House of Lords
House of Commons
Joint Committee on Human Rights

Government replies to the Second, Fourth, Eighth, Ninth and Twelfth reports of Session 2008–09

Seventeenth Report of Session 2008–09

Report, together with formal minutes and written evidence

Ordered by the House of Lords
to be printed 2 June 2009
Ordered by the House of Commons
to be printed 2 June 2009
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

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<td>Lord Dubs</td>
<td>Mr Andrew Dismore MP (Labour, Hendon) (Chairman)</td>
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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), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

Contacts

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1 Report

1. With this Report, we are publishing the Government’s replies to the following Reports:

   - Legislative Scrutiny: Borders, Citizenship and Immigration Bill;¹
   - Legislative Scrutiny: Coroners and Justice Bill;²
   - Legislative Scrutiny: Political Parties and Elections Bill;³
   - The Work of the Committee in 2007-08;⁴ and
   - UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration.⁵

We are grateful for these Government replies and particularly wish to note that the reply to our Twelfth Report, on the UN disability rights convention, arrived well within the two months normally provided for.

2. We are also publishing with this Report, recent correspondence we have received from Alan Campbell MP, Parliamentary Under-Secretary of State at the Home Office, on human trafficking.⁶

¹ Ninth Report, Session 2008-09, Legislative Scrutiny: Borders, Citizenship and Immigration Bill, HL Paper 62, HC 375
² Eighth Report, Session 2008-09, Legislative Scrutiny: Coroners and Justice Bill, HL Paper 57, HC 362
³ Fourth Report, Session 2008-09, Legislative Scrutiny: Political Parties and Elections Bill, HL Paper 23, HC 204
⁵ Twelfth Report, Session 2008-09, UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration, HL Paper 70, HC 397
⁶ Pages 45-46
Formal Minutes

Tuesday 2 June 2009

Members present:

Mr Andrew Dismore MP, in the Chair
Lord Bowness
Lord Dubs
The Earl of Onslow
Baroness Prashar
Dr Evan Harris MP
Mr Virendra Sharma MP

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Draft Report (Government replies to the Second, Fourth, Eighth, Ninth and Twelfth Reports of Session 2008-09), proposed by the Chairman, brought up and read.

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

Paragraphs 1 and 2 read and agreed to.

Resolved, That the Report be the Seventeenth 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 reported and ordered to be published on 16 December, 3 February and 28 April was ordered to be reported to the House for printing with the Report.

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[Adjourned till Wednesday 3 June at 4.15pm.]
Written Evidence

Undated letter from Phil Woolas MP, Minister of State, Ministry of Justice.


I am grateful for the continued interest of your Committee on this subject and for the detailed recommendations that you have made. Many of the issues raised have been the subject of debate during consideration of the Bill by the House of Lords. I thought it would be helpful to respond on the outstanding issues.

(1) Positive duty to safeguard and promote the welfare of children

We welcome the Committee’s recommendation on the children duty.

The Committee’s recommendation that any guidance is published in draft before the Bill completes its passage through Parliament is noted. As advised in our previous correspondence of 23 February, the Government appreciates the importance of joint guidance drawn up by both the Home Office and the Department for Children Schools and Families and will make a draft version available for Members of both Houses during the Commons stages of the Bill, with the aim of issuing the guidance in advance of the new provision coming into force and of liaising closely with key stakeholders, including the children’s charities, in drawing it up.

(2) Judicial review and access to court

As the Committee may be aware, the clause relating to transfer of immigration or nationality judicial review applications was removed from the Bill on Report in the House of Lords and replaced by an opposition amendment. The clause as originally drafted provided for judicial review applications relating to immigration or nationality decisions to be transferred from the High Court to the Upper Tribunal. We address the Committee’s recommendations in relation to the original clause below.

We are pleased that the Committee has accepted that many immigration judicial reviews do not raise issues of great difficulty and complexity and that these cases should be transferred to the Upper Tribunal. Such cases are creating enormous pressures on the higher courts, leading to unacceptable delays in dealing with other cases, many of which are of genuine public importance.

The Committee has recommended that a mechanism is developed to ensure that more significant and complex cases are heard by a High Court judge. The Government agrees that it is right that the most significant and complex cases should continue to be heard by High Court judges, but notes that this can be achieved whether the judicial review is heard in the High Court or in the Upper Tribunal. The mechanism for achieving this in practice is a matter for the Lord Chief Justice and, where the case is dealt with in the Upper Tribunal, the Senior President of Tribunals. If transferred to the Upper Tribunal, the intention is that a judicial review will first be considered by lawyers in the Upper Tribunal.
office, who will identify whether the case is suitable for allocation to be heard by High Court judges sitting in the Upper Tribunal. The ultimate decision as to which judge should hear the case will be made by the Chamber President, who will be a High Court judge. The Government believes that this is a sufficiently robust mechanism to ensure that those cases which raise genuinely significant and complex issues will continue to be heard by High Court judges.

Secondly, the Committee has recommended that the Bill be amended to remove the Lord Chancellor’s power to restrict the test for onward appeals to the Court of Appeal. This is not necessary in relation to Judicial Review applications as the test in section 13(6) of the Tribunals Courts and Enforcement Act 2007 (“TCEA 2007”) applies only where the application is for permission (or leave) to appeal from any decision of the Upper Tribunal on an appeal under section 11 of the Act (13(7) of the Act refers). Section 11 relates to appeals from decisions made by the First-tier Tribunal. Therefore section 13(6) does not apply to appeals to the Court of Appeal on judicial reviews.

In relation to the appeals that section 13(6) TCEA 2007 will apply to, the number of immigration cases applying for permission to appeal to the Court of Appeal is significant and has risen considerably in recent years. The Master of the Rolls, in his response to our consultation on immigration appeals has said that this places significant pressure on the resources of the Court of Appeal, both in terms of administration and judicial time. We are concerned that, while addressing the burden on the High Court, we also need to address the burden on the Court of Appeal. We therefore believe that we should retain the Lord Chancellor’s power to restrict the test for appealing to the Court of Appeal in immigration cases. We accept that there may be cases which raise the appeal prospect that the decision of the Upper Tribunal is in breach of the UK’s human rights obligations, but these are precisely the sort of cases that would meet the test set in 13(6) of the Act. We must also stress that where the Upper Tribunal considers that an onward appeal application does not meet the test, the Act provides for permission (or leave) to be sought from the relevant appellate court. However, the Master of the Rolls has also pointed out that currently the majority of these appeals raise no point of general importance and it is therefore the Government’s view that it is disproportionate for there to be an automatic right for them to be substantively considered by the most senior judges who sit in the Court of Appeal.

(3) Earned Citizenship

Access to Benefits

The Committee has stated that delaying access to benefits may be discriminatory and has recommended that the Government reconsider its position that those with probationary citizenship leave have restricted access to benefits. The Government continues to support the position that the effect of the proposals on earned citizenship, although not specifically arising from the clauses in the Bill, will be to delay access to some benefits for some migrants. However, this is on the basis that those persons have probationary citizenship leave, which is a form of temporary leave, rather than on the basis that they are not British citizens; permanent residents have no such restrictions on their access to benefits. Furthermore, we believe that any discrimination in access to benefits is justifiable. It is a long standing policy position that migrants who come here to work, or as family members of British citizens or permanent residents, should be able to support themselves and should
not be a burden to the state. There are exceptions to this general restriction on access to non-contributory benefits for those with temporary residence leave and probationary citizenship leave, for example, refugees and people with specific emergency needs.

The Committee cites the example of a woman with probationary citizenship who becomes homeless because she is forced by domestic violence to leave her home but who would be ineligible for any homelessness assistance. Where a probationary citizen was a victim of domestic violence, we would be able to grant such a person permanent residence, allowing them full access to benefits including homelessness assistance (subject to the usual eligibility criteria). This also applies where a migrant who is the partner of a British citizen is bereaved.

**Community activity requirement**

The Committee has expressed concern that the active citizenship requirement may discriminate against groups who are unable to undertake any of the prescribed community activities for various reasons such as full time work, or severe physical disabilities and has recommended that the exceptions to undertaking active citizenship are therefore listed on the face of the Bill rather than in regulations. However, the Government does not believe that it is appropriate to specify exceptions to the active citizenship condition on the face of the Bill. The exceptions are likely to be detailed, complex and may change with time, making them unsuitable to be placed on the face of a Bill. Therefore the details of active citizenship, including any exceptions, will be contained in regulations subject to the affirmative resolution procedure, which must themselves be ECHR compliant.

The Committee has alternatively recommended that, if the exemptions are not published on the face of the Bill, the Government should publish the regulations in draft during the passage of the Bill to enable Parliament to scrutinise them properly for any possible discriminatory effect. We fully agree that Parliament should be able to provide effective scrutiny of any exemptions that we will set out in regulations. That is why these regulations will be subject to the affirmative resolution procedure. This will ensure that both Houses of Parliament will be able to undertake the thorough scrutiny desired by both the Committee and ourselves.

As the Committee is aware, we are developing our proposals for the detailed operation of active citizenship through the mechanism of a design group, which includes representatives of third sector organisations and local authorities. The group has published two documents and laid these in the library of the House of Lords. These set out the group’s emerging thinking and it is likely that further information will become available as the group continues to meet to assess the overall operation of the active citizenship requirement. Given this, it would be premature to publish draft regulations on active citizenship until the work of that group is completed.

**Retrospectivity**

We note the Committee’s recommendation that clear transitional provisions are made which meet the legitimate expectations of those already in the system. Since the Committee’s report, a Conservative amendment on transitional arrangements has been added to the Bill (clause 39: Exceptions to application of this Part). Officials continue to
examine what transitional arrangements should apply when earned citizenship becomes law, taking into account debate on these issues during Committee and Report.

The Government can confirm that at present the intention is that any application for naturalisation which is received by the UK Border Agency before the earned citizenship provisions are implemented and which remains undecided at that point, will be considered under existing arrangements set out in the British Nationality Act 1981 (“BNA 1981”) rather than the earned citizenship provisions. This will be set out in the commencement order giving effect to Part 2 of the Bill. An application for indefinite leave to remain (ILR) which is made before the immigration rules are changed to implement the earned citizenship provisions and which remains undecided after the rules are changed will be considered under the immigration rules in force at the time of application.

Migrants who already have ILR in the UK will be deemed to have permanent residence leave for the purposes of the earned citizenship clauses. They will not need to make an application to be recognised as a permanent resident or pay a fee and will continue to have full access to benefits and services, subject to the general eligibility criteria. Migrants with ILR or those with a pending application for ILR (who are subsequently successful) when the earned citizenship clauses in the Bill are commenced, will be able to apply to naturalise under existing section 6 and Schedule 1 of the BNA 1981, provided they apply within a set period after the clauses have been commenced. This period is yet to be confirmed but our view is that a period of between 18 and 24 months would be fair in this context.

Migrants who are currently in the UK and have existing limited leave to enter or remain which is regarded, under the new earned citizenship system, as a qualifying immigration status, will be able to count that time towards the qualifying period for naturalisation as a British citizen. For example a person here under Tier 2 of the Points-Based System before the earned citizenship clauses in the Bill are commenced will be able to count that time as a type of qualifying temporary residence leave, and therefore count this towards the revised qualifying periods for naturalisation.

We do not currently propose that the transitional arrangements should permit those who do not have ILR when the earned citizenship clauses in the Bill are commenced to be able to apply to naturalise under existing section 6 and Schedule 1 of the British Nationality Act 1981 after the changed have taken effect. This will mean that when the provisions of the Bill come into force all migrants with limited leave will have to progress through the earned citizenship architecture to obtain British citizenship or permanent residence.

As noted above, officials are continuing to analyse what transitional arrangements should apply when earned citizenship becomes law, and we will confirm our position in the near future.

**Compatibility with Refugee Convention**

We note the Committee’s concerns that the earned citizenship provisions are inconsistent with Articles 31 and 34 of the 1951 Refugee Convention and the recommendation that the Bill should be amended to ensure that penalisation for illegal entry does not affect the qualifying period for refugees and those with humanitarian protection. We do not consider that the earned citizenship clauses are inconsistent with either Articles 31 or 34 of the
Government replies to the 2nd, 4th, 8th, 9th and 12th reports of Session 2008-09

Refugee Convention, since they neither penalise unlawful entry or presence, nor make the route to naturalisation unduly onerous for refugees.

In terms of penalisation for illegal entry, the existing requirement ‘not to be in breach of the immigration laws’ in the Bill is concerned with a person holding the correct sort of status in the UK rather than the commission of offences (clause 49: Meaning of references to being in breach of immigration laws). In future (as now), any commission of criminal offences would be taken into account in assessing whether an applicant met the separate requirement of “good character” on the date of the application for naturalisation in Schedule 1 to the BNA 1981.

You will be aware of the Government amendments to the Bill to ensure that the earned citizenship clauses in the Bill give discretion to waive the requirement to have had a qualifying immigration status for the whole of the qualifying period, in relation to applications made under sections 6(1) and 6(2) of the British Nationality Act. This discretion will provide the necessary flexibility in the system we are creating. In the case of refugees, we would usually expect to exercise that discretion where undue delay had occurred in determining an asylum application and where this delay was not attributable to the applicant.

(4) Section 9 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004

The Committee draws particular attention to section 9, which it originally requested should be repealed in your report on the Treatment of Asylum Seekers, published in March 2006.

This provision, amongst other things, enables support to be withdrawn from families who have been refused asylum following an assessment that the family is not taking reasonable steps to leave the UK voluntarily. Previously, support was provided for families with dependent children under Part VI of the Immigration and Asylum Act 1999 until such time as they left the United Kingdom or, if earlier, they failed to comply with a removal direction.

Section 9 was originally piloted in 2005 but the provision has not been used since the pilot. In a statement on 25 June 2007, the Minister for Immigration and Asylum made it clear that, whilst the provision was not suitable for use on a blanket basis, it was important to retain the ability to withdraw support from families who were wilfully not co-operating in the process.

In January 2008, it was agreed to consult with the Local Government Association before further roll out of the provision. Consultation on section 9 and alternative measures to encourage return of unsuccessful asylum seeking families will now be included under consultation on reform of asylum support under the Immigration Simplification project. The Immigration Simplification project aims to replace all existing immigration legislation with a single simplified Act. This new legislation will give us an opportunity to streamline and reform the support system to ensure that those seeking asylum are effectively and comprehensively supported during the determination of their claims; that the system for achieving this is as simple and efficient as possible; and that it works towards the return of those who have no protection needs and who have no right to be in the United Kingdom. The consultation will seek a range of views on how to improve the way in which asylum
support is provided to asylum seekers and other categories of claimants. It is planned to publish the draft Immigration (Simplification) Bill in autumn 2009. In view of the plans for new legislation and full consultation, including consultation on the section 9 provision, there are no plans to repeal it in the interim.

Letter from Maria Eagle MP, Parliamentary Under-secretary of State, Ministry of Justice, dated 20 May 2009

Reference to clause or Schedule numbers in the Bill are to the Bill as brought forward from the House of Commons (unless otherwise stated) and ordered to be printed on 25 March 2009.

1. We welcome the inclusion of detailed Explanatory Notes on the implications of the Bill for Convention rights and we commend to other Departments the approach taken in relation to this Bill. (Paragraph 1.4)

The Cabinet Office's Guide to Making Legislation will be strengthened to emphasise further to Departments that the explanatory notes should contain as detailed an assessment as possible of the compatibility of the Bill's provisions with Convention rights.

2. We welcome the prompt response provided by the Secretary of State to our request for further information, which has assisted parliamentary scrutiny of the Bill. (Paragraph 1.5)

3. We welcome the engagement of the public and interested organisations in our legislative scrutiny work. (Paragraph 1.7)

4. The breadth and size of the Bill and the legal complexity and diversity of the topics it covers have been the subject of concern during the Bill’s passage through the House of Commons given the limited time provided for scrutiny. We add our voice to those concerns. Large, multi-purpose bills of this sort are almost impossible to scrutinise effectively within the limited timescale provided by the Government. Given the range and significance of the human rights issues raised in this bill, the Government should have introduced two or three separate bills, each of which would have been substantial pieces of legislation in their own right or ensured that there was sufficient time for full pre-legislative and Committee stage scrutiny in the House of Commons. We welcome the fact that two days have been given over for Report stage in the House of Commons, a step not taken in relation to previous Bills of similar size, including the Criminal Justice and Immigration Bill, which we considered in the last session. (Paragraph 1.11)

The pressure on Parliamentary time means that separate Bills are not always possible. The Government believes that sufficient time was given to scrutiny in the House of Commons. The Public Bill Committee had 16 sittings stretching over some 43 hours. To ensure that all the provisions of the Bill were adequately debated the Committee sat late on three occasions and added an extra day. As the Committee has noted, two days were provided for consideration at Report stage.
**Certified or “secret” inquests**

5. Some press reports suggest that additional safeguards [to the proposals for certified inquests] have been introduced since these proposals were withdrawn from the Counter-Terrorism Bill. In our view, for reasons we explain below, the proposals are broadly the same and raise the same concerns. (Paragraph 1.14)

6. We consider that there remains a significant risk that the proposed scheme [for certified inquests] will operate in a way which is incompatible with Article 2 ECHR. (Paragraph 1.20)

7. We note that the Government had intended to tighten up the grounds for certification, but consider that the changes have not significantly altered the very broad scope of the original proposals. In the light of the fact that the right to life is so clearly engaged in this case, we are alarmed by the Government’s concession that a broad public interest test has been deployed “just in case” a future unforeseen concern might arise. (Paragraph 1.26)

8. The Government has not explained fully how the ability of the coroner to appoint counsel to the inquest will assist the participation of bereaved family members in certified inquests. There remain a number of difficulties with the Government’s proposal in the Explanatory Notes that counsel for the inquiry act ‘as special advocate’, including how the counsel would resolve any potential conflict of interest between individual interested parties and whether counsel would need to be approved by the Secretary of State if they were not special advocates with appropriate security clearance. In our view, if the family of the bereaved are to be excluded from any part of the inquest, it is vital that they be represented in the closed proceedings by a special advocate whose function is to represent the interests for family. (Paragraph 1.30)

9. We do not consider that the Government has provided a satisfactory justification for its view that there is no need to set out, on the face of the Bill, a requirement that the Minister’s view be honestly and reasonably held. Despite the Government’s assertion that the judicial oversight proposed is adequate, we are concerned that Clause 11 is designed with this purpose in mind: to secure greater protection for information which the Government considers should not be disclosed in the public interest without the rigorous scrutiny which would be applied by the court on an application for PII, where the onus clearly rests on the Secretary of State to persuade the coroner, and if necessary, the court, that there are good reasons why certain information should not be disclosed. (Paragraph 1.34)

10. We welcome the decision to remove the power for the Secretary of State to appoint a coroner to hear a certified inquest. We are concerned however that the proposals have [otherwise] been amended in a way which widens their scope without introducing any additional significant safeguards. (Paragraph 1.36)

11. We are not satisfied that a case has been made for the broad provisions under Clauses 11-13, and we would recommend that they be deleted from the Bill. We recommend amendments to the Bill. (Paragraph 1.42)
The Justice Secretary announced by way of a Written Ministerial Statement on 15 May 2009 that the Government will table amendments to remove clauses 11 and 12 (and the equivalent Northern Ireland provisions) from the Bill. The text of the Statement is as follows:

“In some rare but very important cases there may be highly sensitive information directly relevant to the circumstances of the death but which cannot be made public in any way. To meet this problem the Coroners and Justice Bill contains provisions to dispense with a jury inquest in certain tightly defined circumstances. These provisions have greatly been improved during their Commons’ scrutiny. Now the decisions as to whether to hold a non-jury inquest would be made within the criteria by a High Court judge, sitting as a coroner. The main provisions on this are in clause 11. By clause 12 the blanket ban on the admission of intercept evidence was modified for the purposes of these special inquests.

The Government felt these changes struck a fair and proportionate balance between the interests of bereaved families, the need to protect sensitive material and judicial oversight of the whole process.

However, following further discussions in the House and with interested parties it is clear the provisions still do not command the necessary cross party support and in these circumstances the Government will table amendments to remove clauses 11 and 12 (and the equivalent Northern Ireland provisions) from the Bill.

Where it is not possible to proceed with an inquest under the current arrangements, the Government will consider establishing an inquiry under the Inquiries Act 2005 to ascertain the circumstances the deceased came by his or her death. Each case will be looked at on its own individual merits. As with the provisions in respect of the certification of coroners’ investigations, we would expect to resort to such a procedure only in very exceptional and rare circumstances.”

Data Protection

*Information Sharing Orders and the right to respect for private life*

12. We reiterate our view that, in principle, information sharing powers should be adequately defined in primary legislation, accompanied by appropriate safeguards and subject to the application of the Data Protection Act 1998. (Paragraph 1.45)

13. We would welcome confirmation that the Government has decided to drop these proposals. We recommend that the relevant amendments are tabled as soon as possible and that the Secretary of State should make a statement to Parliament on his decision and the Government’s plans for taking this issue forward. No Government amendments have yet been tabled to the Bill for this purpose. We recommend amendments to the Bill. (Paragraph 1.46)

14. If these proposals are part of the Bill introduced to the House of Lords, we may consider a further report to address our detailed concerns about the Government’s proposals for ISOs. (Paragraph 1.48)
15. Ideally, safeguards should be provided in primary legislation. If adequate safeguards were in place in the enabling primary legislation, a narrow fast-track ISO procedure could be a positive development in terms of parliamentary oversight of information sharing proposals, particularly given the limited scrutiny of existing information sharing provisions in primary legislation. However, for the reasons set out below, we have significant concerns about the scope of these proposals and the associated safeguards in clause 154. (Paragraph 1.50)

16. We have previously, made clear that such a wide order-making power is not acceptable. Ministers should never be given the power to amend, by order, legislation as significant for human rights as the HRA and the DPA.206 (Paragraph 1.51)

17. We recommend that the Government should take up the Information Commissioner’s suggestion that a clear savings clause for the continued application of the DPA 1998 and the HRA 1998 is necessary. (Paragraph 1.54)

18. The correct test [to be applied Article 8 ECHR] is whether the interference with the rights of those individuals which happens when their information is shared is necessary and proportionate to the pressing social need which the sharing proposes to address. (Paragraph 1.56)

19. We welcome the Minister’s reassurance that any ISO would automatically be accompanied by a Privacy Impact Assessment, which would be provided to the Information Commissioner and generally published more widely. We do not consider, however, that this would provide an adequate safeguard to meet our other concerns about the breadth of the proposals in clause 154. (Paragraph 1.57)

20. We are concerned at the limitations on the role of the Information Commissioner in these proposals and note that he shares some of our concerns. (Paragraph 1.58)

As the Committee will now be aware, the Justice Secretary tabled an amendment on 17 March to remove the clause of the Bill which contained the power to make information sharing orders. The amendment was considered at Commons Report Stage on 24 March and the Commons agreed that the clause should be withdrawn.

The Government will consider further the provisions in this clause and, in doing so, take account of the issues raised by Members of Parliament and interested parties. The Government reaffirms its continued commitment to clarifying and simplifying the legal framework governing data sharing, which Richard Thomas and Mark Walport recognised as necessary.

New powers for the Information Commissioner

21. We recommend that the Government reconsider the Information Commissioner’s request that the proposed power to issue assessment notices be extended to data controllers in the private sector. Extension of these proposals to the private sector should include safeguards for data controllers’ rights to respect for private life, if necessary. We do not consider that an amendment together with any necessary safeguards should be overly complex and we propose an amendment for the purposes of debate. (Paragraph 1.66)
Assessment notices form an important step towards improving public trust and confidence in the handling of personal data by public sector data controllers and complement the Information Commissioner’s existing powers. They are similar to the consensual Good Practice Assessments currently provided for by section 51(7) of the Data Protection Act 1998 (“DPA”). The clause as drafted does not limit the cases in which an assessment notice may be issued to those where the Information Commissioner positively suspects that there has been non-compliance with the DPA. They build on the commitment made by the Prime Minister in November 2007 that the Information Commissioner would be able to “spot check” government departments.

As drafted, the clause makes it possible for the Commissioner to serve an assessment notice on certain private or third sector data controllers. This is done through new section 41A(12), which extends the meaning of “public authority” under the DPA to include data controllers in respect of which an order may be made under section 5 of the Freedom of Information Act 2000. This covers data controllers that appear to the Secretary of State to exercise functions of a public nature, or which are providing under a contract made with a public authority any service whose provision is a function of that authority.

The Government remains to be persuaded of the case for extending the power to serve assessment notices so that it applies in relation to all data controllers, but will continue to consider the points made by the Committee and the Information Commissioner.

22. We consider that these additional powers [to sanction public authorities] for the Information Commissioner would be a human rights enhancing measure. While we note the Government’s view that it would be unusual for a department or other public body to ignore an Assessment Notice, or to fail to comply with its terms, there is no reassurance on the face of the Bill that this will not be the case. We propose an amendment to meet the Information Commissioner’s concerns, for the purpose of debate. (Paragraph 1.67)

As the Government made clear in our memorandum to the Committee of 25 February, the Information Commissioner already has a range of enforcement powers available to him for failures to comply with the DPA, and these are being strengthened in the Bill. If the Commissioner discovers a breach of the data protection principles during an assessment, he would be able to issue an enforcement notice to compel the data controller to comply with their data protection obligations; non-compliance with an enforcement notice is a criminal offence. The Information Commissioner also has existing powers to apply for a search warrant under Schedule 9 to the DPA.

However, the Government will continue to reflect carefully on the comments made as the Bill makes progress in the Lords.

**Coroners Reform**

**Coroners reform as a human rights enhancing measure**

23. We welcome the long-awaited introduction of the Government’s proposals for [coroners] reform. In so far as the Bill has the potential to support the UK’s obligation to protect the right to life, by enhancing the ability of families to discover the truth
about the deaths of their loved ones and by increasing the likelihood that public services and others will learn lessons from often tragic circumstances, we consider Part 1 of this Bill to be a human rights enhancing measure. (Paragraph 1.70)

The Government welcomes the conclusion of the Committee that overall the coroner reforms in Part 1 of the Bill are a human rights enhancing measure.

**Duty to investigate**

24. We welcome the new extended duty to investigate deaths in state detention, which is a human rights enhancing measure. However, we are concerned that the only clarification of the scope of this provision is found in the Explanatory Notes accompanying the Bill. We recommend that the Bill is amended to include an interpretative clause which sets out a non-exhaustive list of circumstances when an individual should be considered to be in custody or in state detention. (Paragraph 1.74)

25. We have one outstanding concern, which relates to individuals without capacity who may be deprived of their liberty in residential care homes or hospitals, so-called “Bournewood patients”. Individuals in these circumstances are particularly vulnerable, whether resident in a state institution or a private facility. The Government should clarify whether the Bill will impose a duty to conduct an investigation in these cases. We recommend that any illustrative list should make clear that a duty should apply. (Paragraph 1.75)

The Government accept that each of the examples given would come under the definition of ‘state detention’, but considers that specifying them, even in a non-exhaustive list, on the face of the Bill is unnecessary.

The Government does not intend to introduce a specific duty to conduct an investigation into the death of an individual without capacity who dies in a residential care home or hospital. However, the general duty in clause 1(1) of the Bill will apply in such cases where the coroner has reason to suspect that the deceased died a violent or unnatural death or the cause of the death is unknown. Under clause 1(7) of the Bill, coroners will have the explicit right to conduct preliminary enquiries to ascertain whether a duty to investigate the death concerned has arisen. Also, the new independent Medical Examiners created by clause 19 of the Bill are likely to pay particular attention to the cause of death entered on the death certificate by the doctors with clinical responsibilty for these vulnerable patients. A Medical Examiner may refer a case to the coroner if the Examiner believes that such a case comes within the coroner’s jurisdiction.

**Purpose of investigation and matters to be ascertained**

26. We welcome clause 5 to the extent that it seeks to enshrine in primary legislation the principle, recognised by the House of Lords in Middleton, that the focus of an investigation into a death governed by Article 2 of the Convention should be on the circumstances of the death. We welcome this legislative clarification of the law to give better effect to a court judgment in which the court used the interpretative power in section 3 of the Human Rights Act to change the settled interpretation of the meaning of a statutory provision. As the Explanatory Notes state, “the new provision makes the
position expressly clear” and “therefore ensures that investigations into deaths under the Bill are compatible with the ECHR as determined by Middleton”. (Paragraph 1.77)

The Government welcome the Committee’s support for our enshrining of Middleton principles on the face of the Bill.

27. We welcome the Minister’s reassurance that coroners will retain a broad discretion to undertake a wider investigation into the circumstances of a death in cases other than those where one is necessary in order to avoid a breach of Convention rights. Unfortunately, there is nothing on the face of the Bill or in the Explanatory Notes to make clear whether or not it is the Government’s intention that coroners should be able to exercise their discretion in this way. Nor is there any indication of the circumstances in which a coroner may wish to exercise his discretion. We recommend the following amendment to the Bill for the purpose of debate. (Paragraph 1.81)

Whilst noting the Committee’s comments, the Government still considers that there is no need to make further provision on the face of the Bill on this point. We would expect the Chief Coroner to give guidance as to the types of cases that he or she considers should attract a broader investigation, for example where there is an unusual cluster of deaths such as those that have recently come to light in relation to Stafford Hospital or the suicides of young people which occurred in Bridgend.

Outcome of investigation

28. We welcome the Minister’s reassurance that the Government does not intend to narrow the scope of the existing law by incorporating in statute the existing limitation on coroners determinations “appearing to determine” civil or criminal liability. However, since clause 5 and clause 10 together will serve to determine the scope of a coroners investigation, we remain concerned that this relationship should be clearly defined. As matters stand, it is not clear how the requirement in clause 10(1) – that any determination should address the purpose of an investigation, by determining how or in what circumstances the deceased came by his death – relates to the prohibition in clause 10(2) against findings that appear to determine civil or criminal liability. Without clarity, there is a risk that the prohibition in clause 10(2) could serve to undermine the very purpose of a coroners investigation as envisaged in clause 5. This could undermine the ability of the inquest to meet the requirements of Article 2 ECHR. We propose the following amendment to the Bill. (Paragraph 1.85)

Whilst noting the Committee’s comments, the Government still considers that there is no need to make further provision on the face of the Bill on this point. As set out previously, clause 10(2) is only concerned with the way a determination is framed and it is not intended that it should prevent a coroner or jury considering facts bearing on civil or criminal liability in order to reach a determination. A determination will not offend clause 10(2) provided it is framed so as not to appear to determine any question of criminal liability on the part of a named person or any question of civil liability. The Government does not believe that the provisions undermine the ability of an inquest to be Article 2 ECHR compliant.
**Juries**

29. The Government’s justification for removing the requirement for a compulsory jury inquest in cases where the health and safety of the public, or a section of the public, is at issue is not clear. We recommend that the Bill is amended to reflect the existing legal position unless a clear argument against doing so is provided. We propose an amendment for the purposes of debate. (Paragraph 1.92)

The Government has expanded the categories of cases in which an inquest will be conducted before a jury to those including any death which is violent or unnatural, or of unknown cause, in any form of state detention. It has never been clear why a jury was required in inquests where matters are being discussed where the safety of the public is at risk. This could, in fact, apply to the majority of the 30,000 inquests each year, but it is the Government’s contention that there is no need for the added layer of independence that a jury would bring. Experience has shown that coroners make minimal use of juries in inquests of this kind, and the Government believes that the aims of this recommendation, and the coroner’s role in public protection, will be far better achieved by means of the already enhanced rule 43 reports (updated July 2008) - to prevent future deaths – which is being consolidated in the Bill (additions to paragraph 6 of Schedule 4 and the related clause 29 were brought forward at Commons Report Stage).

30. We are not persuaded that the Minister has provided adequate justification for the proposed change [to the composition of inquest juries]. We recommend that clauses 8(1) and 9(2) be amended to maintain the existing provision to the effect that the minimum number of members required on a jury is seven and the maximum is eleven. We propose an amendment for the purposes of debate. (Paragraph 1.95)

The Government has considered this point carefully and remains of the view that it is not necessary to retain the minimum and maximum number of jurors required under the current system, as long as the jury has sufficient numbers to make a reasoned decision. In addition, it should be noted that it has been a long running complaint of the administrative staff responsible for summoning inquest juries that it is very challenging in some areas to identify sufficient people for inquest jury service using the current numbers required, given that such inquests are relatively rare occurrences in most coroners’ courts and have to be scheduled some weeks or even months in advance (so jurors may have moved home or their circumstances may have changed which mean they are seeking to exempt themselves from a lengthy inquest). This proposal has been particularly well received by jury summoning staff. The presumption that coroners always begin an inquest with 9 jurors will be set out in guidance from the Chief Coroner.

**Powers to gather evidence and to enter, search and seize relevant items**

31. In principle, we welcome the proposals to extend the compulsory powers of the coroner as a human rights enhancing measure. (Paragraph 1.98)

The Government welcome the Committee’s support for these new powers.

32. The participation of any interested party in the investigation will necessarily be contingent upon access to all relevant material, and such participation on the part of the deceased’s next of kin to the extent necessary to safeguard their legitimate interests
is an essential part of an effective investigation in the context of a death governed by Article 2. We welcome the Government’s recognition that evidence obtained using compulsory powers will be subject to the ordinary rules of disclosure in the coroners rules (which will be covered in secondary legislation under this Bill). However, we consider that the Government has missed an opportunity in this Bill to ensure that the disclosure rules will be applied in a way which will support the rights of bereaved families to effective participation. In addition, we regret that draft coroners rules are not available for scrutiny. (Paragraph 1.100)

On the issue of disclosure, the Government would direct the Committee to paragraphs 25 and 26 of the draft charter for bereaved people who come into contact with a reformed coroner system. These outline that disclosure of all relevant documents to be used in an inquest will take place, on request, free of charge and in advance of an inquest to all family members whom the coroner has determined have an interest in the investigation. It is possible, for legal reasons, that not all documents that the coroner intends to use at an inquest will be able to be disclosed, or disclosed in full. In that case, on request, the coroner will explain the reasons why he or she cannot disclose a particular document or part of a document. The Charter will have the standing of statutory guidance issued under clause 34. Provision will be made in Coroners rules mirroring and expanding upon the provision in the Charter.

The production of rules and regulations will be a major undertaking on which the Ministry of Justice will engage with many of its external stakeholders, and in relation to which the Government would expect the Chief Coroner to play an active part. That appointment will take place as soon as possible after Royal Assent.

33. We have previously expressed our disagreement with Government over whether safeguards in respect of compulsory powers, and in particular, powers of search and seizure, should be provided in primary legislation. We agree that some degree of detail may be left to secondary legislation, but consider that the substance of the relevant safeguards should be provided in primary legislation. We are concerned that draft regulations setting out the proposed safeguards which will accompany the compulsory powers of the coroner will not be available for scrutiny during the passage of the Bill. (Paragraph 1.102)

Whilst the Government accepts that ideally drafts of proposed rules and regulations would be available for scrutiny alongside the Bill, this has not proved to be possible. However, we can assure the Committee that full consultation will take place on the rules and regulations to be brought forward under powers contained in the Bill prior to the implementation of the provisions in Part 1.

**Power to report if risk of future death**

34. We do not have adequate information to assess whether last year’s amendments to rule 43 have been sufficiently successful to obviate the need for a further formal mechanism for collating, monitoring and disseminating coroners’ reports, or any further provision for sanctions. The changes to rule 43 have been in force for such a short period of time that the experience of their operation may not be as useful as the Minister suggests. In the light of the potential value which coroners’ reports may
provide in allowing lessons to be learnt from often tragic circumstances and in avoiding unnecessary risk to life, we recommend that the Government reconsider whether more formal arrangements for the treatment of coroners’ reports should be included on the face of the Bill. (Paragraph 1.106)

As indicated in the response above to paragraph 29 of the Committee’s conclusion and recommendations, the system of rule 43 reports was improved by reforms implemented in July 2008 and, following Government amendments made at Commons Report stage, the Bill contains further proposals aimed at giving such reports greater prominence. This includes having the details of all such reports, and responses to them, contained in an annual report from the Chief Coroner to the Lord Chancellor, which will be published and laid before both Houses of Parliament. Initial indications are that the July 2008 enhancements to the rule 43 report system have been a success – the first summary is due to be published in shortly - and the Government wishes to build upon that success.

35. We regret that no draft regulations dealing with the proposed treatment of coroners’ reports have been produced to assist parliamentary scrutiny. (Paragraph 1.107)

Please see the Government’s response to recommendation 33.

Legal aid

36. We are concerned by the evidence which we have received on the difficulties faced by families who seek legal assistance and representation to support their effective participation in an inquest where their loved one has died. Article 2 ECHR does not require legal aid to be provided in all cases. However, Article 2 ECHR will require legal aid to be provided where it is necessary to ensure that next-of-kin participation is effective. This may include legal aid for representation throughout an inquest. Evidence appears to suggest that current legal aid rules are being applied in a way which fails to recognise when legal aid may play an integral role in supporting effective participation for many families and that, in many cases, families are faced with unrealistic choices based upon the current application of the means testing rules. We welcome the undertaking of the Secretary of State and the Minister to look again at these rules. We recommend that the Government make a concrete commitment to an independent review of the current system for assessing access to legal aid and other funding for bereaved families to access legal advice and assistance, preparation and representation at an inquest. (Paragraph 1.113)

37. We suggest a new clause for inclusion in the Bill which would ensure that the Government commissioned such a review and reported its conclusions to Parliament. (Paragraph 1.114)

The Government is unaware of any evidence which shows that the legal aid rules for inquests are being applied inappropriately. The Government is considering how families and other interested parties should have more accessible opportunities for involvement in the process, but the Government does not agree that a formal review is the best way to achieve this.
The means test need not be an obstacle for those exceptional inquests where representation is necessary. Where funding is requested to provide representation at an inquest into the death of a member of the client’s family, the Legal Services Commission may, for inquests brought into scope by the Authorisation on Inquest Funding, waive the financial eligibility limits. The Lord Chancellor has the discretion to waive the financial eligibility limits for all other inquests.

**Witness anonymity**

38. We […] welcome the early opportunity to give further consideration to the human rights issues raised by witness anonymity orders. (Paragraph 1.115)

39. We welcome the CPS’s initiative in compiling this register of all applications: it provides an important source of information to enable the practical operation of the witness anonymity provisions to be independently scrutinised and is a valuable human rights safeguard. (Paragraph 1.118)

40. We welcome the express acknowledgment of the exceptional nature of witness anonymity orders in both the Attorney General’s Guidelines and the DPP’s Guidance. We also welcome the Minister’s acceptance that “anonymity orders should not become routine instead of exceptional.” We do not consider the number of witness anonymity orders applied for in the first 6 months of the legislation’s operation to suggest that the orders are being treated as other than exceptional. We therefore do not regard it as necessary for the legislation to be amended to insert an express reference to the exceptional nature of witness anonymity orders, such as that contained in the equivalent New Zealand legislation. (Paragraph 1.124)

**The Government welcome the Committee’s support.**

41. We recommend that appropriate guidelines be drawn up for the police concerning their role in the application for witness anonymity orders, which reflects, in a manner accessible to front line police officers, the clear guidance to prosecutors that witness anonymity orders are justified only in exceptional circumstances. (Paragraph 1.125)

The National Policing Improvement Agency has recently prepared a “Briefing Paper on Anonymity” or interim guidance for the police on the operation of the anonymity legislation, in relation to anonymity for civilian witnesses. This does not refer to the exceptional nature of anonymity orders in terms, but sets out a range of measures to ensure that applications are subject to scrupulous preparation. Furthermore, the interim guidance states explicitly that where an application appears appropriate, witnesses “should not be given any guarantee that either the CPS will pursue the application or that the court will grant it”.

The interim guidance was produced in consultation with the CPS. It was made available to CPS staff on 1 April 2009. It will be reviewed when, as we hope, the Bill has become law. The Association of Chief Police Officers (ACPO) is planning similar guidance for undercover officer witnesses.

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We note the conclusion in the same paragraph 1.125 that 'the police may regard witness anonymity orders as much less exceptional than the CPS'. The reason for the disparity in numbers of requests made by the police and number of applications made to the court by the CPS is that the CPS data collection is a snapshot of all cases in which potential witness anonymity orders have been identified. Many of the cases registered will not have reached the court because cases are often identified at a very early stage. For the period in question (July – December 2008) the CPS declined to make applications for 42 witnesses out of 346 requested by the police, as opposed to the much higher figure of 210 that the Committee assumes in paragraph 1.125. Thus of these 346 cases, a number may still be outstanding in terms of a possible application to the court.

42. We recommend that future editions of the Director’s Guidance, which expressly states that it will be kept under review, provides some guidance as to what the Director is likely to regard as constituting “serious damage to property” when considering whether to make an application for a witness anonymity order. In particular, guidance would be welcome as to whether, in the DPP’s view, there will usually need to be some kind of risk to persons for the damage to property to be “serious”, which was the human rights compatible interpretation of the same phrase by the Attorney General of New Zealand. (Paragraph 1.129)

Future versions of the Director’s Guidance may include guidance to prosecutors as to the interpretation of the serious damage to property test, but that is of course a matter for the Director. Given that the Bill is still before Parliament, the appropriate course at this time is for the Government to make clear the intended effect of the provision and we believe we have done so.

There is no change in policy or approach in this area. The issue here is the prospect of acts of violence, whether to persons or to property. Either is capable of intimidating witnesses into not giving evidence, and it will depend on the context. The legislation would fail to achieve its rightful effect if, for example, a witness anonymity order could not be obtained where arson would follow exposure of the witness’s identity.

There is no question of serious damage to property necessarily having to be accompanied by an effect on the witness’s safety. In Condition A, safety and serious damage to property are freestanding tests. It is quite possible for witnesses to be sufficiently intimidated by the thought of, say, their factory being burnt down to decline to give evidence, without there necessarily being also a threat to their safety. Where a threat to the witness’s safety existed, the safety test in Condition A could of course be satisfied, as well as the serious damage to property test.

What is serious in any case is a matter for the court, having regard to all the circumstances.

43. We therefore remain of the view that the legislation should be amended to place on an express statutory footing the trial judge’s discretion to appoint special counsel and the right of the defence to request the appointment of such special counsel. Alternatively, we recommend that such express provision be made in the new rules of court on witness anonymity being drafted by the Criminal Procedure Rule Committee chaired by the Lord Chief Justice. (Paragraph 1.137)
Paragraph 1.134 of the Committee’s report argues that the appointment of special counsel should be more than exceptional. The Government considers that the appointment of special counsel will be required to secure fairness only in exceptional circumstances.

The Government notes the argument in paragraph 1.135 that there is doubt as to the ability of the magistrates’ court to request the appointment of special counsel. However, the case law suggests that the ability to ask the Attorney General to appoint special counsel applies to courts generally, without distinction. Paragraphs 43-44 of the House of Lords decision in R v H [2004] 2 AC 134 support this.

The Government also notes the view that it has changed its position on the inherent jurisdiction of the courts to appoint special counsel since the time of the emergency legislation (paragraph 1.136). However, Baroness Scotland referred explicitly to her role during the passage of the Criminal Evidence (Witness Anonymity) Bill in commenting in Lords Committee that: “We believe that at the moment, as a result of H and C and the current framework, it is possible—the court has the power—to invite the Attorney-General to appoint a special counsel.” (15 July, Hansard column 1125).

Turning to the recommendation at paragraph 1.137, the Government has explained its position on special counsel on a number of occasions. Courts may already ask the Attorney General to appoint special counsel to assist with applications for a witness anonymity order. This option is set out in a Practice Direction issued on 28 August 2008 by the President of the Queen’s Bench Division following the implementation of the Criminal Evidence (Witness Anonymity) Act 2008. We have seen no evidence that these current arrangements are not working satisfactorily and, in these circumstances, we are not persuaded that there is a need to put them on a statutory footing. The existing arrangements are sufficient to secure fairness. The Government is unable, therefore, to accept the recommendation that provision on special counsel be added to the Bill.

The alternative recommendation, that the same provision be added to the Criminal Procedure Rules, is unacceptable for similar reasons. It too would place the role of appointing special counsel explicitly with the court. This raises issues as to the proper nature and role of special counsel, and the Attorney General’s role in the appointment process, in criminal proceedings generally which this Bill is not, and the Criminal Procedure Rules are not, the right forum to resolve.

However, a declaratory reference to special counsel in the Criminal Procedure Rules, pointing to the Attorney General’s role in the same way as the August 2008 judicial Practice Direction, is a different matter. We have no objection in principle to such a reference and will take this forward with the Criminal Procedure Rule Committee. This Committee is already working on Rules to implement the anonymity legislation.

44. We also recommend that the DPP’s Guidance covers the assistance prosecutors should be prepared to provide to the court to consider whether, in the particular circumstances of the case, fairness requires the appointment of special counsel; and that the DPP’s register of anonymity applications should additionally record whether any request or application was made to the court to appoint special counsel and the outcome of that request or application. (Paragraph 1.138)
The “Attorney General’s Guidelines on the Prosecutor’s Role in Applications for Witness Anonymity Orders” already set out what prosecutors should do in relation to requests for special counsel. The relevant passages read as follows:

‘D5 A prosecutor making an application for a witness anonymity order should always be prepared to assist the court to consider whether the circumstances are such that exceptionally the appointment of Special Counsel may be called for. When appropriate a prosecutor should draw to the attention of the court any aspect of an application for a witness anonymity order or any aspect of the case that may, viewed objectively, call for the appointment of Special Counsel’; and

‘D7 Where Special Counsel is appointed, he or she will initially be provided by the prosecutor with any open material made available to the accused regarding the application (and any other open material requested by Special Counsel). Special Counsel may then seek instructions from the defendant and his legal representatives. Only then will Special Counsel be provided by the prosecutor with the closed or un-redacted material provided to the court.’

Reference is made to the Attorney General’s Guidelines at paragraph 46 of the August 2008 edition of the DPP’s Guidance on Witness Anonymity. There is scope for expanding this section of the DPP’s Guidance to take into account the more detailed guidance contained within the Attorney General’s Guidelines.

The Government does, however, have some concerns as to the additional statistical gathering exercise which is proposed in this recommendation. Statistical exercises impose a resource burden on the authority undertaking them and need to be carefully justified on their individual merits. In the present instance, to ensure comprehensive coverage, each case would have to be monitored for applications that are made only rarely.

In this light, the collection in question needs to be justified in principle and on the available evidence it appears that it is not. The Government has received no suggestion from any source, prior to the Committee’s report, that there might be an issue with refused defence applications. In any event, the information in question, assuming it was collectable, would be of limited value if, for example, it were to emerge that a request for special counsel were included in stock defence pleadings in anonymity cases. Furthermore, it would not be possible to form any meaningful view of such statistics without checking every case to see if the request has been appropriately decided. Such an exercise might well fail to come up with a single case where the judge arguably refused the application incorrectly, which would serve only to prove that the defence were making applications inappropriately.

45. We therefore recommend that the Bill be amended to require the consent of the DPP before an application for an investigation witness anonymity order is made. (Paragraph 1.145)

It would not be appropriate for the DPP to have to consent to every investigation anonymity order application, partly because the orders are an investigative tool which should be available to the police, and also because they and any prosecuting authority specified in the Bill are capable of deciding whether to exercise the powers or not without reference to the DPP. These orders are not linked to trial anonymity orders, they are a separate tool.
In any event, there will be close co-operation in practice between the police and CPS in these cases in accordance with standard procedure under the ‘Good Practice Guide to Prosecuting Complex Gun and Gang Related Violence’. ACPO and the CPS are discussing whether these arrangements might be further enhanced by a protocol.

With regard to the suggestion that there is a risk of a disproportionately large number of applications if the DPP does not have to give consent, investigation anonymity orders apply only to a narrow class of gang related homicides. In that context, it is difficult to imagine applications being made in disproportionately large numbers of cases. Furthermore, one must have regard to a fundamental aspect of these orders, that they are intended to protect witnesses in criminal investigations. Unlike at the trial stage, nobody’s liberty is at issue.

The Committee’s report also appears to suggest that if the DPP gives his consent to the application for an investigation order, he will have made a decision as to, or will be likelier to know, whether he will also apply for a trial order later on. The implication seems to be that this will address the practical problem the Committee perceives of informants being reluctant to come forward unless they know they will get a trial anonymity order.

However, neither the police nor the CPS can guarantee that a court will grant a trial anonymity order at any stage of a case. Nor indeed will the CPS be able to say with any certainty that the informant will indeed be required to provide evidence at trial at the very early stages of an investigation.

Changes to the criminal law

Reform of partial defences to murder

46. The Law Commission’s 2006 report [on partial defences] also recommended that the Government should undertake a public consultation on whether and, if so, to what extent the law should recognise either an offence of ‘mercy’ killing or a partial defence of ‘mercy’ killing. So far the Government has not taken up this recommendation. We recommend that they should. We note the Government’s statement that the reformulation of the partial defence of diminished responsibility is not intended to change its scope in any way, and that it therefore continues to cover the sorts of “mercy killing” cases identified by the Law Commission. (Paragraph 1.152)

The position on “mercy killing” links to issues around euthanasia and assisted dying which are especially contentious, and about which people hold strong and deeply divided views. The Government has made clear that assisted dying is a matter of conscience and for Parliament to decide. Parliament has considered this on several recent occasions, including in response to Lord Joffe’s Private Member’s Bill. The Government remains of the view that a private member’s Bill is the right and proper vehicle to debate any change in the law in this sensitive area and has no plans to consult on the issue of “mercy” killings.

Encouraging or assisting suicide

47. We are concerned that the scope of the new offence of encouraging or assisting suicide is sufficiently uncertain that it might have a chilling effect on speech. We accept
that the intent elements of the offence add clarity. However, given that the Bill applies to the encouragement or assistance of suicide, but is not related to the suicide of any individual person or group of persons known to the accused, the intent involved may be relatively broad. For example, we consider that the placing of advertisements or information in respect of assisted suicide services abroad could fall squarely within the ambit of the offence. Similarly, an NGO which provided information about these services could equally be liable to prosecution. We consider that the breadth of the offence remains uncertain and has the potential to have a chilling effect on a range of activities involving reference to suicide or the provision of information or support around end of life decision making. We consider that this chilling effect could engage the right to freedom of expression and the right to respect for private life (Articles 8 and 10 ECHR) and would require justification. (Paragraph 1.165)

The Committee has observed that, on its face, the reformulation of section 2 of the 1961 Act appears to be wider than the current offence. However, that is only because the reformulation combines two offences – the offence in section 2 of the Suicide Act 1961 and the offence of attempting to commit a section 2 offence under the Criminal Attempts Act 1981 - with one offence cast in modernised statutory language. The new provisions are consistent with the case law that exists in relation to the existing two offences and do not widen the current law when section 2 of the 1961 Act is read with the Criminal Attempts Act 1981.

For an offence under section 2 of the 1961 Act to be committed, there must be an intention to aid, abet, counsel or procure an actual or attempted suicide and a person who is assisted or encouraged by the defendant’s conduct must actually commit or attempt suicide. In other words there must be a causal link between the aiding, abetting, counselling or procuring and an actual or attempted suicide.

For an offence under the Criminal Attempts Act 1981 to be committed, the defendant must carry out an act that is more than merely preparatory to aiding, abetting, counselling or procuring a suicide or suicide attempt with the same intention. No actual suicide or suicide attempt need occur as a result. It is not a requirement that actual assistance is given to any person for there to be an attempt to assist suicide under the 1981 Act. The effect is that conduct capable of assisting or encouraging suicide and intended to assist or encourage suicide is enough. It need not be aimed at a specific person or group of people.

To put this into context, the publication of information (online or off-line) which:

- is capable of encouraging or assisting suicide; and
- is intended to so encourage or assist

is an offence under section 1 of the Criminal Attempts Act 1981. Where there is a link between the material published and an actual suicide or attempted suicide the relevant charge would be the substantive offence under section 2 of the Suicide Act 1961.

The new provisions do not change the scope of the current law and will not make liable to prosecution anyone who was not liable before. So in the examples given by the Committee, the advertiser or NGO would be no more vulnerable to criminal liability than at present. The provisions simplify the law by bringing together the two current offences so
that all the relevant law will be in one place and the need for reliance on the Criminal Attempts Act in this context will be eliminated. Consequently, paragraph 55 of Schedule 19 provides that the Criminal Attempts Act 1981 will no longer apply to offences committed under section 2 of the Suicide Act 1961.

The Government does not accept the suggestion that the offence is uncertain in scope. The requirements of the offence are set out in clear terms in the clause. Indeed, by bringing together the existing two offences into a single statutory formulation, the clause arguably represents an improvement on the current law in terms of certainty. It is clear from the ECHR challenges that have been brought in respect of assisted suicide that the current version of section 2 is sufficiently clear for Convention purposes. The new offence is no broader in scope than the current law, which has never successfully been challenged on any ECHR ground.

In the examples given by the Committee, the advertiser or NGO would only commit an offence if, in the particular circumstances of the case, their conduct meets the requirements of being both capable of encouraging and assisting suicide and intended to encourage or assist suicide. Those requirements are clearly set out in the clause and use language that has been adopted in other criminal law legislation.

The Government does not therefore consider that the reformulation of the offence creates uncertainty or has any greater effect on Convention rights than the existing law.

Any potential interference with Article 8 or Article 10 arising from the offence is in any event justified as necessary in a democratic society to protect the rights of others for the same reasons as those set out by the European Court of Human Rights in Pretty v United Kingdom (2002) 53 EHRR 1 (a detailed summary of which was set out in the Government’s letter to the Committee of 26 February 2009).

47a. In the light of the potential for uncertainty in the proposals on encouraging and assisting suicide, we recommend that the DPP consult on and publish guidance on the factors which he would take into account in deciding whether it would be in the public interest to bring a prosecution for the new offence of encouraging or assisting suicide.

(Paragraph 1.166)

As the Committee is aware, the question of whether the DPP has a legal duty to provide such guidance is currently being litigated in the courts. The DPP maintains that he has no such duty, a position that has been upheld by the High Court and Court of Appeal. In the Government’s view, that position would not be altered by the reformulation of the offence proposed in the Bill which does not extend the scope of the current law.

Possession of a prohibited image of a child

48. Criminal offences should be drafted in clear and accessible terms to ensure that individuals know how to regulate their conduct. We remain concerned at the broad definition of the offence [of possession of a prohibited image of a child] and, as a result, its potential application beyond the people whom the Government is seeking to target.

(Paragraph 1.174)
The Government agrees with the Committee on the need for legal certainty but the Government believes that the current draft achieves this and is sufficiently tightly drawn. The parameters of the offence are clearly outlined in the Bill. The offence has been carefully constructed to target the images which cause most concern at the extreme end of the spectrum. It has been clearly defined in simple language and uses familiar terms. The offence has also been constructed to ensure that it captures the target material whilst providing adequate protection for works of art, historical artefacts, images used for medical purposes, or in the treatment of sex offenders, and documentary works by mainstream broadcasters.

The offence consists of three elements and an image must cross all three of these thresholds to fall within the terms of the offence. First an image must be pornographic. To meet the pornography threshold, the material should be of such a nature that it must reasonably be assumed to have been produced solely or principally for the purposes of sexual arousal. The formula was discussed during the passage of the Criminal Justice and Immigration Bill and is now in use in relation to the offence of possession of extreme pornography in section 63 of the Criminal Justice and Immigration Act 2008.

It was an important consideration when constructing the offence that it should not catch material which can be published legally under the Obscene Publication Act 1959 (OPA). The inclusion of the second threshold, “grossly offensive, disgusting or otherwise of an obscene character”, taken together with the pornography test and the list of proscribed acts (see below), ensures that this offence only catches material which would be caught by the OPA if it were published here.

The terms “grossly offensive, disgusting or otherwise of an obscene character” are drawn from the ordinary dictionary definition of “obscene” and are intended to convey a non-technical definition of that concept. “Grossly offensive” and “disgusting” are examples of “obscene character”. The offence of possession of extreme pornographic material in the Criminal Justice and Immigration Act 2008 uses the same test.

Finally, the image must focus solely or principally on a child’s genitals or anal region, or depict one of a series of explicit sexual acts which are clearly described and the Government considers leave no room for misinterpretation.

The Government considers that these thresholds are set at a high level and are clearly defined so as to plainly achieve an adequate degree of legal certainty. They ensure that the offence only captures material at the extreme end of the spectrum, the existence of which causes real concern to those who are closely involved in the protection of children.

49. We reiterate our view, which we have expressed on previous occasions, that legislation should be evidence-based. Such evidence should be published in time to assist parliamentary scrutiny. Whilst we fully support appropriately targeted criminal offences which will prevent children from abuse, itself a gross violation of their human rights, we are disappointed that the Government has failed to provide sufficiently weighty reasons for the need of the new offence that they propose in this Bill. (Paragraph 1.178)

The Government carried out a full public consultation on the proposals to create a new offence of possession of this material. During this process, the police and child welfare
organisations consistently highlighted the fact that collections of these images are found alongside indecent photographs of children. There would be substantial difficulties in constructing a research project which could isolate the effects on a potential paedophile of the prohibited images targeted by this offence, because experience has shown that this material is rarely found by itself. However, there is some research, which has been carried out in the USA, which suggests that there is a correlation between possession of images of child sexual abuse and hands-on abuse of children. (US Report to House of Representatives, A. Hernandez – 26 September 2006)

The Government is determined that our laws should keep pace with technological developments in this area. Current computer software now makes it easy to create drawings and other fantasy style images of explicit child sexual abuse. If the link to a real image could not be proved this would not be covered by current legislation and could create a situation where an abuser could create a fantasy-style visual record of actual abuse. The presence of these images is taken very seriously by child welfare groups, police and public protection agencies, and is a consideration when they assess an offender’s risk.

Other countries such as Ireland, Australia and the USA have already made the possession of this material illegal.

In summary, the police, children’s welfare organisations and others have expressed growing concern at the increase in availability of these depictions of child sexual abuse which they believe can be used for “grooming” children for sexual abuse. There is also a deep concern among these groups that the possession and circulation of these images could fuel the abuse of real children by reinforcing abusers’ inappropriate feelings towards children.

Public order offences

Incitement to hatred on the grounds of sexual orientation and freedom of expression

50. We reiterate our earlier view that the offence of incitement to hatred on the grounds of sexual orientation contains adequate safeguards for the right to freedom of expression without the addition of a savings clause. Clause 58 would not lead to a significant risk of incompatibility with Article 10 ECHR. (Paragraph 1.179)

The Government welcomes the Committee’s view.

“Insulting” words or behaviour

51. We consider that this Bill provides an opportunity to address our concern [about the current scope of the Public Order Act 1988] and therefore suggest the following amendment. (Paragraph 1.180)

The Government is currently considering all the recommendations in the Committee’s Seventh Report of Session 2008-09, Demonstrating Rights Demonstrating Respect for Rights? A Human Rights Approach to Policing Protest including the recommendation to amend section 5 of the Public Order Act 1986 by removing the words “insulting” from the
scope of the offence. The report was published on 23 March. The Government will provide a comprehensive response to all the recommendations and conclusions to that Report shortly.

The Government is considering carefully the implications of the proposed amendment. Section 5 can cover a wide range of lower level disorder in the street. Additionally, the offence can be racially and religiously aggravated and amendments to section 5 will have implications for these offences. It is important therefore that the Government consults a range of stakeholders for their views.

Given the need for such consultation, the Government is not persuaded that the Coroners and Justice Bill is the appropriate legislative vehicle to take forward any amendment to section 5 of the Public Order Act 1986.

**Release of long term prisoners**

52. We welcome the proposal to remove the power of the Secretary of State to overturn or disregard decisions of the parole board on the release of prisoners serving more than 15 years, pursuant to the Criminal Justice Act 1991, as a human rights enhancing measure. (Paragraph 1.182)

The Government welcomes the Committee’s support.

**Procedural changes**

**Bail and murder cases**

53. We welcome the Government’s reassurance that clause 98(2) is not intended to create a presumption against bail or to reverse the burden of proof in bail applications in murder cases. In either case, we consider that there would be a clear risk of a breach of the right to liberty (Article 5(3) ECHR). We remain doubtful whether clause 98(2) can have any practical effect on bail decisions. (Paragraph 1.190)

The Government will keep the provisions on bail under review and, as with the other provisions in the Bill, they will be subject to post-legislative scrutiny in due course at which time their impact can be fully assessed.

**Vulnerable and intimidated witnesses**

**Automatic application of special measures to selected witnesses**

54. We recognise that the court will retain control over whether or not special measures will be in the interests of justice in an individual case. We accept that this discretion will provide a valuable safeguard for the right to a fair hearing as guaranteed by Article 6 ECHR and the common law. However, we remain concerned by the decision of the Government to provide blanket eligibility for special measures to any witnesses in proceedings related to a whole category of offences and the power to extend eligibility to a wider category of offences without further parliamentary debate. The Minister should explain clearly why automatic eligibility is necessary when the existing law
already provides for special measures in cases where witnesses’ fear or distress is likely to diminish the quality of his or her evidence. (Paragraph 1.195)

Clause 86, which establishes automatic eligibility for special measures to witnesses to certain gun and knife crimes forms part of the Government’s wider initiative to tackle gun and knife crime, with the aim of encouraging witnesses to such crimes to come forward.

Witnesses to such serious crimes are invariably fearful of giving evidence and need early reassurances that they are eligible to receive support and assistance from special measures in court; otherwise they are reluctant to assist the police. At present, while young witnesses to these offences are automatically eligible for special measures by virtue of their age, in the case of adults, the police are limited to advising the witness that they are likely to be eligible for special measures but that the eligibility will be decided by the court at a much later date. Making such witnesses automatically eligible will enable the police to give greater certainty to these witnesses at an early stage in the investigation that they may receive help when giving their evidence in court, unless of course the witness wishes to opt out. This in turn should encourage more such people to come forward and testify in court.

The order-making power to amend the list of applicable gun and knife offences in the relevant Schedule to the Bill has been included to provide flexibility to take account of the creation of new offences in the future which it may be appropriate to add to the Schedule.

In the normal way, the Government has published a delegated powers memorandum alongside the Bill and will give careful consideration to the recommendation made by the Delegated Powers and Regulatory Reform Committee in the House of Lords that the exercise of this power should be subject to the affirmative procedure.8

The Committee’s report states that “during Public Bill Committee, it was suggested that offences related to gun and knife crime could comprise up to 24% of all proceedings.” That statement is incorrect – David Howarth MP in fact mentioned that 24% of all violent crime involved the use of weapons, which comes from the British Crime Survey 2006/2007 and relates to crime reported to that survey rather than actual prosecutions, which are inevitably lower. The 24% figure relates to a quarter of violent crime rather than all crime and includes crime involving all weapons and not just crime involving guns or knives. The same 2006/07 BCS report found that violent crime was responsible for 22% of all BCS crime and that guns and knives were responsible for 1% and 6% of violent crime respectively in that time period. As these are all survey estimates, they attract an inevitable margin of error but using a conservative estimate, it seems safe to say firearms and knives are collectively responsible for around only 2% of BCS crime.

According to the 2007/08 BCS, violent crime comprised 21% of all BCS crime and the proportion of these violent incidents involving guns and knives remained the same at 1% and 6% respectively.

Of course these figures cannot be directly translated into court proceedings.

The Government welcomes the Committee’s recognition that the court’s discretion and control over the granting of special measures constitutes a valuable safeguard to the

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defendant’s right to receive a fair trial but would also like to emphasise the general purpose of special measures is to assist prosecution and defence vulnerable and intimidated witnesses to give their best evidence – not to hinder the defence in testing the actual evidence given.

**Extension of availability of intermediaries to vulnerable defendants**

55. We share the concerns of the Prison Reform Trust, Justice and other witnesses that individuals who cannot effectively participate in criminal proceedings, whether as a result of any mental health disability, intellectual impairment, or otherwise, should not be subject to prosecution, but should be diverted from the criminal justice system. The right to a fair hearing, guaranteed by the common law and Article 6(1) ECHR requires nothing less. However, we welcome the aim of these proposals to support vulnerable defendants when the court considers that an intermediary would be “necessary” to secure a fair trial. We consider that this provides a valuable safeguard against the use of these provisions in circumstances which would lead to prosecutions of individuals who should rightly be considered unfit to plead. We recommend that the Government consider asking the CPS and the Judicial Studies Board to consider issuing guidance to accompany these proposals, making clear the scope of the right to effective participation in criminal proceedings and highlighting circumstances where the use of an intermediary would be inappropriate. We understand that intermediaries will be funded by Primary Care Trusts (PCTs). We recommend that the Government monitor and review how these provisions operate in practice. We consider that this monitoring exercise could be conducted effectively by the CPS or by the CPS with the input of information from PCTs, individual intermediaries, defence lawyers and defendants. (Paragraph 1.200)

The Government welcomes the general support of the Committee for the intermediary provision.

The Committee expresses concern that the provision raises the prospect of defendants being tried when it is inappropriate to do so, on the grounds of their mental incapacity. The issue of fitness to plead and the criteria for determining it is distinct from that of the eligibility for an intermediary. Fitness to plead involves a different, more stringent, test about a defendant’s capacity to comprehend the course of proceedings so as to make a proper defence.

Broadly, the defence or prosecution can claim unfitness to plead and the decision is made by the judge, usually based on evidence from a psychiatric evaluation (following procedures in the Criminal Procedure (Insanity) Act 1964, as amended by the Domestic Violence, Crime and Victims Act 2004). This will ordinarily be done before arraignment but the court may postpone consideration of unfitness until any time before the opening of the defence case.

There will be vulnerable defendants who are fit to plead yet may require assistance with communication if a contested trial is to go ahead and if they choose to give evidence in their own defence. The purpose of the intermediary provision is to help the defendant participate effectively if and when he or she is giving oral evidence as a witness. The Government does not consider it follows that where this particular step (intermediary) is
taken in the interests of a fair trial that a defendant should not be being tried at all. It is for the judge to decide whether to grant a defence application for an intermediary to assist the defendant after considering whether the defendant meets the relevant statutory requirements.

The role of the intermediary here is limited to assisting the defendant give oral evidence in court. It is not to provide emotional support or assist the defendant’s general comprehension of the trial, which is already provided for in the Consolidated Criminal Practice Direction. Under section III.30.3 of the Practice Direction the overriding principle is that all possible steps should be taken to assist a vulnerable defendant to understand and participate in the proceedings and therefore, the ordinary trial process should so far as necessary be adapted to meet those ends. One of the steps that should be taken is that a suitable supporting adult, such as a social worker sit with the defendant and that the defendant’s understanding of what is happening is regularly checked.

As part of the implementation process for this provision, the Government will be considering what guidance for criminal justice practitioners will be necessary and appropriate. The Government will draw the Committee report’s recommendation to the attention of the relevant department of the CPS.

The Committee’s report also cited concerns raised by some about the independence of the intermediary. Registered intermediaries are independent from the witness or defendant and they have a paramount duty to provide a service to the court. They are not on the ‘side’ of either the prosecution or defence. They are neutral and take an oath to the court to perform their services faithfully, as a translator of foreign languages would. In exceptional circumstances, an unregistered intermediary may be used. This would only be the case if the options for using a registered professional intermediary have been exhausted. An unregistered intermediary should still be a recognised communication expert and ideally unknown to the witness; they have the same responsibility to the court. Unregistered intermediaries will be provided with a guidance manual from the Office for Criminal Justice Reform (OCJR).

The Committee also recommends monitoring of the intermediary service. Intermediaries for vulnerable witnesses other than the defendant were introduced as one of the special measures in the Youth Justice and Criminal Evidence Act 1999 and the provision has recently been rolled out nationally by the OCJR following a successful pathfinder phase, which was independently evaluated. The OCJR is responsible for managing the Intermediary Service, and will continue to monitor it in consultation with the Intermediary Registration Board, on which various stakeholders, including the courts, ACPO, CPS, intermediaries and the Law Society are represented.

Currently there are about 150 registered intermediaries from a variety of backgrounds. Most take on work as intermediaries on an ad hoc basis in addition to their full time job, and in some cases may be employed by Primary Care Trusts. In such cases, when they take time away from their day job for an intermediary assignment, the Primary Care Trust will be reimbursed for the intermediary’s time.
Live links

56. The Minister’s response does not help us understand the benefits which the Government consider will flow from the increased use of live link hearings, only the Government’s view that live links should be used in as many cases as possible. We recommend that the Government provide evidence of the benefits which it considers will flow from the increased use of live links. (Paragraph 1.209)

57. The Minister should be able to explain why the Government considers that there is adequate evidence to show that in the circumstances in which live links may be implemented more widely, they are currently operating in a manner which allows the defendant to participate in the hearing and to consult and instruct his legal adviser in confidence. (Paragraph 1.212)

58. We welcome the Minister’s reassurance that the Government’s view is that the court would automatically consider the defendant’s capacity to participate when considering whether a live link was in the interests of justice. (Paragraph 1.213)

The Government is satisfied these provisions are compatible with Articles 5 and 6 of the ECHR.

The use of live links in this context does not extend to contested trials, but only to preliminary hearings and sentencing hearings. These live link preliminary hearings apply only to those who have been arrested and then charged with an offence. A person who is charged and remains in detention is entitled to be brought before a judge promptly. If this happens through a Virtual Court hearing, it may in fact minimise the prospect of defendant being detained unduly at a police station. The court must be able to see and hear the person and that person must be able to see and hear the court. In the view of the Government this is an appearance before the Judge or magistrate and will constitute being present at the hearing. The court will at all times continue to be able to exercise its judicial discretion, in connection with bail or other matters. The defendant or his representative will continue to be able to make representations to the court. In all cases the court retains a discretion to give a live link direction, and may rescind a live link direction at any time before or during a hearing. Clause 93 also adds an interests of justice requirement to section 57C in the Crime and Disorder Act 1998, so that in all situations covered by sections 57C, 57D and 57E the court may not give a live link direction unless it is satisfied that it is not contrary to the interests of justice to do so. This acts as a further safeguard.

Whether the Virtual Court process is in any respect disadvantageous to a defendant compared with a traditional court appearance is one of the key questions to be considered in evaluating the pilot; this will involve analysing data on case outcomes and bail decisions at first hearing. Where bail applications are made and the right to liberty may be engaged, it is for the state to satisfy the court that there are relevant and sufficient reasons for withholding bail; the issues will be the same in Virtual Court hearings as in conventional hearings. The impact of the process on bail decisions will be carefully evaluated and consideration given to the types of case that are suitable for live link hearings if Virtual Courts are to be used more widely.

The defence has the same rights to legal assistance and representation at a Virtual Court hearing as at any hearing. The adequacy of arrangements for defendant-lawyer contact in
the Virtual Court process will be evaluated in the pilot. In relation to live-link hearings from prison (which are the only sort currently in operation) there have been no widespread problems with defence lawyers being able to consult with their clients directly before, during and after the hearing.

**Criminal memoirs**

59. We remain concerned that making an Exploitation Proceeds Order (EPO) in part dependent on the degree to which a victim, their family or the general public are offended in a particular case could unnecessarily risk arbitrary application of these proposals. We recommend that the Government should consider an amendment to the Bill to remove any reference to the degree of offence aroused by the relevant profits, while retaining the ability of the court to consider the wider public interest in making an EPO. (Paragraph 1.220)

The Government remains of the view that any interference with Article 10 rights resulting from the criminal memoirs scheme will clearly meet the requirement of being “prescribed by law”. The Government cannot agree with the Committee that the inclusion of a requirement that the court should take into account “the extent to which any victim of the offence, the family of the victim or the general public is offended by the respondent obtaining exploitation proceeds from the relevant offence” creates an unnecessary risk of arbitrary application of the scheme.

As explained in the letter of 26 February 2009, the Government considers that the extent to which an offender’s publication causes offence to victims, family members or the wider public is an appropriate factor for the court to consider in the overall balance when deciding whether or not to impose an exploitation proceeds order. That factor forms just one of a number of factors that the court must weigh up when deciding whether or not to grant an order. In addition, the court may take into account any other matter that it considers to be relevant (so, in respect of one of points made by the Committee at paragraph 1.129 of the report, it would in fact be open to the court to consider the impact that an order may have on the public interest or individual victims or their families). The Government does not agree with the suggestion that the inclusion of this particular factor introduces an element of legal uncertainty into the scheme.

In response to the Committee’s specific point at paragraph 1.119 of the report, the Government does not consider that the court will be bound to take into account campaigns by national newspapers in order to determine the extent to which the general public was offended. The provisions do not require the court to assess the extent of offence in any specific way. The court will have the discretion to decide what evidence is relevant to take into account on the particular facts and circumstances of the individual case.

In relation to the “prescribed by law” requirement, the Government agrees that discretionary powers may be sufficiently precise to meet the “prescribed by law” standard provided that the scope of the discretion and manner of its exercise are indicated with sufficient clarity to give the individual adequate protection against arbitrary interference; The Government’s view is that the criminal memoirs scheme quite plainly satisfies this requirement for the reasons highlighted in the letter of 26 February 2009. The decision on whether or not to make an order rests with a judge and may be subject to appeal. The
necessary requirements for the imposition of an exploitation proceeds order are set out clearly on the face of the provisions. Equally, the provisions set out in considerable detail the factors that the court is required to take into account when deciding, in the exercise of its discretion, whether or not to impose an exploitation proceeds order. The inclusion in those of factors of "the extent to which any victim of the offence, the family of the victim or the general public is offended by the respondent obtaining exploitation proceeds from the relevant offence” does not, in the Government’s view, mean that the scope of the court’s discretion and the manner of its exercise is rendered insufficiently clear to give adequate protection against arbitrary interference. Indeed, given the highly detailed nature of the statutory scheme, the Government believes that the provisions in the Bill provide a very high level of protection against arbitrary application.

For these reasons, the Government is not currently persuaded of the case for amending the scheme in the way the Committee suggests.

Letter from the Rt Hon Michael Wills MP, Minister of State, Ministry of Justice, dated 18 May 2009

Thank you for your Committee’s Report on the Political Parties and Elections Bill, which was published on 1 February. We welcome your Committee’s scrutiny of the Bill, and noted with interest its conclusions and recommendations on the Commission’s investigatory powers and the issue of prisoners’ voting rights.

The Commission’s investigatory powers

The Government takes seriously the importance of ensuring that the right to respect for private life (guaranteed by Article 8 ECHR) and the right to the free enjoyment of property (guaranteed by Article 1 of Protocol 1 to the ECHR) are properly observed. Accordingly, it supports the view that the exercise of powers of entry should be justified and proportionate in pursuit of a legitimate aim as required by those Articles. The arrangements that the Bill seeks to put in place are fully capable of being exercised in such a way as to ensure compliance with these fundamental principles.

That said, I have of course studied your Committee’s Report carefully. After the report was prepared, as you know, Government amendments were tabled (on 26 January) which overhauled the powers of entry provisions in the Bill. The amendments:

i) Modified significantly the Bill’s extension of the Electoral Commission’s existing power of entry, which has existed since 2000, so that it applies to the same group of bodies as currently, with small additions. In particular, the amendments made at that stage removed the proposed extension of the right of entry to electoral candidates and their agents, which appeared to be the focus of the Committee’s concerns as expressed in its report;

ii) Removed from Bill the provision that would have allowed the Commission to apply for a warrant to search premises in connection with an investigation. Instead, the Commission will be able to apply for a court order to require disclosure of documents. Failure to comply with such an order will be a contempt of court.
iii) These amendments were made with a view to ensuring broad acceptability for the Bill’s approach in this area, whilst continuing to deliver the objective of empowering the Commission to investigate effectively. I hope that the Press Notice accompanying publication of your Report positively acknowledged the removal of the extension of the existing power of entry and inspection. On that basis I hope that you will agree that the provisions as amended take account of your Committee’s key concerns whilst giving the Commission the powers it needs in order to be effective.

**Prisoners’ voting rights**

The Government has no plans to amend the PPE Bill to make provision in relation to prisoners’ voting rights. The Government has consistently made clear that it intended to conduct a two-stage consultation process on how the judgment of the European Court of Human Rights (ECtHR) in *Hirst (No2)* should be best implemented. To this end, the Government published its second consultation paper on prisoner enfranchisement on 8 April 2009. The paper summarises the responses to the first consultation – which were sharply divided – and outlines the Government’s conclusions and its proposals for how the judgment of the European Court might be implemented.

To summarise, the Government has concluded that prisoners’ right to vote should be determined on the basis of the length of their custodial sentence, thus aligning enfranchisement to the seriousness of the offence committed, and the circumstances of the offender. The paper proposes that, in order to implement the Hirst (No 2) judgment one of the four options set out below for determining entitlement to vote should be pursued:

i) Prisoners who have been sentenced to a period of less than 1 year’s imprisonment would automatically retain the right to vote;

ii) Prisoners who have been sentenced to a period of less than 2 year’s imprisonment would automatically retain the right to vote;

iii) Prisoners who have been sentenced to a period of less than 4 year’s automatically retain the right to vote;

iv) Prisoners who have been sentenced to a period of less than 2 year’s imprisonment would automatically retain the right to vote. In addition, prisoners who have received sentences of more than 2 but less than 4 years could apply to be entitled to vote, but only where a Judge grants permission in their specific case.

It is not proposed that prisoners sentenced to a term of 4 years’ imprisonment or more would be entitled to vote in any circumstances, on the basis of the underlying seriousness of the offence(s) which would give rise to a custodial sentence of that length and longer.

In addition, the paper seeks views on some of the practical issues around the implementation of prisoner voting rights, including arrangements for registration and the process for casting a vote. After this consultation has concluded, the Government will consider the next steps towards implementing the judgment in legislation.

I hope that the Committee finds this information helpful.
Letter from the Rt Hon Michael Wills MP, Minister of State, Ministry of Justice, dated 21 May 2009

I am writing in response to the above report, which outlines the work of the Joint Committee on Human Rights during the 2007-08 parliamentary session.

Firstly, I would like to express my appreciation for the valuable work done by the Committee during 2007-08. The Committee carries out important work in scrutinising the Government’s treatment of human rights in legislation and conducting thematic inquiries into human rights issues.

I am pleased to find that the Committee welcomes a number of positive developments for human rights implemented by the Government in the 2007-08 parliamentary session, both through provisions in a number of Government bills and through the UK’s engagement with a number of international treaties. As a recent development, the Committee will note the publication on 23 March 2009 of our Green Paper on Rights and Responsibilities, which addresses the central constitutional question of the relationship between the citizen and the state. This has launched a national discussion on a Bill of Rights and Responsibilities, in which the Committee has already proven it is fully engaged.

I am also pleased to see that the Committee has noted a general improvement in the references to human rights issues in the explanatory materials produced to accompany bills. In addition to this, I note the new development in 2007-08 of Ministers writing to the Committee after the introduction of a bill to set out in more detail the human rights issues it raises, and welcome the continuation of this practice. Similarly, it is good to see that the Government’s decision to publish in draft its legislative programme has proven useful for the Committee’s work.

As well as appreciating the positive developments outlined in this report, please be assured that the Committee’s constructive recommendations will also receive the Government’s careful attention.

I note the point raised in paragraph 16 of the report, regarding the Committee’s desire for all public authorities to focus on the protection of the human rights of service users, rather than simply complying with the minimum legal requirements of the Human Rights Act. To encourage and facilitate this, the Ministry of Justice continues to work across Whitehall, with the aim to further embedding a human rights based approach within Departments and their sponsored bodies. The Government also looks forward to reviewing the results of the NHS pilot programme, Human Rights in Healthcare, mentioned in paragraph 17 of the report. This comprehensive project launched by the Department of Health aims to support the NHS in using human rights based approaches to improve service design and delivery. The Government looks forward to engaging further with the Committee on this work.

Regarding the Committee’s recommendation, in paragraph 27 of the report, that the Government review whether the UK should sign Optional Protocols to international treaties which provide for a rights of individual petition to monitoring bodies, I understand that you have now received a response from the Prime Minister to your letter, dated 20 January 2009. I trust that this clearly explains the Government’s position on the matter.
Finally, I welcome the changes to the Committee’s working practices that are noted in the report, which aim to enable you to undertake a broader range of activities, whilst focusing on the most significant human rights issues. I hope that these changes will contribute to an even more productive year for the Committee in 2008-09.

Once again I would like to thank the Committee for its valuable work in the parliamentary session 2007-08 and I look forward to working with you further in the coming year.

Letter from Jonathan Shaw MP, Minister for Disabled People, Department for Work and Pensions, dated 14 May 2009

Optional Protocol

1. We welcome the Government’s decision to sign the Optional Protocol to the Convention and recommend that the Government confirm its proposed timetable for ratification without delay. (Paragraph 3)

The Government welcomes the Committee’s support for UK signature of the Optional Protocol, and notes its recommendation. Our aim is to ratify the Optional Protocol as quickly as possible.

Progress towards ratification

2. We remain of the view that the Government should have consulted on both the justifications for and the precise terms of the reservations and interpretative declaration it proposes to make to the Convention, either before the Convention was laid before Parliament, or for a specified period after the Convention was laid and before ratification. It is not acceptable for the Government to claim that consultation cannot take place now because of the need to ratify as soon as possible, when the Government delayed its own timetable for ratification in order for departments to agree their positions. Nor can inviting disabled people and organisations to write to the Minister or other parliamentarians be a substitute for a proper consultation on the terms on which the UK will ratify the Convention (Paragraph 13)

The Government notes that the Committee remains of the view that it should have consulted on both the justifications for, and the precise terms of, the reservations and interpretative declaration it proposes to make to the Convention, either before the Convention was laid before Parliament, or for a specified period after the Convention was laid and before ratification.

The Government considers that the formal consultation process recommended would have significantly delayed ratification.

As the Committee is aware, the Government made clear in May 2008 that at that time it was considering reservations and/or interpretative declarations in three areas (service in the armed forces, education and immigration), and was continuing to explore whether there were any compatibility issues which may result in the need for an interpretative declaration or reservation in respect of measures relating to the exercise of legal capacity; aspects of mental health legislation; choice of place of residence; and cultural services
Government replies to the 2nd, 4th, 8th, 9th and 12th reports of Session 2008-09

(interpretive measures). That information was circulated to a number of organisations of and for disabled people, the Equality and Human Rights Commission and Equality 2025 and was put on the ODI’s website.

A further update was provided in response of the then Minister for Disabled People to the Committee’s letter to her of 28 August 2008. Jonathan Shaw, Minister for Disabled People, set out the further progress that had been made and the position on reservations/interpretative declarations in his evidence to the Committee on 18 November 2008.

Disabled people and their organisations have also had the opportunity to make their views known during meetings with Ministers and officials, and on a number of occasions have availed themselves of that opportunity. There has therefore been both information available and an avenue for dialogue as the work towards ratification has proceeded.

3. We again draw attention to the limited extent to which Parliament can scrutinise Government proposals to ratify treaties. We call on the Government to bring forward its proposals for enhancing parliamentary scrutiny of treaties as soon as possible, whether in the Constitutional Renewal Bill, or otherwise. (Paragraph 18)

The Government intends to introduce a Constitutional Renewal Bill, including covering the ratification of treaties, before the Summer recess.

4. While we welcome the fact that there will be debates in both Houses on the Convention, this will only happen because the Convention is to be ratified by the EU and the Commons debate is likely to take place in a Delegated Legislation Committee. This is a further illustration of the lack of parliamentary control over treaties entered into by the UK. We recommend that the Government make time for a full debate on the Convention in both Houses. (Paragraph 19)

The Command Paper containing the Convention and the Government’s Explanatory Memorandum which set out the terms under which it proposed to ratify the Convention were laid before Parliament for 21 sitting days under the Ponsonby procedures. Those procedures allow for debates where requested, and it was open to members of both Houses to do so.

No such request was made by any Member of the House of Commons. The debate on the Order for Specification of the Convention under the 1972 European Communities Act in the Commons Delegated Legislation Committee on 21 April did cover wider issues arising from ratification. A request for debate on the reservations and declaration was made in the House of Lords, and this was subsumed within the debate on the Specification Order on 28 April. Both occasions allowed consideration of the wider issues arising from the proposed basis for ratification, as well as the detail of specification itself.

5. The Government should clarify whether specifying the Convention as a Community Treaty is a necessary step to UK ratification and how this will affect the UK’s timetable for ratification, particularly if the scrutiny reserves of Parliament’s EU Committees are engaged. (Paragraph 20)
Specifying the Convention as a Community Treaty is considered to be a necessary step to be taken prior to UK ratification, and has been taken into account in our timetable.

Scrutiny of the European Commission’s proposals for Community ratification, and the EU Committee reserves, do not affect UK ratification. The Committee have reserved on issues to do with the basis for Community ratification, and this does not affect our intention, and timetable, for UK ratification.

**Reservations: general**

6. We are satisfied that the Explanatory Memorandum sets out the Government's view (that its proposals for reservation are necessary), subject to a notable exception which we consider below. While we may disagree with them, the Government's views are clearly discernible from the contents of the Explanatory Memorandum. We regret, however, that the Explanatory Memorandum provides no explanation of the Government's view that its proposals for reservations and an interpretative declaration are compatible with the object and purpose of the Convention. (Paragraph 22)

The Government welcomes the Committee's comment that its views are clearly discernible from the contents of the Explanatory Memorandum. The Government notes the Committee's view that the Explanatory Memorandum should have explained how the proposed reservations and declaration are compatible with the object and purpose of the Convention. The Government took account of the requirement for reservations to be compatible with the object and purpose of the Convention when considering the terms on which it was proposing to ratify the Convention, and set out its rationale in its Explanatory Memorandum.

7. We welcome the Government's view that the UK should not accede to any treaty unless domestic raw and practice are capable of complying with its obligations. (Paragraph 26)

The Government agrees. That is why Government Departments and the Devolved Administrations have compared their policies, programmes etc with the Convention’s requirements to ensure that the UK is compliant. It is UK practice not to ratify a treaty and unless it can implement and comply with its obligations.

8. Signature of any new international human rights instrument should provide an opportunity for an audit of national law and policy with a view to removing any incompatibilities with the rights guaranteed before ratification, in so far as possible. (Paragraph 26)

The Government agrees that national laws and policies need to be examined in the process of preparing for ratification. UK practice is not to ratify a treaty unless we are in a position to comply with the obligations that we are agreeing to be bound by. As the Committee is aware Departments and Devolved Administrations have compared their legislation, policies, practices and procedures against the provisions in the Convention.

9. Acceptance of new international human rights standards should not trigger a "wish-list" approach to potential reservations from departments seeking to protect existing policies and practices. We note the Government's argument that the Office of Disability
The Government notes but does not accept the Committee’s view. The exercise of considering compliance with the Convention identified a range of issues that required careful consideration to explore whether or not a reservation or declaration might be needed, and as the Committee recognises the ODI has coordinated the work required to scrutinise, discuss and challenge proposals. The then Minister of Disabled People’s statement of 6 May 2008 made clear that at that time the emerging findings from the exercise to compare the UK’s legislation, policies practices and procedures were being considered carefully and that the position was that reservations were being considered in three specified areas, and that compatibility issues in respect of four other areas continued to be explored. In arriving at that position, and subsequently, the ODI has worked very closely with the Devolved Administrations and other Departments, in particular the Foreign and Commonwealth Office, at all stages of the compatibility exercise.

10. Our experience in scrutinising the United Kingdom implementation of the UNCRC is that reservations, once in place tend to persist even where UN monitoring bodies, parliamentary committees and civil society organisations are united in the view that they are unnecessary and incompatible with the object and purpose of the treaty. We start our scrutiny of the reservation and “interpretative” declaration proposed for this Convention from the standpoint that there should be as few such statements as possible, preferably none, and that where such statements are necessary, the Government should be committed to making the legislative and other changes necessary to enable them to be withdrawn as soon as practicable. (Paragraph 31)

The Government notes the Committee’s view. As is indicated in the Explanatory Memorandum, the Home Office will review the need for their reservation after one year. The Department for Work and Pensions will withdraw the reservation in respect of benefit appointees when new arrangements are in place. The need for other reservations will also be kept under review as part of the process of monitoring implementation and reporting on the United Kingdom’s compliance to the United Nations. Where the outcome of review is that they are no longer needed, they will be withdrawn.

**Education**

11. We [therefore] understand why the Government feels it necessary to enter a reservation and an interpretative declaration to make clear its understanding that a commitment to inclusive education is not incompatible with the continued existence of special schools. (Paragraph 44)

The Government welcomes the Committee’s comment.

12. We welcome the restatement in the Explanatory Memorandum of the Government’s commitment to inclusive education. We are concerned, however, that the scope of the reservation and interpretative declaration may send a confused message to people with disabilities about the purpose and intention of the
Government's position. We call on the Government to confirm that nothing in its reservation and interpretative declaration is intended to enable the Government to dilute in any way the current strong statutory presumption in favour of mainstream education for children with special educational needs. We also ask the Government to confirm that the purpose of its proposed reservation and interpretative declaration is simply to clarify that nothing in the Convention requires the Government to work towards the eventual elimination of special schools in the UK. If this is the purpose of the Government's reservation and interpretative declaration, we accept that a lack of clarity in the Convention may necessitate a reservation and an interpretative declaration which is compatible with the object and purpose of the Convention. (Paragraph 46)

The Government confirms that the purpose of the proposed reservation and interpretative is to maintain the present policy and legislative position in relation to inclusive education and welcomes the Committee's acceptance of this position.

Armed forces

13. We doubt whether the continuing exemption from the Disability Discrimination Act (as amended) [for service in the armed forces] is necessary. While this exemption remains in force, we acknowledge that the reservation proposed by the Government is necessary to achieve the Government's policy objective. In our view, the existing exemption is inconsistent with the requirements of the Convention and would be subject to challenge without a reservation. We reiterate our recommendation that the existing exemption should be reconsidered in the Equality Bill. (Paragraph 55)

The Government notes and has considered the Committee's view. The MOD has reviewed its current arrangements but has concluded that it is essential that the exemption from disability legislation is retained.

14. Given the breadth of the proposed reservation in respect of service in the armed forces - seeking as it does to remove a major public authority entirely from a basic provision on non-discrimination in access to employment - we consider that it is open to challenge as being incompatible with the object and purpose of the Convention. (Paragraph 56)

The Government notes and has considered the Committee's comments. The Government has taken account of the fact that reservations incompatible with the object and purpose of the Convention were not permitted when considering the terms on which it was proposing to ratify the Convention. In the case of the Armed Forces, the Government believes that decisions on operational effectiveness must be taken by Ministry of Defence Ministers, accountable to Parliament and based on military advice. It is essential therefore that recruitment to the Armed Forces remains a matter of military judgement rather than being subject to decisions taken by the Courts.

15. If the Government decides to lodge a reservation in the terms it proposes, or any alternative based on the principle of combat effectiveness, we recommend that the Government should commit to keep the reservation under review and undertake to
reconsider the necessity for the reservation within 6 months of Royal Assent being granted in respect of the forthcoming Equality Bill. (Paragraph 57)

The Government notes and has considered the Committee’s views. The rationale for the reservation is based on the need to maintain the operational effectiveness of the Armed Forces. We do not expect that this will change, but the continuing need for a reservation will be kept under periodic review.

**Immigration**

16. We regret the lack of clarity in the Explanatory Memorandum in respect of the implications of the proposed reservation on liberty of movement for the requirements of the Convention. The breadth of the proposed reservation and its purpose are entirely unclear. We are disappointed that the elastic text of the proposed reservation confirms our earlier concern that the Home Office is seeking "catch-all" protection for any policy relating to immigration and nationality against the full application of the rights recognised by the Convention. (Paragraph 62)

The Government notes and has considered the Committee’s views. The Government considers that the reservation it is proposing is necessary and proportionate. However as the Government stated in its Explanatory Memorandum on its proposals, we are committed to reviewing this reservation 12 months after UK ratification of the Convention.

17. We are concerned that the Government is pursuing a broad, general reservation related to immigration control. The Government has not provided an adequate explanation of its view that the proposed reservation is necessary. In any event, we consider that there is nothing in the Convention or in domestic law which could justify a reservation of the breadth proposed, (Paragraph 68)

The Government notes and has considered the Committee’s views. However, the Government remains of the view that the reservation it is proposing is both necessary and proportionate to the need to protect public health and safeguard the wider public good. Consideration of disability rights is an integral part of UK domestic legislation including the Human Rights Act 1998. This reservation does not alter this. The Government is concerned to preserve the existing position whereby immigration decisions are taken in accordance with these obligations and may be reviewed by our courts and finally by the European Court of Human Rights. As the Committee is aware, the Government is committed to reviewing this reservation 12 months after UK ratification of the Convention.

18. Read literally, this reservation could disapply the Convention in its entirety in so far as its protection might relate to people subject to immigration control. In our view, this is incompatible with the object and purpose of the Convention and does not constitute a valid reservation. (Paragraph 69)

The Government notes the Committee’s views, but does not accept that its proposed reservation could disapply the protection of the Convention in its entirety from people subject to immigration control. The reservation has been drafted with the intention of
ensuring that the existing law, can be applied and the Government view is that the reservation is not incompatible with the object and purpose of the Convention.

19. We recommend that the Government abandon this reservation. We consider that it is both unnecessary and inconsistent with the object and purpose of the Convention. (Paragraph 70)

The Government notes and has considered the Committees recommendation. The Government remains of the view that the reservation is not inconsistent with the object and purpose of the Convention, but it agrees that it should not be maintained unless it is necessary. The Government is committed to reviewing the reservation 12 months after ratification, and it will be withdrawn if, as a result of the review, it concludes it is not necessary.

20. If the Government proceeds to lodge this reservation, we recommend that the review, 12 months after ratification, should provide a clear analysis of why the Government considers the reservation is necessary and compatible with the object and purpose of the Convention. This review must answer the concerns we have set out above and should contain examples and evidence to support the Government’s views on the continuing need for the reservation. (Paragraph 71)

The Government notes and has considered the Committee’s views. The review will consider whether there is a continuing need for the reservation in the light of all relevant factors. If, as a result of the review, the Government considers there is a continuing need it will provide a clear analysis of why it believes this to be the case and it will give the evidence on which it has based this conclusion.

Benefits appointees

21. We welcome the recognition by the Government that the existing treatment of benefits appointees is incompatible with the requirements of the Convention. We agree with the Government’s analysis and consider that, without any change to the current provision, a reservation is necessary. (Paragraph 78)

We welcome the Committee’s view.

22. We recommend that the Government publish details of its proposal for a new review mechanism for benefits appointees, together with any necessary legislative changes and the timetable for reform, without delay. In keeping with the requirements of the Convention, we recommend that the Government publish its plans for consultation and that the Department for Work and Pensions should consult with disabled people and their organisations. The Government’s proposals will be scrutinised for compatibility with the Convention and should be designed to facilitate removal of the proposed reservation. (Paragraph 79)

The Government notes the Committee’s recommendation. Introducing a system of review that is compatible with Article 12.4 is, given the number of appointees, a huge undertaking for the Department of Work and Pensions. The best estimate is that a system facilitated to remove the reservation will take at least two years to design and implement. We will consult with disabled and older people and their organisations as part of this process.
23. If legislative changes are needed to implement the Government’s plans to create a system of review for benefits appointees, we recommend that the Government consider making appropriate amendments to the Welfare Reform Bill. (Paragraph 80)

The Government notes the Committee’s view. No changes to legislation are envisaged.

Conclusion

24. If the Government cannot be persuaded that reservations or interpretative declarations are unnecessary, ratification [of the Convention] should take priority over lengthy and futile discussions which would only serve to delay the participation of the United Kingdom in this.

The Government considers that the reservations and as well as the proposed interpretative declaration are necessary. The Government’s priority is, and always has been, to ratify the Convention as soon as is possible.

25. We are concerned that the Government’s approach to some of its proposed reservations has been unduly cautious and may detract from the positive role which the United Kingdom has so far played in the adoption and promotion of the Convention. (Paragraph 83)

The Government notes the Committee’s concerns, but does not agree. The Government notes that the Committee has recognised the need for the education reservation and declaration (recommendation 11 above refers), and also the reservation in respect of benefit appointees (recommendation 21). We do not accept that our approach to reservations detracts from the positive role that the United Kingdom has played in the adoption and promotion of the Convention. The Government is committed to ratifying the Convention and to implementing and complying with our obligations under the Convention once we have ratified. The Convention does not prohibit reservations or declarations and in the Government’s view the number of reservations and interpretative declarations we are proposing is small. Furthermore, these reservations have been subject to careful consideration by the departments concerned and the reservations proposed are those which the Government view as necessary in order for it to ratify the Convention. Our approach must be seen in the wider context of our achievements in respect of disabled people.

26. We will keep compliance with the Convention under review and will continue to challenge the necessity and desirability of any reservations and interpretative declarations lodged on ratification. We look forward to the day when the reservations and interpretative declaration can be withdrawn. (Paragraph 84)

The Government notes the Committee’s comment, and welcomes its support for and interest in the Convention.

Letter to Alan Campbell MP from the Chairman, 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.

Undated letter from Alan Campbell MP to the Chairman

Thank you for your letter dated 9th December about Human Trafficking. I am grateful for your on-going engagement on this important cause. We all agree that human trafficking is an abhorrent crime and I can assure you that protecting its victims and bringing to justice those responsible for exploiting them remains a key priority for me and the Government.

The Home Secretary gave a commitment to ratify the Council of Europe Convention on Trafficking in Human Beings by the end of the year. We are on track to do so and I hope to be able to confirm ratification by the end of next week.

As you will be aware, we announced last week that, following discussions with the Metropolitan Police Service, the Home Office has decided to provide additional one-off funding for the Metropolitan Police Service Trafficking Team. As a result, the MPS will make arrangements to ensure the Trafficking Team continues to function during 2009/10.

Human trafficking is now part of core business for all police forces . This funding is designed to enable the MPS to mainstream this work into its daily activities in a planned and organised fashion. The MPS has commissioned a review of how they deal with organised immigration crime, including human trafficking, in order to find more efficient methods and mainstream this work effectively. We will continue to work with the MPS on this and related issues .
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