full public discussion about what both the nature of the issue is and what some of the potential solutions to it would be.

**Q39 Baroness Stern:** I would like to move us on, if I may, to a little bit of discussion about communications data and privacy. I thought that would cheer you up. I am sure it has come to your warning in that statement.

**Chairman:** I think we are going to have to move on.

**Jacqui Smith:** Quite a lot of the time that I have spent in coming forward with the proposals that I have to respond to, the particular issue of pre-charge detention, has involved thinking about what the appropriate safeguards should be. I think we went to quite some lengths, both in the Counter Terrorism Bill and, incidentally, in terms of the safeguards in the Temporary Provisions Bill, to make sure that there are appropriate safeguards in place—to the extent that, actually, in the end, people were arguing that they felt that there were too many Parliamentary safeguards, and that was one of the criticisms that was used against the process that we had come forward with. I think the argument between us is not whether or not there are any safeguards, because I would argue there are and I would be willing to listen for you, it is whether or not we believe that derogation is appropriate in these circumstances, and if it would be a safeguard at all. I just do not agree that it would be or that it is appropriate.

**Q40 Baroness Stern:** Thank you. Can I give you another quote—if you could bear it—from the same speech, which I will probably ask you to respond to as well? Sir Ken Macdonald also said: “It is in the nature of State power that decisions taken in the next few months and years about how the State may use these powers, and to what extent, are likely to be irreversible”, which means once you have taken away people’s privacy in respect of their emails, their ‘phone calls and pictures taken of them every day when they walk about the streets, it is very hard to give that back. I wonder if you have any comment on that, and what principles you have in mind when you are reflecting which areas of privacy you feel need to be invaded in the interests of security.
Jacqui Smith: It is rather difficult for me to comment on what Ken Macdonald meant by the speech that he gave; he did not clear it with me and he did not discuss it with me before he gave it. As far as I am aware, he had not made those points across government. So if what you want me to do is to spell out what I think the issue is around communications data and how we intend to take that forward, I will do it, but I am not in a position to give a commentary on what Ken Macdonald may or may not have meant by quotes that he put into a speech that I did not write.

Chairman: If you can do that very briefly, because, obviously, we are under time constraints, that would be very helpful.

Q44 Dr Harris: I am asking you whether you have learnt your lesson. I have already said I think it was particularly stupid to make a party political comment when you failed to do that, and I would like to ask if, at the end of this exercise, you are not able to persuade civil society, Labour members, Cross-bench members, Liberal Democrat and Conservative members, whether two of those groups can expect the same lambasting that you have singled them out for when you failed to get support for your view of what consensus should be around the 42 days. In other words, do you accept—

Jacqui Smith: It depends whether or not they have engaged seriously in the process or not.

Q45 Dr Harris: You understand it could be damaging to future attempts to seek consensus if people feel they are going to be decried, in their view unfairly, and singled out—because you did not attack people like the Chairman who are Labour members who disagree with you. Do you understand—

Jacqui Smith: The Chairman well knows that I have attacked him on numerous occasions.

Q46 Dr Harris: You see the point. You understand that that might undermine your efforts to achieve future consensus on such an important issue.

Jacqui Smith: To be honest with you, I think we have gone through this process and, you know, as I suggested earlier, if people are offended by what I said, well, in some cases I am sorry; in other cases I am not.

Q47 Mr Shepherd: Big deal. This is absurd.

Jacqui Smith: The process that I thought I went through in order to get to the point we have got to was one that was aimed at building consensus. My criticism is about those who failed to engage in trying—

Q48 Mr Timpson: Could I ask the Home Secretary to reassure us that the capability gaps in the communications data that have been identified for this Bill, that none of that work will be done prior to the public consultation by any of the communication providers or, indeed, before the Bill is brought before the House?

Jacqui Smith: It is the case, and I think we have been clear about this, that we have brought together a team to look at some of the technical solutions around what it might be necessary to do, precisely in order to be able to inform the consultation. So that work, of course, is ongoing, but one of the reasons why we need legislation would be to put in place any necessary safeguards to enable that work to come to any sort of fruition. So to that extent, yes, of course, it is right (and that is part of the reason why I think it is important that we engage in a consultation about this) that there is legislation to provide both the legal underpinning for the work that is happening and the necessary legal safeguards around that work as well.
Q49 Chairman: Can I ask you about Paddington Green? The Committee visited Paddington Green and whilst I think we were all impressed by the professionalism of the police officers there, the conditions are clearly not suitable for holding people for any length of time. That is a point that, also, Lord Carlile has made and the European Committee for the Prevention of Torture has made. What progress is being made in trying to implement the various recommendations towards improving conditions at Paddington Green, or providing, indeed, an alternative?

Jacqui Smith: I understand from the Met that the refurbishment of the facilities at Paddington Green is under way. They hope to complete that work by May or June next year. Those improvements will, for example, deal with some of the issues that the Committee has previously raised—for example, the enhancement to exercise and leisure facilities at the site. Funding for that is being found from within the MPS’s budget. There are options being considered, however, for extending the capacity of the detention facility, both within London and under the auspices of ACPO(TAM) across the rest of the country as well. So there is immediate action being taken on the refurbishment of Paddington Green. With respect to the points that the Committee have raised about greater capacity, those things are also under active consideration as well, and we have made provision in the Home Office, as part of our CSR settlement, for the necessary funding in order to enable that to happen.

Q50 Lord Lester of Herne Hill: Home Secretary, intercept evidence. This Committee went to Paris, Madrid and Canada, being concerned to try to find more effective means of prosecuting and convicting terrorists. We found the use of intercept evidence in those countries under common law and civil law. As you know, the Newton Committee long ago recommended the use of intercept evidence and Sir John Chilcot, a year ago, also recommended it. Given that there are safeguards in the judicial process against revealing things to defendants that ought not to be known by them, when are you going to introduce the use of intercept evidence in order that we can have more effective prosecutions and convictions?

Jacqui Smith: Of course, the Chilcot Privy Council Committee actually recommended that further work be done, on the basis that they did argue that they felt it was possible to find a legal model that would enable the use of intercept as evidence, whilst being very clear that it was extremely important that the operational requirements, the tests—nine of which they set down—needed to be met in order to ensure that, particularly, the sort of strategic capability and the very important contribution that intercept as intelligence already plays in this country to achieving successful convictions as well, were all safeguarded. We responded to that by accepting that recommendation and by setting up both a programme of work led from the Home Office and a process of governance for that, including an advisory committee of Privy Councillors, which includes all of the original Chilcot Four, with one substitution of Michael Howard, as the Conservative representative, to actually have a bit of oversight of the way in which that was going. We have made progress on taking that work forward.

Q51 Lord Lester of Herne Hill: The question is when?

Jacqui Smith: The answer is when we can be confident, as Chilcot suggested we should be, that the nine operating requirements have actually been met in relation to the legal model that has been designed.

Q52 Lord Lester of Herne Hill: Can you deal with this urgently, because it is, clearly, a very urgent matter now. Is it not? To be able to enhance prosecution to be able to secure a conviction and, at the same time, balance the needs of national security is, surely, very urgent. If it can be done in other countries like Canada or the United States, who have the same common law adversarial system, surely, if you give it high priority, you can give us something better than a very vague indication that it may happen on your watch, sometime before the next election.

Jacqui Smith: The first thing to say is, of course, you yourself identified precisely the issue that we are dealing with, which is to make quick progress consistent with maintaining national security and, I would argue and the Chilcot Committee argued, consistent with retaining the operational capability that is so significant to us in terms of our ability to be able to use intelligence. Of course, in terms of international examples, as the Chilcot Committee themselves identified, we have a very good conviction rate in this country using intercept as intelligence, compared to the US, for example, which has a roughly comparable use of interception. They themselves identified that the highest arrest-to-conviction rate as a result of interception between 1996 and 2006 was 56.4 per cent in the US, and the Met identified that in operations involving intercept as intelligence only in 2006-07 there was an 88 per cent charge-to-conviction rate of completed cases. So I agree with you that we need work to fulfil the task, if you like, identified by the Chilcot Committee, but I do not accept that we do not already have a successful use of intercept in this country which does, although not used as evidence, nevertheless, lead to a successful conviction rate.

Q53 Lord Bowness: Home Secretary, the National Security Strategy. In your speech on 15 October you said that you were revising your counter-terrorism strategy known as CONTEST and you said the revised one would look very different from its predecessor. I do not suppose you are able to tell us how far you have got with that and in what respect it is going to look different, but perhaps you can tell me how you propose to ensure that within the new, revised strategy a proper respect for human rights is embedded, and what advice and expertise you are drawing upon for the benefit of the National Security Forum.
**Jacqui Smith:** Firstly, I did, partly in response to Lord Lester, outline the work that we were undertaking to revise the CONTEST strategy. I made clear that actually, on the contrary, we will publish that, almost certainly before the end of Christmas, and I made clear that one very important area, as far as I am concerned, for example, where there would be quite fundamental differences from the previous CONTEST strategy would be in this whole area of prevent, where we have not only invested significant amounts of money but, I think, developed a much more sophisticated set of both strategic objectives and processes for delivering that. We will certainly outline that in the strategy, as well as change at all the other areas, and that we will have a much clearer idea of what some of the overarching themes and requirements would be—for example, how we use the benefit of science to deliver our counter-terrorism strategy and how we build better partnerships with industrial partners. All of those are themes that are likely to differentiate the new CONTEST strategy from the last one. With respect to your second point, about the National Security Forum, of course, the secretariat for taking forward the work on the National Security Strategy sits in the Cabinet Office. They are currently, I think, well down the route, from what I understand, to determining the membership of the interim National Security Forum that they hope to be in a position to announce quite quickly.

**Q54 Lord Bowness:** Chairman, if I may: with respect, I am not terribly clear where we are going anyway but you have clearly got plans, but you made no reference at all to the question about human rights expertise and whether or not it is high on your priority that this should be embedded in such a strategy. If I might just say so—and I hope, Home Secretary, you will not take this as a party point because it is not meant as a party point—many people are very concerned about this issue because so many times the Government has assured us that legislation brought forward with the best possible motives (and I do not, in any way, impugn anybody’s motive) will only be used in certain circumstances, and you will be well aware that it did not turn out that way. Otherwise, (and I apologise in a sense for using high-profile and, you might say, emotive cases) anti-terrorism legislation would not have been used against people reading out the names of the war dead and it would not have been used against people wearing t-shirts with messages that were thought to be inappropriate to some people. Frankly, anti-terrorist legislation, whatever the circumstances, would not have been used to freeze Icelandic company assets. Nobody would have contemplated those things out of legislation which I would freely acknowledge was probably brought forward for the best possible motives. It is quite important when you are revising this you can assure that Committee that it is high on the agenda and taken account of at the very beginning.

**Jacqui Smith:** Perhaps I did not make it clear enough. Legislation is only one element of our counter-terrorism strategy. It is not my intention when we bring forward the refreshed CONTEST strategy that that will include legislative provisions. It is actually far broader than legislation and that is precisely the point that I was making to Lord Lester earlier on. It is the case when we are designing counter-terror legislation that our human rights obligations and international obligations are fundamental to the way in which we design that.

**Q55 Lord Dubs:** Home Secretary. I would you to ask you a question about the Highly Skilled Migrants Programme. You will recall that there was a judgement of the High Court in April 2008 upholding the challenges to the Government’s changes in the Highly Skilled Migrants Programme. Why has the Government not provided that anyone who had already entered on the programme by April 2006 qualified for settlement after four years and not five?

**Jacqui Smith:** Our view was that there were two elements to the changes that were made in the judgement. What we did in 2006 was to tighten the criteria for those coming in on the Highly Skilled Migrants Programme and moving on from that to settlement. We believed that that was an appropriate thing to do. It was clear that the court disagreed with us. We have changed the process and reverted to the previous criteria for those moving down that path to settlement. The point about the four years to five years we believe to be separate. We would argue that that in itself does not take you off the path to settlement which the courts ruled and I can understand is a reasonable expectation that you would have had. It simply extends that path by one year in that prior period. These are fundamentally different issues. We believe that we have fulfilled the requirements in the way in which we have changed the programme now to make sure that all those who entered under the previous criteria can have their decisions for settlement determined back under those previous criteria again.

**Q56 Lord Dubs:** What is the distinction of principle which means that the November 2006 changes to the HSMP can only take effect prospectively while the April 2006 changes, extending the qualifying period for settlement from four to five years, can apply to people who have already entered at the time of the changes?

**Jacqui Smith:** The November 2006 changes, it could be argued and we accept, changed the criteria and fundamentally changed the path through which you could get to settlement. In other words, it is possible that you could have entered pre-November 2006 with an expectation that you would fulfil the criteria to get to settlement and then because of the changes that were made you were not able to fulfil those criteria. That is why we have reverted to the previous criteria. By simply extending the time period you do not change the criteria by which somebody travels down that path to settlement, you simply change the length of the path and that is a different order of change. It does not prevent somebody from
Q57 Dr Harris: Did the judge say you are okay on the four to five years but not on the criteria?  
Jacqui Smith: That is the argument that we are making on the lengthening of the period from four to five years.

Q58 Dr Harris: But there is a bit of the judgement where the judge says, “For the avoidance of doubt, you’re okay on the four to five years but not on the other criteria”?  
Jacqui Smith: There is a difference of interpretation here, which is why we are still arguing over it and we will take whatever the final inclusion is on the four to five years. I am explaining in my view what I think the difference is between those two.

Q59 Dr Harris: Would it not be better to play safe, because we are talking about people’s livelihoods here, and grant them and then you can appeal on that point, rather than forcing these people to have to go back to court to seek clarification?  
Jacqui Smith: No. The difference here is, of course, an extended time period does not prevent somebody from finally reaching settlement in the same way potentially as a change in criteria does.

Q60 Chairman: It does if you refuse them indefinite leave to remain and threaten to remove them, which is what has been going on. That goes right against their reasonable expectation of what was going to happen.  
Jacqui Smith: Which is why it is completely right that these things have been and will be, I have no doubt, tested in the courts and where we have been proven to have acted unreasonably we have, as in the case of the criteria, changed those and reinstated the previous criteria.  
Chairman: So will you agree not to remove anybody while this case is underway?

Q61 Dr Harris: And compensate them if you are overruled again?  
Jacqui Smith: We would obviously need to look at the details of any judgement carefully as to whether or not we were going to do that.

Q62 Dr Harris: I do not want to rehearse the long debate we had in Westminster Hall about this issue, but it has a significant impact on the individuals’ lives, even if it is an extra year, in terms of their ability to get a mortgage or their children’s higher education rights.  
Jacqui Smith: No. If you extend the time period you are saying that if you still fulfil the criteria you are on a path to settlement. You can have the expectation that you would have had when you entered about the criteria that will be necessary for you to settle.

Q63 Dr Harris: The expectation when you entered was that after four years you would be allowed to settle. That was the expectation that you came on the basis of and you organised your life on the basis of. You then comply with all the rules and suddenly the goalposts are shifted.  
Jacqui Smith: There is still an expectation that you will be able to settle on the basis of the same criteria under which you entered. The other is a different set of criteria, which I can accept is a different scale of concern for people and is effectively a retrospective change in the conditions.

Q64 Lord Lester of Herne Hill: We are asking you simply whether or not you will act to the detriment of anyone while the legal process is going on?  
Jacqui Smith: I am not in a position where I can give you a rundown on every single individual case that is likely to be considered. I think we have acted in good faith in response to the judgements that we have received.

Q65 Lord Lester of Herne Hill: I want to know, if there is now a case pending, will you not take action which will prejudice that by sending someone away from this country while the process is going on?  
Jacqui Smith: Certainly it has been the case with the way in which we have changed the previous criteria that had they been removed, they would have been able to apply on the previous criteria as opposed to on the new criteria.

Q66 Mr Timpson: I would like to move on to the issue of deportation and the prohibition of torture as an absolute right. Are you able to tell us how many terrorist suspects you have been unable to deport in recent years because of the prohibition of torture under Article 3, which we now know to be an absolute right?  
Jacqui Smith: No, I am not able to give you a number as to how many we have been unable to deport.

Q67 Mr Timpson: Can we have that information?  
Jacqui Smith: I will certainly write to you on what our view is about that. Incidentally, of course, we do believe that the process of deportation with assurances that we have put in place, which is precisely in place in order to ensure that we can fulfil our requirements with respect to Article 3, has enabled us to deport eight people as of this moment. There are 11 others whose cases are currently undergoing consideration.

Q68 Mr Timpson: In terms of the decision in Chahal v UK, which was unsuccessful from the Government’s point of view, what has the Government learnt from that and what are you going to do in terms of your disseminating of that decision down to the providers of the deportation service?  
Jacqui Smith: Chahal was the judgement in 1996.

Q69 Mr Timpson: It was Saadi.  
Jacqui Smith: As to the judgement in Saadi, which was actually versus Italy, if I remember rightly, in that particular case it was ruled that the assurances were not sufficient in order to be able to be confident
that Article 3 rights were not being compromised. Our reading of that judgement—and this was helpful in our view—was that a regime of deportation with assurances could be an acceptable way in order to ensure that people’s Article 3 rights were assured. We believe that that enables us to continue what has to be, quite rightly, detailed work to ensure that we can be confident that if and when we need to deport people, we can do that in a way that clearly safeguards their future and safeguards their rights under Article 3.

**Q70 Dr Harris:** Can I draw you to the main thrust of the judgement, which was not about removals with assurances but was upholding *Chahal*, as Mr Timpson rightly said, and that is that by a margin of 19 to zero the court rejected the case you made on behalf of this country as an intervener, stating that it should be possible to balance security against the absolute protection founded in it. It should be possible to balance security against the absolute protection founded in it. Timpson rightly said, and that is that by a margin of 19 to zero the court rejected the case you made on behalf of this country as an intervener, stating that it should be possible to balance security against the absolute protection founded in *Chahal* against ill-treatment under Article 3. Do you accept that that judgement went against you, because you did not mention it before?

**Jacqui Smith:** I accept that, but I also argue that it did not rule against the principle of diplomatic assurances as a basis on which to deport.

**Q71 Dr Harris:** That is a separate issue.

**Jacqui Smith:** I accept what you say.

**Q72 Dr Harris:** I am talking in respect of that part of the judgement where the margin was 19 to zero. I think the view of the court was quite trenchant as well, that, recognising the security issues, you cannot balance Article 3 rights against security. Do you now accept and will you be providing guidance to decision-makers that Article 3 is an absolute right that cannot be diluted or held in the balance against issues of national security?

**Jacqui Smith:** Yes, but we believe that diplomatic assurances are an appropriate route to safeguard people’s Article 3 rights.

**Q73 Dr Harris:** Do you feel that your history of trying and failing to water down the protection given by *Chahal* in the case law to the absolute nature of Article 3 leaves you open to accusations of being soft on torture or at least softer on torture than you might have been because of the impression you give about the UK’s position?

**Jacqui Smith:** No.

**Q74 Dr Harris:** Do you see how it is difficult for us to argue against some of these regimes that do torture and we know they torture, which is why you feel you need to get *ad personam* assurances that they will not torture some of the people we are deporting? It undermines our argument that they should not torture when we are going round in a court case, unsuccessful in the end, to try and water down the absolute nature of Article 3 protection.

**Jacqui Smith:** No. I think the effect of our approach to deportation with assurances has actually been to strengthen not only our ability to deport but, also, to strengthen the sort of monitoring arrangements and capacity development in those countries which in the long term may well help us to be—

**Q75 Dr Harris:** I do not have time to go into deportation with assurances.

**Jacqui Smith:** That is the fundamental point here.

**Q76 Dr Harris:** The issue is the reputation of this country in seeking to undermine the absolute nature of Article 3 protection in the courts.

**Jacqui Smith:** I do not believe that is what we were trying to do. I think what we were trying to do was to make sure that we could both deport from this country people who were potentially seriously dangerous to British people whilst upholding our commitments to Article 3.

**Q77 Earl of Onslow:** Home Secretary, you are probably aware of the Iranian student, a Mr Mehdi Kazemi who came over here and who was a homosexual. His boyfriend was arrested in Iran, charged with sodomy and hanged. Before he was executed he identified Mr Kazemi as his boyfriend to Iranian police who sought to arrest him. The Home Office actually wished to deport him. However, thanks to a high profile public agitation they did not do so. Can you give me an undertaking that it is not Home Office policy to send homosexuals back to face trial for whatever acts they particularly wish to get up to and especially if they risk imprisonment or, above all, death, because to do that would show such total disregard for any possible form of possible human rights or ancient English liberties or any of those sorts of things? Can I please have that undertaking?

**Jacqui Smith:** I am aware of the case of Mehdi Kazemi. That is why I asked that it be reviewed, which is why he has—

**Q78 Earl of Onslow:** Home Secretary, could I just have an answer, yes or no?

**Jacqui Smith:** To what question? Was I aware of the case? Yes. Do I think he should not be deported? No. Did I intervene to make sure he was not? Yes. Do I think if people face a serious threat to their welfare on the basis of their homosexuality or anything else they should receive the safe haven of this country? Yes, I do. Do I think we deliver that through the way in which we implement our asylum policy? Yes, I do. Will we remain careful to ensure that is the case in the future? Yes.

**Q79 Chairman:** Let us be clear. Basically we are not going to deport gays to Iran whilst the present regime continues, are we?

**Jacqui Smith:** No. We will look at each case carefully on the basis of whether or not individuals will face a threat when they return, as we did in this case, and we will certainly not deport people if we believe that they will face danger when they return to Iran.

**Q80 Dr Harris:** It was suggested in government argument that if people kept quiet about their sexual orientation then they probably would be okay
 Jacqui Smith: It was not. I am hardly somebody, as my record as a Minister will show, who believes that gays should keep quiet about their sexuality. In fact, I have taken considerable efforts to safeguard the rights of gay people both in this country and abroad.

Q81 Dr Harris: You will recall the case of Ama Sumani in Cardiff in January 2008. She was removed from hospital and then removed from the country. Would you describe her as an immigration “health tourist”?  
Jacqui Smith: No.

Q82 Dr Harris: Do you think it was justified to take someone who was reliant on life-sustaining dialysis and remove them given that if you have renal failure and you are not dialysed you die within days or weeks?  
Jacqui Smith: We ask our caseworkers to make decisions about some of the most difficult cases necessarily in some of the most difficult circumstances. It cannot be the case that simply being in receipt of NHS treatment in this country of itself is sufficient to prevent, if all other routes have been exhausted, the imposition of removal back to a country.

Q83 Dr Harris: You are being asked these questions on a particular case, but in the end it is an asylum judge who has to decide these. Is that not the answer?  
Jacqui Smith: I wish that had been my answer!

Q84 Dr Harris: There is common ground between us.
Jacqui Smith: Fine. It is the case that if you are seriously terminally ill that would be a basis on which you would not be removed.

Q85 Dr Harris: Is it not a question of low hanging fruit in a sense? You have got targets to get people and if someone is there in a hospital, vulnerable and able to be removed and unlikely to put up a struggle both legally and physically, then you can reach your targets of removals by just scouring the hospitals and taking these people out rather than some of the more difficult cases. Is that not a worry?  
Jacqui Smith: I can give you an absolutely categorical and fundamental assurance that that is not what UKBA caseworkers do.

Q86 Dr Harris: Do you see the conundrum here, that if someone is on life-sustaining treatment, which is dialysis every three days for renal failure, and you take them off that, they are then going to die unless they get back on dialysis?  
Jacqui Smith: It must always be part of the decision about any individual case that there would be appropriate health care available in the country to which people are removed. What it cannot be a condition of, however, is that in all of those cases that health care has to be equivalent to the sort of health care you would receive in the British NHS. We lead the world, as I am sure you would agree, on some of the quality of the health care that we provide. You cannot have a condition that says you need equivalent health care in order to remove an individual.

Q87 Dr Harris: You either get replacement for renal function or you do not. Does the fact that she died two months later suggest to you that there was equivalent treatment, given that was not her prognosis in this country, even though she had an underlying myeloma as well?  
Jacqui Smith: I would not know—

Q88 Dr Harris: Does it give you pause at least?  
Jacqui Smith: Of course it does because these are some of the most difficult cases that we have to deal with and that we have to ask our UKBA caseworkers to deal with. It is, of course, on the basis of issues like that that we look very carefully at whether the individual decision is right and the general guidance that we give to caseworkers is right as well.

Q89 Dr Harris: Is it not a question of low hanging fruit in a sense? You have got targets to get people and if someone is there in a hospital, vulnerable and able to be removed and unlikely to put up a struggle both legally and physically, then you can reach your targets of removals by just scouring the hospitals and taking these people out rather than some of the more difficult cases. Is that not a worry?  
Jacqui Smith: I can give you an absolutely categorical and fundamental assurance that that is not what UKBA caseworkers do.

Q90 Lord Lester of Herne Hill: Home Secretary, why do you not reply to my colleague that actually ultimately there are judicial safeguards—my wife is an asylum judge—in the case law here and the case law in Strasbourg and therefore all this is fact sensitive and it is not for you in the end to decide the question, it becomes ultimately a question of fact in a particular case which is reviewed by asylum judges. Is that not the answer?  
Jacqui Smith: I wish that had been my answer!  
Dr Harris: If only everyone had access to a judge.

Q91 Lord Lester of Herne Hill: You are being asked these questions on a particular case, but in the end it is an asylum judge who has to decide these. Is that not right?  
Jacqui Smith: You are exactly right that none of these removals would have been made, or very rarely, without there having been a very thorough independent judicial exploration of the facts of the individual case.

Q92 Chairman: I want to ask you about the overall policy in relation to health care for foreign nationals
because that has been outstanding for some considerable time. Indeed the Home Office and health ministers were not able to come to our mini-conference on that issue several months ago now on the basis that the new policy announcement was imminent. Where has it got to?

Jacqui Smith: It is still imminent.

Q93 Chairman: Several months on?

Jacqui Smith: As I am sure you identified in the conference that you held, there are some difficult issues when we are looking at the whole issue of not just health care for asylum seekers but the relationship between people coming to this country and their entitlement to health care, which go pretty broad and about which there does need to be detailed consideration of precisely the sort of impacts that we have just been talking about. That is something that is being looked at in considerable detail, including the interrelationship between the objectives we set through the immigration system and the objectives that we set for the health service as well.

Q94 Chairman: It has been going on for several years now.

Jacqui Smith: I do not think it has been going on for several years.

Q95 Chairman: I think it is four years altogether.

Jacqui Smith: It came out of a publication in the spring of 2007.

Q96 Dr Harris: Could you at least publish the consultation responses you had given that that consultation finished years ago?

Jacqui Smith: As is normal, we will publish the consultation responses at the point at which we come to a conclusion they are able to publish the substantive result of the consultation and the consideration.

Q97 Chairman: I want to ask you about the case of the Tamils. Almost 700 applications recently have been lodged with the European Court of Human Rights against removal and, as you know, there is the case of NA v United Kingdom which has raised the need to try and put the deportations off. Have you changed your approach in relation to the deportation of Tamils, particularly in light of the significantly worsening security situation in Sri Lanka with half a million displaced people, 40,000 have been displaced five times now in recent years, and the withdrawal of the NGOs and UN aid from the Tamil areas?

Jacqui Smith: Those would all be things that would be borne in mind, but my understanding about the case of NA was it endorsed the existing Asylum and Immigration Tribunal country guidance with respect to Sri Lanka and that is the basis on which we are acting.

Q98 Chairman: You do not accept there should be a moratorium on deportations which the European Commission for Human Rights has recommended bearing in mind what is going on?

Jacqui Smith: No. The result of the NA case—and I will certainly write to you if I have got this wrong—was they endorsed the current position with respect to the country guidance, which would be that individual circumstances were considered but that there should not be a moratorium on removals.

Q99 Chairman: As I understand it, in NA the court found the UK would breach the applicant’s right to be free from torture, inhuman or degrading treatment if he were to be returned to Sri Lanka.

Jacqui Smith: It is always possible that in an individual case that is the case but that nevertheless the country guidance against which those individual cases are tested in the first instance when the UKBA make a decision is legitimate. Therefore, it is not necessary, as you were proposing, that there should be a total moratorium, but what there should be is case guidance that bears in mind all of the circumstances in any case in the country to which people are being removed and then a detailed individual consideration of the circumstances in that particular case and then, as we discussed previously, the opportunity to be able to test that through the Asylum and Immigration Tribunal as well.

Q100 Chairman: So the 1,400 cases have got to work their way through the European Court of Human Rights?

Jacqui Smith: No. I would suspect that their first port of call once a decision has been made, if they do not agree with that decision, would be through the Tribunal.

Chairman: The 1,400 have been lodged as I understand it.

Q101 Lord Lester of Herne Hill: We get all these Rule 39 letters from the Strasbourg court to persuade us not to send someone to Sri Lanka. Since that court is already overburdened with 200,000 pending cases or something like that at the moment, should we not look systemically at this and decide whether as a matter of policy we should change our approach to the country report on Sri Lanka?

Jacqui Smith: As I understand it, those Rule 39—

Q102 Lord Lester of Herne Hill: They mainly failed.

Jacqui Smith: No. In the bulk the issuing of Rule 39 with respect to Sri Lanka has been lifted now. That is my understanding, but if I am wrong I will certainly update the Committee.

Q103 Lord Dubs: Home Secretary, I would like to ask you a little bit about two Conventions, one on the rights of the child and the other on disability. First of all, congratulations on removing the UK’s immigration reservation on the UN Convention on the Rights of the Child. When will guidance be issued to the frontline decision-makers in the immigration and asylum field explaining the practical implications of removing the reservation?
Jacqui Smith: I am sure we will do that. I will write to the Committee with details about when we will actually issue the guidance, but we will do that whilst building on the work that we have already done to put in place a focus on children’s rights within UKBA, a specific senior official with respect to responsibility for that, but I will write to the Committee with details about when we will issue further guidance on the lifting of that reservation.

Q104 Lord Dubs: Thank you very much. On the UN Disability Convention, do you propose to enter an immigration reservation when you ratify the UN Disability Convention?

Jacqui Smith: This is not something which I have considered as of this moment.

Letter from the Chair to the Committee to the Rt Hon Jacqui Smith MP, Home Secretary, dated 11 November 2008

Thank you for giving evidence to the Joint Committee on Human Rights on 28 October. As I mentioned at the end of the meeting, there were a number of questions which we did not reach for which we would like to seek written replies. In addition, we have some questions arising from your oral evidence. I would be grateful if you could provide us with answers to the questions set out below by Monday 1 December.

Counter-terrorism policy: framework for derogation from the ECHR

We had a lengthy exchange with you about our proposal that the Government might seek to provide a more detailed legislative framework for derogating from the ECHR in the event of a terrorist atrocity which amounted to a threat to the life of the nation (Qq16–38). We encourage you to respond to our detailed proposals when you reply to our 30th Report of the current session—a reply is due in early December. In particular, you should note my comments in questions 32 and 36. Derogation has not been put forward as an alternative to the 42 days proposal: it is intended to deal with the “three 911s” threat previously mentioned by Tony McNulty MP. We of course recognise that the Human Rights Act already provides a mechanism for derogation. Our proposal is intended to provide greater parliamentary and judicial oversight of any derogation in this area. We look forward to studying your detailed response and may wish to correspond further on this matter.

Deportations with assurances

We would be grateful if you could inform us of how many terrorist suspects you have been unable to deport in recent years because of the prohibition on torture under Article 3 of the ECHR (Qq66–7).

Applications to European Court by Tamils

We discussed the applications made to the European Court by Tamils seeking to resist deportation from the UK (Qq97–102). You offered to update the Committee on the latest position in respect of Tamil applicants to the Court and the invocation of Rule 39, on interim measures. We would be grateful if your response to this letter could deal with this matter.

In addition, has the Government been involved in any further discussions with the Court Registry about the significant number of Rule 39 requests made by those seeking asylum in the UK?

Reservations to UN treaties

You offered to write to the Committee to explain what steps are being taken to implement the Government’s welcome decision to remove its reservation to the UN Convention on the Rights of the Child (Q103).

I would be grateful if you could also set out the Home Office’s stance on reservations to the UN Disability Convention (Q104). Anne McGuire MP, the then Minister for Disabled People, stated in a letter to us of 24 September that the Home Office was considering a reservation to the Convention in respect of immigration and nationality matters. We are hearing oral evidence from the current Minister on ratification
of the Convention on 18 November and will wish to press him on this issue. It would be helpful to receive your department’s view on this matter, particularly in view of the withdrawal of the reservation to the Convention on the Rights of the Child.

It would also be helpful if you could deal in writing with our question about the reservation in the International Covenant on Civil and Political Rights (Q105).

**Human trafficking**

In his recent letter to the Committee, Alan Campbell MP, the Parliamentary Under-Secretary of State at the Home Office, said that he was unable to provide an exact date for the ratification of the Council of Europe Convention on Human Trafficking because “the plans for implementation still lie before Parliament in the form of an Explanatory Memorandum”. The explanatory memorandum does not indicate when the Government intends to ratify the Convention. Are you yet in a position to indicate precisely when you intend to ratify the Convention? If not, can you explain why you are unable to give a date?

Mr Campbell’s letter noted that the Pentameter 2 police operation had found 172 victims, including 12 children. Of the adults recovered, only 37 “initially accepted supported accommodation”. No information was gathered about most of the victims because “despite having the support arrangements in place, a significantly high number of victims were unwilling to engage”. It would seem, therefore, that only a minority of trafficking victims picked up during Pentameter 2 were accepted into supported accommodation: most simply disappeared. What lessons have you drawn from this? Will you review the decision to require trafficking victims to co-operate with the authorities before they receive support?

Maria Eagle MP told the Commons on 21 October that there are just 35 supported accommodation places for trafficking victims at the moment (c162). How many places do you think there should be, nationwide, and when will they exist?

---

**Letter from Rt Hon Jacqui Smith MP, Home Secretary, dated 10 November 2008**

When I gave evidence to you on Tuesday 28 October 2008 I undertook to write with information on several points.

1. **Mr Timpson asked how many terrorist suspects we have been unable to deport in recent years because of the prohibition of torture under Article 3 of the European Convention of Human Rights**

The Government will always seek to deport foreign national terrorists and terrorist suspects. However, in doing so, we must act in a way which is consistent with our international obligations, including under the European Convention of Human Rights (ECHR). This means that deportation action cannot be taken where there are substantial reasons for believing that there is a real risk that someone would face torture or inhuman or degrading treatment or punishment in the country concerned. Similarly, we would not remove someone if there was a real risk that they would face execution.

The way in which individual immigration decisions are recorded means it is not possible to identify every instance where our obligations under Article 3 have prevented the deportation of a terrorist suspect. However:

   (a) Sixteen individuals were certified under Part 4 of the Anti-terrorism, Crime and Security Act 2001 as suspected international terrorists by the then Home Secretary and were detained on the basis that, in our view, their removal was prevented by a point of law which related wholly or partly to an international agreement (one other person was also certified under Part 4, but was detained under other powers). Those detained, in accordance with the provisions of Part 4, had the right to leave the UK at any time and two elected to do so. Six more have subsequently been deported. In the case of the latter group, we had sought or were in the process of seeking diplomatic assurances from the receiving state.

   (b) Since 2005, there have been 19 cases where deportation action on national security grounds was commenced, but was later discontinued because it was concluded that it would not be possible to demonstrate that removal would be in conformity with our international obligations (these cases are, of course, kept under review for future deportation action).

   (c) In addition to those 19 cases, there are a number of other cases involving terrorist suspects where deportation action was not progressed as it was concluded that Article 3 considerations would prevent removal. It has not been possible to identify from the data collected centrally how many cases have been considered. However, such cases are kept under review.

   (d) Finally, there are currently 11 cases where we are seeking to deport individuals because of their suspected involvement in terrorism, which are at various stages in the appeals process. In all of these cases, the appellants are claiming that their removal will result in a breach of our obligations under Article 3.
2. Sri Lanka, rule 39 and the case of NA

In respect of NA Sri Lanka, my answer to the Committee on the outcome of that case was correct. The ECHR considered that there was no general risk of mistreatment to Tamils in Sri Lanka and that any individual asylum decision should be based on a fair assessment of the general situation in Sri Lanka and the individual circumstances of the asylum claim.

The ECHR issued Rule 39 indications on Sri Lanka pending the outcome of the case of NA. These have now been withdrawn and the cases are currently being considered on the individual circumstances in line with NA and existing country guidance caselaw which NA endorsed.

On your question as to whether 1,400 cases have to work their way through the European Court of Human Rights, our records indicate that there are no more than 450 cases where Rule 39 measures were indicated by the European Court in respect of Sri Lankan Tamil Claimants and NA.

3. The UN Convention on the Rights of the Child

As you are aware, I announced a review of the reservation in January, which consisted of an internal assessment of the risks associated with withdrawing the reservation and a public consultation. This review led to the conclusion that developments in UK law and practice, including the proposed introduction in the UK Border Agency of a Code of Practice for Keeping Children Safe from Harm, meant that an immigration-based reservation was no longer necessary.

No additional changes to legislation or significant amendments to guidance and practice are currently envisaged but all relevant UKBA staff will be advised through our internal communications network when the formal process of withdrawing the reservation is completed, which is expected to be later this month.

4. The UN Disability Convention

The question of whether to enter an immigration reservation when ratifying the UN Disability Convention is currently under consideration and I will write to the Committee shortly.

5. United Nations Covenant on Civil and Political Rights (UNCCPR)

We have no current plans to remove the immigration reservation attached to the United Nations Covenant on Civil and Political Rights.

Supplementary note from Rt Hon Jacqui Smith MP, Home Secretary, in answer to the Committee's question on Human Trafficking

How many places do you think there should be, nationwide, and when will they exist?

We already have comprehensive support provisions in place for victims of human trafficking and we intend to build on our existing arrangements next year. The Impact Assessment relating to the Council of Europe Convention against trafficking placed in the House Library on 7 October describes in some detail our projections for the number of victims of trafficking we expect to encounter and how we will cater for their needs. It is intended that there will be a flexible accommodation resource that operates on a national basis for victims of all forms of trafficking.

In England and Wales we will be seeking to grant fund approximately 55 intensive crisis refuge places for victims of trafficking for sexual exploitation and domestic servitude that are destitute and have no recourse to public funds, with advocacy support for others. The intention is for the crisis places to be on a rolling basis to cover the ‘reflection period’ with victims that qualify for temporary residence receiving access to public funds and moving into longer term accommodation. Separate arrangements are being developed for victims of other forms of trafficking for forced labour where the level of need is less clear. This will involve upskilling existing service providers to provide advice and support with a flexible central fund to meet crisis accommodation and other expenses. These victims will also be able to apply for longer-term support and temporary residence. Scotland and Northern Ireland will also put in place similar Convention compliant support arrangements. Having a flexible system that can cater for individual needs is crucial to assisting victims’ in their recovery and will hopefully encourage individuals to seek justice. It will also enable us to meet the requirements of the Convention in a cost effective manner. Arrangements will be in place at the beginning of the next financial year (April 2009).