House of Lords
House of Commons
Joint Committee on Human Rights

Work of the Committee in 2008–09

Second Report of Session 2009–10

Report, together with formal minutes and written evidence

Ordered by the House of Lords
to be printed 15 December 2009
Ordered by the House of Commons
to be printed 15 December 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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<th>HOUSE OF COMMONS</th>
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<td>Lord Bowness</td>
<td>Mr Andrew Dismore MP (Labour, Hendon) (Chairman)</td>
</tr>
<tr>
<td>Lord Dubs</td>
<td>Dr Evan Harris MP (Liberal Democrat, Oxford West &amp; Abingdon)</td>
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<tr>
<td>Baroness Falkner of Margravine</td>
<td>Ms Fiona MacTaggart (Labour, Slough)</td>
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<tr>
<td>Lord Morris of Handsworth OJ</td>
<td>Mr Virendra Sharma MP (Labour, Ealing, Southall)</td>
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<tr>
<td>The Earl of Onslow</td>
<td>Mr Richard Shepherd MP (Conservative, Aldridge-Brownhills)</td>
</tr>
<tr>
<td>Baroness Prashar</td>
<td>Mr Edward Timpson MP (Conservative, Crewe &amp; Nantwich)</td>
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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), Chloe Mawson (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), Lori Verwaerde (Committee Assistant), John Porter (Committee Assistant), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

Contacts

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

In this report, we provide an overview of our work during the 2008-09 parliamentary session and draw attention to improvements to the human rights landscape in the UK which we have commended in our reports during the year.

We also mention a number of continuing areas for concern, including:

- allegations that the UK has been complicit in the torture of terrorism suspects overseas;
- the unravelling of the control orders framework following a succession of legal judgments;
- the UK’s ranking as 24th out of 29 European countries in terms of children’s well-being;
- lack of leadership from the Government in ensuring that public bodies promote human rights and in responding to court judgments which have narrowed the scope of the Human Rights Act; and
- the possibility that the Human Rights Act will become a political football during the next general election, preventing there from being serious debate about how human rights should best be protected and promoted.

We make a number of detailed points about parliamentary scrutiny of human rights issues before concluding that, whatever decisions are taken about the shape of the human rights framework in the UK, there should continue to be a dedicated human rights committee with an unflinching focus on whether human rights are being protected and promoted sufficiently in the UK.
1 Overview

Introduction

2. This is the third annual report by the Joint Committee on Human Rights,1 in which we set out our activities during the 2008–09 parliamentary session.2 We also highlight areas in which the Government has enhanced human rights during the year as well as areas of concern, and comment on our working practices. With this report we are publishing the transcripts of the oral evidence we heard from the Secretary of State for Justice and the Human Rights Minister on 20 January and the Northern Ireland Human Rights Commission on 24 February to follow up our report on a Bill of Rights for the UK as well as a number of written submissions which have not been previously printed.

Our remit and core tasks

3. The Joint Committee on Human Rights is comprised of twelve Members, drawn equally from the House of Commons and the House of Lords. Our remit is broad: “to consider matters relating to human rights in the UK”, although we are unable to deal with individual cases. We are also required to report to both Houses in relation to remedial orders (as well as proposals for remedial orders and draft remedial orders), which are statutory instruments made under the Human Rights Act 1998 in order to deal with legislative provisions which the courts have ruled to be incompatible with the European Convention on Human Rights (ECHR). Remedial orders have been brought forward infrequently and there were none for us to consider in 2008–09.

4. As a joint committee, with a remit which cuts across the responsibilities of all Government departments, we do not have a specific department to hold to account in terms of service delivery or expenditure. As a consequence, not all of the core tasks first

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2 The session ran from 3 December 2008 to 17 November 2009.
elaborated by the Commons Liaison Committee in 2002 are relevant to our work.\(^3\) The relevance of specific core tasks to our work is set out in Table 1.

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

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>To examine policy proposals from the UK Government and the European Commission in Green Papers, White Papers, draft Guidance etc, and to inquire further where the Committee considers it appropriate.</td>
</tr>
<tr>
<td>2</td>
<td>To identify and examine areas of emerging policy, or where existing policy is deficient, and make proposals.</td>
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<tr>
<td>3</td>
<td>To conduct scrutiny of any published draft bill within the Committee’s responsibilities.</td>
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<td>4</td>
<td>To examine specific output from the department expressed in documents or other decisions.</td>
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<tr>
<td>5</td>
<td>To examine the expenditure plans and out-turn of the department, its agencies and principal NDPBs.</td>
</tr>
<tr>
<td>6</td>
<td>To examine the department’s Public Service Agreements, the associated targets and the statistical measurements employed, and report if appropriate.</td>
</tr>
<tr>
<td>7</td>
<td>To monitor the work of the department’s Executive Agencies, NDPBs, regulators and other associated public bodies.</td>
</tr>
<tr>
<td>8</td>
<td>To scrutinise major appointments made by the department.</td>
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<tr>
<td>9</td>
<td>To examine the implementation of legislation and major policy initiatives.</td>
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<tr>
<td>10</td>
<td>To produce reports which are suitable for debate in the House, including Westminster Hall, or debate in committees.</td>
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</table>

**Overview of our work**

5. Our work can broadly be divided into three distinct categories:\(^4\)

- Legislative scrutiny: the scrutiny of Government Bills, in particular, as well as other bills, draft bills, statutory instruments, consultation documents and other legislative proposals for compatibility with human rights;
  - Thematic inquiries: inquiries into issues relating to human rights in the UK, similar to the inquiries undertaken by departmental select committees in the Commons except that, in common with most Lords select committees, we frequently consider issues which cut across departmental boundaries; and

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\(^3\) For more on the core tasks see Liaison Committee, First Report of 2008-09, The work of committees in 2008-09, HC 291.

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

These strands of work are closely inter-related. For example, our scrutiny of the Government’s proposals on the retention, use and destruction of biometric samples has involved both legislative scrutiny and scrutiny of the Government’s response to an adverse decision of the European Court of Human Rights. Nevertheless, the distinction between these types of work is useful in understanding the way in which we undertake our scrutiny of the Government.

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

7. Table 2 shows the main issues we have considered across all the different strands of our work in 2008–09, illustrating the considerable breadth of our activity.

<table>
<thead>
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<th>Subject</th>
<th>Activity</th>
<th>Outcome</th>
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<tr>
<td>Adults with learning disabilities</td>
<td>Follow up of previous inquiry</td>
<td>Debate in Westminster Hall, March</td>
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<tr>
<td>Asylum seekers, treatment of</td>
<td>Follow up of previous inquiry and legislative scrutiny</td>
<td>Legislative scrutiny reports, March, April</td>
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<tr>
<td>Business and human rights</td>
<td>Thematic inquiry</td>
<td>Mini-conference, February; oral evidence, June and July; report in preparation</td>
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<tr>
<td>Children’s rights</td>
<td>Thematic inquiry and legislative scrutiny</td>
<td>Report, November. Also legislative scrutiny reports, March, April, November</td>
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<td>Coastal path, right of appeal</td>
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<td>Court judgments finding breaches of human rights</td>
<td>Ongoing scrutiny</td>
<td>Report in preparation</td>
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<td>Counter-terrorism policy</td>
<td>Ongoing scrutiny</td>
<td>Reports, February and June</td>
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<td>Criminal justice matters</td>
<td>Legislative scrutiny</td>
<td>Reports, March, April</td>
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<td>Data protection</td>
<td>Legislative scrutiny</td>
<td>Reports, March, April</td>
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<td>Disabled Rights Convention</td>
<td>Scrutiny of UN human rights instrument</td>
<td>Reports, January and April</td>
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<td>Discrimination law</td>
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<td>Electoral Commission, powers</td>
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<tr>
<td>Subject</td>
<td>Activity</td>
<td>Outcome</td>
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<td>Equality and Human Rights Commission</td>
<td>Ongoing scrutiny</td>
<td>Oral evidence, October and November; report in preparation</td>
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<td>Freedom of expression and religion</td>
<td>Legislative scrutiny</td>
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<td>Gangs injunctions</td>
<td>Legislative scrutiny</td>
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<td>Human rights policy</td>
<td>Ongoing scrutiny</td>
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<td>Human trafficking</td>
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<td>Immigration and citizenship</td>
<td>Legislative scrutiny</td>
<td>Report, March</td>
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<td>Meaning of public authority under the Human Rights Act</td>
<td>Follow up of previous inquiry</td>
<td>Oral evidence, January; correspondence</td>
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<td>Northern Ireland Human Rights Commission</td>
<td>Ongoing scrutiny</td>
<td>Oral evidence, February</td>
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<td>Parliamentary standards</td>
<td>Legislative scrutiny</td>
<td>Report, June</td>
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<td>Policing and Protest</td>
<td>Thematic inquiry</td>
<td>Reports, March, April and July</td>
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<td>Policing (general)</td>
<td>Legislative scrutiny</td>
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<td>Prisoner transfer treaty with Libya</td>
<td>Scrutiny of treaty</td>
<td>Report, April</td>
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<td>Sexual offences</td>
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<td>Taxation, retrospective</td>
<td>Legislative scrutiny</td>
<td>Report, July; correspondence</td>
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<td>UK Bill of Rights</td>
<td>Follow up of previous inquiry</td>
<td>Report, January; oral evidence, January and February; mini-conference, April</td>
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<tr>
<td>UN Convention Against Torture</td>
<td>Follow up of previous inquiry</td>
<td>Report, August</td>
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<tr>
<td>Welfare reform</td>
<td>Legislative scrutiny</td>
<td>Report, April</td>
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9. Table 3 shows the core tasks relevant to each inquiry or activity undertaken during the year.

Table 3: JCHR activity in 2008-09, by core tasks set out by the Commons Liaison Committee

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<td>Adults with learning disabilities</td>
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<td>Business and human rights</td>
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<td>Children’s rights</td>
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<td>Court judgments finding breaches of human rights</td>
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10. The remainder of this report deals in more detail with our work in 2008–09, drawing out some of the themes from our legislative scrutiny and illustrating some of the more controversial and innovative aspects of our other work. We also comment on developments in our working practices and outline the work we intend to do before the general election.

12. More detailed information about the Committee and our work in 2008–09 can be found in annex 1.
2 The state of human rights in the UK

13. A summary of positive human rights developments in the UK in 2008-09 and areas for concern can be found in annex 2.

14. As in previous years, the Government has taken a number of steps to enhance the protection and promotion of human rights during the year. International conventions on human trafficking and the rights of disabled people have been ratified, for example, and longstanding reservations to the UN Convention on the Rights of the Child have been withdrawn. We have welcomed provisions in a number of Government bills intended to enhance human rights, including:

- the Child Poverty Bill, which will establish a strategy for reducing child poverty;
- the Equality Bill, which will simplify and enhance anti-discrimination legislation;
- the introduction of the new positive duty to safeguard and promote the welfare of children in the discharge of immigration, asylum, nationality and customs functions, in the Borders, Citizenship and Immigration Bill;
- provisions in the Apprenticeships, Skills, Children and Learning Bill concerning education for detained young offenders and the obligation to record the use of force on pupils;
- the explicit reference to human rights in the NHS constitution; and
- numerous detailed reforms of the coroners system in the Coroners and Justice Bill;

15. Nevertheless, significant problems remain. Our biggest concern is that the UK may have been complicit in the torture of terrorism suspects carried out overseas after the attacks of 9 September 2001. There are now numerous allegations of complicity in torture, with a number of features in common. It is alleged that the UK provided questions to put to suspects tortured or badly treated in Pakistan and elsewhere; that UK agents interviewed suspects immediately before or after periods of torture or mistreatment and cannot have been unaware that suspects were being abused; and that the UK routinely received
information from countries using torture, turning a blind eye to how the information was gathered. As we reported in August, the Government has sidestepped parliamentary scrutiny of these issues but valuable information has emerged in court proceedings and the police are currently investigating whether there has been criminal wrongdoing in at least one case. **Serious, sustained allegations that the UK has received information from countries which routinely use torture, or has been more actively complicit in torture carried out by others, puts the UK’s international reputation as an upholder of human rights and the rule of law on the line.**

16. Throughout the current Parliament we have scrutinised closely the Government’s attempts to tackle terrorism within the framework for human rights protection set by the ECHR. The Government’s task has been far from easy and we have fully supported its aim of protecting the right to life of people in the UK from terrorist attack. We have been fiercely critical of proposals which patently would not be consistent with the ECHR, such as the extension of the maximum period of pre-charge detention to 42 days, and welcomed moves to make it easier to prosecute terrorism suspects. **We have consistently argued that the system of control orders, by which the activities of terrorism suspects who have not been prosecuted can be regulated and curtailed, is bound to lead to breaches of the ECHR, particularly because people subject to control orders are not given the details of the case against them. In a series of judgments during the session, the courts have reached broadly similar conclusions, culminating in decisions of the Grand Chamber of the European Court of Human Rights and the House of Lords, which have caused the whole system to unravel.**

6 We note also that the control order system is expensive – over £8 million was spent by the Home Office on legal costs between April 2006 and October 2009, not including legal aid costs and the costs incurred by HM Courts Service.

17. We have also continued to question whether the continued renewal of the power to detain terrorism suspects for up to 28 days before charge is justified, in view of the lack of

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6 A and others v UK, Application No. 3455/05 [GC], judgment of 19 February 2009 and Secretary of State for the Home Department v AF and others [2009] UKHL 28.

7 Letter from David Hanson MP, Minister of State, Home Office, to Andrew Dismore MP, Chair, JCHR, 27 Nov 09, see written evidence page 115; and uncorrected oral evidence from David Hanson MP, 1 Dec 09, HC 111-i, Qq75-80.
use made of the power and the inadequate procedural safeguards which accompany it. We expect to report further on control orders and other aspects of the Government’s counter-terrorism policy before the end of the Parliament.

18. Children’s rights have been another source of concern to us and our predecessors and we published a report in November following a report by the UN Committee which monitors the UN Convention on the Rights of the Child (UNCRC) which made over 100 recommendations.8 There have been several positive developments in recent years, such as the introduction of the Children’s Plan in England, the appointment of Children’s Commissioners and the withdrawal of the UK’s reservations to the UNCRC but the UK was recently ranked 24th out of 29 European countries in an assessment of children’s well-being. There is clearly a long way to go before the UK can be regarded as an exemplar of good practice in respecting children’s rights and, in our view, some of the Government’s policies are taking the UK in the wrong direction. The increasing criminalisation of children is particularly worrying, given the high level of child deaths and self-harm in custody and the restricted life chances likely to be available to children drawn into the criminal justice system at a young age.

19. A consistent theme of our work since 2005 has been to emphasise how the Human Rights Act could and should be used by public bodies as a tool to focus service provision on the needs of service users.9 For this to happen, the Government must take the lead in showing public bodies how human rights are relevant to their work. Although there have been some steps in this direction – such as the project undertaken by the Department of Health and the British Institute of Human Rights to introduce a human rights approach in Primary Care Trusts – we have generally been disappointed by the Government’s failure to provide a more positive and consistent lead. This issue was raised again recently in the report of the EHRC’s human rights inquiry.10

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20. A related issue is the scope of the Human Rights Act, on which we have often reported.\textsuperscript{11} Although the Government has legislated to ensure that the protections offered by the Human Rights Act are available to publicly funded residents of private sector care homes, it has dragged its feet in relation to considering this issue in other contexts, such as the provision of social housing. This is not an abstruse legal point: human rights belong to everyone and protect the most vulnerable in particular. In contracting out public sector functions to the private sector, the human rights protections to which service users are entitled should not be diminished. The Government is, of course, to be commended for introducing the Human Rights Act; but too often subsequently there has been a lack of leadership to use the Act to its full potential, ensure that public bodies promote human rights as well as do the minimum necessary to comply with the legislation, and respond to court judgments which have narrowed the scope of the Act from what Parliament originally intended.

21. Human rights are likely to feature in the forthcoming general election campaign because all three major parties are committed to changing the UK’s human rights landscape by introducing a new Bill of Rights. We are concerned that human rights will again become a political football, with serious debate on the choices facing the UK kept on the touchline in favour of noisy recitals of the myths and distortions with which we are so familiar. Politicians on all sides must be clear about what they intend to do and the practical impact of their proposals. We would oppose any suggestion that rights encompassed in the Human Rights Act should no longer be protected or should not be enforced in UK courts, or that the UK need not fully comply with judgments of the European Court of Human Rights.

22. Parliament is central to the Human Rights Act. Ministers must report on the human rights compatibility of every bill and it is Parliament, not the courts, which must decide how to deal with legislation which is not compatible with the Act. We and our predecessors have undertaken the lion’s share of Parliament’s scrutiny of the Government’s performance on human rights issues, publishing over 200 reports since the Joint  

Committee was first set up in 2001. We were grateful for the compliment recently paid to us by the Master of the Rolls, Lord Neuberger of Abbotsbury, who described our work as “consistently excellent”. Whatever decisions are taken on the shape of the human rights framework in the UK, we are of the view that Parliament, Government and the people we serve will continue to benefit from a dedicated human rights committee with an unflinching focus on whether human rights are being protected and promoted sufficiently in the UK.

12 2009 Denning Lecture, 23 Nov 09, paragraph 34.
3 Legislative scrutiny

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

24. In 2008–09 we reported on 10 bills and cleared another 14 from scrutiny.13 The Child Poverty, Equality and Constitutional Reform and Governance Bills were carried over into the 2009–10 session: we have reported on the first two and the latter remains under scrutiny.14

Scope of legislative scrutiny

25. We do not scrutinise private members’ bills unless they have a realistic prospect of becoming law and raise significant human rights concerns. None met these criteria in 2008–09. Nor do we report on private bills unless they raise significant issues, although we may write to the Chairman of a committee on a private bill to draw attention to the less significant human rights points which that committee may wish to address.15 Alternatively our Legal Adviser may assist the legal adviser to the private bill committee in identifying relevant human rights concerns.

Government amendments to bills

26. Following a recommendation in the 2007 report on our work, the Government agreed in principle that we should receive information about the human rights compatibility of Government amendments to bills which “significantly alter or augment the policy or

13 In clearing a bill from scrutiny we decide not to engage in further work on the bill – such as writing to the appropriate Minister or publishing a report – because we consider that the bill does not raise sufficiently significant human rights issues.
15 See written evidence page 93, page 124 and page 127
implementation of a Bill”. During the session we received numerous helpful letters from Ministers about Government amendments to bills and we reported on Government amendments to the Policing and Crime Bill on injunctions aimed at restricting the activities of members of gangs; to the Coroners and Justice Bill on certified, or “secret” inquests; and to the Marine and Coastal Access Bill on the right of appeal to an independent body.

**Statutory instruments**

27. Almost without exception, secondary legislation which is not compatible with the ECHR is *ultra vires* and, if and when challenged, is struck down by the courts on those grounds. In recent years we have reported on secondary legislation relating to the use of force on children detained in secure training centres and immigration rules relating to highly skilled migrants, both of which raised human rights concerns and were successfully challenged in court. We do not have the resources to systematically scrutinise all secondary legislation for human rights compatibility. However, we liaise at staff level with the select committees dealing with statutory instruments, to assist with the identification of human rights issues and so that we can identify secondary legislation to scrutinise ourselves. We also continued our practice of reporting on the statutory instruments introduced each year to renew the framework of control orders for terrorism suspects and to extend the maximum period of pre-charge detention for such suspects from 14 to 28 days.

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20 Reply to 2007 annual report p10.


Pre- and Post-legislative scrutiny

28. Pre-legislative scrutiny is an important feature of our legislative scrutiny work. We raised concerns with the draft Coroners Bill when it was published in 2006 which informed our scrutiny of the Coroners and Justice Bill in 2008–09.23

29. One point of interest arises from this correspondence. During the passage of the Coroners and Justice Bill, the Government said that, in certain circumstances, an inquest would be suspended in favour of an inquiry initiated by the Secretary of State under the Inquiries Act 2005. We reported on this proposal and concluded that if the inquiries process was used to achieve the same aim as the Government’s original proposal for certified or “secret” inquests, we would be concerned that such inquiries might be conducted in a way which would be incompatible with Article 2 of the ECHR.24 Under what is now the Coroners and Justice Act 2009, a coroner may only refuse to suspend an inquest in favour of an inquiry proposed by the Secretary of State for an “exceptional reason”.25 An almost identical proposal was included in the draft Coroners Bill and we asked the then Minister of State for Justice, Harriet Harman MP, whether the term “exceptional reason” would include circumstances where a coroner had a reasonable belief that the inquiry would not comply with Article 2.26 She confirmed that, in the Government’s view, it would.27 **We draw to the attention of both Houses the Government’s undertaking, in 2006, that a coroner may refuse to suspend an inquest in favour of an inquiry under the Inquiries Act 2005 if he reasonably believes that the inquiry will not comply with Article 2 of the ECHR.**

30. We have tended not to report on draft bills, which are usually scrutinised by other committees, but we wrote to the Joint Committees on the draft Bribery Bill, following a request from the Chairman of that Committee, to comment on human rights issues raised

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23 Written evidence, pages 73-88
24 Certified inquests, paragraphs 1.24-1.27.
25 Schedule 1, paragraph 3.
26 Written evidence, page 73.
27 Written evidence, page 79
Our staff also assist the staff of draft bill committees to identify human rights issues raised by bills.

31. Much of our work involves assessing how legislation has worked in practice, both when scrutinising new legislation and, for example, in our inquiry into UK law into genocide and related offences. We have also corresponded with Government on issues raised by members of the public in relation to the implementation of legislation. We wrote to Lord Myners, Financial Services Secretary to the Treasury, about the time period within which the Financial Services Authority (FSA) can investigate complaints about financial advisers following a letter we received from Mr Alan Lakey of Highclare Financial Services. We concluded from the Minister’s reply that the FSA’s interpretation of the law in this area did not raise a significant human rights issue for us to consider. We welcome requests from members of the public to investigate Government policy or practice which may not comply with the UK’s human rights obligations (although bearing in mind that we cannot investigate individual cases). Where time allows, we will endeavour to take up matters within our remit with the Government and to provide a response to those who raise matters with us explaining the action we intend to take or the reasons why we have decided not to act.

32. We also responded to emails from Mr Nigel Jagger and others who argued that section 58 of the Finance Act 2008, a retrospective tax measure, contravened the Human Rights Act. Retrospective taxation engages Article 1 of Protocol 1 of the ECHR and must be justified by sufficiently strong arguments. We asked Stephen Timms MP, Financial Secretary to the Treasury, for a memorandum setting out the Government’s view about the compatibility of section 58 with the Human Rights Act but were told that none would be forthcoming while the matter was subject to judicial review.

33. The Finance Bill is long, complicated and impossible to understand without reference to the enormous existing body of taxation law. We have not found it easy to identify
retrospective tax measures to assess whether the interferences with human rights they entail are sufficiently justified. Mr Timms helpfully agreed to discuss our request for a memorandum on retrospective taxation provisions in future Finance Bills with the Ministry of Justice. **We look forward to receiving the fruits of this work: scrutiny of the Finance Bill is central to the work of Parliament and we require additional information than that which is normally provided in order to perform our scrutiny role properly.**

**Timeliness**

34. We aim to report on bills before Report stage in the first House, if possible, or before Second Reading in the second House. During the session we reported on nine bills before Report stage in the first House and one before Second Reading in the second House. Where we are unable to publish a report in time for Report stage in the first House we make our correspondence with the relevant Minister available on the internet and in Parliament.31

**Recurring themes**

35. In our legislative scrutiny work we often comment positively that a particular provision is to be welcomed as a human rights enhancing measure. Examples during 2008–09 can be found at paragraph 11 above. We have also identified nine human rights compatibility issues which have arisen consistently in our scrutiny of legislation:

- The adequacy of the safeguards contained on the face of bills conferring powers to disclose, share or match personal information;32

- Lack of clarity about whether private bodies are “public authorities” for the purposes of the Human Rights Act where bills confer powers and functions on them;33

- The adequacy of judicial and procedural safeguards to protect liberty;34

31 See Table 4.
32 e.g. Coroners and Justice Bill, Policing and Crime Bill.
33 e.g. Health Bill, Welfare Reform Bill.
• The danger of discrimination in the operation of certain provisions;\(^\text{35}\)

• The right of access to a fair hearing before a court;\(^\text{36}\)

• The adequacy of safeguards against powers to search a person or property;\(^\text{37}\)

• The adequacy of procedural safeguards on preventative orders;\(^\text{38}\)

• The adequacy of the powers and independence of human rights institutions;\(^\text{39}\) and

• The adequacy of protection for children and young persons.\(^\text{40}\)

36. Specific themes were considered in depth in our reports on Children’s Rights (protection for children and young persons) and the Equality Bill (discrimination) and in our inquiry into business and human rights (clarity about whether private bodies are “public authorities” for the purposes of the Human Rights Act).\(^\text{41}\)

37. We have on a number of occasions criticised the Government’s interpretation of the European Court’s decision in \textit{Tsfayo v UK}, which concerned access to an independent court or tribunal to challenge administrative determinations of civil rights.\(^\text{42}\) This point arose in the Marine and Coastal Access Bill in relation to the system for appealing designations of land to form a coastal footpath. The Bill initially did not provide for a right of appeal to an independent court or tribunal against proposals made by Natural England or the decision of the Secretary of State. The Government argued that the combination of procedural safeguards and judicial review would ensure compatibility with the ECHR. We took the view that a right of appeal to an independent body, particularly in relation to

\(^{34}\) e.g. Annual renewal of control orders; Annual renewal of 28 days pre-charge detention, Coroners and Justice Bill, Policing and Crime Bill.

\(^{35}\) e.g. Borders, Citizenship and Immigration Bill, Welfare Reform Bill, Equality Bill, Child Poverty Bill.

\(^{36}\) e.g. Annual renewal of control orders; Annual renewal of 28 days pre-charge detention, Coroners and Justice Bill, Borders, Citizenship and Immigration Bill, Marine and Coastal Access Bill, Policing and Crime Bill, Welfare Reform Bill, Parliamentary Standards Bill.

\(^{37}\) e.g. Political Parties and Elections Bill, Coroners and Justice Bill, Policing and Crime Bill, Children and Learning Bill.

\(^{38}\) e.g. Policing and Crime Bill.

\(^{39}\) e.g. Policing and Crime Bill.

\(^{40}\) e.g. Policing and Crime Bill, Apprenticeships, Skills, Children and Learning Bill, Equality Bill, Child Poverty Bill.

\(^{41}\) See also paragraphs 48 and 62.

disputes about factual questions, was necessary to ensure compliance.\textsuperscript{43} Although the Government initially rejected our recommendation, following meetings between Lord Pannick, our Legal Adviser and the bill team, amendments were tabled at a late stage in the House of Lords which met our concerns.\textsuperscript{44} \textbf{We welcome the Government’s willingness to amend the Marine and Coastal Access Bill to meet our concerns about compliance with Article 6 of the ECHR in the light of the Tsfayo judgment. We look to the Government to build on its approach to dealing with Tsfayo in this context in future legislation.}

\section*{Quality of explanatory notes}

38. The quality of the analysis of human rights compatibility issues in the explanatory notes to bills has improved over the course of the Parliament. We comment on explanatory notes in our legislative scrutiny reports, commending examples of good practice and drawing Parliament’s attention to areas for improvement.\textsuperscript{45} A particularly common problem is for explanatory notes to assert that a provision complies with the ECHR without giving any justification for that point of view.\textsuperscript{46}

39. We noted last year that, in relation to several bills, a Minister had written to us after the introduction of a bill to set out in more detail than in the explanatory notes his or her view of the human rights issues raised. This practice has continued in 2008–09, although it is not universal. In addition, the Department for Children, Schools and Families responded to our call for evidence on the Government’s draft legislative programme by providing us with a detailed human rights memorandum prior to a bill’s introduction.

40. Last year we concluded by encouraging Ministers to write to us after introduction and to let our secretariat know that a letter was on its way, so that we could speed up our scrutiny of bills and reduce the number of issues on which further correspondence was necessary.

\begin{footnotes}
\item[43] Eleventh Report, Legislative Scrutiny: Health Bill, Marine and Coastal Access Bill, HL Paper 69, HC 396, paragraphs 2.2 -2.11.
\item[44] See 21st Report.
\item[45] e.g. Equality Bill report, paragraphs 5-7, and Eighth Report, Coroners and Justice Bill, HL Paper 57, HC 362, paragraph 1.4.
\item[46] e.g. see Ninth Report, Borders, Citizenship and Immigration Bill, HL 62, HC 375, paragraph 1.7.
\end{footnotes}
necessary. In his reply to our report, Michael Wills MP “welcome[d] the continuation of this practice”.\textsuperscript{47}

41. We have consistently asked the Government to provide a dedicated human rights memorandum with every bill it publishes, suggesting that this could be done by providing us with a copy of the human rights memorandum circulated within Government, but with any legally privileged material excised.\textsuperscript{48} The Government has rejected this suggestion and concentrated instead on improving the references to human rights in explanatory notes.\textsuperscript{49} We were surprised and pleased to receive during the session a human rights memorandum on the Marine and Coastal Access Bill which appeared to be exactly what we have long requested: a detailed note—running to nearly 400 paragraphs in total—which seems to have been prepared for consideration within Government but which does not include legally privileged information.\textsuperscript{50} We have received similar memoranda concerning the Equality Bill and note that some bill team managers are basing the human rights sections of explanatory notes on the Government’s internal human rights memorandum.\textsuperscript{51}

42. We welcome—and expect—improvements to the human rights analysis in explanatory notes but we have consistently asked for more a more detailed memorandum from Government on human rights compatibility at the time when a bill is introduced. Although the Government’s formal position is that it will not provide such memoranda, we now often receive helpful letters about human rights issues from Ministers when bills are introduced and on one occasion received a full human rights memorandum. We therefore call on the human rights division of the Ministry of Justice to look again at this issue.

\textbf{Following the example set by the Department of the Environment, Food and Rural Affairs with the Marine and Coastal Access Bill and the Government Equalities Office with the Equality Bill, Ministers should provide us with a redacted version of the human rights memorandum circulated within Government when a bill is introduced.}

\textsuperscript{47} 2007-08 Report, paragraph 45 and 17th report, Ev p37.


\textsuperscript{49} Reply to 2007 annual report, pp8-9.

\textsuperscript{50} We will make this memorandum available in the Parliamentary Archives.

\textsuperscript{51} For example, see the Coroners and Justice Bill.
We recommend that Government guidance on the introduction of legislation should be amended to give effect to this proposal in time for the first session of the new Parliament.

**Committee amendments to Government Bills**

43. A list of issues on which we published amendments to bills, a brief account of how the amendments fared when tabled in both Houses, and their outcome, can be found in annex 3. Changes due to, or influenced by, our work included:

- the withdrawal of Government proposals for certified inquests, information sharing orders and in relation to the retention, use and disposal of biometric data, following adverse comment by the Committee in correspondence and reports as well as amendments to the relevant bills;

- the introduction of procedural fairness safeguards in the Parliamentary Standards Bill;

- the withdrawal of a proposal to increase the investigatory powers of the Electoral Commission;

- the introduction of a right of appeal to an independent body in respect of the designation of a coastal path under the Marine and Coastal Access Bill;\(^52\)

- the Government undertaking to replace sections of the Serious Organised Crime and Police Act 2005 relating to protest around Parliament with amendments to the Public Order Act 1986;\(^53\)

- changes to the strict liability sexual exploitation offence in the Policing and Crime Bill;

- amendment to the Government’s proposal for reducing the size of juries in inquests;

\(^52\) See paragraph 34.

\(^53\) See paragraphs 50-51.
• amendment to the powers of the Information Commissioner in respect of the private sector; and

• amendment to the Government’s proposals in respect of appeals in judicial review of immigration and nationality matters.

44. The publication and tabling of amendments to bills arising from our recommendations has helped raise our profile, and the profile of human rights issues, in Parliament and contributed to substantive and significant changes to legislation. Last year we suggested that select committees should be able to table amendments in the House of Commons in their own name, rather than in the names of individual Members, principally so that it would be easier to distinguish committee amendments from others on the Order Paper. This proposal was endorsed in November by the Commons Procedure Committee. We look forward to the House of Commons being given the opportunity to agree that amendments to bills (and motions) can be tabled in the name of a select committee, as long as the amendments have been agreed formally without division at a quorate meeting (or, in the case of a joint committee, by a quorum of Commons Members). We also welcome the Procedure Committee’s recommendation that committee amendments should have priority in selection for decision under programming.

45. Last year we commented on the scarcity of time available at Report stage in the House of Commons for committee and backbench amendments to bills to be debated. This continues to be a significant problem which undermines effective scrutiny of legislation in the Commons. The time provided for the Report stage of the Policing and Crime Bill, for example, was completely inadequate, particularly given the addition of an entirely new Part by the Government during the Committee stage. Many of our amendments tabled in the Commons to the Coroners and Justice Bill were also not debated or the subject of cursory debate. We are pleased to note that the House of Commons Reform Committee, chaired by Tony Wright MP, recognised this issue and made some far-reaching recommendations. We particularly welcome and endorse that Committee’s view that “there should be a
presumption that no major group [of amendments] should go undebated”. The House of Commons should be given an early opportunity to debate changes to procedure arising from the report of the Wright Committee, including a new approach to the allocation of time for Report stage debates which will enable the Commons to debate legislation more thoroughly than is often possible at present.

Civil society input into legislative scrutiny work

46. We publish a considerable volume of information about our work on our website, including a summary of the main points we intend to raise about a bill and our detailed letters to Ministers. This often elicits memoranda from NGOs and others about bills and we also often receive the briefings prepared by such organisations for parliamentary debates. We welcome engagement with members of the public, NGOs and others about the human rights issues raised in bills.

47. The publication in draft of the Government’s legislative programme has helped us plan our work and attract more civil society input and should now be regarded as a routine part of the legislative cycle.

56 First Report, Session 2008-09, House of Commons Reform Committee, HC 1117, paragraph 115.
4  Thematic inquiries and other work

Core task 1: examination of policy proposals

48. As discussed in the preceding chapter, a central element of our work is the examination of policy proposals in Government bills to assess their compatibility with the ECHR and the UK’s international human rights obligations.

UN Convention on the Rights of Persons with Disabilities

49. We published two reports during the session on the Government’s proposal to ratify the UN Convention on the Rights of Persons with Disabilities, which we strongly supported. In the first report we recommended that the UK ratify the Convention without delay and were critical of the lack of transparency of the process by which the Government was considering reservations. Our second report considered the four reservations and the interpretive declaration proposed by the Government. We expressed concern that the Government’s approach to reservations had been unduly cautious and concluded that two of the reservations were unnecessary. Our report was agreed four weeks after the Convention was formally laid before Parliament and was published before relevant debates in both Houses.

Core task 2: emerging policy

50. Our thematic inquiries have generally dealt with areas where human rights concerns have not been adequately taken into account in the development of policy, such as, in previous years, the treatment of asylum seekers and the human rights of adults with learning disabilities.

Business and human rights

51. During this session we looked at business and human rights, including the role the Government should play in ensuring that UK businesses respect human rights wherever they operate. This inquiry also provided an opportunity to follow up our previous work on

the extent to which private sector providers of public functions are within the scope of the Human Rights Act. Our report was published in December 2009.59

**UK Bill of Rights**

52. We followed up our report on a Bill of Rights for the UK by publishing a short report on the Government’s reply to our work and its Green Paper, in January.60 We also took oral evidence on the issue from Jack Straw MP, the Secretary of State for Justice, and Michael Wills MP, the Human Rights Minister, and from the Northern Ireland Human Rights Commission, and held a conference on the issue.61

**Policing and Protest**

53. We published two reports on policing and protest.62 In the first report, we concluded that, in general, legislation relating to protest was consistent with the UK’s human rights obligations. One major exception related to protest around Parliament where we added our voice to the demand for the relevant sections of the Serious Organised Crime and Police Act 2005 to be repealed in favour of amendments to the Public Order Act 1986 which, while maintaining access to Parliament, would be less restrictive on protest. The Government accepted our recommendations and we are currently scrutinising the amendments to the Public Order Act brought forward in the Constitutional Reform and Governance Bill. We drew attention to problems with policing training and practice and emphasised the need for dialogue between protesters and police to facilitate protests and minimise conflict.

54. Our second report followed up the Government reply to our earlier report and also analysed some of the lessons which could be learnt from the way in which the police handled the G20 demonstrations in London in April. We examined in detail the containment tactic used during the G20 protests and which had been subject to a legal...
challenge following the May Day demonstrations in 2001. In our view, this tactic may be legitimately used in some circumstances to prevent people suspected of causing disorder from dispersing but it must be used in a proportionate manner and with due regard to the human rights of the people contained. We have continued to follow the debate on these matters and plan to host a mini-conference with the police, HM Inspectorate of Constabulary and other interested parties in the new year.

**Freedom of expression**

55. We also responded to a letter from the Chairman of the Commons Culture, Media and Sport Committee for our advice on human rights matters relating to that Committee’s inquiry into press standards, privacy and libel.

**Core task 3: draft bills**

56. Our pre-legislative scrutiny work is dealt with in paragraphs 25-27 above.

**Core task 4: specific output from the department**

57. We pay close attention to the work of the human rights division of the Ministry of Justice and the minister in that department with responsibility for human rights policy. We took oral evidence from the Human Rights Minister on 20 January and, in the current session, on 2 December.63

**Prisoner transfer treaty with Libya**

58. We are routinely sent treaties which raise human rights implications, prior to ratification, and decided to scrutinise a prisoner transfer treaty with Libya which was laid before Parliament on 27 January. We raised a number of questions including, for example, about the treatment, conditions and monitoring of prisoners transferred to Libya. Unfortunately, the Secretary of State for Justice refused to agree to defer ratification of the treaty until we had time to consider his response to our questions and publish a report. We published the correspondence on 15 April along with a short report which concluded that “when a select committee intends to scrutinise a treaty, ratification should be delayed until

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the committee’s inquiry has concluded”. 64 We will return to this matter in our scrutiny of the Constitutional Reform and Governance Bill, which will place parliamentary scrutiny of treaties on a statutory footing.

**Core tasks 7 and 8: scrutiny of relevant public bodies and major appointments**

59. Our predecessors in the last Parliament led the campaign for the establishment of the EHRC and we have taken a close interest in its work since it was launched in 2007. Concerns have been expressed in recent months about the leadership and governance of the Commission and about its work priorities, particularly in relation to human rights. We are currently inquiring into these matters and expect to report in the new year.

60. We have also maintained close links with the Northern Ireland and Scottish Human Rights Commissions. We took oral evidence from both bodies this year, on a UK Bill of Rights and business and human rights respectively, and also held an informal meeting with Professor Alan Miller, the Chair of the Scottish Commission.

**Core task 9: implementation of legislation and major policy initiatives**

61. Much of our work has been concerned with the implementation of the ECHR in specific areas or the impact of particular legislative provisions which have raised human rights concerns.

**UN Convention against Torture**

62. In August we published a report on allegations that the UK had been complicit in the torture of terrorism suspects in Pakistan and elsewhere. 65 This followed up our 2006 report on UK implementation of the UN Convention against Torture (UNCAT) 66 and sought to examine the veracity of the allegations and whether, if true, they indicated that the UK had been complicit in torture under the terms of Article 4 of UNCAT and the general

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65 Allegations of Complicity in Torture.
principles of State responsibility for internationally wrongful acts. Regrettably, ministers refused to give oral evidence on this subject and we devoted a chapter of our report to the “woefully deficient” system for ministerial accountability for security and intelligence matters.\textsuperscript{67} We returned to this issue in oral evidence with David Hanson MP, Minister of State at the Home Office, early in the current session.\textsuperscript{68}

63. One issue we pursued was whether the receipt of intelligence information from a country known to practise torture amounted to complicity in torture. We concluded that:

If the UK is demonstrated to have a general practice of passively receiving intelligence information which has or may have been obtained under torture, that practice is likely to be in breach of the UK’s international law obligation not to render aid or assistance to other states which are in serious breach of their obligation not to torture.\textsuperscript{69}

In its reply to our report, the Government said “the receipt of intelligence should not occur where it is known or believed that receipt would amount to encouragement to the intelligence services of other states to commit torture”.\textsuperscript{70} This formulation of the Government’s view, which we had not previously encountered, does not assuage our concern that the UK may be in systematic and regular receipt of information obtained by torture overseas and may, as a result, be “complicit” in torture as that term is defined in the relevant international standards. An overseas security agency may well use torture without being encouraged to do so by the fact that the information thereby obtained ends up in London. In any event, it is unlikely that the UK Government would come to know or believe that its receipt of such information was acting as an encouragement to torture.

\textsuperscript{67} Allegations of Complicity in Torture, paragraph 56.

\textsuperscript{68} Uncorrected oral evidence with David Hanson MP, 1 Dec 09, HC111-i, available at www.parliament.uk/jchr.

\textsuperscript{69} Allegations of Complicity in Torture, paragraph 42.

\textsuperscript{70} Allegations of UK Complicity in Torture: the Government Reply to the Twenty-third Report from the Joint Committee on Human Rights, Cm 7714, p3.
64. The main conclusion of our inquiry was that there should be an independent inquiry into the numerous allegations of UK complicity in torture. We remain firmly committed to this view.

**Children’s rights**

65. Our inquiry into children’s rights looked at the extent to which the UK had implemented the UNCRC and focused on areas on which we had previously reported during the Parliament, including children in the criminal justice system and asylum-seeking and trafficked children, and followed up a report on implementation of the UNCRC by our predecessors.\(^71\) We welcomed a number of positive developments, such as the Government’s withdrawal of reservations to the UNCRC on immigration and the detention of children alongside adults, but also expressed concern where action to implement the Convention is not being taken, such as with the Government’s continuing defence of the criminalisation of child prostitution.

**UK law on genocide, torture and related crimes**

66. In examining UK law on genocide, war crimes, crimes against humanity, and redress for torture victims, we assessed whether the patchwork of UK legislation relating to these matters fully implements relevant international conventions.\(^72\) We found that there were inconsistencies and gaps in the law which could allow international criminals to visit and even stay in the UK without fear of prosecution. The Government amended the Coroners and Justice Bill to reflect some of our concerns, although our recommendations aimed at enabling victims of torture overseas to claim redress from those responsible for their treatment in the UK court were rejected.

**Adverse court judgments**

67. Our scrutiny of the Government response to adverse judgments by the European Court of Human Rights, as well as declarations of incompatibility under the Human Rights Act

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\(^72\) Twenty-fourth Report, *Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims*, HL Paper 153, HC 553.
by domestic courts, has continued throughout the session. We expect to publish our third report on this work, considering the Government response to specific cases as well as how action to respond to and implement adverse judgments is co-ordinated across Whitehall, in the new year.

Counter-terrorism policy and human rights

68. We continued our long-running scrutiny of UK counter-terrorism policy and human rights by publishing reports on the annual renewal of control orders legislation and of the extension of the maximum period of pre-charge detention for terrorism suspects from 14 to 28 days. Both of these reports, our fourteenth and fifteenth of the Parliament on counter-terrorism, were used in debates in both Houses. We intend to return to the issue of counter-terrorism policy before the end of the Parliament.

Core task 10: debates in the House

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

Table 4: House of Commons debates to which JCHR Reports and other material was ‘tagged’ to indicate relevance

<table>
<thead>
<tr>
<th>Date</th>
<th>Debate</th>
<th>JCHR Report etc “tagged”</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 February</td>
<td>Political Parties and Elections Bill: Consideration</td>
<td>4th Report 2008–09</td>
</tr>
<tr>
<td>3 March</td>
<td>Motion to approve the draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1-9) Order 2009</td>
<td>5th Report 2008–09</td>
</tr>
<tr>
<td>5 March</td>
<td>Westminster Hall debate on report on adults with learning disabilities</td>
<td>7th Report 2007-08</td>
</tr>
<tr>
<td>23 and 24 March</td>
<td>Coroners and Justice Bill: Consideration</td>
<td>8th Report 2008–09</td>
</tr>
<tr>
<td>5 May</td>
<td>Apprenticeships, Skills, Children and Learning Bill: Consideration</td>
<td>14th Report 2008–09</td>
</tr>
<tr>
<td>19 May</td>
<td>Policing and Crime Bill: Consideration</td>
<td>10th and 15th Reports 2008–09</td>
</tr>
<tr>
<td>2 June</td>
<td>Borders, Citizenship and Immigration Bill [Lords]: Second Reading</td>
<td>9th Report 2008–09</td>
</tr>
<tr>
<td>1 July</td>
<td>Parliamentary Standards Bill:</td>
<td>19th Report 2008–09</td>
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</table>

73 Control orders renewal 2009 and 28 days renewal 2009.
<table>
<thead>
<tr>
<th>Date</th>
<th>Committee and remaining stages</th>
<th>Reports 2008–09</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 July</td>
<td>Finance Bill: remaining stages</td>
<td>20th Report 2008–09</td>
</tr>
<tr>
<td>9 July</td>
<td>Motion to approve the draft Terrorism Act 2006 (Disapplication of Section 25) Order 2009</td>
<td>18th Report 2008–09</td>
</tr>
<tr>
<td>14 July</td>
<td>Borders, Citizenship and Immigration Bill [Lords]: Consideration</td>
<td>9th and 17th Reports 2008–09</td>
</tr>
<tr>
<td>12 October</td>
<td>Health Bill [Lords]: remaining stages</td>
<td>11th and 14th Reports 2008–09</td>
</tr>
<tr>
<td>3 and 4 November</td>
<td>Constitutional Reform and Governance Bill: Committee</td>
<td>Correspondence</td>
</tr>
</tbody>
</table>

70.

71. As the table shows, our reports on the human rights of adults with learning disabilities and a UK Bill of Rights were debated in Westminster Hall during the year.

72. Our reports are frequently listed on the House of Lords Order Paper as relevant to debate on the stages of bills and were frequently cited in debate. Our second report on the UN Convention on the Rights of Persons with Disabilities was debated in Grand Committee in the House of Lords on 28 April, along with a statutory instrument relating to the ratification of the Convention.74

74 HL Deb, 28 Apr 09, c19-50GC.
5 Working practices

Recent changes

73. We published a substantial report on our working practices in July 2006 in which we set out changes intended to focus our work on the most significant human rights issues and enable us to undertake a broader range of activity, including more thematic inquiries.\(^{75}\) We discussed the implementation of these changes at autumn awaydays in 2007, 2008 and 2009.\(^{76}\) The main changes in our working practices since 2006 have been reporting on bills before report stage in the first House, the introduction of Committee amendments to bills—discussed in chapter 3 of this report—and the introduction of ‘mini-conferences’. These are short seminars attended by a broad range of interested parties including NGOs, specialist advisers, and, where possible, Ministers, to follow-up our reports (or aspects of them) or to discuss issues likely to be the subject of future inquiries.

74. During the 2008–09 session we hosted a mini-conference on 25 February on business and human rights, in order to help develop the terms of reference for our subsequent inquiry. We held a larger conference on 22 April to follow up our 2008 report on a Bill of Rights for the UK, at which Michael Wills MP, the Human Rights Minister, Dominic Grieve MP, Official Opposition Shadow Secretary of State for Justice, and David Howarth MP, Liberal Democrat Shadow Secretary of State for Justice, debated their parties’ proposals for a Bill of Rights.\(^ {77}\) Our awayday, on 3 November, also provided an opportunity to discuss human rights issues with NGOs and others. The themes covered this year were social and economic rights in legislation, freedom of expression and court injunctions, and human rights action plans.

75. We intend to hold a mini-conference in the early part of 2010 to follow up our policing and protest reports.

\(^{75}\) Working practices report.

\(^{76}\) The review of the 2006 changes to working practices was discussed in the chapter 4 of 2007 annual report. Also see 2007-08 report, paragraphs 72-74.

\(^{77}\) A record of the discussion at this event is published with this report – see Annex 4.
Informal meetings and visits

76. Tables 5 and 6 set out the other informal meetings we held during the year and the visits we undertook.

Table 5: JCHR informal meetings, 2008–09

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 May</td>
<td>Equality Bill team</td>
</tr>
<tr>
<td>13 October</td>
<td>International Brotherhood of Teamsters</td>
</tr>
<tr>
<td>13 October</td>
<td>Councillor Adele Morris, Southwark Council</td>
</tr>
<tr>
<td>5 November</td>
<td>Professor Alan Millar, Chair, Scottish Human Rights Commission</td>
</tr>
</tbody>
</table>

Table 6: JCHR visits, 2008–09

Overseas visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>inquiry</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 – 18 June</td>
<td>New York and Washington D.C.</td>
<td>Business and Human Rights</td>
</tr>
</tbody>
</table>

UK visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>inquiry</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 December</td>
<td>Lambeth, Met Police Central Communications Command Centre</td>
<td>Policing and Protest</td>
</tr>
<tr>
<td>21 January</td>
<td>Yarl’s Wood, Bedfordshire, Immigration Removal Centre</td>
<td>Immigration and human rights</td>
</tr>
</tbody>
</table>

Representative capacity visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>inquiry</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 March</td>
<td>Oxford, BILD conference</td>
<td>Adults with learning disabilities</td>
</tr>
<tr>
<td>23 September</td>
<td>Geneva, EHRC Conference</td>
<td>n/a</td>
</tr>
</tbody>
</table>

77.

78. Informal meetings with interested parties, at Westminster or on visits within the UK or abroad, are an essential part of our work. They enable the Committee to hear from a broader range of views than is usually possible in oral evidence and offer perspectives which can be difficult or impossible to appreciate from formal written and oral evidence.

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

**Following-up previous work**

80. Several of our reports were explicitly intended to follow up previous work,\(^78\) or built on work we or our predecessors had undertaken.\(^79\) We also continued to follow up earlier reports in correspondence with the Government and others, some of which is published with this report.\(^80\) As mentioned above, we continued to follow up our 2008 report on a Bill of Rights for the UK in a number of different ways.\(^81\)

81. Our predecessors recommended that there should be a cross-departmental task force on deaths in custody, which, amongst other things, would share best practice and make recommendations to the Government.\(^82\) The Government subsequently set up the Forum on Deaths in Custody, which one of our Members, Lord Bowness, attended as an observer. The Forum has now been replaced by a Ministerial Council on Deaths in Custody, on which Lord Bowness has observer status.

**Relations with government**

82. We deal with most Government departments, some—such as the Ministry of Justice and the Home Office—frequently. In general, we have established good relations with departments. We are appreciative of the depth and quality of the letters and memoranda we usually receive from Government when we raise human rights issues in bills with departments.

83. We do not require the Government to reply to our legislative scrutiny reports, given the timescale in which bills progress through Parliament, but we appreciate those replies we

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\(^78\) For example, *Demonstrating respect for rights follow up*.

\(^79\) For example, *28 days renewal 2009* and *Children's Rights*.

\(^80\) See written evidence pages; 73; 128-130.

\(^81\) See paragraph 49.

are sent. The Government is obliged to reply to our other reports within two months of the date of publication unless we agree a longer time period with the relevant department. In our 2007–08 report, we criticised the Government for its long and continuing delays in replying to our 2006-07 report on the meaning of public authority under the Human Rights Act and certain recommendations in our 2006–07 report on adverse human rights judgments. Both replies have now been received, although in the former case only after we had complained to the Commons Liaison Committee, which took up the matter with the Leader of the House of Commons.

**Informing Parliament**

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

85. Our Chair, Andrew Dismore MP, again promoted a Private Members’ Bill—the Human Rights Act (Meaning of Public Authority) Bill—which sought to implement a solution to the problem concerning the scope of the Human Rights Act on which we have often reported. The Bill did not make progress beyond Second Reading.

86. Our Legal Adviser advised the Commons Foreign Affairs Committee on the human rights implications of the draft constitution proposed for the Cayman Islands, a UK overseas territory. The draft constitution excluded sexual orientation as a prohibited ground for discrimination, included numerous references to “Christian values” and also included an exemption for any claim for discrimination on the grounds of public morality. The Foreign Affairs Committee deplored the omission of reference to sexual orientation as a prohibited ground for discrimination and raised the possibility that the constitution

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83 In 2008-09 we received Government replies to scrutiny reports on the following bills: Political Parties and Elections and Borders, Citizenship and Immigration (17th Report); Coroners and Justice (17th Report and Twentieth Report, Legislative Scrutiny: Finance Bill; Government Response to the Committee’s Sixteenth Report of Session 2008-09: Coroners and Justice Bill (certified inquests) HL Paper 133, HC 882) and Marine and Coastal Access (Twenty-first Report, Legislative Scrutiny: Marine and Coastal Access Bill; Government Response to the Committee’s Thirteenth Report of Session 2008-09, HL Paper 142, HC 918).

84 2007-08 report, paragraphs 68 and 83.


86 See Table 4.
could afford less protection to citizens of the Cayman Islands than they are entitled to under the ECHR. It recommended that in all future discussions with Overseas Territories the FCO insists that no specific religion or faith community be singled out for privileged mention and that anti-discrimination provisions make explicit mention of sexual orientation.

**Outreach**

87. Our main tool for communicating with the public is the Committee’s website (www.parliament.uk/jchr). As with other select committees, our reports and oral evidence can be found online. We also publish our correspondence with Government on bills and in relation to adverse European Court of Human Rights judgments and declarations of incompatibility. We have used the website to seek submissions from interested parties on the draft legislative programme and on specific bills, publishing a list of bills and issues we are scrutinising at an early stage. This year, we published online written evidence relating to our thematic inquiries on children’s rights and business and human rights at an early stage in order to raise the profile of the inquiries and generate further evidence.

88. We have worked with our select committee media adviser to promote our reports and gained a significant amount of media coverage during the year, especially for our reports on allegations of complicity in torture and policing and protest.

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

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88 See paragraph 70.
90. An innovation in 2008–09 was the lecture we hosted to mark the 60th anniversary of the UN Declaration of Human Rights, on 10 December 2008, which was given by Dame (now Baroness) Nuala O’Loan.89

91. Several of our Members and staff have given lectures and presentations over the course of the year, most notably our Chair’s speech at a British Institute of Learning Disabilities conference in March about the human rights of adults with learning disabilities.

**International dimension**

92. Although our remit relates only to the UK, some of our work has an international dimension.

- We maintain links with the Council of Europe, its Parliamentary Assembly, and the European Court of Human Rights in respect of our work on the Government’s response to adverse decisions of the court.

- We keep under review the work of the EU’s Fundamental Rights Agency, following our visit to its headquarters in Vienna in November 2008.

- Our Chair participated in a seminar organised by the EHRC in Geneva in September at the 12th session of the UN Human Rights Council.

- Our staff have assisted with training parliamentarians and staff in Macedonia in scrutiny of human rights issues, as part of a programme organised by the International Bar Association.

We also often meet parliamentarians and others from abroad interested in human rights when they visit Westminster.

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89 We published the lecture with *Bill of Rights Government Response*, Ev pp33-43.
# Annex 1: Sessional Return 2008–09

<table>
<thead>
<tr>
<th>Commons Members</th>
<th>Meetings attended</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismore, Mr Andrew (Chairman)</td>
<td>31 out of 32</td>
</tr>
<tr>
<td>Austin, John</td>
<td>17 out of 32</td>
</tr>
<tr>
<td>Harris, Dr Evan</td>
<td>30 out of 32</td>
</tr>
<tr>
<td>Sharma, Mr Virendra</td>
<td>20 out of 32</td>
</tr>
<tr>
<td>Shepherd, Mr Richard</td>
<td>7 out of 32</td>
</tr>
<tr>
<td>Timpson, Mr Edward</td>
<td>19 out of 32</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lords Members</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bowness, Lord</td>
<td>25 out of 32</td>
</tr>
<tr>
<td>Dubs, Lord</td>
<td>28 out of 32</td>
</tr>
<tr>
<td>Lester of Herne Hill, Lord</td>
<td>21 out of 32</td>
</tr>
<tr>
<td>Morris of Handsworth, Lord</td>
<td>24 out of 32</td>
</tr>
<tr>
<td>Onslow, Earl of</td>
<td>27 out of 32</td>
</tr>
<tr>
<td>Prashar, Baroness</td>
<td>24 out of 32</td>
</tr>
<tr>
<td>Stern, Baroness</td>
<td>0 out of 1</td>
</tr>
</tbody>
</table>

**Overall attendance:** 71.1%

Total number of meetings: 32

Of which:

- Number of meetings at which oral evidence was taken: 19
- Number of times oral evidence was taken partly or wholly in private: 0
- Number of wholly private meetings: 13
- Number of concurrent meetings with other committees: 0

**Other activities**

- Informal meetings: 4
- Conferences/seminars hosted: 4

**Staff**

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

**Specialist Advisers during the Session**

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

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

Number of appearances by:

  - Cabinet Ministers: 1
  - Other Ministers: 10
  - Members of the House of Commons: 1

Number of appearances by officials from, or representatives of:

  - Department for Children, Schools and Families: 1
  - Government Equalities Office: 1
  - Ministry of Justice: 2
  - Foreign and Commonwealth Office: 1
  - Home Office: 2

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

  - Association of Chief Police Officers: 1
  - Children’s Commissioner for England: 1
  - Children’s Commissioner for Wales: 1
Equality and Human Rights Commission 6

Independent Police Complaints Commission 1

Metropolitan Police Service 1

Northern Ireland Human Rights Commission 3

Northern Ireland Commissioner for Children and Young People 1

Scotland's Commissioner for Children and Young People 1

Scottish Human Rights Commission 1

Appearances by other witnesses 31

Overseas Visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>Members</th>
<th>Staff</th>
<th>Purpose</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-18.6.09</td>
<td>New York and Washington DC</td>
<td>Dismore, Austin, Harris, Sharma, L Dubs, B Prashar</td>
<td>1</td>
<td>Inquiry into business and human rights</td>
<td>£14,190.84</td>
</tr>
<tr>
<td>23.9.09</td>
<td>Geneva&lt;sup&gt;A&lt;/sup&gt;</td>
<td>Dismore</td>
<td>0</td>
<td>Equality and Human Rights Commission seminar</td>
<td>£405.16</td>
</tr>
</tbody>
</table>

<sup>A</sup> Travel in a representative capacity

Visits to European Institutions

None.
UK Visits

<table>
<thead>
<tr>
<th>Date</th>
<th>Destination</th>
<th>Members</th>
<th>Staff</th>
<th>Purpose</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.12.08</td>
<td>Lambeth</td>
<td>Dismore, Harris, L Dubs</td>
<td>1</td>
<td>Inquiry into Policing and Protest</td>
<td>£19.62</td>
</tr>
<tr>
<td>21.1.09</td>
<td>Yarl’s Wood, Bedfordshire</td>
<td>L Lester, L Morris E of Onslow</td>
<td>1</td>
<td>Visit to Immigration Removal Centre</td>
<td>£200.00</td>
</tr>
<tr>
<td>27.3.09</td>
<td>Oxford</td>
<td>Dismore</td>
<td>0</td>
<td>British Institute of Learning Disabilities Conference</td>
<td>£51.00</td>
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</table>

^ Travel in a representative capacity

Reports and Oral and Written Evidence

<table>
<thead>
<tr>
<th>Title</th>
<th>HC No. (2008–09)</th>
<th>Date of publication</th>
<th>Government reply</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Report: The UN Convention on the Rights of Persons with Disabilities</td>
<td>93</td>
<td>4.1.09</td>
<td>Received 3.3.09: published as Sixth Report, Session 2008–09</td>
</tr>
<tr>
<td>Second Report: The Work of the Committee in 2007–08</td>
<td>92</td>
<td>26.1.09</td>
<td>Received 21.5.09: published as part of Seventeenth Report, Session 2008–09</td>
</tr>
<tr>
<td>Fourth Report: Legislative Scrutiny: Political Parties and Elections Bill</td>
<td>204</td>
<td>1.2.09</td>
<td>Received 18.5.09: published as part of Seventeenth Report, Session 2008–09</td>
</tr>
<tr>
<td>Sixth Report: UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee’s First Report of this Session</td>
<td>315</td>
<td>6.3.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Seventh Report: Demonstrating respect for rights? A human rights approach to policing protest</td>
<td>320-I</td>
<td>23.3.09</td>
<td>Cm 7633, published 29.5.09</td>
</tr>
<tr>
<td>Oral and Written Evidence: Demonstrating respect for rights? A human rights approach to policing protest</td>
<td>320-II</td>
<td>23.3.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Title</td>
<td>HC No. (2008–09)</td>
<td>Date of publication</td>
<td>Government reply</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------------------</td>
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</tr>
<tr>
<td>Eighth Report: Legislative Scrutiny: Coroners and Justice Bill</td>
<td>362</td>
<td>19.3.09</td>
<td>Received 20.5.09: published as part of Seventeenth Report, Session 2008–09</td>
</tr>
<tr>
<td>Ninth Report: Legislative Scrutiny: Borders, Citizenship and Immigration Bill</td>
<td>375</td>
<td>25.3.09</td>
<td>Received 21.5.09: published as part of Seventeenth Report, Session 2008–09</td>
</tr>
<tr>
<td>Tenth Report: Legislative Scrutiny: Policing and Crime Bill</td>
<td>395</td>
<td>16.4.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Eleventh Report: Legislative Scrutiny: Health Bill; Marine and Coastal Access Bill</td>
<td>396</td>
<td>15.4.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twelfth Report: UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration</td>
<td>397</td>
<td>17.4.09</td>
<td>Received 14.5.09: published as part of Seventeenth Report, Session 2008–09</td>
</tr>
<tr>
<td>Thirteenth Report: Prisoner Transfer Treaty with Libya</td>
<td>398</td>
<td>15.4.09</td>
<td>Received 30.6.09: published as part of Twenty-First Report, Session 2008–09</td>
</tr>
<tr>
<td>Fourteenth Report: Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children, Children and Learning Bill; Health Bill</td>
<td>414</td>
<td>27.4.09</td>
<td>Not applicable</td>
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<tr>
<td>Fifteenth Report: Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)</td>
<td>441</td>
<td>6.5.09</td>
<td>Not applicable</td>
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<tr>
<td>Sixteenth Report: Legislative Scrutiny: Coroners and Justice Bill (certified inquests)</td>
<td>524</td>
<td>25.5.09</td>
<td>Received 1.7.09: published as part of Twentieth Report, Session 2008–09</td>
</tr>
<tr>
<td>Seventeenth Report: Government replies to the Second, Fourth, Eighth, Ninth and Twelfth Reports of Session 2008–09</td>
<td>592</td>
<td>25.6.09</td>
<td>Not applicable</td>
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<tr>
<td>Nineteenth Report: Legislative Scrutiny: Parliamentary Standards Bill</td>
<td>844</td>
<td>30.6.09</td>
<td>Not applicable</td>
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<tr>
<td>Twentieth Report: Legislative Scrutiny: Finance Bill; Government Response to the Committee's Sixteenth Report of 2008–09, Coroners and Justice Bill (certified inquests)</td>
<td>882</td>
<td>8.7.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Title</td>
<td>HC No. (2008–09)</td>
<td>Date of publication</td>
<td>Government reply</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>------------------</td>
<td>---------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Twenty-first Report: Legislative Scrutiny: Marine and Coastal Access Bill; Government Response to the Committee’s Thirteenth Report of 2008–09</td>
<td>918</td>
<td>5.8.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twenty-third Report: Allegations of UK complicity in torture</td>
<td>230</td>
<td>4.8.09</td>
<td>Cm 7714, published 2.10.09</td>
</tr>
<tr>
<td>Twenty-fourth Report: Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims</td>
<td>553</td>
<td>11.8.09</td>
<td>Cm 7704, published 26.10.09</td>
</tr>
<tr>
<td>Twenty-fifth Report: Children’s Rights</td>
<td>338</td>
<td>20.11.09</td>
<td>Awaited</td>
</tr>
<tr>
<td>Twenty-sixth Report: Legislative Scrutiny: Equality Bill</td>
<td>736</td>
<td>12.11.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Twenty-seventh Report: Retention, use and destruction of biometric data: correspondence with Government</td>
<td>1113</td>
<td>12.11.09</td>
<td>Not applicable</td>
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<tr>
<td>Twenty-eighth Report: Legislative Scrutiny: Child Poverty Bill</td>
<td>1114</td>
<td>26.11.09</td>
<td>Not applicable</td>
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<tr>
<td>Oral and Written Evidence: Immigration and Human Rights</td>
<td>357-i</td>
<td>22.6.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Oral and Written Evidence: Immigration and Human Rights</td>
<td>[Session 2007-08]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uncorrected Oral Evidence published on the internet: A Bill of Rights for the UK and the work of the Human Rights Minister</td>
<td>174-i</td>
<td>20.1.09</td>
<td>Not applicable</td>
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<tr>
<td>Uncorrected Oral Evidence published on the internet: A Bill Of Rights For The UK And The Work Of The Northern Ireland Human Rights Commission</td>
<td>280-i</td>
<td>24.2.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Uncorrected Oral Evidence published on the internet: Business and Human Rights</td>
<td>559-i</td>
<td>3.6.09</td>
<td>Not applicable</td>
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<tr>
<td>Uncorrected Oral Evidence published on the internet: Business and Human Rights</td>
<td>559-ii</td>
<td>9.6.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Uncorrected Oral Evidence published on the internet: Business and Human Rights</td>
<td>559-iii</td>
<td>30.6.09</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Uncorrected Oral Evidence published on the internet: Business and Human Rights</td>
<td>559-iv</td>
<td>7.7.09</td>
<td>Not applicable</td>
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</tbody>
</table>

[^92]: Holding reply received 24.10.09: published on the internet
Title | HC No. (2008–09) | Date of publication | Government reply
---|---|---|---
Uncorrected Oral Evidence published on the internet: *Business and Human Rights* | 559-v | 14.7.09 | Not applicable

**Government replies to Reports for Session 2006–07**

Reply to the Committee’s Ninth Report, Session 2006-07: The Meaning of Public Authority under the Human Rights Act, published as Cm 7726

**Government replies to Reports for Session 2007–08**

Reply to the Committee’s Twenty-ninth Report, Session 2007-08: *A Bill of Rights for the UK?*, received 18.12.08 and published as the Committee’s Third Report, Session 2008–09

Reply to the Committee’s Thirty-first Report, Session 2007-08: *Monitoring the Government’s Response to Human Rights Judgments*, published as Cm 7524

**Formal Minutes**

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

**Divisions**

None.

**Debates**

Committee reports and/or correspondence were tagged on the Order Paper as being relevant to debates in the House of Commons on 17 occasions and in Westminster Hall on 2 occasions. Further details can be found in table 4, pages 24 and 25.

**Number of oral evidence sessions for each inquiry during the Session**

<table>
<thead>
<tr>
<th>Inquiry</th>
<th>Number of oral evidence sessions</th>
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<tbody>
<tr>
<td>A UK Bill of Rights and the Work of the Human Rights Minister</td>
<td>1</td>
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<tr>
<td>A UK Bill of Rights and the work of the Northern Ireland Human Rights Commission</td>
<td>1</td>
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<tr>
<td>Business and human rights</td>
<td>5</td>
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<tr>
<td>Children's rights</td>
<td>2</td>
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<tr>
<td>Legislative Scrutiny: Equality Bill</td>
<td>1</td>
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<tr>
<td>Policing and Protest</td>
<td>3</td>
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<tr>
<td>Inquiry</td>
<td>Number of oral evidence sessions</td>
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<tr>
<td>The Work of the Equality and Human Rights Commission</td>
<td>2</td>
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<tr>
<td>UK legislation relating to genocide and torture</td>
<td>2</td>
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<tr>
<td>UNCAT: Allegations of UK Complicity in Torture</td>
<td>2</td>
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<td>Total</td>
<td>19</td>
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<tr>
<th>Issue</th>
<th>Positive developments</th>
<th>Outstanding Concerns</th>
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<tbody>
<tr>
<td>Children</td>
<td>Withdrawal of the reservation to Article 22 to the UNCRC (relating to immigration)</td>
<td>UK was ranked 24th of 29 European countries in the assessment report of child well-being(^94)</td>
</tr>
<tr>
<td></td>
<td>Withdrawal of the reservation to Article 37 to the UNCRC (relating to children in custody with adults).</td>
<td>Different types of discrimination towards children (based on age, disability, race, sex), including:</td>
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<tr>
<td></td>
<td>Publication of the Progress Report on the implementation of the Children’s Plan</td>
<td>• difficulties for young Gypsy and Traveller children in accessing suitable accommodation, public transport, GP surgeries and safe places to play, etc.</td>
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<td></td>
<td>Adoption of the UK Border Agency’s (UKBA) <em>Code of Practice for Keeping Children Safe from Harm</em> and the corresponding duty on UKBA to safeguard and promote the welfare of children</td>
<td>Retention of the low age of criminal responsibility</td>
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<td></td>
<td>Government proposals for improving the education of detained children and young people, including those with special educational needs(^93)</td>
<td>Refusal to incorporate UNCRC into the UK’s law</td>
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<td>Growing criminalisation of children, especially children from vulnerable and marginalised groups (looked after, children with autism, Gypsies and Travellers, children involved in prostitution)</td>
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<td>High level of child deaths and self-harm in custody</td>
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<td></td>
<td>Obligation to record significant incidents involving use of force by staff on pupils (Apprenticeships, Skills, Children and Learning Act)</td>
<td>Continued widespread usage of ASBOs</td>
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<td></td>
<td>Creation of the Child Poverty Commission as a source of independent expert advice to the Secretary of State</td>
<td>Poor conditions in parts of the detention system (use of strip searching, fear of bullying and assault, physical restraint, children being held in solitary confinement)</td>
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<td></td>
<td>Introduction of the Child Poverty Bill</td>
<td>Use of pain compliance against young people in detention</td>
</tr>
<tr>
<td><strong>Counter-terrorism</strong></td>
<td>Additional safeguards for post charge questioning</td>
<td>Continued problems with treatment of age-disputed asylum-seeking children (the usage of x-rays and other medical assessment methods to determine age)</td>
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<td></td>
<td>Proposal for the use of intercept evidence in a criminal court which has the potential for reducing the number of control orders</td>
<td>Relatively high rate of teenage pregnancies</td>
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<td></td>
<td>renewal of the control orders regime until March 2010</td>
<td>Absence of protection against age discrimination for those under 18 in service provision in Equality Bill as well as limited protection in relation to the performance of public functions</td>
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<td></td>
<td>Continuing application of section 44 of Terrorism Act 2000 (stop and search without suspicion)</td>
<td>Continued criminalisation of children involved in prostitution</td>
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</table>

| **Equality and discrimination** | Ratification of the UN Convention on the Rights of Disabled Persons (8 June 2009) | Scope of reservations to the UN Convention on the Rights of Disabled Persons (for instance, on |
| --- | --- |
| Introduction of Equality Bill, including  
  - public sector equality duty  
  - the prohibition of age discrimination (under 18s excluded) in service provision and the performance of public functions  
  - the extension of protection for carers through the prohibition of discrimination by association.  
  - widening of protection from discrimination to a combination of two grounds | Issues relating to the Equality Bill:  
  - absence of constitutional guarantee to equality and a purpose clause  
  - new socio-economic duty does not apply in relation to public services accessed by individuals subject to immigration control  
  - absence of explicit prohibition on harassment related to sexual orientation in the areas of service provision, the performance of public functions, and disposal, management and occupation of premises  
  - exemption of the armed forces from the scope of the disability provisions  
  - unwillingness to extend combined discrimination to indirect discrimination, harassment and exclusion of maternity, pregnancy, marriage |
| Adoption of the Autism Act 2009 which sets a duty on the Secretary of State to prepare an “autism strategy”. | |
and civil partnership from this area

- lack of clear definition of public authority which may have a limiting effect on the different bodies subject to the positive equality duty

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<tr>
<th>Freedom of expression</th>
<th>Abolition of the offences of seditious libel and criminal defamation</th>
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</table>
| Immigration and asylum | Introduction of a positive duty on the Secretary of State to ensure that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK (Borders, Citizenship and Immigration Act 2009)  
  Government’s commitment to finding alternatives to detention of asylum-seeking families  
  Publication of the draft Immigration Bill which aims to simplify immigration legislation |
|                        | Asylum-seeking children continue to be detained  
  There is a lack of data on the number of children seeking asylum  
  No independent oversight mechanism, such as a guardianship system, for an assessment of reception conditions for unaccompanied children who have to be returned;  
  Children over 10 years of age may be prosecuted if they do not possess valid documentation upon entry to the UK (Section 2, Asylum and Immigration Act 2004)\(^5\)  
  Introduction of the new category of temporary leave to remain, entitled “probationary citizenship”. This will constitute an additional period for which migrants are denied access to services and welfare |

Introduction of a community activity requirement (Borders, Citizenship and Immigration Act 2009) for migrants which may have a discriminatory effect on groups who are unable to undertake such activity (for instance, because of physical or mental disability, caring responsibilities, or being in full time work)

Penalisation for illegal entry affects the qualifying period for refugees and those with humanitarian protection.

<table>
<thead>
<tr>
<th>Torture</th>
<th>Amendments to UK law on genocide and related offences in Coroners and Justice Act,</th>
<th>Allegations of complicity in torture:</th>
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<tbody>
<tr>
<td></td>
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<td>• possible systematic receipt of intelligence which is obtained from detainees subjected to torture</td>
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<td>• allegations of involvement of UK security services in torture in military detention facilities in Pakistan</td>
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<td>• Increasing evidence of more widespread abuse of detainees by UK armed forces in Iraq than</td>
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<tr>
<td>Trafficking</td>
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</table>
| | Ratification of the Council of Europe Convention on Human Trafficking (1 April 2009).
| | Creation of a national referral mechanism, providing a nationally agreed framework to help frontline staff identify victims of trafficking and offer them support
| | £4m over two years to enhance the services for trafficking victims including an expansion of accommodation and support through the criminal justice system - resulting in more traffickers being brought to justice
| | Granting a 45 day minimum reflection and recovery period to victims and the possibility of a one-year renewable residence permit
| | £3.5m funding package for a new Police Central e-crime Unit (PceU) which became operational in spring 2009
| | Update of national trafficking action plan
| | Extra government funding of £3.7m to expand the Poppy Project which provides health, psychological and financial support for the victims of human trafficking\(^\text{96}\)
| | Doubts to long-term future of UK Human Trafficking Centre and Metropolitan Police human trafficking unit

\(^{96}\text{http://www.justice.gov.uk/news/newsrelease180609c.htm.}\)
<table>
<thead>
<tr>
<th>Privacy</th>
<th>Delay in implementing <em>Marper v UK</em> (DNA retention)(^{97})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right to vote</td>
<td>Delay in implementing <em>Hirst v UK</em>(^{98}) (prisoners voting rights)</td>
</tr>
<tr>
<td>Protest</td>
<td>Proposed repeal of SOCPA (protest around Parliament)</td>
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<tr>
<td>Women</td>
<td></td>
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<td></td>
<td>Publication of the Violence Against Women and Girl’s Strategy (November 2009): putting gender equality and violence against women and girls on the national schools curriculum</td>
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<td></td>
<td>Possibility of extending by another fifteen years (to 2030) the existing provision in law which allows political parties to use all-women shortlists (Part 7 of the Equality Bill)</td>
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<td></td>
<td>Clarification of equal pay law which for the first time makes it possible to bring a claim for direct sex discrimination when a person is paid less because of their sex (Equality Bill)</td>
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<td></td>
<td>Joint responsibility for birth registration (Welfare Reform Act 2009)</td>
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<td></td>
<td>Absence of protection from harassment on the grounds of marriage and civil partnership, and pregnancy or maternity (Equality Bill)</td>
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<tr>
<td></td>
<td>Absence of an explicit prohibition on harassment related to sexual orientation in the areas of service provision, the performance of public functions, and disposal, management and occupation of premises (Equality Bill)</td>
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<tr>
<td></td>
<td>Continuing practise of domestic violence, rape and sexual violence, sexual harassment, forced marriage, and sexual exploitation (3 million women in UK each year)</td>
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<td></td>
<td>Significantly high level of self-injury and self-inflicted deaths, experience of abuse and mental health problems among women prisoners(^{99})</td>
</tr>
</tbody>
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\(^{97}\) Application Nos.30562/04 and 30566/04.

\(^{98}\) Application No. 74025/01.

### Annex 3: Committee amendments to bills

<table>
<thead>
<tr>
<th>Bill</th>
<th>Issue raised in amendments</th>
<th>How dealt with in Commons</th>
<th>How dealt with in Lords</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apprenticeships, Skills, Children and Learning</td>
<td>UNRDC as strategic framework for Children’s Plans</td>
<td>Moved by Chair, part of broader group. No other Member mentioned the amendment. Minister argued against it.</td>
<td>L Morris spoke to JCHR amendment as part of a larger group. Other Members supported it. Minister put on record a commitment to refer to the convention in statutory guidance.</td>
<td>Government policy unchanged – JCHR again critical in Children’s Rights Report.</td>
</tr>
<tr>
<td>Coroners and Justice</td>
<td>1. Certified or secret inquests</td>
<td>1. JCHR amendments debated with other amendments.</td>
<td>1. JCHR amendments not tabled because proposals withdrawn.</td>
<td>1. Government withdrew secret inquest proposal in favour of use of Inquiries Act.</td>
</tr>
<tr>
<td></td>
<td>2. Information Sharing Orders</td>
<td>2. JCHR amendment debated with other amendments.</td>
<td>2. JCHR amendments not tabled because proposals withdrawn.</td>
<td>2. Government withdrew proposal.</td>
</tr>
<tr>
<td></td>
<td>3. Powers of Information Commissioner</td>
<td>3. JCHR amendment debated in same group as amendment on Information Sharing Orders.</td>
<td>3. JCHR amendments moved by L Dubs and withdrawn after debate.</td>
<td>3. Government concession met some of Committee’s concerns.</td>
</tr>
<tr>
<td></td>
<td>5. Witness anonymity orders</td>
<td></td>
<td>5. 20 minute debate, only JCHR contribution was an intervention by Dr Harris,</td>
<td>5. Government position unchanged.</td>
</tr>
<tr>
<td></td>
<td>6. Public order offences</td>
<td></td>
<td></td>
<td>6. Raised in context of Policing and Protest report,</td>
</tr>
<tr>
<td>Health</td>
<td>1. Direct payments: scope of HRA</td>
<td>JCHR amendments not tabled.</td>
<td>1. JCHR amendment moved by L Dubs. Minister argued there was no need for the amendment. Withdrawn.</td>
<td>Government position unchanged on these three issues.</td>
</tr>
<tr>
<td></td>
<td>2. Adult social care: complaints</td>
<td></td>
<td>2. JCHR amendments not tabled.</td>
<td></td>
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<tr>
<td></td>
<td>3. Healthcare for refused asylum seekers</td>
<td></td>
<td>3. JCHR amendment moved by B Stern and supported by others in debate. Minister stated issue was being examined in a review of migrants’ access to free NHS services and any changes would be made by secondary legislation. Withdrawn.</td>
<td></td>
</tr>
<tr>
<td>Marine and Coastal Access</td>
<td>Right of appeal to an independent body.</td>
<td>JCHR amendment superseded by Government concession by the time the Bill reached the Commons.</td>
<td>JCHR report supported an existing amendment that had already been tabled by another Member of the House.</td>
<td>Government amendment met JCHR concern.</td>
</tr>
<tr>
<td>Parliamentary Standards</td>
<td>1. Procedural requirements of fairness</td>
<td>1. JCHR amendments debated as part of wider group in Committee.</td>
<td>1. Specific JCHR amendments not tabled but L Lester contributed to debate on related amendments.</td>
<td>1. Bill amended to reflect some JCHR concerns.</td>
</tr>
<tr>
<td></td>
<td>2. Independent right of appeal</td>
<td>2. JCHR amendments not reached because of programme order. Issue raised during another debate in Committee</td>
<td>2. JCHR amendments moved by Lord Lester. Supported by others in debate. Minister committed to think further before Report. Withdrawn.</td>
<td>2. Government did not accept JCHR arguments.</td>
</tr>
<tr>
<td>Policing and Crime</td>
<td>1. Human rights framework for inspectorate of constabulary</td>
<td>1. Not selected.</td>
<td>1. JCHR amendments not tabled.</td>
<td>1. No change in Government position</td>
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<td></td>
<td>2. Appointment of senior police officers</td>
<td>2. Not selected.</td>
<td>2. JCHR amendments not tabled.</td>
<td>2. No change in Government position.</td>
</tr>
<tr>
<td></td>
<td>3. Strict liability offence of paying for services of a prostitute</td>
<td>3. Several JCHR amendments not selected because they were superseded by Government amendments. Strict liability offence dealt with in amendment tabled by Dr Harris which was negativized on division after lengthy debate.</td>
<td>3. E Onslow spoke to JCHR points during debate on wide range of amendments.</td>
<td>3. Some JCHR concerns on the strict liability offence dealt with in Government amendments in Commons.</td>
</tr>
<tr>
<td></td>
<td>5. Premises closure orders</td>
<td>5. Not selected</td>
<td>5. Lib Dem front bench tabled JCHR amendments. B Stern contributed to debate citing JCHR report for support. Minister argued amendments were unnecessary.</td>
<td>5. No change in Government position.</td>
</tr>
<tr>
<td></td>
<td>7. Directions to individual to leave a locality</td>
<td>7. Not selected</td>
<td>7. JCHR amendments not tabled.</td>
<td>7. No change in Government position.</td>
</tr>
<tr>
<td></td>
<td>8. Extradition</td>
<td>8. JCHR amendments selected but not reached because of programme order.</td>
<td>8. JCHR amendments moved by E Onslow. Minister resisted JCHR arguments.</td>
<td>8. No change in Government position.</td>
</tr>
<tr>
<td></td>
<td>9. Biometric data</td>
<td>9. JCHR amendments part of wider group, but debate lasted only 45 minutes under programme order and only JCHR contribution was an intervention by Dr Harris.</td>
<td>9. JCHR amendments not tabled because clauses had been withdrawn.</td>
<td>9. Government withdrew clauses. Issue still under active consideration.</td>
</tr>
<tr>
<td>Political Parties and Elections</td>
<td>Electoral Commission’s investigatory powers.</td>
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<tr>
<td>Amendment tabled but withdrawn after Government amendments on same issue were tabled.</td>
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<tr>
<td>JCHR amendments not tabled because Government had already changed position by the time the Bill reached the Lords.</td>
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<td>Government amended Bill in line with Committee recommendation.</td>
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<tr>
<td>2. Individual budgets, contracting out etc: scope of HRA</td>
<td></td>
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<tr>
<td>Committee reported after Bill had left the Commons.</td>
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</tr>
<tr>
<td>1. JCHR amendments not tabled, but similar issues raised in other amendments.</td>
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<tr>
<td>2. JCHR amendments not tabled.</td>
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<tr>
<td>1. Government amendments at third reading in the Lords took account of some JCHR concerns.</td>
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<td>2. Government position unchanged.</td>
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A BILL OF RIGHTS FOR THE UK?

MINI CONFERENCE: WEDNESDAY 22 APRIL, 2PM-5PM

ATTLEE SUITE, PORTCULLIS HOUSE

This is a summary of an event held with members of the Joint Committee on Human Rights and a group of invited stakeholders (see annex for list). The event was held under Chatham House Rules.

There were short talks from Michael Wills MP, Minister of State, Ministry of Justice, David Howarth MP, Liberal Democrat Shadow Secretary of State for Justice and Shadow Solicitor General, and Dominic Grieve MP, Shadow Secretary of State for Justice and Shadow Attorney General. This was followed by three discussions on responsibilities; economic and social rights; and the process of engaging the public.

The Committee would like to thank all who contributed, particularly the speakers and those who introduced the discussions.

Michael Wills

The Minister welcomed the JCHR Report, which was an important contribution to the Bill of Rights debate. He explained that the Government’s Green Paper asked fundamental questions about how power was distributed in society, the responsibilities people owed to society, and how the Human Rights Act could be entrenched in the constitutional fabric of the UK so that it was above party politics. Full discussion of these issues was necessary before legislation could be introduced.

The Government did not intend to rescind the Human Rights Act but there were questions about further rights, responsibilities and entrenchment. There were issues about justiciability of economic and social rights which needed discussing.
There would be a separate consultation exercise on the meaning of public authority in the Human Rights Act.

**David Howarth**

Mr Howarth argued that the Green Paper confused human rights and the rights and responsibilities relating to citizenship.

The Human Rights Act should be left untouched. Human rights related to all people, irrespective of the country to which they belonged, and were not conditional on or linked to responsibilities. The debate was really about citizenship and the alienation between the political system and the people it was meant to serve. Declarations and rhetoric would not overcome the lack of popular participation in Government in the UK.

The Government was right to exercise caution in making resource allocation questions justiciable, but he welcomed debate on the minimum social requirements, in respect of education and health for example, for effective citizenship.

**Dominic Grieve**

Mr Grieve said he was disappointed by the Green Paper and concerned by the lack of public support and acceptance for the Human Rights Act. The Conservative Party was not in favour of withdrawal from the ECHR and was working on proposals for its own Bill of Rights and Responsibilities. Key issues to be addressed included the rights not covered by the ECHR, such as the right to jury trial and good administration; the need for clearer guidance about where to strike the balance between competing rights; and procedural matters, including the extent to which the UK courts were required to follow ECHR jurisprudence. He did not support declaratory rights, which he argued were meaningless.

His party aimed to issue a consultation paper if and when it returned to Government.

**Points raised in discussion included:**

It was important for UK judges to remain influential in shaping ECHR jurisprudence.
It was difficult to win public acceptance for domestic human rights legislation which would necessarily offer protection to unpopular minorities, such as terrorists.

There should be a concordant between the main party leaders not to talk down human rights.

It would be difficult to draw a clear distinction between the judicial and political fields: judicial decisions under the Human Rights Act had helped drive policy improvements in areas such as health.

The Government was not simply seeking to re-brand human rights. Polls showed that people were largely ignorant of human rights and gave different views on human rights issues, depending on how questions were framed. Strong leadership was needed.

Putting reform of the Human Rights Act on the legislative agenda would create an opportunity for parliamentary mischief. On the other hand, if there were matters for debate, they should be tackled directly in Parliament.

The three main political parties should guarantee that the human rights in the ECHR would not be diluted by their Bill of Rights proposals.

Expectations about likely outcomes needed to be managed.

**Round table discussion 1: Responsibilities**

Key points raised in the round table discussion were as follows:

- At the start of the discussion five types of responsibilities were outlined;
  
  1. EC Convention duties
  2. Existing legal duties
  3. Indirect duties (e.g. not to abuse NHS staff)
  4. Privacy and freedom of expression
  5. Declaratory non justiciable duties.

- An option for codifying these responsibilities would be to supplement the duties in the ECHR with domestic provisions in a separate bill, keeping the ECHR and a domestic bill of rights as separate entities.
• A society devoid of responsibilities and values would never respect the Human Rights Act. Reference to values should be the bedrock of human rights legislation, and any bill should consider education and awareness of values promoted within the bill.

• Responsibilities should not be a condition of gaining rights. It was misguided to think of human rights as selfish and something that must be paid for by fulfilling responsibilities. Any legislation should promote a sense of community where the public were not viewed as consumers of public services but equal partners with the state. The state’s responsibilities to the public should be clearly stated.

• The lack of a written constitution was one reason why there was concern over the lack of sense of community in society. If we had a clear constitution outlining the relationship between the individual and the state then the rights and responsibilities within that constitution would be respected.

• Legislation promoting responsibilities could be confusing if those responsibilities were rhetorical flourishes and not justiciable.

• If responsibilities were to be justiciable then individuals would have a legally bound responsibility to the state, which was not generally a feature of a democratic society. An example of the type of society that codified responsibilities was the USSR in its 1977 constitution.

• Would it even be possible to codify responsibilities that were historically taught by elders within society?

• The Government’s Green paper addressed the balance between rights and responsibilities: a balance which many have sought to strike, since Tom Paine. The Government did not believe that rights were contingent on fulfilling responsibilities, but that responsibilities should be “double underlined”.
Roundtable discussion 2: Economic and social rights

Opinion was divided as to whether economic and social rights should be included and how, if at all, they could be.

Key points made in discussion included:

- The Government green paper was helpful to open debate on the issue.

- There was significant support amongst the public for including specific social and economic rights.

- There was not a strong division between civic/political and social/economic rights: many people already thought that social and economic rights had the status of human rights.

- It would be difficult for judges to decide what was unfair in relation to social and economic rights. It was also the role of politicians to take decisions about social and economic issues.

- Some believed that courts were already intervening on these issues. Perhaps we should not understand Parliament and the courts as being opposed to each other. The courts could enforce democracy by requiring Government to give reasons for action or lack of action.

- What would progressive realisation mean in practice? Would the courts make statements about the specifics of healthcare, say on cancer treatment, or more generally on healthcare?

- Comparisons with South Africa were misplaced, because South Africa had a constitutional court which played a very different role than did the judiciary in the UK.

- If the Equality Bill before Parliament were enacted with an “equality guarantee” than this would provide an opportunity to enforce social and economic rights without having to involve the courts.
• Trade union rights should be recognised as human rights and included in a Bill of Rights: neither the Committee’s report nor the Green Paper had recommended they be included. This was a mistake.

• The debate about economic and social rights got to a core political issue: how best to protect the interests of the poorest in society.

**Round table discussion 3: Process of engaging the public**

The Government’s discussion paper committed to a process of full consultation and debate about a UK Bill of Rights, but did not explain how this would work. Therefore, how should the Government set about consulting on the Bill of Rights?

Key points made in discussion included:

*Who should it consult and what form should the consultations take?*

• There could only be a UK Bill of Rights if the public believed it needed one.

• There should be extensive consultation with the British public. Consultation must extend beyond Government and the small community to involve local government, the public sector and marginal groups.

• Understanding of human rights was low, and it would be important to explain human rights and to demonstrate how a Bill of Rights could benefit people. On the other hand, some mentioned that public awareness was growing and there was increasing enthusiasm for a Bill of Rights.

• The media and political leaders often contributed to negative portrayal of human rights.

• Note should be taken of the discussions and decisions of devolved nations, for example the work in Northern Ireland.
What questions should the process seek to answer?

- Before the process began the Government should be clear whether it intended to have a Bill of Rights (the consultation paper was simply entitled ‘Rights and Responsibilities).

- There should be a clear term of reference before any consultation is launched. People should only be consulted on those issues that were genuinely open: the process should only ask questions on which the Government would be prepared to act.

- Questions would include, how should it work in practice? Who did the public trust to protect their rights and how?

Who should do the consulting and how?

- It should be run by a high profile, independent body with no links to Government. This could potentially be led by an existing body, such as the EHRC or, in part, by the JCHR.

- The process had already become politicised and the Government discussion paper was full of party political references. This could make it difficult to have an open consultation.

- One possibility would be set up a Citizens Assembly, as in British Columbia in Canada. People had been selected at random from the voting register. There had been clarity and public awareness about what the outcome of the Assembly’s discussions would be (discussions led directly to a referendum). A Constitutional Convention would be one way forward.

How long should the process take?

- A minimum of 6-9 months, but it would most likely be a longer process, possibly extending into the next Parliament.
**ANNEX: Attendance List**

External organisations:

Edward Adams – Head of the Human Rights Division, Ministry of Justice

Charles Appleby - International Association for Human Values (IAHV)

Alison Balchin – TUC

Professor Robert Blackburn - Kings College London

Professor Vernon Bogdanor – Professor of Politics and Government, Brasenose College, Oxford University

Jean Candler - Head of Policy and Public Affairs, British Institute of Human Rights

Shami Chakrabarti - Director, Liberty

Michael Clancy OBE – Director of Law Reform, Law Society of Scotland

Professor Brice Dickson – Professor of International and Comparative Law at Queen’s University, Belfast

Professor Keith Ewing - Unions Together

Sandra Fredman - Professor in Law and Fellow of Exeter College, Oxford University

Ceri Goddard - Acting Director, British Institute of Human Rights

Carol Harlow – London School of Economics

Professor Robert Hazell - University College London

Tom Hickman - Blackstone Chambers

Martin Howe QC - Member of the Conservative Party’s Policy Commission on a Bill of Rights

John Jackson – Co-director, Convention on Modern Liberty
Professor Francesca Klug – Centre for the Study of Human Rights, London School of Economics

Donal Lyons – Human Rights Consortium in Northern Ireland

Monica McWilliams - Northern Ireland Human Rights Commission (NIHRC)

Claire Methven O’Brien - Danish Institute for Human Rights

Fiona Murphy – Committee for the Administration of Justice

Ellie Palmer - Senior Lecturer, Department of Law, University of Essex

Brian Peddie – Civil and International Justice Directorate, Scottish Government

Glenn Preston – Head of Projects and Communications, Ministry of Justice

Jiwan Raheja – Head of Stakeholders and Delivery Branch, Ministry of Justice

Peter Reading - Equality and Human Rights Commission (EHRC)

David Ruebain - Equality and Human Rights Commission (EHRC)

Alexandra Runswick - Unlock Democracy

Isabella Sankey - Policy Director, Liberty

Professor Graham Smith – Centre for Citizenship and Democracy, University of Southampton

Roger Smith – JUSTICE

Christopher Stanley - British Irish Rights Watch

Katy Swaine - Legal Director, Children’s Rights Alliance for England (CRAE)

Bryon Taylor - Unions Together

Susie Uppal - Equality and Human Rights Commission (EHRC)

John Usher - Legal Officer, Unite the Union
John Wadham - Equality and Human Rights Commission (EHRC)

Andrea Wright – Legal Directorate, Ministry of Justice
Conclusions and recommendations

The state of human rights in the UK

1. Serious, sustained allegations that the UK has received information from countries which routinely use torture, or has been more actively complicit in torture carried out by others, puts the UK’s international reputation as an upholder of human rights and the rule of law on the line. (Paragraph 15)

2. We have consistently argued that the system of control orders, by which the activities of terrorism suspects who have not been prosecuted can be regulated and curtailed, is bound to lead to breaches of the ECHR, particularly because people subject to control orders are not given the details of the case against them. In a series of judgments during the session, the courts have reached broadly similar conclusions, culminating in decisions of the Grand Chamber of the European Court of Human Rights and the House of Lords, which have caused the whole system to unravel. (Paragraph 16)

3. The Government is, of course, to be commended for introducing the Human Rights Act; but too often subsequently there has been a lack of leadership to use the Act to its full potential, ensure that public bodies promote human rights as well as do the minimum necessary to comply with the legislation, and respond to court judgments which have narrowed the scope of the Act from what Parliament originally intended. (Paragraph 20)

4. We are concerned that human rights will again become a political football, with serious debate on the choices facing the UK kept on the touchline in favour of noisy recitals of the myths and distortions with which we are so familiar. Politicians on all sides must be clear about what they intend to do and the practical impact of their proposals. We would oppose any suggestion that rights encompassed in the Human Rights Act should no longer be protected or should not be enforced in UK courts, or that the UK need not fully comply with judgments of the European Court of Human Rights. (Paragraph 21)

5. Whatever decisions are taken on the shape of the human rights framework in the UK, we are of the view that Parliament, Government and the people we serve will continue to benefit from a dedicated human rights committee with an unflinching focus on whether human rights are being protected and promoted sufficiently in the UK (Paragraph 22)

Pre-and-Post legislative scrutiny

6. We draw to the attention of both Houses the Government’s undertaking, in 2006, that a coroner may refuse to suspend an inquest in favour of an inquiry under the Inquiries Act 2005 if he reasonably believes that the inquiry will not comply with Article 2 of the ECHR (Paragraph 29)
7. We welcome requests from members of the public to investigate Government policy or practice which may not comply with the UK’s human rights obligations (although bearing in mind that we cannot investigate individual cases). Where time allows, we will endeavour to take up matters within our remit with the Government and to provide a response to those who raise matters with us explaining the action we intend to take or the reasons why we have decided not to act. (Paragraph 31)

8. We look forward to receiving the fruits of this work: scrutiny of the Finance Bill is central to the work of Parliament and we require additional information than that which is normally provided in order to perform our scrutiny role properly (Paragraph 33)

Timeliness

9. During the session we reported on nine bills before Report stage in the first House and one before Second Reading in the second House. (Paragraph 34)

Recurring themes

10. We welcome the Government’s willingness to amend the Marine and Coastal Access Bill to meet our concerns about compliance with Article 6 of the ECHR in the light of the Tsfayo judgment. We look to the Government to build on its approach to dealing with Tsfayo in this context in future legislation. (Paragraph 37)

Quality of explanatory notes

11. Following the example set by the Department of the Environment, Food and Rural Affairs with the Marine and Coastal Access Bill and the Government Equalities Office with the Equality Bill, Ministers should provide us with a redacted version of the human rights memorandum circulated within Government when a bill is introduced. We recommend that Government guidance on the introduction of legislation should be amended to give effect to this proposal in time for the first session of the new Parliament. (Paragraph 42)

Committee amendments to Government Bills

12. We look forward to the House of Commons being given the opportunity to agree that amendments to bills (and motions) can be tabled in the name of a select committee, as long as the amendments have been agreed formally without division at a quorate meeting (or, in the case of a joint committee, by a quorum of Commons Members). We also welcome the Procedure Committee’s recommendation that committee amendments should have priority in selection for decision under programming. (Paragraph 44)

13. We particularly welcome and endorse that Committee’s view that “there should be a presumption that no major group [of amendments] should go undebated”. (Paragraph 45)
Civil Society input into legislative scrutiny work

14. The House of Commons should be given an early opportunity to debate changes to procedure arising from the report of the Wright Committee, including a new approach to the allocation of time for Report stage debates which will enable the Commons to debate legislation more thoroughly than is often possible at present. (Paragraph 45)

15. We welcome engagement with members of the public, NGOs and others about the human rights issues raised in bills. (Paragraph 46)

16. The publication in draft of the Government’s legislative programme has helped us plan our work and attract more civil society input and should now be regarded as a routine part of the legislative cycle. (Paragraph 47)

UN Convention against torture

17. This formulation of the Government’s view, which we had not previously encountered, does not assuage our concern that the UK may be in systematic and regular receipt of information obtained by torture overseas and may, as a result, be “complicit” in torture as that term is defined in the relevant international standards. An overseas security agency may well use torture without being encouraged to do so by the fact that the information thereby obtained ends up in London. In any event, it is unlikely that the UK Government would come to know or believe that its receipt of such information was acting as an encouragement to torture. (Paragraph 60)
Formal Minutes

Tuesday 15 December 2009

Members present:

Mr Andrew Dismore MP, in the Chair

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<tr>
<th>Lord Dubs</th>
<th>Dr Evan Harris MP</th>
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<td>Baroness Falkner of Margravine</td>
<td>Fiona Mactaggart MP</td>
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<td>Lord Morris of Handsworth</td>
<td>Mr Virendra Sharma MP</td>
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<td>The Earl of Onslow</td>
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Draft Report (The Work of the Committee in 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 to 87 read and agreed to.

Annexes read and agreed to.

Summary read and agreed to.

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

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

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 16 December, 27 January, 3 February, 10 and 31 March, 12 May and 13 October in the last session of Parliament and on 24 November.

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[Adjourned till Tuesday 12 January 2010 at 1.30pm.]
Written Evidence

Letter from the Chair of the Committee to Rt Hon Harriet Harman QC MP, dated 19 December 2006

Draft Coroners Bill

The Joint Committee on Human Rights is considering the human rights compatibility of the Draft Coroners Bill. We are aware that this Bill has been subject to detailed pre-legislative scrutiny by the House of Commons Constitutional Affairs Committee. Although the Government had expressed a commitment to bringing forward a Coroners Bill in this parliamentary session, there was no reference to a Coroners Bill made in the Queen’s Speech, nor is there any reference to a Bill on the website of the Leader of the House. The Government have indicated to the Committee of Ministers that, in relation to the enforcement of the implementation of general measures to meet the United Kingdom’s procedural obligations under Article 2 ECHR, that legislative measures to reform Coroners are underway. The Committee of Ministers Deputies are awaiting further information from the United Kingdom on the progress of these reforms.  

1. We would be grateful if you could update us on the Government’s progress on the draft Bill, and whether it is likely that the Government will continue with its proposed reforms in this parliamentary session. If not, why not?

Having undertaken initial scrutiny of the draft Bill, we recognise that the Bill clearly has the potential to be a human rights enhancing measure; by increasing the effectiveness of Coroners’ investigations and addressing the requirement for an effective investigation into deaths which engage the State’s responsibility to protect individuals’ right to life (as guaranteed by Article 2 ECHR). However, we would be grateful if you could provide a fuller explanation of the Government’s view that the proposals in the Bill are compatible with the Convention rights guaranteed by the Human Rights Act 1998, in the following respects.

100 Main Cases pending supervision, database, presented 17 October 2006 to the Committee of Ministers; Execution of Edwards v United Kingdom App 46477/99 (page 218). We note that the Committee of Ministers Deputies have reopened their consideration of the implementation of this judgment and are awaiting further information. http://www.coe.int/t/e/human_rights/execution/02_documents/PPcasesExecution_Nov%202006.pdf
(1) Reform of death investigation: Article 2 ECHR

There are a number of developments in the Bill which have the potential to enhance the ability of Coroners’ investigations to satisfy the requirements of Article 2 ECHR for a full and effective investigation, including, a) widening the statutory duty to conduct investigations, including a broad duty to conduct investigations into the death of anyone “lawfully detained in custody”, as opposed to the current duty to investigate deaths “in prison”\(^{101}\) and b) the introduction of new rights of participation and appeal for bereaved families and other “interested parties”. We welcome the proposed introduction of a Charter for bereaved families, a policy objective which our predecessor Committee praised in its report into deaths in custody (2004-05, Third Report, para 295).

The draft Explanatory Notes accept that a significant number of the Bill’s clauses engage Article 2 ECHR and the obligation to conduct an effective investigation. The Government explain that certain parts of the Bill “are designed to discharge the obligation to conduct an effective investigation”.\(^{102}\) However, the draft Explanatory Notes do not explain why the Government is persuaded that the provisions of the Bill discharge that obligation effectively. We hope that a full explanation of the human rights impact of the proposals in the Coroners Bill will be provided to the Committee, including an explanation of those proposals which the Government considers enhance the United Kingdom’s ability to meet the procedural requirements of Article 2 ECHR, and containing an explanation of the Government’s reasons for its assessment.

Coroners’ Investigations: Recommendations of the Coroner

The draft Bill makes provision similar to that already established under Rule 43 of the Coroners Rules 1984. Under Clause 12(2), where a coroner believes, as a result of an investigation, that action should be taken to prevent similar fatalities, the coroner may report the matter both to a person who has power to take such action and to the Chief Coroner. There is no power for the coroner to compel the person to take action or to

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\(^{101}\) Clause 1 See Coroners Act 1988, Section 8(1).

\(^{102}\) Ibid, page 116
report back as to what action, if any, has been taken. The Constitutional Affairs Committee, in their report, recommended that the Government take a bolder approach to the Coroner's preventative role in public health and safety matters (see paragraph 211). Liberty have submitted that the Coroner should be required to make recommendations at the end of every inquest and that these should be centrally recorded and monitored.\(^{103}\) Article 2(1) ECHR requires the state to take appropriate steps to safeguard the lives of those within their jurisdiction. The Court will take into consideration the effectiveness of any preventative steps taken by the State in their consideration of the compatibility of any State acts or omissions in respect of a death which engages Article 2 ECHR.

2. **Has the Government any plans to enhance the powers of the Chief Coroner to act on recommendations made by coroners with a view to identifying patterns in deaths which require investigation and preventing similar fatalities, in light of the recommendations of the Constitutional Affairs Committee?**

**Coroners' Investigations: Evidence**

For example, Clause 43(2) would give the Lord Chancellor a wide power to limit the power of the Coroner to call certain evidence or require the production of certain documents. Although the Explanatory Notes explain that this power would “only be exercised in a way that is compatible with ECHR obligations”, the Committee has previously expressed their concern where issues which may raise significant human rights issues are left to secondary legislation. It is clear from the case law of the European Court of Human Rights that the effectiveness of an individual investigation for the purposes of Article 2 ECHR, where one is required, will be significantly affected by the scope of the evidence taken or heard, and any relevant procedural limitations.\(^{104}\)

3. **What has persuaded the Government that it is appropriate to grant the Lord Chancellor a wide power to direct the Coroners’ treatment of evidence?**

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103 “The Draft Coroners Bill”, Liberty Briefing, para 12.

104 *Jordan v United Kingdom* (2003) 37 EHRR 2, para 141 (Failure to disclose witness statements and/or take evidence from various members of the security forces in breach of Article 2 ECHR)
4. In what circumstances do the Government consider that this power could be exercised in a case engaging Article 2 ECHR, without unduly restricting effectiveness of the Coroner’s investigation for the purposes of Article 2 ECHR?

Suspension of Coroners Inquests

Clause 22 provides that where certain inquests are suspended, it will be within the discretion of a senior Coroner to resume the inquest, if he thinks there is “sufficient reason” for doing so. Although the Explanatory Notes explain that “where the proceedings for which his investigation was suspended have not met the State’s ECHR obligations, that would provide a good reason for resuming the inquest”, Liberty are concerned that if an inquest is suspended when a criminal prosecution begins, there is a risk that inquests may not be resumed even where a criminal prosecution fails, or where the substance of a trial does not adequately meet Article 2 ECHR standards.105

5. Has the Government considered how to ensure that Coroners will, in practice, be free to reopen suspended investigations in circumstances where a prosecution or other investigation has not met the UK’s obligation to conduct an effective inquiry into a death?

a. Has the Government considered Liberty’s suggestion that there should be a presumption, on the face of the Bill, that where an investigation which triggers the suspension of an inquiry fails to satisfy the requirements of Article 2 ECHR (and fails to identify by what means and in what circumstances a person came by their death) that the inquest will automatically resume?

b. Does the Government intend to provide guidance to Coroners which emphasises the role which Coroners will play in ensuring that the UK’s obligations under Article 2 ECHR are met?

Clause 19 requires the Coroner to suspend an inquest where the Lord Chancellor informs him that the circumstances of an individual’s death will be considered in the course of a public inquiry pursuant to the Inquiries Act 2005, unless there are “exceptional reasons” for not doing so. This provision mirrors amendments to the Coroners Act 1988 made to address concerns about overlapping inquiries, and to avoid any conflict or duplication with

105 Liberty, Briefing on Draft Coroners Bill, September 2006
public inquiries.\textsuperscript{106} The Explanatory Notes do not explain whether the Coroner would be able to refuse to suspend an investigation where it was his view that the Inquiries Act inquiry would not be adequate for the purposes of Article 2 ECHR, or whether the Coroner would have the power to reinstate his investigation where he thought that the scope of the inquiry conducted was not adequate to meet the need for a Convention compliant investigation. In their Report on the Inquiries Bill, the Committee concluded that there was a risk that an inquiry held under the Inquiries Act would not be sufficiently independent to satisfy the requirements of Article 2 ECHR. The Committee were particularly concerned that the power of the Minister to issue “restriction notices” which could limit the scope of an inquiry and the power of the Minister to withhold publication of inquiry reports in the “public interest” would limit the institutional independence and effectiveness of any inquiry.\textsuperscript{107}

6. Does the Government consider that a reasonable belief that the inquiry proposed by the Lord Chancellor under the Inquiries Act 2005 was unlikely to meet the requirements of Article 2 ECHR, because the scope of that inquiry was restricted, or because there was a risk that the inquiry would not be considered independent, would be an “exceptional reason” which would justify a refusal to suspend an investigation?

Clause 30(1) provides that the Coroner may issue directions prohibiting the publication of information gathered in the course of an investigation. Any Article 2 ECHR compliant investigation must have an adequate degree of transparency to ensure that it is open to public scrutiny to a degree sufficient to provide accountability in the circumstances of the case. The Government considers that “this power is justified, in that it seeks to strike a balance between rights under Articles 8 and 10”. Clause 41 confirms that, subject to Coroners Rules, inquests are to be held in public. The Explanatory Notes provide that “the Coroners Rules...will set out the grounds on which the public may be excluded from inquests” (see Clause 67).

7. What has persuaded the Government that the discretion afforded to the Coroner under Clause 30(1), and to the Lord Chancellor under Clause 67, is adequately

\textsuperscript{106} Coroners Act 1988, Section 17A, inserted by Access to Justice Act 1999, s71(1)

\textsuperscript{107} 2004-05, Eighth Report, 3.1-3.18 (See also 2004-05, Fourth Report)
defined to ensure that public scrutiny is not circumscribed arbitrarily or inappropriately and that the provisions in the Bill which permit the restricted publication of information relating to an investigation are compatible with Article 2 ECHR?

(2) Legal assistance for bereaved families

Next of kin must be involved in any Convention compliant death investigation to the extent “necessary to safeguard [their] legitimate interest”. This may include a positive obligation on the State to provide legal aid. The Luce Report (“Death Certification in England, Wales and Northern Ireland: The Report of a Fundamental Review 2003) recommended that funding for legal representation should be available to families in all Coroners’ cases where a public authority is also legally represented. In our predecessor Committee’s Report on Deaths in Custody, it recommended that, at least in relation to deaths in custody, funding should be made available to all next of kin participating in an investigation into the death of their family member. At present, families can apply for funding based on significant public interest. However, the Committee has previously heard evidence that many families involved in cases involving deaths in custody have had to fund their own involvement in inquests.

8. What has persuaded the Government that the current provision for legal funding for bereaved families is adequate to ensure that their participation in Coroners’ investigations is effective for the purposes of the procedural requirements of Article 2 ECHR?

(3) Reporting Restrictions

The Committee is considering whether the reporting restrictions which may be imposed by the Coroner pursuant to Clause 30 strike an appropriate balance between the rights of the deceased person’s family under Article 8 ECHR and the rights of the press under Article 10 ECHR. This is a new power. The draft Explanatory Notes explain that the department considers that this power is justified, “in that it seeks to strike a balance between rights under Articles 8 and 10”.

108 Jordan v United Kingdom (2003) 37 EHRR 2, para 109; R (Khan) v Secretary of State for Health [2004] 1 WLR 971
110 Ibid.
9. What has persuaded the Government that the power to impose reporting restrictions provided by the Bill is proportionate to the need to protect bereaved families’ right to respect for their private life?

10. Will members of the press be considered “interested persons” for the purposes of asking the senior coroner to vary a direction imposing reporting restrictions, or bringing an appeal against such a direction?

(4) Powers of Search and Seizure
The Committee is considering whether the powers of search and seizure granted to Coroners by the Bill contain adequate safeguards for the protection of individual rights under Articles 6 and 8 ECHR (Clauses 50 – 51). These are relatively broad powers. They will extend to all premises, including residential premises. It appears that there are a number of safeguards which generally accompany intrusive rights of search and seizure in the United Kingdom which are not, as yet, reflected on the face of the Bill. For example a) the draft Bill grants powers of search and seizure to the Senior Coroner, as an entity, without any guarantee as to the identity of the individual conducting the search. It is important that any search is in fact conducted only by an authorised person with an adequate degree of training to exercise this intrusive power; b) it provides no procedure for dealing with the treatment or return of seized materials, and c) it provides no means of redress for those aggrieved by the conduct of any search.

11. Have the Government considered whether there are adequate safeguards on the face of the draft Bill to ensure that any interference with the right to respect for the home and private life and the right to the peaceful enjoyment of possessions is proportionate? Have the Government considered incorporating safeguards, similar to those set out in Part II of the Police and Criminal Evidence Act 1984, and if not, why not?

Letter to the Chair of the Committee from Rt Hon Harriet Harman QC MP, dated 22 January 2007

Thank you for your letter of 19 December about the human rights compatibility of the draft Coroners Bill.

The main purpose of the Bill is to improve the way that the coroners system serves the public interest and meets bereaved families' concerns. The Bill will give families involved in
the inquest process a clear legal standing in the system. For the first time, families will have rights, through the introduction of a charter for bereaved people, laying out the level of service in relation to information and consultation that families can expect, and through a new appeals system, enabling them to challenge a coroner’s decision.

A second important aim is to create a national structure for coroners' work. For the first time there will be a Chief Coroner who will provide national leadership for coroners, as the Lord Chief Justice does for judges. This will be supported by national standards, a coronial advisory council, a proper inspection system and national training for coroners and their officers.

And the third main aim of reform is to strengthen coroners’ work and make the appointment system more transparent. The Bill will provide coroners with new powers and procedures to conduct more effective investigations, and will establish a proper appointments system, approved by the Judicial Appointments Commission.

You have sought additional information about certain aspects of the Bill in relation to human rights compatibility. I have set out below your questions together with my response for ease of reference.

1. We would be grateful if you could update us on the Government’s progress on the draft Bill and whether it is likely that the Government will continue with its proposed reforms in this Parliamentary session. If not, why not?

The Coroners Bill is not part of the main programme for this session, but this gives us additional time for further detailed work, including more consultation with stakeholders, so that the legislation can be improved. We will also explore, in consultation with those who deliver and fund the service and those who represent people with experience of it, whether there are other changes that can be made to improve the system in advance of and to complement legislation. The comments of the Joint Committee on Human Rights are therefore particularly welcome and timely.
Coroners’ Investigations: Recommendations of the Coroner

2. Has the Government any plans to enhance the powers of the Chief Coroner to act on recommendations made by coroners with a view to identifying patterns in deaths which require investigation and preventing similar fatalities, in the light of the recommendations of the Constitutional Affairs Committee?

Clause 12(2) of the draft Bill gives the coroner power to report his findings to a person who may have power to take action to prevent the recurrence of fatalities similar to that which is being investigated, with a view to preventing similar deaths in the future.

Following the consultation process, I am considering amending the Bill to make it a requirement for the Chief Coroner to include - in his or her annual report to the Lord Chancellor (who is, in turn, required to lay it before Parliament) - a summary of the reports made by coroners and responses to such reports. I am also considering making it a requirement for the person to whom the report is made to formally respond. More details on procedures to support these new arrangements will be dealt with in secondary legislation.

Coroners’ Investigations: Evidence

3. What has persuaded the Government that it is appropriate to grant the Lord Chancellor a wide power to direct the Coroners’ treatment of evidence?

4. In what circumstances do the Government consider that this power could be exercised in a case engaging Article 2 ECHR, without unduly restricting effectiveness of the Coroners’ investigation for the purposes of Article 2 ECHR?

The Bill provides coroners with a power to compel a person to attend to give evidence (clause 42). Powers to compel evidence are a necessary corollary of the state’s duty to discharge obligations under Article 2. Lack of power to compel witnesses may diminish the effectiveness of an inquiry111. A person may argue that he may not be compelled to give evidence where it would not be reasonable (clause 42(4)). A further procedural safeguard enables a person to argue that he should not be required to give, produce or provide evidence if doing so will tend to incriminate him, if the evidence is covered by legal professional privilege or on the grounds of public interest immunity (clause 43).

The Government is currently reviewing whether these provisions are a sufficient safeguard for witnesses and whether the provision in clause 43(2) is necessary. If further provision is considered to be necessary it is intended that the Bill will list the evidence or documents to which section 42 does not apply and that the Lord Chancellor’s power will be limited to altering this list by subordinate legislation, which will follow the affirmative resolution procedure.

Suspension of Coroners Inquests

5. Has the Government considered how to ensure that Coroners will, in practice be free to reopen suspended investigations in circumstances where a prosecution or other investigation has not met the UK’s obligation to conduct an effective inquiry into a death?

a. Has the Government considered Liberty’s suggestion that there should be a presumption, on the face of the Bill, that where an investigation which triggers the suspension of an inquiry fails to satisfy the requirements of Article 2 ECHR (and fails to identify by what means and in what circumstances a person came by their death) that the inquest will automatically resume?

b. Does the Government intend to provide guidance to Coroners which emphasises the role which Coroners will play in ensuring that the UK’s obligations under Article 2 ECHR are met?

6. Does the Government consider that a reasonable belief that the inquiry proposed by the Lord Chancellor under the Inquiries Act 2005 was unlikely to meet the requirements of Article 2 ECHR, because the scope of that inquiry was restricted, or because there was a risk that the inquiry would not be considered independent, would be an "exceptional reason" which would justify a refusal to suspend an investigation?

The Bill requires the coroner to suspend an investigation in the event that certain criminal proceedings may be brought, have been brought, or in the event of an inquiry under the Inquiries Act 2005 (clauses 17 to 19). A coroner who suspends an investigation on the ground that criminal proceedings might be brought (clause 17) is required to resume the investigation once the period of suspension has ended. A coroner who suspends an investigation on the ground that criminal proceedings have been brought (clause 18) or that an inquiry is being held (clause 19) has power to resume the investigation once the proceedings or inquiry is complete if he or she thinks there is sufficient reason for doing so.
This gives him the power to resume an investigation, for example, where he or she thinks that the State's obligations have not been met under the ECHR.

I consider that the provision as currently worded is sufficient to ensure ECHR compliance. Since a coroner is a public authority and, whether or not the Bill requires him or her to, at the end of the criminal proceedings or inquiry, as the case may be, he or she will be required to assess whether those proceedings met the Article 2 obligation and, if not, he or she will be required to resume the inquest in any event, unless the obligation will be met in any other way.

As to whether the government will issue guidance to coroners emphasising the role which they should carry out in ensuring the obligations of Article 2 are met, this will be a responsibility of the proposed new Chief Coroner as part of his or her leadership role, which will include a requirement to ensure consistency across coroner areas.

Finally, on your question about inquiries under the Inquiries Act, the Government does consider that a reasonable belief that the inquiry proposed by the Lord Chancellor would not meet Article 2 requirements because of its scope, would be an exceptional reason which would justify a coroner's refusal to suspend an investigation.

7. What has persuaded the Government that the discretion afforded to the Coroner under Clause 30(1), and to the Lord Chancellor under Clause 67, is adequately defined to ensure that the public scrutiny is not circumscribed arbitrarily or inappropriately and that the provisions in the Bill, which permit the restricted publication of the Information relating to an investigation are compatible with Article 2 ECHR?

Clause 30 provides a senior coroner with the power to give a direction prohibiting publication of the name of the deceased and any interested person within clause 76(2)(a) and any information which could lead to the identification of the deceased. Any publication in contravention of a direction will constitute a contempt of court. When considering whether to give such a direction, a coroner will be bound by existing case law as to the circumstances in which it is appropriate to allow a name to be withheld. In addition and so as to ensure the public scrutiny of an investigation is not compromised, I am considering amending this clause so as to limit the discretion of a coroner to cases
where he or she considers that exceptional circumstances apply to justify the imposition of reporting restrictions. It may also be amended so that a coroner will no longer be able to make a direction under clause 30 of his own motion but only where an application is made by an interested party. In his or her function of providing leadership to coroners, the Chief Coroner will have power to issue guidance to coroners setting out the type of exceptional circumstances that would justify the coroner exercising his discretion.

In the Government’s view, exceptional circumstances are only likely to exist if there is a reason for not publicising the name and the case does not raise issues of public interest or matters of public protection or if there is no third party or organisation implicated in or connected to the death. In addition, the Chief Coroner will monitor use of this discretionary power, and he or she will be required to report to the Lord Chancellor the number and outcome of applications under this provision, including the number and outcome of any appeals.

Clause 41 is likely to be amended so that the cases where an inquest may be held in private will be set out on the face of the Bill. The only circumstance when this will be permitted is if there are national security issues.

Legal Assistance for Bereaved Families

8. What has persuaded the Government that the current provision for legal funding for bereaved families is adequate to ensure that their participation in Coroners’ investigations is effective for the purposes of the procedural requirements of Article 2 ECHR?

In some cases, Article 2 ECHR places a substantive investigative obligation on the State. In any case that requires an inquest, it is necessary to consider whether the investigative duty under Article 2 is triggered on the facts of the case and if there is such a duty, whether what has become known as the "Jordan fifth" criteria applies. The Jordan criteria derives from the judgement in the case of Jordan (Hugh Jordan v. the United Kingdom - 24746/94 [2001] ECHR 327 (4 May 2001)), and is that "the next-of-kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests" (para. 109). If that
criteria does apply, a further issue arises, namely whether or not this requires the grant of public legal funding for the coroner's inquest.

The courts have also made clear that that in the vast majority of inquests the coroner can conduct an effective investigation, with the family's participation, without the family of the deceased needing to be legally represented. For example, in the case of Khan, the court found that:

"...the function of an inquest is inquisitorial, and in the overwhelming majority of cases the coroner can conduct an effective judicial investigation himself without there being any need for the family of the deceased to be represented..." (para 74., Khan v Secretary of State for Health [2003] EWCA Civ 1129)

This view was subsequently reiterated in the case of Challender where the court considered that that:

"I see nothing in the cases post-dating Khan to support a broader approach than that expressed in Khan itself when it was said that in the overwhelming majority of cases the coroner can conduct an effective judicial investigation himself and that only in exceptional cases will article 2 require legal representation for the family of the deceased" (p.71, R (Challender) v Legal Services Commission [2004] EWHC 925 (Admin)

Normally, the holding of the inquest will be sufficient to discharge the State's Article 2 obligations to conduct an effective investigation into the death. For those exceptional circumstances, funding may be required. In such cases, the Lord Chancellor or his Ministers can grant funding, where it requested by the LSC, under the powers granted by section 6(8)(b) of the Access to Justice Act 1999.

In addition to this, Legal Help is available for an inquest, (subject to financial eligibility and the usual test sets out in the LSC funding code). Legal Help would fund all the preparatory work associated with the inquest, which may include preparing written submissions to the Coroner. Legal Help will also fund someone to attend the inquest as a 'Mackenzie Friend', to offer informal advice in Court, providing the Coroner gives permission.
Other than in exceptional cases, funding for representation at an inquest is not usually available because an inquest is a relatively informal inquisitorial process, rather than an adversarial one. The role of the coroner is to question witnesses and to actively elicit explanations as to how the deceased came by his death. An inquest is not a trial. There are no defendants, only interested parties, and witnesses are not expected to present legal arguments. I am, however, concerned about coroners' investigations where the substantive investigative duty under Article 2 is not triggered and when public authorities choose to be legally represented at inquests, where a bereaved family member is not entitled to public funding for representation. This is something I am considering further.

**Reporting Restrictions**

9. What has persuaded the Government that the power to impose reporting restrictions provided by the Bill is proportionate to the need to protect bereaved families' right to respect for their private life?

10. Will members of the press be considered "interested persons" for the purposes of asking the senior coroner to vary a direction imposing reporting restrictions, or bringing an appeal against such a direction?

Draft clause 30 polarised opinion in the responses to our public consultation. Some strong views were received from the media, who felt that the proposal was against the principle of open justice and would not be in the public interest. On the other hand, many voluntary groups were supportive of the proposal and felt it was an important step towards protecting families in sensitive cases where there is no justification for names being made public.

The exercise of this power may engage Article 8 and Article 10. The decision to give a direction will involve a balancing of these rights. There is no automatic precedence as between these Articles and both are subject to qualification where, among other considerations, the rights of others are engaged. The coroners will follow the approach of the House of Lords in *Re S (a child)*[^112] that the foundation of the inherent jurisdiction to impose reporting restrictions now derives from Convention rights.

[^112]: In [2004] UKHL 47
As mentioned at paragraph 7, I am considering a number of amendments to this clause to ensure compliance with the ECHR.

It is intended that the amendments will allay the fears, expressed by the media, that there will be a ‘widespread ban’ on the reporting of inquests and investigations, yet still provide the necessary protection for vulnerable families in cases where there is no public interest in the publication of information that could lead to the identification of those involved. In clause 76(2), the media will be included as an 'interested person' who may appeal a direction on reporting restrictions.

Powers of search and seizure

11. Have the Government considered whether there are adequate safeguards on the face of the draft Bill to ensure that any interference with the right to respect for the home and private life and the right to the peaceful enjoyment of possessions is proportionate? Have the Government considered incorporating safeguards, similar to those set out in Part II of the Police and Criminal Evidence Act 1984, and if not, why not?

Clause 50 enables a coroner to enter and search premises and to seize property or inspect and take copies of documents. Clause 51 enables property seized to be retained. Reasonable force may be used in the exercise of the power.

The powers of search and retention of property may engage Article 8 rights. However, I consider that any interference will be justified in accordance with Article 8(2) as any search is likely to be in the interests of either public safety, prevention of crime or for the protection of the rights and freedoms of others. The inability to acquire evidence and material may inhibit the coroner’s duty to conduct an effective investigation.

I consider that the powers are proportionate to the achievement of a legitimate aim. The power to enter and search may only be used if the Chief Coroner has given his or her authorisation (clause 50(2)). Furthermore, authorisation will only be given if the coroner has reasonable cause to suspect that there may be anything on the premises which relates to a matter which is relevant to the investigation (clause 50(3)); and either-
it is not practicable to communicate with a person entitled to grant permission to enter and search the premises,

permission to enter and search the premises has been refused, or

the coroner has reason to believe that such permission would be refused if requested (clause 50(4)).

The power to seize anything on the premises and inspect and take copies of documents may only be used if the coroner believes that it may assist the investigation and, in the case of seizure, only if it is necessary to prevent the item being concealed, lost, altered or destroyed (clause 51(1)).

The power to seize articles may engage rights to peaceful enjoyment of possessions under Article 1, Protocol 1. However the Department considers that interference with this right is justified in the public interest and is proportionate. Any items seized will only be retained for as long as is necessary in all the circumstances (clause 51(4)). Furthermore, by virtue of clause 66(2)(f) and (g), the Lord Chancellor has power to make regulations which may contain provision, in relation to authorisations under clause 50(2), which is equivalent to that made by any provision of sections 15 and 16 of the Police and Criminal Evidence Act 1984 and which may contain provision, in relation to the power of seizure of property, which is equivalent to that made by any provision in section 21 of the Police and Criminal Evidence Act 1984. It is intended that the regulations will require a coroner to provide a record of items seized to a person who is the occupier of premises from which the item was seized or who had control of the item before it was seized. It is also intended that such a person will be allowed access to the item for the purpose of photographing it.

A coroner’s decision to seize and retain an item will be capable of challenge by way of appeal to the Chief Coroner. Article 6 rights may be engaged in this context, in which case the appeal proceedings which the Bill puts in place will be capable of meeting its requirements.
Letter from the Chair of the Committee to Rt Hon Beverley Hughes MP, Minister of State for Children, Young People and Families, dated 11 November 2008

The use of restraint in juvenile secure settings

I refer to our telephone conversation on 29 October 2008 in which you notified me of David Hanson’s Written Ministerial Statement the same day. You told me, and the Statement confirms, that the Government intends to delay publication of the report of the independent review into the use of restraint and the Government’s response to it until 15 December.

Thank you for keeping me informed of the Government’s plans in this area. As you are aware, the use of restraint on children in detention is an issue of very serious concern to my Committee. We are concerned at the significant time which has elapsed since the inquest into the death of Adam Rickwood and the announcement of the setting up of the independent review into the use of restraint in secure settings, as well as the further postponement of publication of the review and the Government’s response. We trust that there will be no further delay in the Government’s timetable on this important human rights issue.

In our Report on the Use of Restraint in Secure Training Centres, we recommended that the Government report to Parliament on a six monthly basis on the number of restraint incidents, broken down by the specific purposes for which restraint was necessary (Recommendation 14). The Government accepted this recommendation and proposed to include this information in the quarterly statistics it placed in the Libraries of both Houses (p. 12 Government Response). We note that the most recent statistics were deposited on 11 August 2008 and relate to the period January to March 2008 (HC Dep 2008-2167). Disappointingly, these statistics do not provide a breakdown of the purpose for which restraint was used. Given the Government’s commitment to do so, please could you ensure that future statistics are broken down in this way.
Letter to the Chair of the Committee from David Hanson MP, Minister of State for the Home Office and Rt Hon Beverley Hughes MP, Minister of State for Children, Young People and Families, dated 17 February 2009

USE OF RESTRAINT IN JUVENILE SECURE SETTINGS

Thank you for your letter of 11 November about the independent Review of Restraint. We are sorry that you have not had an earlier reply.

You were concerned that the Government should meet its target of publishing the Review and our Response to it by 15 December. I am very pleased that we were able to do so.

You also referred to the quarterly statistics on use of restraint in secure training centres for the period January to March 2008, which were placed in the Libraries on 11 August. You commented on the absence of a breakdown of the reasons for restraint being used.

Letter from the Chair of the Committee to Rt Hon Gordon Brown MP, Prime Minister, dated 11 December 2008

Adoption of the Right of Individual Petition to the UN Human Rights Committee

I am writing to request that you consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), to mark the 60th anniversary of the Universal Declaration of Human Rights.

The International Covenant on Civil and Political Rights (ICCPR) came into force on 23 March 1976. Following the Universal Declaration on Human Rights, this was the first international legal instrument guaranteeing the civil and political rights of individuals across the globe. It has been ratified by 163 States worldwide. The United Kingdom signed the Covenant in 1968 and ratified in May 1976.

The ICCPR is accompanied by an Optional Protocol which provides individuals with a right to petition the international monitoring body, the UN Human Rights Committee, in respect of individual complaints. In 2005, our predecessor Committee called on the Government to explain why the UK had not ratified this and other Optional Protocols.
which would provide people in the UK with the right to petition international human rights monitoring bodies.\textsuperscript{113}

The Minister for Human Rights, Michael Wills MP, has recently published the outcome of the Government’s review of its experimental ratification of the similar Optional Protocol to the UN Convention on the Elimination of Discrimination against Women (UNCEDAW). The Minister explains the Government’s view that the review has not “provided sufficient empirical evidence to decide either way on the value of other individual complaint mechanisms”. We understand that the Government will now consider whether to accept the right of individual petition to the international human rights monitoring bodies on a “case-by-case” basis.

In July, the UN Human Rights Committee called on the UK to consider accession to the Optional Protocol as “a priority”\textsuperscript{114}. We suggest that it would be appropriate to mark the 60\textsuperscript{th} Anniversary of the Universal Declaration on Human Rights by announcing a review of the merits of ratification of the Optional Protocol to the ICCPR. This would help enhance the protection of human rights in the UK, follow up the recent review of the UK’s experience with the Optional Protocol to the UNCEDAW, and be an appropriate response to the concerns of the UN Human Rights Committee. We recognise that the Government has taken a number of positive steps with respect to international human rights treaties in recent years, including the welcome commitment to ratify the UN Convention on the Rights of Persons with Disabilities and the Council of Europe Convention on Human Trafficking. We consider that signing and ratifying the Optional Protocol to the ICCPR would also prove beneficial and we would be grateful for your commitment to initiate a review of this matter.


\textsuperscript{114} CCPR/C/GBR/CO/6, Concluding Observations of the UN Human Rights Committee on the Sixth Periodic UK Report, 30 July 2008, paragraph 6.
Letter to the Chair of the Committee from Rt Hon Gordon Brown MP, Prime Minister, to
the Chairman regarding the ICCPR, dated 20 January 2009

Thank you for your letter about the Optional Protocol to the International Covenant on
Civil and Political Rights (ICCPR), which provides a mechanism of individual petition to
the United Nations (UN) Human Rights Committee.

The Government reviewed its position on individual petition under various treaties in
2004.

As we noted at the time, the United Kingdom seeks to comply with its obligations under
the UN treaties, including the ICCPR, and we have effective protections in our law to do
so. In particular, of course, the Human Rights Act 1998 gives further effect to rights drawn
from the European Convention on Human Rights, most of which are civil and political
rights; people may also apply to the European Court of Human Rights in Strasbourg in
respect of these same rights.

Successive Governments have not seen a compelling need to accept individual petition to
the UN. The practical value to the individual citizen is unclear. Unlike the Strasbourg
Court, the UN committees that receive individual petitions are not courts and cannot
award damages, nor can they produce a legal ruling on the meaning of the law.

However, as a result of the 2004 review, the Government decided to accede to the Optional
Protocol to the UN Convention on the Elimination of All Forms of Discrimination Against
Women (CEDAW).

As you note in your letter, the Government is also considering acceding to the Optional
Protocol to the new UN Convention on the Rights of Persons with Disabilities; I am
pleased that you welcome the Government’s positive attitude towards this and other
human rights commitments. Between that and the continued operation of the CEDAW
Optional Protocol, we hope to gain more evidence as to the merits of individual petition
mechanisms. However at present there is no new evidence to suggest a review of our
position.
Broads Authority Bill

I am writing to you in connection with clause 32 and Schedule 2 of the above Bill.

I note that the “Note in support of Human Rights Act declaration” submitted with the Bill, dated 21 November 2006, does not address the question of whether the Bill’s provision for appeals against decisions concerning permits are compatible with the right of access to an independent and impartial tribunal in the determination of one’s civil rights in Article 6(1) of the European Convention on Human Rights.

I would be grateful if you could provide a reasoned explanation of your view as to why that part of the Bill (as proposed to be amended in your letter dated 5 September 2008 to Counsel to the Chairman of Committees) is compatible with Article 6(1), having regard in particular to the decision of the European Court of Human Rights in Tsfayo v UK [2007] BLGR 1, and to the fact that decisions concerning permits may turn on purely factual questions.

My clients have obtained advice on your inquiry from Mr Richard Drabble QC who advised in the Human Rights Act declaration when the Bill was deposited in Parliament in November 2006. As it happens Mr Drabble appeared for Mrs Tsfayo in the case of Tsfayo v UK to which you referred in your letter of 17th December. A copy of Mr Drabble’s advice is attached. As you will see he is of the view that clause 32 and Schedule 2 to the Bill (as proposed to be amended) are compatible with article 6 of the European Convention of Human Rights.
The Broads Authority have asked me to confirm that, if the Bill becomes law, they will exercise their functions in relation to the Water Skiing and Wake Boarding Appeals Panel in accordance with Mr Drabble’s advice.

I hope that this letter and its enclosure provide you with a sufficient response to your letter of 17th December, however do please let me know if you require more information or wish to discuss the matter further.

Annex

RE: BROADS AUTHORITY BILL WATER SKIING AND WAKE BOARDING APPEALS PANELS COMPATIBILITY WITH ARTICLE 6

NOTE

1. This Note has been prepared to deal with the concern raised about the Appeals Panel proposed under paragraph 1A of schedule 2 of the Broads Authority Bill. The concern is articulated in a letter dated 17th December 2008 from Andrew Dismore MP in his capacity as Chair of the Joint Committee on Human Rights. The concern is whether this provision is compatible with Article 6, given that the Appeals panel may decide issues of pure fact. The letter draws attention to the decision of Tsfayo v UK (in which, by chance, I appeared as advocate for Mrs Tsfayo).

2. The provisions of paragraph 1A of schedule 2 provide for a panel composed of two persons appointed by the authority; two persons appointed "by a body appearing to the Authority to represent water skiing and wake boarding interests"; and one person appointed by the authority’s standards committee from amongst the members of that committee who are not members of the authority. I note at the outset that the form of the paragraph identifies the appointing body; it does not mandate the actual identity of the person who is appointed. Thus, although the paragraph allows the Authority to appoint members of the authority or officers of the authority it does not require this; and the legality of the use of the power to appoint someone with an improperly close connection to the dispute could itself be controlled by judicial review.
3. The JCHR letter refers specifically to *Tsfayo*. *Tsfayo* is one of a line of cases both in the ECHR and domestically in which the adequacy of access to a court through judicial review or appeals on a point of law has been considered. The cases include *Bryan* before both the Commission and the European Court; *Alconbury* and *Begum* in the House of Lords; *Tsfayo* itself; and post *Tsfayo* cases in the Court of Appeal, including Ali v Birmingham and R(Gilboy) v Liverpool Ct.

4. I am of the clear opinion, having regard to this line of authority, that the provisions of paragraph IA of Schedule 2 are compatible with article 6 given the ability of an appellant to judicially review the Panel. Although the JCHR letter concentrates on *Tsfayo*, the most immediately relevant authorities are the earlier authorities of *Bryan* and *Alconbury*, in which the position of planning inspectors in article 6 terms is considered.

5. There are two issues which need to be considered under article 6. A court, to be adequate for article 6 purposes, must be both "impartial" and "independent". A planning inspector is not independent of the executive; and accordingly cannot itself be regarded as an article 6 court. However, s/he does possess a considerable degree of impartiality. For the purposes of fact finding, he can be regarded as "independent" of the parties - see in particular the speech of Lord Hoffmann at paragraphs 103 to 117, especially the citation from Sir Nicholas Bratza in the Commission proceedings in *Bryan* in paragraph 108. Lord Hoffmann paraphrased this in paragraph 110 by observing that the Inspector was not independent when deciding policy, but "on the other hand, in deciding questions of primary fact or fact and degree which arose in enforcement notice appeals, the inspector was no mere bureaucrat. He was an expert tribunal acting in a quasi-judicial manner and therefore sufficiently independent to make it unnecessary that the High Court should have a broad jurisdiction to review his decisions on questions of fact. ".

6. Applying that dicta to the present structure, it is true that the Appeals Panel would not be an "expert tribunal"115, but there is no reason at all why the powers of appointment cannot be exercised so as to appoint people with no unacceptable relationship to the

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115 Although even here the power is structured to facilitate appointment of persons with knowledge of the relevant background.
dispute. Given the acceptability of the role of higher managers in *Begum*, recently confirmed by the Court of Appeal in *Ali*, I think it highly likely that the courts would accept the appointment of members of the authority or officers of the authority provided that they were not involved in the dispute in question; but it is not necessary to form a final view on this. The point for present purposes is that the provisions of the Bill are compatible with the Convention because they provide a wide power of appointment that can be exercised in an acceptable way; and that the exercise of the powers can be policed by the judicial review court.

7. The problem in *Tsfayo* was different and in some senses extreme. The members of the Housing Benefit Review Board were all members of the paying authority; they operated under a subsidy regime which could be characterised as encouraging a decision adverse to Ms Tsfayo; and they found against her on an issue of pure credibility. Their position is sharply different from the position of a planning inspector. *Tsfayo* can be seen as an example of a "biased" primary fact finder.

8. For the above reasons, I consider that the provisions of the Bill relating to the appeal panel are compatible with article 6.

Richard Drabble QC
Landmark Chambers
19th December 2008.

**Letter from the Chair of the Committee to Frank Doran MP, Chairman of the Administration Committee, dated 3 March 2009**

**Access to Parliament and parliamentary business by people with disabilities**

In the last session, the Joint Committee on Human Rights undertook a broad ranging inquiry into the human rights of adults with learning disabilities. As part of that inquiry, I was keen, as Chair, to ensure that we engaged effectively with adults with learning disabilities during the inquiry. We took a number of steps to try to increase the accessibility of our inquiry. These included:

- publishing our Call for Evidence in Easy Read;
• taking advice from the British Institute for Learning Disabilities on how to make our oral evidence sessions more accessible for witnesses with learning disabilities;

• extending our deadline for evidence in response to requests from adults with learning disabilities and their organisations, who explained that they may need additional time to consider the call for evidence and to work on a response with their supporters;

• engaging a Specialist Adviser with wide experience of working with adults with learning disabilities; and

• publishing an Easy Read summary of our Report, together with an audio version of that summary.

One of the main issues raised in our inquiry was the provision of information to adults with learning disabilities about public sector services. We were critical of the Government for not doing enough to make information available in accessible formats. This issue also affects other forms of disability.

As a result of our work, we are interested in Parliament’s strategy to engage with people with disabilities and to ensure that our proceedings are accessible to them, using different formats and approaches to information provision, where necessary.

We understand that the House has made a number of arrangements to provide access for those with disabilities which affect mobility. I have also met with representatives of the Commons Outreach team, which I understand has delivered a number of information sessions about parliamentary engagement to voluntary sector organisations, including those who work with adults with learning disabilities. However, we are concerned that the House should have a clear policy and strategy for dealing with other access issues, including in respect of accessible parliamentary information and access to allow people with disabilities to follow and participate in the work of Parliament. A number of examples have arisen in our work, where it would be helpful to have clear guidance on House policy:
requests from deaf visitors for a palantypist or British Sign Language (BSL) translator to be provided at public evidence sessions of Committees;

questions about accessing Hansard debates and Committee materials in accessible formats, including Braille, audio, BSL, and Easy Read; and

queries over accessibility of visitor and other facilities, including the provision of parliamentary materials in accessible formats including Braille, audio, BSL and Easy Read in both electronic and hard-copy forms.

I would be grateful if you could consider whether it would be appropriate for your Committee to discuss this issue, with a view to scrutinising House policy on this issue and ensuring that any work in this area is more widely disseminated to Members and to the organisations which assist and advise disabled people. I, and the staff of my Committee, would be happy to provide further information about the Committee’s recommendations to Government in this area if that would be helpful.

I am copying this to Lord Renton of Mount Harry, the Chairman of the House of Lords Information Committee, and plan to provide further information to that Committee as part of its forthcoming inquiry into engaging with the public. I am also copying this to the Speaker, the Leader of the House of Commons and the Clerk of the House. I look forward to receiving your response.

Letter to the Chair of the Committee from Frank Doran MP, Chairman of the Administration Committee

Access to Parliament and parliamentary business by people with disabilities

Thank you for your letter on this subject, which I have circulated to members of my Committee. I share your concerns and agree that it would be useful to have clear guidance from the appropriate House departments on policy in the areas you mention. With this in mind we discussed your letter with the Director General of Facilities at our last meeting. We have requested a report from him, together with the Office of the Chief Executive.

I will be in touch again when the Committee has considered the report.
Letter to the Chair of the Committee from the British Humanist Association, dated 3 March 2009

I would like to draw to the JCHR’s attention to the British Humanist Association’s submission to the Public Administration Select Committee, on the 2011 Census question on religion (enclosed).

We have a number of equalities and human rights concerns regarding the proposed question on religion for the 2011 Census (“What is your religion?”). We believe that the question will lead to discrimination against the non-religious and, because it is not objectively justified, would be unlawful under both the Human Rights Act 1998 and the Equality Act 2006. Further, we suggest in our submission that a question that purports to measure religion or belief (as it must do following the Equality Act 2006 and section 6 of the HRA 1998) is not compliant with that provision if, by referring to religion in a way that may be perceived as cultural, it fails to treat lack of religion equally with religion.

We would also like to draw the JCHR’s attention to the Equality and Human Rights Commission’s (EHRC) position, which supports our view of the need for a different question. In written comments to the Office for National Statistics on the religion question (received by the BHA following our Freedom of Information request to the ONS; details in attached submission), EHRC state that:

‘It has been suggested to us that the question ‘what is your religion’ is a leading question with an implicit expectation that you should have one, leading to an over-count of those having affiliation to a religion. We have had several stakeholder representations made to us expressing concerns in this area. Of particular note is the impact in the last Scottish census of having two questions that effectively distinguished between the religion you were brought up in and your current religion, giving much lower figures for current religious affiliation than the single question in England and Wales. We have not reached a firm view on whether two questions are necessary or whether one might address the issue by re-phrasing the proposed question. If there is to be a single question we believe it would be better to phrase the question ‘Do you regard yourself as belonging to any particular religion?’ and to make the options, No, non-religious; Yes, Christian; Yes, Buddhist etc. We hope that you will test such an option, given all the representations that have been made to you on this issue, such as at your Diversity Advisory Group, and would be happy to discuss ways in which we can contribute to further development of this question.’
We hope that the JCHR will decide to look further into the equalities and human rights issues that we highlight in our submission, and we are happy to supply the JCHR with any further information on this matter that it may need.

Letter from the Chair of the Committee to Rt Hon Jacqui Smith, Home Secretary, dated 12 May 2009

Excluding Promoters of Hate from the UK

I am writing to you in connection with your publication on 5 May of a list of “individuals banned from the UK for stirring up hatred”. In subsequent media interviews you explained that coming to the UK is a privilege and that the Government’s exclusions policy makes clear that we have certain values and standards in the UK and that those who do not come up to those standards and values are not welcome here.

I welcome in principle the Government’s greater openness in providing information about the way in which you exercise in practice the wide power to exclude individuals from the UK on grounds of their unacceptable behaviour. However, your statement raises a number of questions about the Government’s policy which I would be very grateful if you could answer.

My Committee scrutinised closely the “unacceptable behaviours policy” when it was introduced in August 2005 and expressed a number of concerns that the policy as drafted was so broadly worded as to give rise to a risk that the policy will be applied in practice in a way which is in breach of the right to freedom of expression in Article 10 ECHR. The policy was introduced in the wake of the July 2005 terrorist attacks in London and the principal purpose was said to be to “make clear that those who would attempt to foment terrorism or provoke others to commit terrorist acts are not welcome in the UK.”

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117 BBC Breakfast interview, 6 May 2009.
Government’s response to the JCHR’s concerns also stressed “the need to protect society from those who support the use of violence in the furtherance of a cause.”

In your Written Statement on 28 October 2008, however, announcing the outcome of your review of the Government’s exclusions policy, you referred to the “policy on the exclusion from the UK of those individuals who encourage violence or hatred in support of their ideology” (emphasis added). You also referred to implementing the proposals in your review in a way that has the greatest impact on those who seek to enter the UK “to stir up hatred” within our society. In the light of some of the individuals who have now been named as having been excluded in your recent announcement, my Committee is concerned that the Government’s policy on “unacceptable behaviours”, about which it was already concerned, is now being applied in practice in a way which poses an even greater threat to freedom of expression by including behaviour which stirs up community tensions, regardless of whether this gives rise to any risk of violence. I would therefore be grateful for your answers to the following questions.

Q1. Is it the Government’s policy to exclude from the UK those who express what the Government considers to be extreme views that are in conflict with the UK’s culture of tolerance?

Q2. Is stirring-up hatred now enough on its own to warrant exclusion from the UK, or must it be hatred which might lead to inter-community violence in the UK?

The author of the Government’s unacceptable behaviour policy, former Home Secretary Charles Clarke MP, acknowledged in evidence to my Committee that there is a case for consistency between the precise wording used in the list of unacceptable behaviours and that used in the new offence of encouragement of terrorism in the Terrorism Act 2006 and gave his undertaking to my Committee that he would look at the relationship between the two wordings when the Terrorism Bill received Royal Assent.

Q3. Can you confirm whether this review took place and, if so, what its outcome was? If the review has not taken place, will you now honour your predecessor’s undertaking and consider whether it is justifiable for the wording of the

120 Government’s Response, HL 114/HC 888.
121 Hansard, 28 October 2008, col 26WS.
122 Q43.
unacceptable behaviours policy to be wider than the wording of the criminal offence of encouragement of terrorism, and explain your conclusion in writing?

Q4. In relation to the six individuals who have been excluded since 28 October 2008 but have not been named, can you explain, in summary form, in relation to each individual, why it is not in the public interest to disclose their names?

Q5. Do you accept that your power to exclude individuals from the UK on the basis that their presence here is not conducive to the public good is a power of sufficient significance that it ought to be the subject of regular reports to Parliament, just as you already report to Parliament quarterly on your use of the power to impose control orders on individuals?

Q6. Finally, I would be grateful if you could provide my Committee with a memorandum covering the following matters:

- naming the 79 other individuals excluded from the UK on grounds of unacceptable behaviour between August 2005 and October 2008
- indicating, in summary form, why they were considered to have engaged in unacceptable behaviour within the terms of the Government’s policy
- if it is not considered to be in the public interest to disclose the names of any of those 79, explaining the reasons why it is not in the public interest to disclose them
- indicating whether all 101 individuals remain on a UK watch list to ensure that they are identified if they should seek to come to the UK
- explaining precisely how you go about deciding whether an individual has displayed unacceptable behaviour warranting their exclusion, including the relevance of factors such as the frequency with which the relevant views have been expressed or the relevant actions occurred, and the time which has elapsed since then
- explaining whether, and if so how, individuals are removed from watch lists once they are on them.

Letter to the Chair of the Committee from the Home Office, undated

Q1. Is it the Government’s policy to exclude from the UK those who express what the Government considers to be extreme views that are in conflict with the UK’s culture of tolerance?

When considering whether it is appropriate to exclude an individual from the UK I will take account of all the available evidence of their views and the impact, both in the UK and overseas, of those opinions. I would certainly consider excluding an individual who expressed views that seek to undermine the UK’s culture of tolerance through the spread of hatred and advocacy of violence. This is clearly the intention of those aspects of the criteria
that refer to fomenting / provoking serious criminal activity or the possibility of inter-community violence.

Q2. Is stirring-up hatred now enough on its own to warrant exclusion from the UK, or must it be hatred which might lead to inter-community violence in the UK?

The author of the Government’s unacceptable behaviour policy, former Home Secretary Charles Clarke MP, acknowledged in evidence to my Committee that there is a case for consistency between the precise wording used in the list of unacceptable behaviours and that used in the new offence of encouragement of terrorism in the Terrorism Act 2006 and gave his undertaking to my Committee that he would look at the relationship between the two wordings when the Terrorism Bill received Royal Assent.¹

I consider that the deliberate spread of hatred and intolerance can all too easily lead to inter-community violence and therefore believe that those who are based overseas and might want to come here to stir up such hatred should be considered for exclusion. As I have made clear, being permitted to come to the UK is a privilege and I do not believe that it should be extended to those who wish to undermine our society.

Although there are links between some aspects of the policy of excluding those who engage in certain unacceptable behaviours from the UK and the offence of encouragement of terrorism, I do not accept that these two measures are the same. The offence of encouragement of terrorism applies, as you will appreciate, only in terrorism cases but exclusion from the UK on the basis of unacceptable behaviour is wider covering also those who foment/provoke serious criminal activity or who foster inter-community violence. These activities might not solely relate to terrorism but might relate to other forms of violence. The Committee will also appreciate that the offence of encouragement is a criminal matter whereas the exclusion from the UK is not. It is right that the scope of a criminal measure should be as narrowly defined as is possible in keeping with the objective of the measure. However, the aims of both the offence of encouragement of terrorism and exclusion on the basis of unacceptable behaviour are consistent in that they target those who seek to create an environment where terrorism is able to develop / spread.
Q3. Can you confirm whether this review took place and, if so, what its outcome was? If the review has not taken place, will you now honour your predecessor’s undertaking and consider whether it is justifiable for the wording of the unacceptable behaviours policy to be wider than the wording of the criminal offence of encouragement of terrorism, and explain your conclusion in writing?

At the time that the Terrorism Act 2006 received Royal Assent consideration was given to whether the unacceptable behaviours criteria should be amended to bring them more closely in line with the provisions of the offence of encouragement of terrorism. However, as I have already indicated, the two sets of provisions, although closely linked, are different. The criminal offence relates specifically to terrorism whereas the unacceptable behaviours criteria, which are only indicative of the types of activity that will lead to the consideration of exclusion, go wider. It is right that a criminal offence that can lead to the loss of liberty of a person should be drawn in a precise manner. Exclusion from the UK relates to people who are not normally resident here and only limits their ability to visit the UK, which is not a right. I consider that permission to come to this country is a privilege and so a different standard should apply.

Q4. In relation to the six individuals who have been excluded since 28 October 2008 but have not been named, can you explain, in summary form, in relation to each individual, why it is not in the public interest to disclose their names?

As I indicated in my statement on 28 October 2008 there will be a presumption towards disclosure of the details of those who are excluded from the UK on unacceptable behaviour grounds. However, I will not normally disclose details if it is not in the public interest to do so. When considering this I will normally take into account the following factors:

— whether legal barriers, e.g. the Data Protection Act, prevent us from doing so;

— whether to do so would place the individual or others at risk;

— whether for operational reasons it is undesirable to do so;

— whether disclosure would threaten British interests, either in the UK or overseas;

I considered the cases of the six individuals whose names I decided to withhold on the basis of the factors set out above.
Q5. Do you accept that your power to exclude individuals from the UK on the basis that their presence here is not conducive to the public good is a power of sufficient significance that it ought to be the subject of regular reports to Parliament, just as you already report to Parliament quarterly on your use of the power to impose control orders on individuals?

I do not agree that the power to impose a control order and the power to exclude an individual from the UK are comparable. I am not therefore convinced that there is justification in reporting on a regular basis to Parliament. Furthermore, there are avenues to challenge any decision to exclude through judicial review and any subsequent immigration decision might attract a right of appeal. I have, in addition, introduced a process of quarterly publication of the numbers excluded on the basis of unacceptable behaviours, including naming the individuals concerned where I judge it is in the public interest to do so.

Q6. Finally, I would be grateful if you could provide my Committee with a memorandum covering the following matters:

- naming the 79 other individuals excluded from the UK on grounds of unacceptable behaviour between August 2005 and October 2008;

Prior to November 2008 it was not our policy to disclose the details of those who had been excluded from the UK on the basis of unacceptable behaviours. As such, at the time of the decisions no assessment was made on whether it was in the public interest to disclose this information or not. I do not consider that, at this time, it would be a good use of resources across government departments, to review those cases to decide whether to disclose in each case. The policy on disclosure applies to new cases decided from 28th October 2008 onwards and I do not currently intend to apply that policy retrospectively to older cases.

- indicating, in summary form, why they were considered to have engaged in unacceptable behaviour within the terms of the Government’s policy;

The 79 individuals on the basis of unacceptable behaviours comprised 56 individuals excluded for fomenting, justifying or glorifying terrorist violence in furtherance of particular beliefs; 17 individuals excluded for fomenting other serious criminal activity or
seeking to provoke others to serious criminal acts; and 6 individuals excluded for fostering hatred which might lead to inter-community violence in the UK.

- if it is not considered to be in the public interest to disclose the names of any of those 79, explaining the reasons why it is not in the public interest to disclose them;

See above.

- indicating whether all 101 individuals remain on a UK watch list to ensure that they are identified if they should seek to come to the UK;

All individuals who have been excluded from the UK are recorded on the relevant watch lists.

- explaining precisely how you go about deciding whether an individual has displayed unacceptable behaviour warranting their exclusion, including the relevance of factors such as the frequency with which the relevant views have been expressed or the relevant actions occurred, and the time which has elapsed since then;

When deciding whether to exclude an individual from the UK I will take into account all relevant information that is available to me. This will include details of the statements that are considered to have come within the unacceptable behaviours criteria, views from interested departments such as the FCO and CLG, as well as any representations that have been received from individuals or organisations. I take account of the number and frequency of statements made but depending on the severity of what has been said do not consider that more than one statement is necessarily needed. I would take into account the time that has elapsed since the statements were made, but again, I do not consider that the passage of time since the statements necessarily makes exclusion unnecessary. In all of this I would also take into account any statements made by the individual to repudiate earlier views. I do consider the potential impact of statements, both here in the UK and overseas, as well as the impact on UK interests.

- explaining whether, and if so how, individuals are removed from watch lists once they are on them.

It is our practice to review exclusion decisions after three years, and then every three years after that. If there has been a change of circumstance that would warrant lifting the
exclusion then that would be done. It is also open to a person who is subject to exclusion to challenge that decision either by way of judicial review or an appeal if they have made an immigration application that has been refused and that decision attracts a statutory right of appeal.

If an individual is no longer excluded, and there are no other reasons for their inclusion on the watch list, then their details would be removed from the watch list.

Letter from the Chair of the Committee to Lord Myners CBE, Financial Services Secretary to the Treasury, dated 21 May 2009

Time limits for complaints against financial advisers

I am writing to you about a human rights issue which has been raised with members of my Committee, concerning the time limits within which complaints about financial advisers must be referred to the Financial Ombudsman Service.

Under the Financial Services Authority’s procedural rules on dispute resolution (DISP 2.8.2), the Financial Services Ombudsman cannot consider a complaint if the complainant refers it to the Ombudsman more than six years after the event complained of, or more than three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint. As authorised by the relevant statutory provision (para. 13(2) of Schedule 17 to the Financial Services and Markets Act 2000), the FSA’s rules also provide that the Financial Services Ombudsman may extend that time limit if, in the Ombudsman’s view, the failure to comply with those time limits “was as a result of exceptional circumstances”.

The FSA’s rules do not provide, however, for a 15 year overriding time limit, or “longstop”, equivalent to that which applies to court actions for damages for negligence not involving personal injuries (s. 14B Limitation Act 1980). I understand that the FSA recently consulted on whether or not to introduce such a 15 year longstop into its rules for the Ombudsman scheme but decided against it, despite (I am informed) the overwhelming majority of responses to the consultation being in favour.
Human rights law does not go so far as to prescribe the detail of time limit regimes. However, the European Court of Human Rights has acknowledged that limitation periods serve important purposes, including ensuring legal certainty and finality and protecting people from stale claims, and that where limitation periods apply differently to people who are in analogous situations the differential treatment requires some objective justification (Stubbings v UK (1997) 23 EHRR 213). My Committee has been told that financial advisers are the only occupational group to be denied the protection of a 15 year longstop. The right not to be discriminated against in the enjoyment of the right to peaceful enjoyment of possessions (Article 14 in conjunction with Article 1 Protocol 1 ECHR) is therefore potentially engaged by the FSA’s current rules.

I would therefore be grateful if you could answer the following questions.

1. What are the FSA’s reasons for not amending its rules to include a 15 year longstop on complaints against financial advisers, comparable to that which applies to court actions for negligence?

2. Do any other ombudsman schemes lack a 15 year longstop on complaints, and if so which?

3. If financial advisers are treated differently from other professions in this respect, please explain the justification for the difference of treatment.

Letter to the Chair of the Committee from Lord Myners CBE, Financial Secretary to the Treasury, dated 4 June 2009

Time Limits For Complaints Against Financial Advisers

Thank you for your letter of 21 May 2009.

As you know, the FSA is responsible for rules covering the day-to-day operations of the Financial Ombudsman Service, including time limits for referring cases to the FOS. The Limitation Act 1980 does not apply to the FOS, a point that was discussed and considered when the Financial Services and Markets Act 2000 was being debated by Parliament.

I understand that the FOS scheme rules were consulted on extensively before they came into force on 1 December 2001.
The FSA considered the case for the introduction of a 'long-stop' time limit in the context of the Retail Distribution Review. According to Feedback Statement (FS08/6)\textsuperscript{123}, responses from the industry - particularly from the IFA community - focused on the 'fairness' argument. However, other responses, and this included responses from firms rather than just consumers, highlighted the possible consumer detriment and reputational damage that a 'long-stop' could cause. In light of the responses to the review, the FSA did not consider there to be a sufficiently strong case that introducing a 'longstop' would bring-additional benefits to either consumers or firms and therefore decided not consult further on this.

The Treasury does not have full details of all other ombudsman schemes to determine whether meaningful comparisons can be made. However, to give one example, I understand that the Legal Services Ombudsman also has discretion to extend its usual three-month time limit in exceptional circumstances, such discretion not being subject to a pre-determined 'longstop'.

\textbf{Letter to the Clerk of the Committee from Mr A. Lakey, Highclere Financial Services, dated 22 June 2009}

\textbf{Time limits for complaints against Financial Advisers}

Thank you for providing a copy of Lord Myners response to Mr Dismore’s letter.

As I am sure you are aware, the response is very vague and fails to answer any of the questions posed.

He makes a number of points, the first regarding Parliament debating the Financial Services and markets Act 2000. I have undertaken extensive research of Hansard and have been unable to find any reference to a longstop during the various debates in both Houses. His assertion is therefore incorrect.

Secondly, he argues that there was “extensive consultation” on FOS scheme rules prior to the eventual implementation. Whilst there was a consultation at no point was the removal

\textsuperscript{123} http://www.fsa.gov.uk/pubs/discussion/fs08_06.pdf
of the 15 year longstop mentioned. Again it would appear that obfuscation is the prime tool at his disposal.

The FSA Feedback Statement FS/08/6 in respect of their Discussion Paper DP/07/1 was published in November 2009. The attaching pages have been printed from this document and highlight the industry support for the return of a protection that has been removed illegally in defiance of Statute.

Finally, Lord Myners dissembles regarding other ombudsman bodies. He suggests that the Legal Services Ombudsman has discretion to extend its usual three-month time limit in exceptional circumstances.

Rationality is stretched at this point because the Legal Services Ombudsman does not deal with complaints from the public against legal practitioners. It is only able to investigate the complaint-handling undertaken by one of the six legal professional bodies.

In turn, these bodies do not investigate complaints in respect of negligence; their remit is solely with regard to the service and administrative capability of the body being complained about.

Additionally, whilst the Legal services Ombudsman is able to extend the “usual three-month time limit in exceptional circumstances” the FOS is anything but exceptional – it ignores the 15 year longstop in each and every instance.

I also refer to the following extracts from Hansard, specifically the minutes of the Standing Committee A, 29th Sitting Part II. Miss Melanie Johnson MP stated; “The schedule provides in paragraph 11 for the scheme operator and the ombudsman to have statutory immunity in damages for anything done or not done in the discharge of their statutory functions under the compulsory jurisdiction, except when that is done in bad faith or is unlawful under section 6(1) of the Human Rights Act 1998.”

On June 5 2000 the House of Commons debated the House of Lords amendments and Stephen Timms MP, in response to a point raised by Howard Flight, commented, “The standard limitation period is, of course, six years, although it can vary according to the type
of case and according to judicial discretion. If a lengthy complaint was before the ombudsman and a statute bar appeared on the horizon, it would be up to the consumer to institute protective court proceedings to ensure that the limitation period did not run out”.

As previously advised, the business of providing financial advice carries no greater long-term potential for detriment than the medical profession, surveyors, builders, architects, legal practitioners or politicians. It is therefore incumbent on a free society to ensure that advisers human rights enjoy a parity with those of other professions.

The FSA cannot override statute yet, but by using its powers to design the rules under which FOS operates, it is making new law to the disadvantage of the adviser community.

Letter from the Clerk of the Committee to Mr A. Lakey, Highclere Financial Services, dated 27 July 2009

We spoke last week and I am sorry not to have been able to write to you sooner. I have discussed the issue you raised about the longstop for cases raised with the financial ombudsman with the Committee’s Legal Adviser, in the light of the Committee’s correspondence with Lord Myners and the paper we asked the House of Commons Library to prepare about other ombudsmen schemes.

The Legal Adviser’s view is that the issue you raise is not a sufficiently significant one, in human rights terms, for the Committee to pursue. Firstly, there does not appear to be any evidence that financial advisers are any less favourably treated than other professionals who are the subject of ombudsmen schemes. The regime for the legal services ombudsman, for example, is the same, with a short time limit for the bringing of complaints but a discretion to extend in the circumstances of a particular case, and no longstop.

In any event, even if such a differential treatment could be established, it is likely that the Government has provided a sufficiently strong justification, in the letter from Lord Myners and the FSA’s response to the consultation on the Retail Distribution Review, to meet any argument of unjustified discrimination.

The Legal Adviser will set out the issue and his view on the human rights implications in a note to the Committee when it next meets in October. It will be for the Committee to
decide whether to accept his advice. I thought it would be helpful for you to know his views at this stage: if you wish to write again to the Committee to draw Members’ attention to any points you think are being overlooked then please do so.

I am away on leave from today until 17 August. If you wish to discuss how to proceed, perhaps you could call me when I return?

Letter to the Clerk of the Committee from Mr A. Lakey, Highclere Financial Services, dated 25 August 2009

Time Limits for Complaints Against Financial Advisers

Thank you for you letter dated 27 July 2009.

In truth, I found the content both disturbing and astounding in equal measure.

I feel that possible I have failed to develop my arguments regarding the oppressiveness of the regime under which financial advisers are forced to operate. Given this I would be most grateful if you would provide a copy of this letter to Mr Hunt enabling him to gain a greater appreciation of the important issues at hand and how they relate to other ombudsman organisations.

Your letter comprised two distinct sections, the first to do with Mr Hunt’s view as to the “significance”, and the second, in respect of the Government’s response via Lord Myners and the FSA. For convenience I will adapt my comments to this two-part setting with additional comments following.

Other Ombudsman Schemes

There are significant disparities between the various ombudsman schemes, although it is clear that none, bar the FOS, extend to the removal of basic human rights.

How exactly does the FOS differ from other schemes?

- The FOS is a mandatory scheme which does not accept the tenets of English Law and not only ignores the 15 year longstop but also uses a perverted variation of the ‘3 year rule’ due to a re-writing of law by the FSA
• Advisors do have an independent appeal procedure apart from the considerable expense of a Judicial Review, which can only look at the process, not the illogicality, of any decision.

• The FOS is able to dictate compensation of up to £100,000 and their process fails to allow for a personal hearing regardless of requests.

• Additionally, they apply ‘natural justice’ which, as Walter Merricks has previously confirmed, means that they “create new law”.

By contrast, whilst the Legal Services Ombudsman is able to order the relevant professional body to pay compensation, it cannot so order the firm being complained about.

Both the surveyors Ombudsman and the Property Ombudsman limit compensation to £25,000, whilst membership of the Surveyors Ombudsman scheme is optional.

Unlike the FOS, every other Ombudsman scheme refuses to deal with claims of negligence, their investigations are therefore limited to complaints of poor service and maladministration.

There has been some mention of similarities between the FOS and the Legal Services Ombudsman and we believe these to be illusory. Firstly, whilst the FOS investigates complaints which have been rejected by financial advisory firms the LSO only looks at complaints which have been rejected by one of the seven professional bodies.

Secondly, the time limits for complaints have little in common. The FOS is able to look at all complaints post April 1988. Whilst they do not accept the normal limitation terms their rules approximately reflect the ‘3 and 6 year rule’ stipulated within the Limitation Act. Complaints to financial firms which have been rejected are allowed a 6 month window in which to escalate the matter to the FOS.

The seven professional bodies apply different rules, examples being the Legal Complaints Service, the law Society of Northern Ireland, the Council for Licensed Conveyancers and the Bar Standards Board, none of which will entertain a complaint if it is made more than 6 months after the act complained of. The Institute of Legal Executives extends this limit to
12 months. The Scottish Legal Complaints Commission uses a mix of 6 and 12 months depending on the nature of the complaint.

Whilst the FOS enables a maximum claim of £100,000 the various professional bodies apply far lower maximums. Examples being, £5000 with the Legal Complaints Service, £15,000 with the Bar Standards Board and £20,000 with the Scottish Legal Complaints Commission.

FOS decisions are legally enforceable, whereas decisions by the Parliamentary and Health Service Ombudsman can be treated with impunity, and frequently are.

More pertinently, none of the professional bodies nor the LSO will look into complaints regarding negligence whereas the FSO does.

The reason that the other Ombudsman bodies do not specifically use the 15 year longstop is because they never will be in a position to entertain complaints extending that far back. The time parameters they operate within are best highlighted by the table below, which purposely ignored any time spent investigating the complaint.

<table>
<thead>
<tr>
<th>Ombudsman</th>
<th>Time Limit from act complained about</th>
<th>Time limit from receipt of a final decision by the professional body</th>
<th>Overall Maximum time limit from date of act complained about</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Ombudsman</td>
<td>72 months*</td>
<td>6 months</td>
<td>None</td>
</tr>
<tr>
<td>Legal Services Ombudsman</td>
<td>12 months</td>
<td>3 months</td>
<td>9 months</td>
</tr>
<tr>
<td>Surveyors Ombudsman</td>
<td>12 months</td>
<td>9 months</td>
<td>21 months</td>
</tr>
<tr>
<td>Local Govt Ombudsman</td>
<td>12 months</td>
<td>None</td>
<td>12 months</td>
</tr>
<tr>
<td>Parliamentary and Health Service Ombudsman</td>
<td>12 months</td>
<td>None</td>
<td>12 months</td>
</tr>
<tr>
<td>Housing</td>
<td>12 months</td>
<td>12 months</td>
<td>24 months</td>
</tr>
</tbody>
</table>
You will see that whilst the FOS operates an open-ended system, by a unilateral extension of the ‘3 year rule’, the other Ombudsman bodies operate up to a maximum of 24 months from the act being complained about, sometimes as little as 9 months.

By using the legal Services Ombudsman as a comparison, Lord Myners has unwittingly exposed a further anomaly. Financial advice provided by solicitors prior to 2001 does not fall within the FOS jurisdiction and solicitors are able to depend upon the longstop as a defence. Conversely, for financial advisers, any advice provided post 29 April 1988 falls within the FOS jurisdiction. This further highlights the erosion of human rights which applies only to this relatively small group of professionals.

By way of emphasis, I quote the considered opinion of Anthony Speaight QC.

“There are growing concerns that the pendulum of consumer protection has swung too far in the case of the Financial Ombudsman Service and small independent financial advisers. The FOS appears regularly to be exercising its discretion to adjudicate upon claims against small IFAs up to its maximum theoretical jurisdiction of £100,000. There is rarely an oral hearing. And there are good reasons to believe that sometimes FOS make substantial awards in cases which would be rejected by the courts. On other occasions compensation seems to be calculated in a more generous manner than a court would assess damages. By reason very large excesses and other insurance shortcomings some such IFAs have no insurance which responds. There is no appeal on the merits.

Such a system would be tolerable if the maximum award were modest – say £5,000 (which is the maximum summary compensation under the legal professions’ schemes for “inadequate professional service”). It would also be tolerable if, as is the case with the summary system of adjudication in the construction industry under the
Housing Grants Construction and Regeneration Act 1996, there could be a complete
rehearing before a court. And it might even be tolerable if it were applied only
against very large companies.

But an unappealable, compulsory, summary jurisdiction against small traders
making awards as great as £100,000 is, in my view, both wrong in principle and
producing injustice in practice.

There is a prima facie case that financial advisers have suffered retrospective revocation of
their human rights due to the failure to refer to a longstop within FSMA 2000.

The Government’s Response

Lord Myners letter to Mr Dismore failed to provide any adequate response and contained a
number of untruths which should have been evident to any parliamentarian.

Parliament did not debate the question of whether or not to include a longstop within the
 provision for FSMA 2000. Nor was there “extensive consultation” in respect of removal of
the longstop. Whilst there were a number of debates, and whilst there was a form of
consultation, it is totally inaccurate to state that these ever touched on the matter of a
longstop, it was never mentioned.

Within the April 2009 RDR Feedback statement, the FSA says;

“To justify a longstop we will have to identify wider benefits to consumers and to
firms, for example greater consumer access and saving, arising from a long-stop or a
package of changes including one. These benefits would need to exceed the
consumer detriment from time-barred complaints.”

With respect, this statement is fatuous. The FSA, in setting the Dispute Resolution
wordings within its rulebook, has removed a legitimate protection previously available
within the PIA Ombudsman Bureau scheme and also available under the rules operated by
the respective Pensions and Insurance Ombudsman bodies.
It is unfair and unreasonable for the FSA to argue that the industry must identify benefits stemming from the restoration of the long-stop. This is back-to-front and not only breaches human rights legislation but also the tenets of common sense. The removal of time limits from any complaint system will serve to benefit consumers inasmuch as they will have unlimited ability to level complaints. If such a system was employed by other Ombudsman schemes then consumers would be advantaged. The rationale behind limitation periods is that people should not be held to account for their actions indefinitely, nor have to investigate and defend stale claims. Parliament determined 15 years as the appropriate balance between consumer protection and business responsibility.

Parliament’s Intention

It is my contention that parliament never intended that financial advisers suffer retrospective removal of their right to use time bars legitimised within the Limitation Act 1980 as mended by the Latent Damages Act 1986.

In June 2001 FSA had published a consultation document . DISP 3.3.2G cross referred to article 5(2)(b) of the Order, enacted as Statutory Instrument 2001 no. 2326, to entitle regulated firms to claim the 15 year longstop under the Limitation Act 1980, a defence accepted by PIAOB which had operated under the Financial Services Act 1986.

In October 2001 FSA had published a policy statement to confirm that the FSA and FOS boards had legally made DISP 1-4 with effect from 1 December 2001.

In September 2003 the FSA Board subverted SI 2326 and therefore the intent of Parliament. The minutes state: “GCD advises that the way in which schedule 17, paragraph 13, of the FSMA is framed suggests that parliament intended the FSA to be able to set limits which can differ from those in the Limitation Act.” The statement was mendacious.

Parliament never intended that the 15 year longstop defence under the Limitation Act 1980 would be extinguished by FSMA. This conclusion is not weakened but fortified by the explicit recognition in Section 228(2) of FSMA that, “a complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all circumstances of the case.”
Schedule 17, paragraph 12 of FSMA emphasised, “this Part of this Schedule applies only in relation to the compulsory jurisdiction.”

Section 2.2 of the FSA consultation document published in June 2001 had stated “The FSMA provides that the complaints which the FOS can cover must relate to an act or omission which occurred at a time when jurisdiction rules were in force in relation to the activity in question. This means that the Compulsory Jurisdiction rules (which are to be made by the FSA) can apply only to acts or omissions occurring on or after N2. The scope of the Compulsory Jurisdiction of the FOS is therefore effectively limited to complaints about activities which took place after N2”

It is inconceivable to accept that GCD was not aware of Schedule 17 paragraph 12 of FSMA. In such circumstances he committed misfeasance, illegal conduct by a public body without the knowledge that the conduct was illegal. Indeed, the offence of ‘conspiring to commit misconduct in a public office’, alleged by the police against Damien Green MP on 27 November 2008, may have occurred. (Although the DPP confirmed on 17 April 2009 that no action would be taken, Mr Green had been warned at the time of his arrest that a successful prosecution could receive a life sentence.)

In the event of proven allegations the FSA and FOS would lose immunity from liability in damages under Section 102 Subsection 2(a) and Schedule 17 Section 10 Sub-paragraph 2(a) of FSMA.

An invitation to industry and consumer bodies to attend a joint forum on mortgage endowment complaints on 28 November 2003 was issued on 27 October 2003 by Anna Bradley, Director Consumer Division FSA, and Walter Merricks, Chief Ombudsman FOS.

The letter confirmed: “You may like to know that the Board of the FSA recently discussed whether or not to change the current situation whereby the 15 year long stop defence under the Limitation Act does not apply to the FOS. The Board decided that there should be no change. The FSA intends to use the forum to explain the reasons behind the decision and invite feedback.”
FSA was required by Subsections 1 to 6 of Section 155 of FSMA to consult in a specific way unless Subsection 7 applied “Subsections (1) to (6) do not apply if the Authority considers that the delay involved complying with them would be prejudicial to the interests of consumers…”

On 15 July 2004 Bond Pearce, a leading business law firm, criticised the application in a press article:

On June 1 the FSA again changed the rules governing the time-limits applying to customers wanting to complain to firms and the Financial Ombudsman Service about their mortgage endowment policies.

The new rules were made by the FSA using its powers under section 155(7) of the Financial Services and Markets Act 2000. This means that the FSA did not consult with the industry or the public on the proposed rules as it believed that the delay in doing so could have been prejudicial to the interests of consumers. Any prejudice to the interests of the firms which the FSA regulates does not appear to have been considered.

Unsurprisingly, the new rules give the vast majority of policyholders more time to complain. This is the latest in a series of manoeuvres and rule changes by the FSA and the FOS designed to erode the rights of authorised firms to reject complaints on the basis that they are time-barred under normal limitation rules.

Industry Outrage

I am not alone in suggesting that the lack of a longstop is unfair and that, additionally, it causes detriment to financial firms. Below, you will see public comments by a number of influential financial commentators and companies.

AXA 7/5/2008

“The FSAs decision to ditch plans for a 15 year longstop time limit for consumers to bring complaints against financial services firms could hamper acquisitions in the sector”
Robert Bass, Poynton York Vos, 3/10/08

“The 15 year long-stop under S14 of the Limitation Act 1980 operates in law to provide protection to advisers and other professionals. Whilst records may (and should be) complete, the passage of time distorts recollections on both sides as to what may, or may not, have been said and it is only right and proper that a business should be able to rely upon the law of the land to protect them. The FOS should recognise this principle in an endeavour to be even-handed in its dealings with investors and regulated firms.”

Paul McMillan, Editor Money Marketing, 12/6/09

“It is clear the FSA is holding the Sword of Damocles above the heads of the whole IFA profession for a small number of complaints.”

(This reflects the House of Lords judgement in Haward and other v Fawcetts (a firm). Lord Scott stated … it is also a hardship to a defendant to have a cause of action hanging over him, like the sword of Damocles, for an indefinite period.”

Jonathan Newbold, Brown Jacobson, 18/10/08

“It is almost impossible to manage historical liabilities because it is never going to be entirely safe to assume that no claims will arise from advice provided more than a decade ago.”

John Virgo, Barrister, Guildhall Chambers, June 2009


This is because without a 15-year long stop an IFA can still be potentially sued for damages for the rest of his life, even if he is no longer working in the profession or has retired.”

Michelle Kinsella, Clarke Willmott, April 2006
“A recent application for judicial review of a FOS decision has highlighted how the odds are stacked against IFAs when it comes to the FOS’s decision making process.

The time limits for making a complaint to the FOS broadly reflect English law limitation periods. However, the ombudsman can override the primary time limits for making a complaint if the failure to make a complaint is due to ‘exceptional circumstances’, or in other specified circumstances (see Dips. 2.3 of the FSA Handbook).

So, when a client is faced with the usually insurmountable legal hurdles of limitation periods and ‘remoteness of damage’ (ie, liability only for damage that is reasonably foreseeable), which would effectively end any court proceedings, he can turn to the FOS, which need not be restricted by such matters.

Additionally, the FOS has decreed that time limits should not start to run in endowment miss-selling claims until the firm or provider has put the client on notice of the possible shortfall.

In addition to the FOS’s ability to depart from settled principles of law, section 229 of the FSMA states that if a complaint is upheld by the FOS, it can make “a direction that the respondent take such steps in relation to the complainant as the ombudsman considers just and appropriate (whether or not a court could order those steps to be taken)”

Given the above, I believe that there is considerable evidence to prove that advisers Human Rights have deliberately been extinguished. The evidence confirms that the matter is “significant” and an analysis of the competing Ombudsman schemes, particularly the LSO, as well as the proof of deception by the FSA in its dealings and manoeuvrings, serves to blunt Lord Myners response.

I look forward to hearing from you in this regard.
Letter to the Clerk of the Committee from Mr A. Lakey, Highclere Financial Services, dated 22 September 2009

Time limits for complaints against Financial Advisers

Thank you for your letter along with the information from the House of Commons Library.

I wish to enlarge upon the content of my own letter dated 25 August and would therefore be grateful if you would provide copies to the Committee members and Mr Hunt.

The Longstop and other Ombudsman bodies

In my eagerness to distinguish the Financial Ombudsman Service (FOS) processes from those of other ombudsman bodies I may have failed to fully emphasise the major distinction. This is that only the FOS can look at complaints of negligence. Every other ombudsman body insists that such complaints are beyond their remit and directs the complainant towards the courts.

Therefore the semantic arguments regarding time limits and characteristics fail to convey the fact that advisers labour under a totally different regime which ensures that they remain open to complaints some twenty or thirty years after the event in question and into retirement unlike every other profession.

Lord Myners Response

You advised that Mr Hunt considered Lord Myners letter to contain sufficient information as to rebuff the arguments I put forward. Specifically, Lord Myners stated, “I understand that the FOS scheme rules were consulted on extensively before they became into force on 1 December 2001.”

My previous letter highlighted that an examination of Hansard confirmed that whilst the matter of FOS rules was discussed there was never any mention of the longstop. It is evident that both Houses were unaware that such a change was being legislated. It is not unreasonable to expect that the wholesale removal of a legitimate legal defence would receive a high degree of parliamentary comment and scrutiny.
In addition, I have come into possession of the minutes to an FSA board meeting held on 18 September 2003. In part 1 of the annex the minutes corroborate my contention that no worthwhile consultation ever took place. The minutes state, “We did not consult on having a 15year limitation period when DISP was consulted on.”

The minutes then went on to say, in part 2 of the annex, “GCD advises that the way in which schedule 17, paragraph 13, of the FSMA is framed suggests that Parliament intended the FSA to be able to set time limits which can differ from those in the Limitation Act.”

The FSA’s General Counsel opined that the removal of the longstop defence was Parliament’s intention. It is my contention that the FSA’s General Counsel subverted Parliament’s intention with that statement. The legitimate expectation of advisers is clearly demonstrated in the attached flow chart proving that this is not only a serious breach of advisers’ human rights but also a clear case of the FSA subverting Parliament by circumventing the established procedures of open debate and full knowledge of the issues at hand.

This matter is deserving of closer analysis and will, I believe, enable the Committee to form the opinion that both the spirit and the letter of the Human Rights Act has been breached. Therefore, this is a matter of overwhelming significance and is deserving of the Committee’s attentions.

Letter from the Chairman of the Committee to Mr A. Lakey, Highclere Financial Services, dated 20 October 2009

Thank you for your letter of 22 September to Mark Egan, Commons Clerk of the Committee, which was circulated to Members and staff of the Joint Committee.

The Committee was asked at its meeting last Tuesday whether or not to undertake further scrutiny of the law relating to time limits for complaints against financial advisers, in the light of the reply it received from Lord Myners of 4 June; the initial view of the Committee’s Legal Adviser, which the Clerk communicated to you in his letter of 27 July; and your further letters on the subject.
The Committee has decided that the lack of a 15 year longstop on the FSA’s discretion to extend the time limit for investigating a complaint in exceptional circumstances does not raise a significant human rights issue for it to scrutinise further. In particular, the Committee accepts that Lord Myners has provided sufficient justification for any discrimination against financial advisers, in his argument that the absence of a longstop is necessary to maintain consumer confidence, given the nature of the advice offered by financial advisers.

Your letters also raise the issue of whether the current arrangements reflect the intentions of Parliament, but this is not a human rights point on which the Joint Committee can take a view.

I appreciate that this is a disappointing reply but I am grateful that you raised this matter with the Committee and I hope it will be evident that we have considered this matter carefully.

Letter from the Chair of the Committee to Baroness Fookes, dated 9 July 2009

London Local Authorities Bill

I am writing to you in advance of the Unopposed Bill Committee on this Bill because the Government has expressed concerns about the human rights compatibility of two of its provisions, both of which concern the adequacy of the procedural safeguards accompanying powers of entry into residential premises. You might find it helpful to be aware of the views previously expressed by the JCHR on those issues.

In particular, the Bill Committee should be aware that one of the provisions in the Bill proposes to relax a procedural safeguard which was inserted by the Government into the 2004 Housing Act specifically in response to concerns expressed by the JCHR. In view of the JCHR’s direct involvement in the provenance of that provision, I deal with it first. The other compatibility issue raised by the Government is not one on which the JCHR has commented specifically in relation to this legislation, but it raises a general compatibility issue on which it has commented in other contexts.
(1) Seniority of officer authorising entry

Clause 22 of the Bill amends s. 243 of the Housing Act 2004 in its application to London. Section 243 provides that any authorisation for individual officers to exercise certain enforcement powers, including powers of entry into premises, must be given by an officer of the local housing authority who is at least a deputy chief officer of the authority. Clause 22 of the Bill would enable such authorisation to be given also by a person who reports directly to, or is accountable to, a deputy chief officer. The effect of the amendment is therefore to widen significantly the range of officers who can authorise entry into premises.

The provision of the Housing Act 2004 which clause 22 of the Bill amends in its application to London was inserted into that Act by the Government specifically to meet one of the concerns expressed by the JCHR about the lack of adequate procedural safeguards attached to a very widely defined power of entry into premises. As the Committee explained in its Eighth Report of 2003-04, at para. 4.34, powers of entry, in particular powers of entry to residential premises, engage the right to respect for private life of the occupiers of the premises under Article 8 ECHR. In order to be justified under Article 8.2, powers of entry must be clearly defined, so as to comply with the requirement that they be in accordance with law; and must be subject to sufficient safeguards so as to ensure that they are necessary in a democratic society and proportionate to the aim they pursue. The procedures for authorisation of entry to premises is one of the factors which is relevant to assessing the justification for powers of entry under Article 8.2. The Committee said:

In particular, we are concerned that the absence of a requirement for judicial authorisation of entry onto premises and the absence of specification of the level of internal authorisation required may allow for unjustified and disproportionate use of these powers.

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124 Section 243(3) Housing Act 2004.
126 Ibid. at para. 4.35.
The Government initially rejected the Committee’s concern but in the light of the Committee’s sustained concern, the Government reconsidered the matter and tabled an amendment to the Bill to strengthen the authorisation requirements where a power of entry is exercised under the Bill. The Government explained the amendment in a letter to the Committee:

“We have tabled an amendment which introduces a new clause that will require an authorisation for the purposes of certain provisions of the Bill to be given by a senior local authority officer. That officer would be a deputy chief officer (within the meaning of section 2 of the Local Government and Housing Act 1989) whose duties are relevant to the function for which the authorisation is to be given, or the officer to whom the deputy chief officer reports or is accountable in respect of that function. The new requirement would apply to the exercise of any of the powers of entry under the Bill, except one, including those in clause 203 …

The Committee welcomed the Government’s amendment.

Therefore, I share the concern expressed by the Secretary of State in her SO 98 report on the Bill that allowing a person who reports directly to the deputy chief officer may not be compatible with the European Convention on Human Rights. Broadening the class of officer who can authorise entry into premises would remove one of the important procedural safeguards in the Housing Act 2004 which was specifically inserted to make it more likely that the wide powers of entry in s. 239 of that Act would be exercised in practice in a way which is compatible with the right to respect for private life and home in Article 8 ECHR.

(2) Notice to owner of intention to enter

Clause 21 of the Bill amends s. 239 of the Housing Act 2004 in its application to London by removing the requirement in s. 239(5) that at least 24 hours’ notice of intention to enter

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129 Ibid. at para. 3.2.
premises must be given to the owner of the premises (if known). Clause 21(2) removes the need to serve notice of entry on the owner except where there is no occupier.

The exercise of a power of entry into premises is an interference with the right of the owner of those premises to peaceful enjoyment of their possessions under Article 1 Protocol 1 ECHR. A requirement of a minimum period of notice before the power of entry is exercised is one of the procedural safeguards which contributes to ensuring that the power to interfere with that right is exercised in a way which is not arbitrary but is necessary and proportionate.

I therefore share the concern of the Secretary of State to ensure that the interference with property rights as a result of the powers of entry in s. 239 of the Housing Act 2005 is both necessary and proportionate. Removing the requirement that the owner of the premises be given notice of an intended exercise of the power of entry makes it more likely that those powers of entry will be exercised in practice in a way which is incompatible with the right to peaceful enjoyment of possessions.

I hope that this is helpful.

Letter to the Chair of the Committee from Baroness Fookes, dated 24 July 2009

London Local Authorities Bill

Thank you for your letter of the 9th of July 2009 which unfortunately did not reach me in time prior to the unopposed Bill Committee sitting. I have mail redirected to my home at the weekends and I fear that it got caught up in the industrial action by the postal service and it was “chasing” me.

However I did in fact receive the meat of your letter by other means and this was most helpful in considering the London local Authorities Bill.

The Committee reached certain compromises which we believe satisfies both the London local Authorities and those expressing concern about human rights. This will be the subject of a special report so please forgive me if I do not go into all the details in this letter.
Thank you for writing to me with your observations this was a very thoughtful gesture on your part.

**Letter from the Chair of the Committee to Rt Hon Alan Williams MP, Chairman of the Liaison Committee, dated 16 July 2009**

**Delayed Government response to a JCHR report**


The Report was concerned with the effect of a number of court decisions on the scope of the Human Rights Act, particularly in relation to services which had been contracted out to a private sector provider. The main area in which this issue had arisen was with the provision of publicly funded care services by private sector care homes. The Report included 47 conclusions and recommendations, principally on Government guidance and legislative solutions to the problem.

The Government response to this Report was due at the end of May 2007. On 14 May we received a holding reply from Baroness Ashton of Upholland, then Parliamentary Under-Secretary of State at the Ministry of Justice, outlining the Government’s position in the definitive care homes case – *YL v Birmingham City Council* – and promising a more detailed response once the House of Lords judgment had been handed down.

In October 2007, having not received a full response to our Report, we asked Michael Wills MP, the Minister for Human Rights, in oral evidence, when we should expect it. His reply was “soon”.¹³⁰

We raised the issue again in the Report on our work in 2007, published on 1 February 2008, and called on the Government to respond to our earlier Report “as a matter of urgency”.¹³¹ The Government’s response was to argue that many of the Committee’s conclusions had been overtaken by an amendment to the Health and Social Care Bill which

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¹³⁰ HC (2007-08) 132, Oral evidence 26 Nov 07, Q43.
¹³¹ HC (2007-08) 270, paragraph 83.
dealt with the scope of the Human Rights Act in relation to private sector care homes. Nevertheless, Mr Wills undertook “to write to the Committee soon on this general subject in the context of the continuing consideration in relation to the Health and Social Care Bill: I shall take that opportunity to address the Committee’s conclusions insofar as they remain relevant”.132

We commented again on the Government’s failure to respond to our meaning of public authority Report in the Report on our work during the 2007-08 session, recommending that the Ministry of Justice reply “forthwith”.133 The lateness of the Government’s response was highlighted in your Committee’s Report on the work of committees in 2007-08.134 The Government’s response to our annual Report ignored our recommendation.135 We raised the matter again in oral evidence with the Secretary of State for Justice, Jack Straw MP, and Michael Wills MP, on 20 January 2009, and received a firm commitment from Mr Wills that we would receive a reply to our Report by Easter.136 Needless to say, this deadline was missed.

In recent weeks I have tabled a parliamentary question asking when the Secretary of State for Justice will respond to our report and why the response has been delayed. I have also tabled an early day motion on this issue. I received an answer to my question on 9 July in which Mr Wills said for the first time that the Committee would not receive a reply to its report: issues which “remain relevant” will be addressed in a long-delayed consultation document on the scope of the Human Rights Act.

We can see no good reason why our Report should not have received a Government response. Although those conclusions and recommendations dealing with the private sector care homes issue have been dealt with in the Health and Social Care Act 2008, other conclusions and recommendations, on wider aspects of the issue and Government guidance, have simply been ignored. At no point has the Minister written to us to ask for

133 HC (2008-09) 92, paragraph 83.
134 HC (2008-09) 291, paragraph 85.
136 HC (2008-09) 174-i, Q79.
more time to respond or, until now, to assert that he saw no need to respond. In fact, we have repeatedly been told that a response was being prepared.

As well as impeding our work, failure to respond to a select committee report undermines the whole system. The Government cannot be permitted to pick and choose which reports it responds to. Consequently, we request that you should write to the Leader of the House of Commons and the Secretary of State for Justice, drawing their attention to the Government’s failure to respond to our Report, and requesting a response by the end of August.

Letter from Rt Hon Alan Williams MP, Chairman of the Liaison Committee to Rt Hon Harriet Harman QC MP, Leader of the House of Commons, dated 21 July 2009

Delayed Government response to JCHR report

Andrew Dismore has brought to my attention the serious problems that the Joint Committee on Human Rights has been having in getting a full response to its Ninth Report of Session 2006-07 on The Meaning of Public Authority under the Human Rights Act. In our First Report last March, we noted that the response had still not been provided.

I am attaching his letter which sets out the disappointing experience that he has had from Departments and Ministers.

The Liaison Committee has always taken seriously the obligation by the Government to respond fully and specifically to the recommendations in select committee reports. Some delay can be tolerated where this has a good reason but I am sure you will understand the concern that I share with Andrew that this situation has run on for such a long time. Can you please investigate why the response has still not been provided and discuss with Jack Straw, to whom I am copying my letter and enclosure, the early submission of a proper response.

Letter to the Chair of the Committee from Metropolitan Police Service, dated 17 July 2009

Re: Disclosure of report into death of Blair Peach
Thank you for your letter dated June 09 addressed to the Commissioner of Police for the Metropolis which has been forwarded to me for response. Please accept my apologies for the delay in responding.

I can advise you that the Commissioner has asked Deputy Commissioner Tim Godwin to consider if the report can be made public, starting from the principle that it should be. However it is on the basis that the MPS needs to review the material and to consider carefully all of the relevant factors, including taking legal advice.

The intention is for the process to be completed by the end of the year and it is too early at this stage to give a view as to the details of how disclosure/non disclosure will take place. Once the MPS is in a position to comment we will ensure that the MPA and interested parties are made aware.

**Letter to the Chair of the Committee from Metropolitan Police Authority, dated 4 August 2009**

The Metropolitan Police Authority (MPA) writes in response to your call for the release of the findings of the Metropolitan Police Service (MPS) inquiry into the death of Mr Blair Peach.

The MPA, the body that oversees the MPS, moved a motion at our June Full Authority (25th June 2009) meeting requesting that the MPS publish the report by the end of 2009. The Commissioner, Sir Paul Stephenson said at that meeting that his starting point was a desire to publish the report and that began a review to consider the issue arising out of publication particularly in relation to fairness and legality. He also noted that it “would be reckless of me not to do that, particularly if we get that judgement wrong it may well end up in litigation and an issue of public money”. He agreed to complete that review as soon as he could. In passing the motion, the Chair of the Authority Boris Johnson said that “there is a very strong call from this MPA for that report to be released”. The Authority will continue to monitor the progress of the MPS’s internal review and to press for publication of the report.
DEMONSTRATING RESPECT FOR RIGHTS? FOLLOW-UP REPORT

I wanted to provide you with an update on the Government’s planned response to the report ‘Demonstrating Respect for Rights? Follow-up’ by the Joint Committee on Human Rights (JCHR) published on 14 July 2009.

The Home Office submitted written and oral evidence to JCHR’s review into policing protest and published a formal reply in May 2009. The Government welcomes the JCHR’s follow-up report and is committed to continuing to engage constructively with the Committee on what remains a very important area.

As you will be aware, there have been a number of reviews into the policing of protest in recent months, and we await Her Majesty’s Inspectorate Constabulary’s (HMIC) full Report which is due to be published in November. We are in the process of carefully considering JCHR’s latest recommendations, and will be able to provide you with a more comprehensive response once the HMIC Review is published and following the publication of the Policing White Paper next month: I will ensure you are provided with a full response by 9 December 2009, but in the interim I wanted to give you an update on the Government position of the core issues raised in your Report;

Firstly, it is important to reiterate the evidence provided by my predecessor, Vernon Coaker. The Government is clear that it is important to recognise the professionalism of police forces in facilitating the vast majority of protests without conflict or disorder. It is also important to recognise the successes of the G20 policing operation: criminal activity and wider disruption to London was minimal, the police maintained the high levels of security needed to protect those attending the Summit and over the course of two days thousands were able to protest peacefully.

However it is of course right that those incidents that call into question the actions of individual officers, and any concerns over police tactics, are properly explored and lessons learnt.
I would also reiterate that we are committed to protecting and facilitating the right to peaceful protest. We will be using the opportunity of the White Paper to reaffirm this commitment and to set out the key principles that must underpin the policing of protest.

We agree too that good communication between police and protestors - and with the media - is the key to ensuring 'no surprises policing', and that the use of tactics like containment and use of force must be proportionate. We will set out in our full response how we think this can best be achieved working with a full range of partners.

In our reply to your report and in oral evidence to the Committee, the Home Office also gave undertakings to consult on amendments to section 5 of the Public Order Act 1986, to look at how the Protection from Harassment Act is sometimes used against protestors and to look at the impact of the privatisation of public space on the right to protest. We have sought views from a range of stakeholders on section 5 and are currently collating the responses; we remain in discussions with the Ministry of Justice on the use of injunctions against protestors and will be drawing on the work of the HMIC Review in responding to the Committee's concerns around quasi-public space.

Finally, you will have seen that the Government has brought forward repeal of sections 132-138 of the Serious Organised Crime and Police Act 2005 in the Constitutional Renewal and Governance Bill. In doing so we have directly addressed the Committee's concerns about the level of access the police are required to maintain. I look forward to the Committee's support for these provisions as we take them through both Houses.

I am copying this letter to the Commissioner of the Metropolitan Police Service, the President of ACPO and Her Majesty's Chief Inspector of Constabulary.

Letter from the Chair of the Committee to Alan Campbell MP, Parliamentary Under-Secretary of State, Home Office, dated 27 October 2009

On 9 December 2008 I wrote to you expressing concern in the light of press reports that the Metropolitan Police Services' Human Trafficking Unit was to close down because Home Office funding was being withdrawn. On 16 December you announced that the Home Office would provide additional funding for the Unit in the form of a one-off grant.
The aim of the grant was to help the Metropolitan Police mainstream the Unit’s work into its existing budget and core business.

The Committee is aware that your recent response to the 6th Report of the Home Affairs Committee, “The Trade in Human Beings: Human Trafficking in the UK”, suggests that the Home Office will not provide the Human Trafficking Unit with any more money. This is despite evidence received by the Home Affairs Committee suggesting that closing down the Unit will make it more difficult to identify trafficking victims.

I would be grateful if you could send us a memorandum explaining the funding arrangements for the MPS Human Trafficking Unit and outlining its future. Please indicate what assessment you have made of whether the Metropolitan Police is now tackling human trafficking as part of its mainstream work.

I would be grateful if you could reply by 18 November and send us a Word version of your letter as well as hard copy.

I am copying this letter to the Met Commissioner, the Mayor of London and Keith Vaz MP.

Letter to the Chair of the Committee from Alan Campbell MP, Parliamentary Under-Secretary of State, Home Office

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.

Letter to the Chair of the Committee from Ivan Lewis MP, Minister of State, Foreign and
Commonwealth Office, dated 10 November 2009

I am writing to you about a reference in the Joint Committee on Human Rights report of 3
August on “Allegations of Complicity in Torture”. The Report contained a reference to the
number of cases of British nationals detained in Pakistan in relation to terrorism since 2000
(at paragraph 7) and referred to a discrepancy between the number of cases the FCO gave
in answer to a PQ last year and a list of cases provided by the Guardian (JCHR Report,
page 47, footnote 133). Although you have not asked us about this discrepancy, I consider
that it is important that we address it now in order to set the record straight at the earliest
opportunity.

Having see the Guardian’s list of cases, I can confirm that the FCO is aware of the 11
individuals that they have mentioned. The figure of 8 cases (amended from 6 originally)
given last year in response to the PQ was based on a search of our case files. These records
were not designed to be searched according to thematic criteria such as the reason for
detention, but are set up for the retrieval of individual cases. Information from before the
introduction of the current electronic consular casework database in 2003 is held in paper
files which are weeded in line with HMG’s data handling policy. Furthermore, we rely on
the national authorities in any country to notify us of any detention and of the reasons for
detention, and this is not always done, particularly in cases of dual nationals.
We continue to put in place systems to facilitate this type of data retrieval. But for the reasons above, and despite our best efforts, it is not always possible to give a definitive historical figure for detentions in connection with allegations of terrorism. Where we find discrepancies we will always aim to set the record straight as soon as possible.

Email to the Chair of the Committee from Craig Murray, dated 17 November 2009

I should be most grateful if you would copy this and the attachments to all members of the Joint Committee on Human Rights.

I forward for the Committee's consideration documents which I have newly obtained from the FCO under the Freedom of Information Act. These documents show beyond any possible doubt that there was indeed a policy operating of using intelligence from torture; and that it was directed and approved by Jack Straw, as evidenced by the minute from Simon McDonald, then Straw's Assistant Private Secretary.

I do hope that these documents go some way to assuage the doubts expressed in the Committee's report as to whether my evidence was credible. A key part of it is hereby proven.

It is of course for the Committee to judge the credibility of witnesses before it. Nonetheless, I must say I was deeply wounded by the Committee's comments. I would in particular have hoped that the Committee might distinguish between comments run on an unabashedly polemical blog, and sober evidence given with great care for accuracy to parliament, which I took as a high burden and responsibility.

I do hope that this new documentary evidence I now offer will go some way to lifting the Committee's doubts on my credibility, and that the Committee may take an opportunity to reflect that in public.

I would also restate that my evidence is not just evidence of a policy of knowing and considered complicity with torture, but it is also evidence of a secret such policy. In particular, I put it to you that, taken in the round, the two minutes attached are utterly
incompatible with Jack Straw's previous evidence to parliament on this subject, given two years after the attached documents were written:

As I said there, there are no circumstances in which British officials use torture, nor any question of the British Government seeking to justify the use of torture. Again, the British Government, including the terrorist and security agencies, has never used torture for any purpose including for information, nor would we instigate or connive with others in doing so. People have to make their own judgment whether they think I am being accurate or not.

http://www.publications.parliament.uk/pa/cm200506/cmselect/cmfaff/573/5102405.htm

I have highlighted in bold those sections of Jack Straw's evidence which, in the light of these two documents attached, appear to be highly misleading.

Annex 1

From: Linda Duffield
Date: 10 March 2003
Reference: 1
To PUS
cc: Michael Wood, Legal Adviser
Matthew Kidd, [REDACTION]

SUBJECT: UZBEKISTAN; INTELLIGENCE POSSIBLY OBTAINED UNDER TORTURE

1. Michael Wood, Matthew Kidd and I had a meeting with Craig Murray to discuss his telegram (Tashkent Telno Misc 01). [REDACTION] I said you had asked me to discuss this with Craig personally in view of the sensitive nature of the issues involved.

2. Craig said his concerns had been prompted by a presentation to the Uzbek authorities by Professor Korff (OSCE Adviser) on the UN Convention on Torture. Craig said that his understanding was that it was also an offence under the Convention to receive or to
possess information obtained under torture. He asked for clarification on this. Michael Wood replied that he did not believe that possession of information was in itself an offence, but undertook to re-read the Convention and to ensure that Craig had a reply on this particular point.

3. I gave Craig a copy of your revised draft telegram (attached) and took him through this. I said that he was right to raise with you and Ministers his concerns about important legal and moral issues. We took these very seriously and gave a great deal of thought to such issues ourselves. There were difficult ethical and moral issues involved and at times difficult judgements had to be made weighing one clutch of "moral issues" against another. It was not always easy for people in post to see and appreciate the broader picture, eg piecing together intelligence material from different sources in the global fight against terrorism. But that did not mean we took their concerns any less lightly.

4. [PARAGRAPH REDACTED]

5. After Michael Wood and Matthew Kidd had left, Craig and I had a general discussion about the human rights situation in Uzbekistan and the difficulties of pushing for a Resolution in Geneva, which we both agreed was important. [REDACTION]

CONCLUSION

6. In conclusion, Craig said that he was grateful for the decision to discuss these issues with me personally. At the end of the day he accepted, as a public servant, that these were decisions for Ministers to take, whether he agreed with them or not. If it ever reached the stage where he could not accept such a decision, then the right thing to do would be to request a move. But he was certainly not there yet. He had fed in his views. You and Ministers had decided how to handle this question. He accepted that and would now go back to Tashkent and "Get on with the job".

7. I think it was right to see him. I am not sure this is the end of the issue (or correspondence), but it was a frank and amicable discussion and Craig appears to be making efforts to balance his work on human rights with other FCO objectives. We shall,
of course, be reviewing these again once he has produced his post objectives for the upcoming year.

Signed
Linda Duffield
Director Wider Europe

Annex 2
Linda Duffield

Uzbekistan

Last night the Foreign Secretary read a copy of your minute of 10 March reporting your conversation (in the company of Michael Wood and Matthew Kidd) with Craig Murray.

The Foreign Secretary agrees with the PUS that you handled this very well. He has asked me to thank you.

Signed
Simon McDonald

Letter to the Chair of the Committee from Meg Hillier MP, Parliamentary Under-Secretary of State, Home Office, dated 20 November 2009

UK BORDER AGENCY – STATUTORY DUTY TO SAFEGUARD AND PROMOTE THE WELFARE OF CHILDREN

I am writing to let you know that section 55 of the Borders, Citizenship and Immigration Act 2009 is now in force. It places a duty on the Home Secretary to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children.

We have introduced this duty after carefully listening to constructive debates on this issue in each House. It is a step forward for the UK Border Agency which has been steadily improving its work with children. The duty puts the Agency on the same footing as other
bodies who work with children. It will be a driver for more effective interagency working which is crucial if children are to be kept safe and given the opportunity to thrive. In particular, the duty will place greater emphasis on the UK Border Agency’s participation with Local Safeguarding Children Boards.

I know that many of you have concerns about the detention of children for immigration purposes. Let me make it clear that I share those concerns: none of us wants to detain children. We would much prefer families who have no legal right to be here to leave voluntarily and we provide opportunities and incentives for them to do so, including a re-integration package to assist them in their country of return. We are considering how we might better promote such assisted returns and we are committed to exploring other alternatives to detention: we are currently running a pilot in Glasgow in co-operation with the City Council and Scottish Government, which provides intensive support to help families to prepare for their return.

However we have a responsibility to enforce the immigration laws and, if families refuse to take advantage of the opportunities offered to them to leave voluntarily, detention and enforced removal remains the only realistic option. When this does happen our aim is to make the period of detention as short as possible and to provide children with appropriate care and facilities.

We have made significant improvements in recent years in both the management of detention and the facilities provided, especially in Yarl’s Wood which is where most families with children are detained, and this has been acknowledged by various independent bodies. We have also explored, and continue to do so, alternatives to detention for suitable cases.

We want to continue this process of improvement in detention and across all aspects of our work with children, and to engage constructively with those who can help us. The duty is evidence of our commitment to this.
Together with Baroness Delyth Morgan, Parliamentary Under-Secretary of State for Children, Young People and Families, I am issuing guidance to support the new duty, copies of which are available in the Library.

**Letter from the Chair of the Committee to the Rt Hon David Hanson MP, Minister of State, Home Office, dated 24 November 2009**

I am writing to give you advance notice that my Committee may wish to ask some questions at next week’s evidence session about the legal costs incurred by the Government in connection with control orders since the inception of that regime in 2005. Since this may require some preparation by the staff in your department I want to ensure that you have sufficient time to obtain the necessary information.

I would be grateful if you could provide us with a memorandum showing:

- the total number of court hearings that have taken place in relation to control orders
- if possible, a breakdown of those figures into the different types of hearing
- the total cost to the public purse of those court hearings (including the cost of the Government’s own representation at those hearings, the cost of representation by special advocates, the cost of the Special Advocate Support Office, the cost of meeting the other side’s costs where these have been awarded against the Government, and any other costs arising from the hearings)
- if possible, a breakdown of the total cost figure into the different components listed above.

If it is possible to provide this the day before the evidence session my Committee would find this extremely useful.

**Letter from the Rt Hon David Hanson MP, Minister of State, Home Office to the Chair of the Committee, dated 27 November 2009**

LEGAL COSTS OF CONTROL ORDERS
Thank you for your letter dated 24 November 2009 regarding the legal costs incurred by the Government in connection with control orders since the inception of the regime in 2005.

My officials have sought to respond to your request to the fullest extent possible within the short time available before the evidence session. Obtaining some aspects of the information will involve the identification and search of a large number of files and records and cannot be completed in a manner that would provide the committee with a comprehensive and accurate response in under a week. I am however able to provide you with some of the information which can be obtained from existing records held by the department.

It is not possible to provide you with figures relating to the total number of court hearings relating to control orders since March 2005 within the time available. I will write to you in due course on this point. The information will be broken down to show the total number of:

- substantive judicial review hearings under section 3(10) of the PTA;
- appeal hearings in the High Court under section 10 of the Act;
- Court of Appeal hearings; and
- House of Lords hearings.

You will be aware that there are also a number of interim procedural hearings that take place in relation to control orders - including disclosure hearings and case management hearings. The Home Office does not hold comprehensive records of all of these interim hearings, and they will therefore not be included in the figures provided.

In relation to your request for the total cost to the public purse of control order court hearings I am able to respond. Between April 2006 and the end of October 2009 the Home Office spent £8,134,012.49 on legal costs. This figure includes the costs of the Government’s Counsel and charges by the Treasury Solicitor, the costs of the Special Advocates and the Special Advocates Support Office and the cost of meeting the other side’s costs where this has been ordered by the court. For the avoidance of doubt, this figure
does not only relate to court hearings, but also other work carried out by Counsel and solicitors in relation to control order litigation - for example preparation for hearings and legal advice in advance of the imposition of each control order. The Home Office does not hold information relating to the cost of control order proceedings to the Legal Services Commission or Her Majesty's Courts Service. It is not possible to provide a breakdown of this figure as requested by the committee, as the Home Office does not hold the relevant audited figures.

The Home Office cannot provide figures for the cost of control order legal costs during the financial year 2005-2006 as to do so would be at disproportionate cost. During that financial year control order costs were charged to a cost centre which was also used for the costs of a number of different programmes. It would be necessary to look at the records of every transaction made to the cost centre to establish which costs relate to control orders and which costs relate to other programmes. From the financial year 2006-2007 onwards a separate cost centre was used for control order costs.

Memorandum submitted by the British Humanist Association

We are making this submission on DCSF draft guidance, ‘Religious education in English schools: Non-statutory guidance 2009’, which we hope is an issue the Committee can take up with the DCSF.

A: INTRODUCTION

1. The current situation
The Department of Children, Schools and Families (DCSF) has (on 30 April 2009) issued new draft guidance for public consultation to replace previous guidance on Religious Education (RE) and Standing Advisory Councils on Religious Education (SACREs) which was issued in 1994, and which was even at the time widely considered to be very poor guidance. The public consultation ran until 24 July 2009 and the DCSF will now be considering its response with a view to issuing final guidance in the autumn.

In two respects the draft guidance is severely unsatisfactory and set to cause significant disadvantage to humanists. It fails to ensure:
Work of the Committee in 2008-09

- that RE should be the study of both religious and non-religious beliefs;

- that humanists should have the same right to be full members of the local committees writing and overseeing RE syllabuses as religious people have.

We are now very concerned that the guidance will, at best, offer no improvements in these two areas and, at worst, undermine the positive developments that have occurred, in defiance of the previous guidance, in the years since 1994 (and especially since the Human Rights Act 1998).

We want the DCSF to use the Human Rights Act to read references to ‘religion’ in the present law on RE as references to ‘religion or belief’ in the new guidance. In particular, we want the references to the content of RE as being about ‘principal religions’ to be read as ‘principal religions or beliefs’ and the eligibility for full membership of Standing Advisory Councils for RE (SACRES – the local committees that oversee RE) and Agreed Syllabus Conferences (ASCs – the local committees that set the RE syllabus) as representatives of ‘religions’ to be read as ‘religions or beliefs’, giving humanists the right to be full members.

2. Summary of our position

We say:

1. DCSF guidance on RE in English schools needs (by section 3(1) of the Human Rights 1998 Act) to read relevant legislation to secure compatibility with Convention rights, including thus the Convention rights of humanist parents and pupils, including rights under Article 9 ECHR, Article 2 Protocol 1 ECHR and Article 14 ECHR read in conjunction with those articles.

2. DCSF guidance needs to be compliant with the Equality Act 2006

And that:

3. As it is currently drafted, it fails to do this in relation to what it says or fails to say about:

   a. the eligibility of humanists to be members of SACREs and ASCs
   b. the inclusion of Humanism alongside religions as a subject of study in RE

3. Religious Education (RE) and the present situation
Religious Education in England and Wales is part of the basic curriculum, but not in the National Curriculum; uniquely, RE syllabuses are set locally by occasional Agreed Syllabus Conferences (ASCs) and monitored by Standing Advisory Councils for RE (SACREs) in each local authority. (In practice the same people are members of both bodies.) Nationally, the law requires that RE be the study of ‘Christianity and other principal religions’ and sets out local arrangements in some detail (for example, SACREs must include representatives of the Church of England and representatives of ‘other religions and religious denominations’).

The BHA believes that the introduction of the Human Rights Act 1998 (HRA), which gave further effect in UK law to the rights contained in the European Convention on Human Rights, has effects in practice upon the legal framework governing the teaching about religions and beliefs in England and we are seeking that this be reflected in the new guidance.

In the Introduction to the new guidance, and as one of the stated rationales for the new guidance, it says:

1.2.1 Changes in general legislation

A number of legislative changes within and beyond the world of education in both Britain and Europe have implications for RE. The Human Rights Act 1998, the Race Relations Amendment Act 2000, and the Equality Act 2006 contribute to the ‘bigger picture’ within which RE is provided in schools and experienced by children and young people.

But no actual changes are then introduced in the rest of the guidance in light of either the Human Rights Act or the Equality Act!

B: OUR POSITION

1. The content of the curriculum

a. We say that references in primary legislation to the content of RE (‘principal religions’) should be read as ‘principal religions and beliefs’.

Section 375 of the Education Act 1996 provides that agreed syllabuses of religious education
shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain

We want to argue that ‘and beliefs’ should be read in:

shall reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions and beliefs represented in Great Britain

b. We say that this has already in fact been acknowledged in the Non-statutory National Framework for RE (2004) . . .

In 2004, the government and QCA published the Non-statutory National Framework for RE to give advice to SACREs, ASCs, and others involved in RE. Prescribing the breadth of study at key stage 1 (p.25), key stage 2 (p.27), and key stage 3 (p.29), the Framework said:

During the key stage, pupils should be taught the Knowledge, skills and understanding through the following areas of study:

Religions and beliefs

a Christianity

b at least two other principal religions

c a religious community with a significant local presence, where appropriate

d a secular worldview, where appropriate

The Framework uses the phrase ‘religions and beliefs’ repeatedly to refer to the religious and non-religious worldviews to be studied in religious education and on page 12 makes it clear that humanism is included in this phrase: ‘it is recommended that there are opportunities for all pupils to study…secular philosophies such as humanism.’

c. …and in the non-statutory programmes of study for RE at key stages 3 and 4 (2007)...

In 2007, when the secondary National Curriculum was revised and reissued by the government and QCA, non-statutory programmes of study for RE at key stages 3 and 4 were issued alongside the new National Curriculum. Again the content of RE was
prescribed as ‘religions and beliefs’, which was defined in the explanatory notes at key stage 3 (p.264) and key stage 4 (p.276):

Religions and beliefs: These include systems of thought that are religious and non-religious, theistic and non-theistic, Western and Eastern, Abrahamic and dharmic.

‘Religions and beliefs’ is the phrase used repeatedly throughout the programmes of study to refer to the nature of the content to be taught: pupils should interpret ‘teachings, sources, authorities and ways of life in order to understand religions and beliefs’ (1.1(a)); they should explore the impact of religions and beliefs on how people live their lives.’(1.2(a)) and so on.

At key stage 3 (page 268), the Range and Content is given as:

The study of RE should include:

a. Christianity
b. at least two other principal religions
c. a religious community of local significance, where appropriate
d. a secular world view, where appropriate.

And ‘secular worldview’ is glossed (p.268):

A secular world view: This includes, as in the example given in the non-statutory national framework, secular philosophies such as Humanism.

d. …and in the proposed non-statutory programme of learning for RE at primary level...

In April 2009, at the same time as the draft guidance for RE was released, a non-statutory programme of learning in primary level RE, which it is proposed to issue alongside the new primary National Curriculum was published. This programme says that RE is important because, ‘it develops children’s knowledge and understanding of religions and beliefs’ (p.1) and it defines ‘religions and beliefs’ in its third explanatory note:

3. The phrase ‘religions and beliefs’ should be taken to include religious and secular world views, and their associated practices.
Under ‘Breadth of learning’ (p.2) it prescribes the content of RE as including ‘secular world views, such as humanism’ and adds an explanatory note (ninth explanatory note) to say:

Over the primary phase as a whole, children should draw on both religious and non-religious world views.

In prescribing curriculum content under the heading of ‘Curriculum Progression’ (p.3), the phrase ‘religions and beliefs’ or variants of it are used repeatedly. Pupils will ‘name and explore a range of celebrations, worship and rituals in religions or beliefs’ (E2); ‘describe and discuss some key aspects of religions and beliefs’ (L1); ‘investigate the significance and impact of religion and belief in some local, national and global communities’ (L2) and so on.

e. …and even in the draft guidance itself, but it is not explicit and it is not defined.

Repeatedly throughout the draft guidance, ‘religion and belief’ or variants are used to describe the content of religious education. However, when the Education Act 1996 is referred to (and hence in all those parts of the draft guidance that deal with legal requirements), ‘religion’ or ‘religious’ is used.

In Chapter 2, ‘Religious education – the legal framework’, the new guidance says:

2.3 The agreed syllabus
A locally agreed syllabus is a statutory syllabus of RE prepared under Schedule 31 of the Education Act 1996 and adopted by the LA under that Schedule. Every locally agreed syllabus must reflect that the religious traditions of Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain (Section 375, Education Act 1996). The law does not define what the principal religions represented in Great Britain are. ASCs can decide which principal religions represented in Great Britain, other than Christianity, are to be included in their agreed syllabus…

Although, it is clear to us from other documents referred to, that the government’s view is that religious education is about ‘religions and beliefs’ – including non-religious ‘beliefs’ (in
the ECHR meaning of the word) in the content of the curriculum – there is nothing statutory about these documents and so SACREs and ASCs are free to ignore them. We would like to make the case that there is HRA support for a reading of ‘religion’ as ‘religions and beliefs’, that a compatible reading of the Education Act 1996, such as we have suggested above, is necessary, and should be written into the new guidance, which currently gives no rationale for the use of the phrase ‘religions and beliefs’ throughout.

2. Eligibility of humanists for full membership on SACREs

a. We say that references in primary legislation to eligibility requirements for SACREs and ASCs, where they say ‘religions’, should be read as ‘religions and beliefs’.

Section 390 of the Education Act 1996 sets out the eligibility for membership of the SACRE:

(4) The representative groups required by this subsection are—

(a) a group of persons to represent such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;
(b) except in the case of an area in Wales, a group of persons to represent the Church of England;
(c) a group of persons to represent such associations representing teachers as, in the opinion of the authority, ought to be represented, having regard to the circumstances of the area; and
(d) a group of persons to represent the authority.

We want to argue that ‘beliefs’ should be read in:

(a) a group of persons to represent such Christian denominations and other religions and beliefs and denominations of such religions and beliefs as, in the opinion of the authority, will appropriately reflect the principal religious and belief traditions in the area;

Schedule 31, para 4 of the Education Act 1996 provides that:

(1) A conference convened under this Schedule shall consist of such groups of persons (“committees”) appointed by the local education authority which convenes the conference as are required by sub-paragraph (2).

(2) Those committees are—
(a) a committee of persons representing such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area;
(b) except in the case of an area in Wales, a committee of persons representing the Church of England;
(c) a committee of persons representing such associations representing teachers as, in the opinion of the authority, ought to be represented, having regard to the circumstances of the area; and
(d) a committee of persons representing the authority.

Again, we want to argue that ‘beliefs should be read in:

(2) Those committees are—
(a) a committee of persons representing such Christian denominations and other religions and beliefs and denominations of such religions and beliefs as, in the opinion of the authority, will appropriately reflect the principal religious and belief traditions in the area;

b. The old guidance did not say this – it prohibited humanists from full membership instead

Circular 1/94 – the guidance being replaced – explicitly prohibited humanists from full membership of SACREs with reference to the provisions above:

104. The inclusion of representatives of belief systems such as humanism, which do not amount to a religion or religious denomination, on committee A of an Agreed Syllabus Conference or group A of a SACRE would be contrary to the legal provisions referred to at paragraph 103.

c. The new guidance does not replicate the explicit prohibition, but also does not recommend full membership for humanists

We had hoped and expected the new guidance to make it clear that, in light of the HRA, humanists were now eligible to be full members of committee A of an Agreed Syllabus Conference and group A of a SACRE. Although it does not replicate the explicit prohibition on humanist membership given in the old guidance, the new guidance does not recommend the full membership of humanists either on grounds of the HRA or Equality Act 2006, or on any other grounds.

Membership of SACREs
In '5.2 Role of Local Authorities', the new guidance, interpreting the section of the Education Act 1996 quoted above, says:

A LA must…

…establish a permanent body called a Standing Advisory Council for Religious Education (SACRE) (Section 390, Education Act 1996). LAs must appoint representatives to each of four groups representing respectively:

- Committee A Christian denominations and other religions and religious denominations
- Committee B The Church of England
- Committee C Teacher associations
- Committee D The local authority

…ensure that the composition of committee A on an ASC and group A on a SACRE are representative of the principal religious traditions in the area.

Implicitly, and cryptically, it recommends that humanists should be co-opted to SACREs and informally attached to group A in '5.3.2 Composition and membership of a SACRE':

If a SACRE is to be effective, its membership needs to be as inclusive as possible and to reflect the priorities for RE and for education more broadly in the twenty-first century. SACREs are local bodies and so should ensure that the religions and beliefs of the local area are represented. Membership of SACREs must be as required by law, comprising four committees or groups mentioned in Section 5.2 above. A SACRE may also include co-opted members who are not members of any of the four groups, although it is often useful to attach, informally, co-opted members to one of the SACRE groups. Members of a group may well wish to take into consideration the views of co-opted members before taking a vote. SACREs should also make sure that their membership reflects, where possible, the breadth of study of religions and beliefs referred to in the non-statutory National Framework for Religious Education (the Framework) thus embodying a commitment to a RE which is inclusive, broad and balanced. It is therefore desirable that membership of a SACRE (through group membership or co-options) should include representatives who reflect both the diversity of religions and beliefs identified within the local agreed syllabus, and local commitment to inter-religious dialogue and community cohesion.
Under ‘5.3.3 Decision making and workings of a SACRE’, the guidance says:

Co-opted members do not have a vote (Section 390(7) and Section 391(4), Education Act 1996)

By use of a rather slippery ‘case study’ the guidance implies, however, that not having the right to vote need not really disadvantage a humanist co-optee:

A SACRE had several vacancies which needed to be filled and decided to carry out a review of membership in partnership with the LA. This brought to attention the fact that there were significant religion and belief communities in the area not currently represented on Group A, that there were no representatives of higher education on Group C, and that the voices of the young people most affected by the SACRE’s work, the pupils, were entirely absent. It was decided that in the interests of effectiveness the membership should be expanded to include young people as well as a Bahá’í and a Humanist representative and somebody from a nearby university. Formal votes were very rarely necessary, and the SACRE and LA agreed that since the statutory requirement was for each group, not each individual representative, to have a single vote, there was no problem about these additional new members contributing to the decision making process.

**Membership of ASCs**

Under ‘5.4.2 Membership of an ASC’, the new guidance says:

An ASC is required to be made up of four committees representing respectively (Section 390(2) Education Act 1996; Schedule 31, para 4, Education Act 1996):

A Christian denominations and other religions and religious denominations  
B The Church of England  
C Teacher associations  
D The local authority

There is no provision for an ASC to include co-opted members, but this does not mean that advice cannot be sought beyond its membership.
d. The current situation for humanists on SACREs/ASCs and possible effects of the guidance

As it stands, the new guidance appears to be recommending co-opted, non-voting membership of SACREs for humanists and no membership at all of ASCs. Given that, at the same time, government is recommending that Humanism be included in the syllabus, we believe that a prohibition on humanists being involved in deciding what will be said about them and their beliefs (when religious representatives are included) is a gross inequality.

When Circular 1/94 was issued, most humanists who had been full members of existing SACREs were demoted to non-voting, co-opted membership, if they were retained at all, and most of the new SACREs established had no humanist members. Only the two SACREs of Oxford and Westminster, in defiance of the guidance, chose to keep their humanists as full members of SACRE group A and ASC committee A.

In the years since 1994, some co-opted humanists have been chairs and vice chairs of SACREs and given distinguished service in the development of RE and the inclusion of all pupils. Where there have been SACREs of good will, the position of humanists has not been as bad in practice as circular 1/94 mandated in theory. The experience of other humanists, however, (and this is the case for most) has been that circular 1/94 makes SACREs and ASCs feel unable to appoint humanists as members of SACREs and ASCs, and gives cover to those who, for reasons of prejudice, do not wish to do so. Crucially, even where humanists have been able to be co-opted members of SACREs, they have still been prevented from being members of ASCs and so actually involved (as their religious colleagues are) in the writing of syllabuses.

We are concerned that this situation will not be resolved by the draft guidance and, additionally, that by stopping short of recommending full membership of SACREs and ASCs for humanists, it may actually reverse the progress made in some areas. Whereas Oxford and Westminster were the only SACREs we are aware of that chose to retain their humanists as full members in 1994, we are aware of at least seven further SACREs who have restored full group/committee A membership to humanists since 1998 – Brent,
Suffolk, Portsmouth, Northumberland, Harrow, Ealing and Camden. In the case of Brent, Portsmouth, and Suffolk this was explicitly in light of the HRA and Equality Act 2006. If the new guidance fails to provide appropriate cover and justification for the actions of these LAs, we are concerned that the position of humanists on these SACREs may deteriorate again.

C: SUPPORT FOR OUR VIEW


Section 3 of the HRA requires that legislation written before it was adopted should be interpreted to meet its requirements; ‘so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights’. We believe that this means that the DCSF can read references to ‘religions’ in the Education Act 1996 as references to ‘religions an beliefs’.

Section 6 makes it “unlawful for a public authority to act in a way which is incompatible with a Convention right” which – taken with Articles 9 and 14 – arguably applies in the same way as the Equality Act section 52 (below).

b. Equality Act 2006

Section 52 (‘Public authorities: general’) of the Equality Act 2006 says:

(1) It is unlawful for a public authority exercising a function to do any act which constitutes discrimination.

(2) In subsection (1)—
(a) “public authority” includes any person who has functions of a public nature (subject to subsections (3) and (4)), and
(b) “function” means function of a public nature.

As we read it, ‘discrimination’ in section 52 refers to the definition of ‘discrimination’ given in section 45 (‘Discrimination’):

(1) A person (“A”) discriminates against another (“B”) for the purposes of this Part if on grounds of the religion or belief of B or of any other person except A (whether or not it is also A’s religion or belief) A treats B less favourably than he
treats or would treat others (in cases where there is no material difference in the relevant circumstances).

(2) In subsection (1) a reference to a person’s religion or belief includes a reference to a religion or belief to which he is thought to belong or subscribe.

(3) A person (“A”) discriminates against another (“B”) for the purposes of this Part if A applies to B a provision, criterion or practice—
   (a) which he applies or would apply equally to persons not of B’s religion or belief,
   (b) which puts persons of B’s religion or belief at a disadvantage compared to some or all others (where there is no material difference in the relevant circumstances),
   (c) which puts B at a disadvantage compared to some or all persons who are not of his religion or belief (where there is no material difference in the relevant circumstances), and
   (d) which A cannot reasonably justify by reference to matters other than B’s religion or belief.

Section 44 makes it clear that Humanism is covered:

In this Part—
   (a) “religion” means any religion,
   (b) “belief” means any religious or philosophical belief,
   (c) a reference to religion includes a reference to lack of religion, and
   (d) a reference to belief includes a reference to lack of belief.

It is true that section 52 also provides that:

(4) The prohibition in subsection (1) shall not apply to—
   ...(k) action in relation to—
      (i) the curriculum of an educational institution...

But we would argue that the section on membership of SACREs at least is not about the curriculum & arguably none of the guidance is per se.

Section 66 of the Act (’Claim of unlawful action’) reads:
(1) A claim that a person has done anything that is unlawful by virtue of this Part may be brought in a county court (in England and Wales) or in the sheriff court (in Scotland) by way of proceedings in tort (or reparation) for breach of statutory duty.

\(\ldots\)

(4) In subsection (1) the reference to a claim that a person has done an unlawful act includes a reference to a claim that a person is to be treated by virtue of this Part as having done an unlawful act.
(5) In proceedings under this section, if the claimant (or pursuer) proves facts from which the court could conclude, in the absence of a reasonable alternative explanation, that an act which is unlawful by virtue of this Part has been committed, the court shall assume that the act was unlawful unless the respondent (or defender) proves that it was not.

We believe that the Equality Act 2006 may therefore be used in action over the draft guidance.

c. UN Special Rapporteur on freedom of religion or belief on RE in the UK

The UN Special Rapporteur on freedom of religion or belief in her 2008 report on the UK (A/HRC/7/10/Add.3) made a recommendation to the UK authorities in light of the current discriminatory situation for humanists (emphasis added):

69. With regard to religious education, the authorities should pay specific attention to the contents of syllabuses in publicly funded schools. Furthermore, a non-discriminatory membership of relevant committees preparing such syllabuses seems vital to adequately represent the various theistic, non-theistic and atheistic approaches. The Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination deemed that each State should promote and respect educational policies aimed at strengthening the promotion and protection of human rights, ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief as well as the right not to receive religious instruction inconsistent with his or her conviction (E/CN.4/2002/73, appendix, para. 4). Most recently, the Office for Democratic Institutions and Human Rights (ODIHR-OSCE) Advisory Council of Experts on Freedom of Religion or Belief has prepared the “Toledo Guiding Principles on teaching about religions and beliefs in public schools” which may provide further useful guidance in this regard.

d. ODIHR Advisory Council of Experts on Freedom of Religion or Belief on the drawing up of curricula to do with religions and beliefs

*Toledo Guiding Principles on teaching about religions and beliefs in public schools* (2007), the ODIHR-OSCE document to which the Special Rapporteur refers, among its other recommendations to OSCE participating states (which, of course, includes the UK) recommended that they should:

4. Assess the process that leads to the development of curricula on teaching about religions and beliefs to make sure that this process is sensitive to the needs of various
religious and belief communities and that all relevant stakeholders have an opportunity to have their voices heard.

And included amongst the guiding principles themselves were (emphasis added):

4. Efforts should be made to establish **advisory bodies at different levels** that take an inclusive approach to involving different stakeholders in the preparation and implementation of curricula and in the training of teachers.

7. **Preparation of curricula, textbooks and educational materials for teaching about religions and beliefs** should take into account religious and non-religious views in a way that is inclusive, fair, and respectful. Care should be taken to avoid inaccurate or prejudicial material, particularly when this reinforces negative stereotypes.

8. **Curricula should be developed in accordance with recognized professional standards** in order to ensure a balanced approach to study about religions and beliefs. **Development and implementation of curricula should also include open and fair procedures** that give all interested parties appropriate opportunities to offer comments and advice.

It is made clear that this advice is to deal with very real discrimination (pp.41-2):

Curricula should be sensitive to different local manifestations of religious and secular plurality found in schools and the communities they serve. Such sensitivities will help address the concerns of students, parents and other stakeholders in education, especially with regard to a fair and balanced coverage of different religions and philosophies. The negative impact on the self-esteem and sense of belonging of students who feel excluded has been well documented. Parents who feel that their (religious) beliefs are not respected in the school and school curriculum are also less likely to feel a sense of engagement with the learning that takes place in the schools their children attend. An impartial and inclusive approach should therefore be reflected in the general policy and outlook of the school as well as throughout the curriculum.

e. OSCE/ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, (Warsaw, ODIHR, 2004)
On page 20 of the *Toledo Principles*, it is said that:

> belief refers to deeply held conscientious convictions that are fundamental about the human condition and the world. See the working definition given in OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief, *Guidelines for Review of Legislation Pertaining to Religion or Belief*, (Warsaw, ODIHR, 2004)

These guidelines state (p.8):

> International standards do not speak of religion in an isolated sense, but of “religion or belief.” The “belief” aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. It is very common for legislation not to protect adequately (or to not refer at all to) rights of non-believers. Although not all beliefs are entitled to equal protection, legislation should be reviewed for discrimination against non-believers.


This sets out a number of key principles concerning the enjoyment of the freedom of religion and belief, these being that:

(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, *inter alia,*

(16.1) – *take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;*

(16.2) – foster a climate of mutual tolerance and respect between believers of different communities *as well as between believers and non-believers;*

**g. Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination**

Recommended for the attention of the UK government by the UN Special Rapporteur as above. In this document, the conference (emphasis added):
4. Deems that each State, at the appropriate level of government, should promote and respect educational policies aimed at strengthening the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief as well as the right not to receive religious instruction inconsistent with his or her conviction;

6. Condemns all forms of intolerance and discrimination based on religion or belief including those which promote hatred, racism or xenophobia, and deems that States should take appropriate measures against those which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including Internet;

7. Considers favourably the following objectives:

(a) The **strengthening of a non-discriminatory perspective in education and of knowledge in relation to freedom of religion or belief** at the appropriate levels;

(b) The **encouragement of those engaged in teaching to cultivate respect for religions or beliefs**, thereby promoting mutual understanding and tolerance;

**h. Council of Europe’s ‘Recommendation of the Committee of Ministers to member states on the dimension of religions and non-religious convictions within intercultural education’ (CM/Rec(2008)12)**

In this recommendation, the Committee of Ministers:

1. Recommends that the governments of member states, with due regard for their constitutional structures, national or local situations and educational system:

   a. **draw on the principles set out in the appendix to this recommendation in their current or future educational reforms**;

**Appendix to Recommendation CM/Rec(2008)12**

1. The recommendation’s aim is to ensure taking into account the dimension of religions and non-religious convictions within intercultural education as a contribution to strengthen human rights, democratic citizenship and participation, and to the development of competences for intercultural dialogue,
at the following levels:

- education policies, in the form of clear-cut education principles and objectives;

3. Religious and non-religious convictions are diverse and complex phenomena; they are not monolithic. In addition, people hold religious and non-religious convictions to varying degrees, and for different reasons; for some such convictions are central and may be a matter of choice, for others they are subsidiary and may be a matter of historical circumstances. **The dimension of religions and non-religious convictions within intercultural education should therefore reflect such diversity and complexity at a local, regional and international level.**

**Principles for taking the dimension of religions and non-religious convictions into account in the framework of intercultural education**

4. The following principles should form the basis and define the perspective from which religions and non-religious convictions have to be taken into account in a framework of intercultural education:

- the principle of the freedom of conscience and of thought includes the freedom to have a religion or not to have one, and the freedom to practice one's religion, to give it up or to change it if one so wishes;

- agreement that religions and non-religious convictions are at least “cultural facts” that contribute, along with other elements such as language and historical and cultural traditions to social and individual life;

- information on and knowledge of religions and non-religious convictions which influence the behaviour of individuals in public life should be taught in order to develop tolerance as well as mutual understanding and trust;

- religions and non-religious convictions develop on the basis of individual learning and experience, and are not entirely predefined by one's family or community;

- an interdisciplinary approach to education in religious, moral and civic values should be encouraged in order to develop sensitivity to human rights (including gender equality), peace, democratic citizenship, dialogue and solidarity;

- intercultural dialogue and its **religious and non-religious convictions dimension are an essential precondition for the development of tolerance and a culture of “living together”, as well as for the recognition of our different identities on the basis of human rights**;
the manner in which the dimension of religious and non-religious convictions within intercultural education is introduced in practice could take into account the age and maturity of pupils to whom it is addressed as well as the already existing best practices of the respective member states.

Objectives of an intercultural approach concerning the religious and non-religious convictions dimension in education

5. Education should develop intercultural competences through:

- developing a tolerant attitude and respect for the right to hold a particular belief, attitudes based on the recognition of the inherent dignity and fundamental freedoms of each human being;

- nurturing a sensitivity to the diversity of religions and non-religious convictions as an element contributing to the richness of Europe;

- ensuring that teaching about the diversity of religions and non-religious convictions is consistent with the aims of education for democratic citizenship, human rights and respect for equal dignity of all individuals;

- promoting communication and dialogue between people from different cultural, religious and non-religious backgrounds;

- providing opportunity to create spaces for intercultural dialogue in order to prevent religious or cultural divides;

- addressing the sensitive or controversial issues to which the diversity of religions and non-religious convictions may give rise;

- developing skills of critical evaluation and reflection with regard to understanding the perspectives and ways of life of different religions and non-religious convictions;

- combating prejudice and stereotypes vis-à-vis difference which are barriers to intercultural dialogue, and educating in respect for equal dignity of all individuals;

- fostering an ability to analyse and interpret impartially the many varied items of information relating to the diversity of religions and non-religious convictions, without prejudice to the need to respect pupils’ religious or non-religious convictions and without prejudice to the religious education given outside the public education sphere.

Requirements for dealing with the diversity of religions and non-religious convictions in an educational context
6. The following attitudes should be promoted in order to remove obstacles that prevent a proper treatment of the diversity of religions and non-religious convictions in an educational context:

- recognising the place of religions and non-religious convictions in the public sphere and at school as topic for discussion and reflection;

- recognising that different religions and humanistic traditions have deeply influenced Europe and continue to do so;

- promoting a balanced approach of the presentation of the role of religions and other convictions in history and cultural heritage;

- accepting that religions and non-religious convictions are often an important part of individual identity;

- overcoming prejudices and stereotypes concerning religions and non-religious convictions, especially the practices of minority groups and immigrants, in order to contribute to the development of societies based on solidarity.

Teaching aspects of an intercultural approach to religions and non-religious convictions in education

7. In order to encourage consideration of the diversity of religions and non-religious convictions in the educational context, and to promote intercultural dialogue, the following educational preconditions and learning methods can be seen as highly appropriate examples:

...7.2 Various learning methods

...– the development of appropriate pedagogical approaches such as:

- a phenomenological approach aimed at cultivating a knowledge and understanding of religions and non-religious convictions as well as respect for other persons irrespectively of their religious and non-religious convictions;

- an interpretative approach which encourages a flexible understanding of religions and non-religious convictions and avoids placing them in a rigid pre-defined framework;

July 2009
Witnesses

Tuesday 20 January 2009

Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice and Mr Michael Wills MP, Human Rights Minister, Ministry of Justice

Tuesday 24 February 2009

Professor Monica McWilliams, Chief Commissioner, NIHRC, Professor Colin Harvey, Commissioner, NIHRC and Dr Nazia Latif, Investigations Policy and Research Worker, NIHRC

Wednesday 2 December 2009

Rt Hon Michael Wills MP, Human Rights Minister and Mr Edward Adams, Head of Human Rights Division, Ministry of Justice

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3  Letter to Rt Hon Beverley Hughes MP p 89
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23 Letter to Rt Hon Alan Williams MP p 128
Evidence sent to the Parliamentary Archives

The following memorandum has been reported to the House, but to save printing costs it has not been printed and a copy has been placed in the House of Commons Library, where they may be inspected by Members. A copy is in the Parliamentary Archives, and is available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Government human rights Memorandum on the Marine and Coastal Access Bill
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| Third Report | Legislative Scrutiny: Financial Services Bill and the Pre-Budget Report | HL Paper 184/HC 184 |

**Session 2008-09**

<p>| First Report | The UN Convention on the Rights of Persons with Disabilities | HL Paper 9/HC 93 |
| Fourth Report | Legislative Scrutiny: Political Parties and Elections Bill | HL Paper 23/HC 204 |
| Eighth Report | Legislative Scrutiny: Coroners and Justice Bill | HL Paper 57/HC 362 |
| Tenth Report | Legislative Scrutiny: Policing and Crime Bill | HL Paper 68/HC 395 |
| Eleventh Report | Legislative Scrutiny: 1) Health Bill and 2) Marine and Coastal Access Bill | HL Paper 69/HC 396 |
| Twelfth Report | Disability Rights Convention | HL Paper 70/HC 397 |
| Thirteenth Report | Prisoner Transfer Treaty with Libya | HL Paper 71/HC 398 |
| Fourteenth Report | Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill | HL Paper 78/HC 414 |
| Fifteenth Report | Legislative Scrutiny: Policing and Crime Bill (gangs injunctions) | HL Paper 81/HC 441 |
| Sixteenth Report | Legislative Scrutiny: Coroners and Justice Bill (certified inquests) | HL Paper 94/HC 524 |
| Seventeenth Report | Government Replies to the 2nd, 4th, 8th, 9th and 12th reports of Session 2008-09 | HL Paper 104/HC 592 |</p>
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Oral evidence

Taken before the Joint Committee on Human Rights

on Tuesday 20 January 2009

Members present:

Mr Andrew Dismore, in the Chair
Dubs, L
Lester of Herne Hill, L
Morris of Handsworth, L
Onslow, E
Prashar, B

John Austin
Dr Evan Harris
Mr Richard Shepherd
Mr Edward Timpson

Witnesses: Rt Hon Jack Straw MP, Lord Chancellor and Secretary of State for Justice, and Mr Michael Wills MP, Human Rights Minister, Ministry of Justice, gave evidence.

Q1 Chairman: Good afternoon everybody, and welcome to this public session of the Joint Select Committee on Human Rights. The purpose of this session is to follow up on our report on a Bill of Rights and Freedoms for the United Kingdom and the Government’s reply, and it is also our annual oral evidence session with the Minister of Justice and Human Rights Minister. We are pleased that we are joined by the Secretary of State for Justice, Jack Straw MP, and Michael Wills MP, the Human Rights Minister at the Ministry of Justice. Welcome to you both. Does anyone want to make an opening statement or shall we get straight into questions?

Mr Straw: Except to say that I am delighted to be here, why do we not go straight into questions?

Q2 Earl of Onslow: Will you be by the end of the session?

Mr Straw: I always am, my Lord!

Q3 Chairman: I do not think it will come as any surprise to you, Jack, that we would like to ask you some questions about what you wrote in the Daily Mail and what you meant by that. The Daily Mail suggested that you were making a coded attack on the judiciary for the way they have interpreted the Human Rights Act, and they described you as “one of Westminster’s most wily operators” and “the master of the discreet stiletto”. Is the Daily Mail correct in interpreting your remarks about “frustration” in the justiciary as a challenge to the judiciary for the way they have interpreted the Human Rights Act but to decisions of the Strasbourg Court from and including Chahal which pre-dated this Government and pre-dated the Human Rights Act by four years.

Mr Straw: Let me say the Daily Mail article was entirely accurate in the way in which it quoted me, just so we are clear. What I was seeking to do in this article was to bring a better balance and understanding as to why we had embarked on the Human Rights Act, what its benefits had been and continue to be, but at the same time to acknowledge the way in which in some people’s eyes the Human Rights Act had been held up, as I said in the article, as “a villain’s charter”, and to get a wider hearing for the case for human rights linked with responsibilities, which I am sure, Chairman, you will want to come on to. I have religiously avoided, in your terms, “attacking” judges and I do not regard what I said in this article at all as an attack on the judiciary; far from it. Aside from the fact that I took not one but three oaths when I became Lord Chancellor, which I swore before the Lord Chief Justice, about respect for the judiciary and, as it were, protector of their independence, I happen to feel very strongly that there should be a mutual respect between these separate and distinct arms of the state: the executive, the legislature and the judiciary. I make the point that where there is a connection in terms of ministerial responsibility that is through me, but, as I say, I take my responsibilities very seriously. That said I know that I saw in the letter from you that you had picked up my comment that some courts will be “too nervous” in respect, for example, of deportation of deportees (I did not go into this in detail) with assurances. I think that one can respectfully disagree with some of the specific decisions without going into the detailed cases, and that is what I did in that article. I also just remind colleagues here, if I may, that I said in the article, and the Daily Mail was faithful to what I said, that: “He is quick to defend what is arguably one of the most far-reaching—and many would say damaging (according to the Daily Mail)—pieces of legislation introduced by Labour. He argues that the Act has suffered unduly in the public’s perception in the aftermath of 9/11 as Islamist militants have used it with great success to avoid deportation. It is an ‘Aunt Sally’ often blamed unfairly for problems which are in fact caused by other laws and judgments—quite a few of which he conveniently dates back to the Tories . . .” but I also, as I recall, expanded in that part of the conversation on the fact that the principal difficulties with which the courts have to wrestle, but not the only difficulties, in respect of deportation with assurances go back not to the Human Rights Act but to decisions of the Strasbourg Court from and including Chahal which pre-dated this Government and pre-dated the coming into force of the Human Rights Act by four years.

Q4 Chairman: Just to pick up that point about removal of terror suspects to places of origin or wherever, you put forward on behalf of the
Government as an intervener in Saadi this position and the European Court of Human Rights threw those arguments out, so what did you hope to achieve by raising that point?

Mr Straw: The very fact that the British Government, with some other governments, took that case to the European Court indicates that we have a disagreement with the Strasbourg Court about the efficacy of deportation with assurances and where the balance should lie. Let me just say this: no British Home Secretary, and I have been a British Home Secretary, would ever knowingly or negligently seek to deport somebody who was at a risk of torture or death or inhuman treatment, and if the Human Rights Act did not exist and the Strasbourg Convention had never been ratified by us, that would still be the case, and were a Home Secretary to get into that position—and I do not think one would—then their survival before the House of Commons and, as it were, the court of public opinion, would be very short-lived. I think everybody has to recognise, including those who strongly support the Human Rights Act, as do I, that there is an issue of balance here and how we deal with people who may have committed very serious offences within the jurisdiction or overseas citizens whose presence here was not acceptable, how we deal with those cases within the overall framework of not sending people back to torture or death is a very difficult one. The argument is not should you, as it were, override the purpose of, say, Article 3, but where does the balance lie.

Q5 Chairman: You talk about people having committed serious offences. Presumably the way to deal with those is to prosecute them, so the ones you are left with are those whom you cannot prosecute because the evidence is either inadmissible or inadequate to prove a case against them.

Mr Straw: You are also left with what happens to them when they come out of prison and the same issue arises.

Q6 Chairman: Going to the point you made about torture, the Prime Minister in his speech to the Equality and Human Rights Commission on the 60th anniversary of the Universal Declaration—and I think you have just agreed with this—in talking about human rights said that “the prohibition against torture was absolute”.

Mr Straw: Of course.

Q7 Chairman: If that is the case and we believe in the absolute prohibition where is the balance that comes out of this because if it is an absolute commitment then there is no balancing to be done?

Mr Straw: There is a balancing not of whether there should be an absolute prohibition to people’s submission to torture or death; the difficult judgments arise over whether such a risk is there in respect of sending back an individual to a particular country. That is where the judgment lies, or the balance if you like, which is about future risk, and I think there is scope for a perfectly reasonable difference of view between, say, that which has been taken by the British Government (and a number of other governments; we are far from alone in that) and for example the European Court.

Q8 Chairman: But if there are two views is that not in itself an indication that there is a risk that there could be torture. If a judge looking at a memorandum of understanding as against a country’s history in relation to torture and comes to the conclusion that there is a risk, and the Government comes to a different conclusion, the fact that there are two possible views must in itself mean that there is a risk of infringing the absolute prohibition against torture.

Mr Straw: I do not accept that argument at all. I think it depends on the strength of the views. I recall a similar but slightly different point in the case of the issue of the deportation of Rachid Ramda to France. He was the man accused of the bombings on the Paris Metro in 1995, and he was held here on an extradition warrant for 10 years before he was finally removed to France. The view that I took, and ultimately the British courts took (but it took a very long time) was that it was entirely safe to send him back to France, but there were certainly two views about that. In the end we managed to persuade the courts that the view that was taken on behalf of Ramda was not a substantial one. On plenty of issues you have two views and you then have to weigh up the strength of those views. Can I just say this: as I said at the beginning, I happen to believe, and I have made this clear in the Daily Mail, that the Human Rights Act is an important piece of legislation. Query how it will be seen in the future but I think it will be seen as one of the most abiding pieces of legislation of this Labour administration to date. I think it has produced many benefits, but it is also the case that I am concerned, and I think many Members of Parliament on all sides are, about the less than good press it has received, particularly since 9/11. The purpose of my article was to try and say to people (because you have got to do this—you cannot just get yourself into an intellectual ghetto), to say to very well-meaning people, yes, we understand those concerns and then perhaps to get people to go on from there to recognise that there are benefits and it is not quite such a villain’s charter, but that is how it is perceived. If I may just make this point. I claimed that people do not tend to notice when the Human Rights Act actually does good in helping to defend individuals from unacceptable abuse. I just give you one example, although one could query whether it is unacceptable abuse: it passed with remarkably little comment that the Daily Telegraph, which has not been right in the forefront of defending the Human Rights Act, has as its owners the Barclay brothers who have sought to take on a judicial review in respect of my handling of my responsibilities and Michael’s in respect of the Channel Islands. When it went before the Court of Appeal they won on one key point and lost on some others, and I accepted that, but that was quite an interesting example of entirely law-abiding people who may have been sceptical about the Act making rather good use of it.
Q9 Chairman: Do you yourself think that the Human Rights Act is a villain’s charter?

Mr Straw: No, of course I do not, and I did not say that.

Q10 Chairman: That is why I was putting it to you because sometimes when people use the formulation “people think . . . they often mean themselves.

Mr Straw: Chairman, what is really important here, and it comes on to what we are seeking to do in respect of responsibilities, is to recognise that this Act has not achieved the affection which I hoped for it. I would suggest that the reason for that is because it was subject to a premature and hard test because of what happened on 9/11.

Q11 Chairman: So the Daily Mail article was an attempt at myth-busting?

Mr Straw: Yes it was, but it was also an attempt to reach out to people. I am unapologetic about the fact that I gave the interview and I have no criticism of the way it was written up because we are all grown-ups here. If we are concerned to extend a debate we have got to pick up where people are. There is no point beating up on people because they happen to believe it is a villain’s charter or they have read one decision which appeared to be slightly questionable and for which the Human Rights Act was being blamed, as I say often and in most cases unfairly. What you need to do if you are going to have a debate with people is say, “Yes but . . .” and that was what I was seeking to do.

Q12 Chairman: I have several people itching to come in but one last question from me about myth-busting because we had your predecessor Lord Falconer here and we went into a lot of detail with him about myth-busting, and we had our own report on it and there was a report from the Department on it, and very little actually seems to have come out the other end. Can I put one particular case to you which Lord Falconer was widely quoted on, but I do not recall reading anything from you about it, and that was the attack by Paul Dacre when he called the Human Rights Act “wretched” and made a vitriolic attack on the judge for the particular way he interpreted it in that context to do with the right to privacy. What did the MoJ do to respond to Paul Dacre’s speech?

Mr Straw: I do not think we issued a press notice about that and we tend not to get involved in a running commentary on disputes between one party and another to court actions, otherwise there would be no end to it. I also said in this article, and it is quoted and I had a very straightforward conversation about that, that I recognise some of the concerns about these judgments—and they called it a libel judgment but it was a judgment in respect of privacy—and I suggested that the time had come for a select committee of MPs to study the issue. I understand that is exactly what is going to happen.

Q13 Chairman: But in your own response to our Bill of Rights Report you said: “As part of the Government’s Human Rights Programme, the Ministry of Justice has led an initiative to improve the capability of government departments to respond to inaccurate or misleading media coverage . . .” effectively saying you were going to respond to misleading stories.

Mr Straw: You cannot respond to every comment.

Q14 Chairman: It was quite a big, well-publicised comment.

Mr Straw: It may be a big, well publicised one but I am afraid I rest on the answer that I have just given.

Q15 Dr Harris: You are quoted in the Daily Mail as saying: “Jack Straw: ‘We will get tough on human rights do-gooders.”’ I put it to you would it not be better to get tough on human rights do-badders, and who did you have in mind, present company excepted?

Mr Straw: That is not a direct quotation.

Q16 Dr Harris: Are you saying that was a misreport?

Mr Straw: It is not a misreport. I would not suggest for a second that the Daily Mail had misreported me. Where they quoted me they have quoted me accurately and if you give an interview to the Daily Mail you expect a certain amount of editorial comment within the piece, so I have no criticism whatsoever of the interview because I think that overall it gave a very fair flavour to what I was seeking to say—to repeat myself, Dr Harris—which was to recognise that there are criticisms of the way in which the Act is implemented but also very strongly to defend the Act itself.

Q17 Dr Harris: I do not want you to repeat yourself. I am just interested who these do-gooders are who you want to get tough on. Do you mean the judges? We—the Government I presume—will get tough on the judges?

Mr Straw: As I say, that was their summary of where they thought I was. It was neither a direct nor an indirect quotation.

Q18 Dr Harris: What do you think they meant, the human rights industry, this army of lawyers?

Mr Straw: I was separately critical of some of the claims industry, and I think that most Members of Parliament are critical of the claims industry and the way in which people’s rights of action are sometimes abused and sometimes these are wrapped in together. The legal profession—and this is in one sense above and beyond concerns about the Human Rights Act—have got to be very careful in ensuring that the kind of abuses which we have recently seen brought out before the Solicitors Regulation Authority are dealt with not only by the statutory authorities but also by the profession directly through regulation and also culturally as well.

Q19 Lord Lester of Herne Hill: As you know, I am in the unusual position of asking questions as a poacher who has become a gamekeeper again!

Mr Straw: I think rather gamekeeper who has become a poacher, if I may put it that way.
Q20 Lord Lester of Herne Hill: It depends on how you perceive it. As you know, or do not know, like Mr Justice Eady I was privileged to be attacked by the *Daily Mail*, which I rejoice in personally, just after your interview. Mr Dacre, and others like him in the tabloids and other sections of the press, is worried about the Human Rights Act developing into an enforceable right to personal privacy which means that he and others could not trade in the kind of gossip and media intrusions that perhaps they would like to. Your article gave him the impression, it is pretty clear from his editorial, that you would like to weaken the Human Rights Act, or tighten it up, in order to make it less likely that the press would be restrained when it comes to personal privacy. I do not believe that is your position, but it is important for you to make clear today that that is not your position because I think otherwise Mr Dacre might think, quite wrongly, that what you have in mind is to weaken the Human Rights Act from the point of view of victims and make it easier for the press to make unwarranted attacks on personal privacy. Would you mind clarifying the position on that?

*Mr Straw:* As you know, Lord Lester, a good deal of the law of privacy had developed before the Human Rights Act and it is based on a development of the law of confidentiality, which is now informed by the Human Rights Act, but that is the foundation of it. So far as this particular judgment, the *Max Mosley* one I think, and I am having to choose my words with care here—and I will mention what the note I have been passed says in a second—I make no comment at all about the decision to which the court came, but the behaviour which was the subject of debate was something which I think most people would be very uncomfortable about.

Q21 Lord Lester of Herne Hill: I was not asking you about that; I was asking about whether it was your intention to seek to weaken the Human Rights Act in that respect or not?

*Mr Straw:* What my intention is, which is now actually happening, is that there should be a select committee of MPs to look at the law on privacy. Legal systems in common law countries above all are living systems. Sometimes they require a nudge one way or the other by statute. There is nothing wrong with that. We did that very recently following the *Davis* judgment about the admissibility of anonymised evidence. The Law Lords overwhelmingly on the basis of common law rather than the Human Rights Act came to one decision and the House of Commons on a unanimous basis decided to come to an opposite one. None of these things is set in concrete and I repeat the point that those of us, of whom there are two of us here, who are keen to ensure that the legacy of the Human Rights Act continues and thrives need to be alive to criticism and to respond to that criticism. I am sorry, I do not always agree with Mr Dacre, still less he with me famously, but I do not take your view about him or his newspaper. It is a serious newspaper and it happens to represent a large body of public opinion in this country. Whether you agree with it or not is neither here nor there. It would be ridiculous not to take note of that and then try to seek to respond to it.

Q22 Earl of Onslow: Secretary of State, in your article it said: “He is ‘frustrated’ by some of the judgments which have encouraged voters to conclude that the Act is ‘a villain’s charter’ which favours the rights of criminals over those of victims”. You said when you came in that you stood by every single quote that you made, which seems perfectly reasonable.

*Mr Straw:* Sorry?

Q23 Earl of Onslow: You said that you stood by every single quote. Does that sentence in that article mean that they have taken those quotes out of context because it seems to me completely clear what you are saying, and I read it absolutely accurately?

*Mr Straw:* I said at the beginning, Lord Onslow, that I did not resile from what I was quoted as having said. I did not at the time and I have not subsequently. I have set out the reasons why I gave the interview.

Q24 Earl of Onslow: That sounds to me an absolutely bog-standard “letter from Lord Rothermere congratulating you on your views” line.

*Mr Straw:* That is your view; it is not mine.

Q25 Earl of Onslow: It says it there in black and white.

*Mr Straw:* Your Committee, Lord Onslow, has already made some observations about this article, which I must say I think the *Daily Mail* will be really pleased that it has got this much attention but, equally, you might like to draw your own attention to where I came to the key point about the interview, which was defending the Act. If I had come to a different view and had said, “I introduced the Act but I have changed my mind”, I could understand people’s concern, but at the risk, indeed the certainty, of repeating myself, I say again I think that it was important to recognise where people were on the issue and then to seek to respond to them. Could I just say that Mr Wills had a point that he wanted to make in respect of data protection measures and privacy.

*Mr Wills:* Just to reassure Lord Lester in response to your concerns about the right to privacy, as the Justice Secretary has said, there is a balance to be struck here. We have made pretty clear how we want to strike the balance. You will be aware of the original Human Rights Act, section 12, which suggests that the courts have a particular regard to freedom of expression, so that is one side of the equation. The other side is of course we understand concerns about privacy, and that is why we introduced measures to tighten up data protection and penalties for misuse of data. I hope that will give you some reassurance.
Q26 Lord Lester of Herne Hill: I do not need any reassurance. What I am anxious is that Mr Dacre is under no misapprehension, as I think he is at the moment, and I am glad you have corrected the position.

Mr Wills: He is also aware of these measures.

Q27 Dr Harris: Part of the role of the Lord Chancellor in relation to the judiciary is set out as “ensuring that the judiciary is supported in undertaking its function to deliver justice independently”. That is from your Government’s Court Service Framework Document from within the last 12 months. Clearly the serious part of this article was you criticising judges in the broad if you like for their decisions. Are you now going to write to yourself in support of the judges and tell yourself not to undermine them in this way? There are other bully boys in government who can play that role but you are the Lord Chancellor.

Mr Straw: This administration as a whole, particularly since Gordon Brown became Prime Minister, has been extremely careful about not criticising judges. I said right at the beginning that I took the three oaths that I made about protecting the judiciary very seriously indeed, and I have followed those through. That does not mean that on an issue of very great public interest that you are not sometimes entitled to express a difference of emphasis. I do not take that as criticism. If you take something which I know was picked up in your first report where I was talking about the “nervousness” of judges, that was not intended as a pejorative statement. You will recall, Chairman, Dr Harris, that this was my point in longhand, that the courts—and there is a lot of authority on this—put themselves to what they have described as “particularly anxious scrutiny” where there is an issue of returning a potential deportee to a country or to a circumstance where they may be at risk.

Q28 Dr Harris: Of torture?

Mr Straw: Yes of course. There is no argument about whether they should or should not subject the issue to particularly anxious scrutiny, so indeed does the Home Office and the Home Secretary of the day. The issue, to return to my first set of answers, is what judgments are there made and whether particularly anxious scrutiny may in some cases be over-anxious scrutiny.

Q29 Dr Harris: That is a criticism of being too nervous.

Mr Straw: It is not a criticism. If every disagreement is a criticism then discussion becomes absurd. You can disagree with people without criticising them personally and have a difference of view from them.

Chairman: I think we have exhausted this subject and we have a lot of ground to cover so I will bring in John Austin.

Q30 John Austin: Moving on to the Bill of Rights, there was a great deal of scepticism as to what the motivation of the Government is in saying it wanted a Bill of Rights and whether it is going to strengthen Convention rights or be a diminution of Convention rights, but the Government has said that it is enthusiastic about the bringing in of a Bill of Rights and we have been promised the publication of a Green Paper which would at least give us some idea of what the Government’s thinking and motivation is. The dates seem to come and go and I wonder what the cause of the delay is and when we might actually see the Green Paper?

Mr Straw: Can I first say, Mr Austin, what we have talked about is a Bill of Rights and Responsibilities. We have made it clear—the Prime Minister, Mr Wills, myself and many others, and indeed this report acknowledged that in terms—that we have no intention of resiling from the Human Rights Act. That is the first point. In terms of the publication we aim to publish the Green Paper before Easter. That is the programme to which we are working. What is the cause of the delay? I saw some slightly acerbic comments (not criticisms!) by the Chairman in respect of this and why has it taken some time. It has taken time because it is new territory and there are three aspects to it. One is the extent to which a new document should seek to lay out and encapsulate and summarise rights which citizens have, for example, in respect of health and education and the environment, but to do so in a summary form so that they would be part of a single document. The second issue is the extent to which this document should bring out responsibilities more clearly—responsibilities that we owe to each other and owe to the community. The third issue is the extent to which all or any part of what would amount to a new Bill could or should be justiciable. These are really complicated areas and they are very important. I am struck that the Netherlands is going through exactly this process just now and I had a very interesting conversation last Thursday with the Dutch Minister of the Interior. They have their equivalent to the Human Rights Act embodied in their constitution and what they are now raising is what they call a “Charter for Responsible Citizenship”, which tries to introduce a better balance culturally and maybe legally (but they say it is culturally) into the way people relate to each other. That is why it has taken some time. If you are anxious about our direction of thinking, Mr Wills has made a number of speeches about it and I have given three lectures about it. I think the Committee has had them but if it has not I am very happy to circulate them, they are quite big lectures too in which I have tried to develop that thinking.

Chairman: We will come back to the issue of responsibilities a little bit later.

Q31 John Austin: I was going to say responsibilities is an issue which we might want to tackle later on. You mention justiciability and I want to look at the area of economic and social rights and the need for progressive realisation of those rights. If you look at our evidence that we took when we talked to the Constitutional Court in South Africa, there are clearly some concerns that some politicians have about bringing the judiciary into decisions about allocation of resources, but is the Government really
nervous about judicial intervention in those areas of economic and social rights or will your Green Paper actually spell out quite clearly that the Government is committed to that progressive realisation?

**Mr Straw:** I think you have to be extremely careful about that, really, really careful. I noted in your report, Chairman, that you say in paragraph 8 that: “Resource allocation decisions should remain primarily for democratically elected decision-makers. We do not agree that any judicial role in these areas inevitably means that decisions about the allocation of scarce resources become less democratically accountable”. On the overall issue, who makes the decisions about resource allocations? I do not just mean the big numbers but being quite specific. In my judgment, in this system, it needs to be the House of Commons. If you are asking me specifically, and let us just deal with the situation in India about which I am more knowledgeable than that in South Africa, you have got the Delhi pollution case which has now been followed through in other parts of the High Court in India, where after years and years of arguments by the politicians, the Supreme Court in India ordered the removal of the filthy two-stroke engines from the tuk-tuks, the three-wheeler taxis, and replaced them by LPG. It has literally changed the environment in Delhi. The High Court in West Bengal, to much fuss I might say, is in the process of doing the same in respect of Calcutta. I understand why there is that level of judicial activism in India, and there is general public consent for it as well in India. I do not, and they can speak for themselves, believe that the judiciary in this country believe that that kind of decision in this country should be made other than by democratically elected representatives, be that at national level or at devolved level or at a local level.

Of course, in terms of economic and social rights there is often now before the courts an issue of whether if X has certain rights, is Y being unfairly treated? That will always be an issue of equity before the courts, and on the overall issue of should economic and social rights be more justiciable than they are now, my view is no, but that does not mean that you should not have a declaration of rights and responsibilities where you set out in a single document that to which people are entitled and that to which people owe an obligation. This raises a very interesting point of philosophy. We have never said that rights are contingent on responsibilities. Self-evidently you have a responsibility to obey the law but that does not mean that if you fail to obey the law when you go before the court you lose all rights to a fair trial. That would be an absurdity and an affront to democratic society. If you take, for example, the field of parenting and education, as well as the state having responsibilities to provide schools and so on parents have responsibilities to their children. In the Children (Scotland) Act 1995 some of those responsibilities are set out rather explicitly. What Ed Balls, the Secretary of State, is considering is how you better set those out. In respect of health, people have had very clear rights since 1948 and the establishment of the Health Service. What Alan Johnson is now doing through his NHS Constitution is saying yes, you have rights to health but you have also got obligations to keep yourself healthy and not to waste other people’s money. It does not mean if you fail to meet those obligations the doctor will not see you. What it does is seek to raise the nature of people’s behaviour and change people’s behaviour not just by the blunt instrument of the law. You have a balance there and within a particular instrument some parts of it are directly justiciable, as they are for the Human Rights Act, other parts could be interpretive, other parts could be not justiciable at all, but it does not lose their force because words have meaning and force whether or not they are justiciable.

**Mr Wills:** Just a couple of points. Firstly, the phrase “progressive realisation” has got a very specific context. It is not the only way in which justiciability could be increased, for example. I think what we are looking at here is a spectrum of justiciability. It is not that rights are either justiciable or non-justiciable. There is, if you like, a spectrum and at either end of the spectrum you have got fully justiciable, directly enforceable rights in the courts and, on the other hand you have got rights which are purely declaratory, although even they may have some legal effect. There is a debate to be had because at any point on that spectrum there are arguments for it and against it, and that is of course what we want to see reflected in the Green Paper. What we would like to see is a discussion about where exactly, if at all, we should plant any new Bill of Rights and Responsibilities on that spectrum of justiciability. It is of course true that the courts already scrutinise government decisions in all sorts of areas. There has been tremendous growth in judicial review. This is already a current debate and what we want to see is that taken forward. These are profoundly important issues, as the Justice Secretary has said. It is not surprising that it has taken some time for this Green Paper to emerge. This is potentially a profound constitutional change and it is right that it should be deliberated on properly within government and then there should be a proper public discussion about this matter.

**Q32 John Austin:** A lot of the cases have not been about rights of service or rights of access. Many of the healthcare cases have been whether public authorities have acted reasonably in their discretion. On things like asylum seekers you have denied access to healthcare for say refused asylum seekers. Would that be justiciable?

**Mr Straw:** It has been the subject of many proceedings. We can have a debate if you want about how we treat asylum seekers, but I just say that there is a reason why asylum seekers go through any number of countries where they could and ought to claim asylum before they get to the United Kingdom and that is because we are a decent country. All of us have got long lists of cases of asylum seekers and on the whole these are people who have been through a whole series of appeals and whose appeals have been
found to be quite unmeritorious. I think we are entitled to take fairly firm action in respect of those people and we do.

Q33 John Austin: But we can expect something on social and economic rights in your Green Paper?
Mr Straw: You certainly can.

Q34 John Austin: When it comes.
Mr Straw: Along the lines that I have been raising.

Q35 Chairman: Before I bring in Richard Shepherd I would just make our position clear as a Committee: we are not arguing for direct enforceability of social and economic rights. We have suggested that there should be public sector duty for the progressive realisation of those rights. Perhaps you could confirm whether or not you see that as a justiciable issue or not and secondly, for the interpretive power of the courts when interpreting other legislation to give effect to those rights, all other things being equal.

Mr Straw: If you do not mind me saying so, this exactly begs a very large set of questions which is why it takes time to develop a Green Paper when you are getting people to think about it almost for the first time. As I say, on this critical issue of where do the rights of elected representatives and their responsibilities end and the duties of the court come in, I think we have to be very careful indeed about moving away from what voters expect of their elected representatives and handing over duties to the courts. I may say, and there is plenty of authority for saying this, that the senior judiciary are on record as sharing that view, and that was certainly the view of Lord Bingham when he made that speech on the rule of law where he talked about the limits of judicial review.

Chairman: I do not think we would disagree with the support of that position, as we said in our report. Richard?

Q36 Mr Shepherd: I think this area is a profoundly constitutionally important issue that affects Bills of Rights. In fact it divides, and I am not with the Committee on its report, as you can imagine, and we are seeing an alliance here that is concentrating on progressive advancement of social and economic rights which to me is a matter of political policy. What I was going to say is that this country is not unfamiliar with a Bill of Rights. We had one of course in 1689 and it echoes through the American Constitutional amendments and in fact the very language of it is employed in part in the European Convention on Human Rights. I just wanted to quote something to you because I think it will elicit—at least I hope it will elicit—your responses. This is a summation on our own original Bill of Rights. The revolution was fought to protect liberty and the concept takes a central place in the settlement. The true value of liberty has been forgotten, however, as the plethora of documentation of rights has increased. The liberty which the people reserve from their government is untouchable and encompasses many modern civil and political rights. This idea of liberty is fundamental to the UK constitution and should be recognised as a continuing restraint upon governmental abuse of power. The first true Bill of Rights would be much expanded and improved over the centuries, but it remains the first clear signal that the constitution must serve to protect the people from sovereign power. The fundamental ideas of a limited constitutional monarchy, a supreme and limited Parliament and individual rights and liberties, were introduced to the English constitution over 300 years ago and, although the legacy is an imperfect one, these ideas still endure in the constitution of today”. It is this muddle that we get into when we start saying that that which government cannot absolutely give an undertaking to accomplish, the social and the economic rights (and we now hear there is a third division of rights, environmental rights), is the divide in this argument, it seems to me. A Bill of Rights is essentially about the liberty and freedom of the citizens and it is through the democratic process and protecting the democratic process to advance all those causes that this Committee has become a playing field for special interest groups. That was my statement that was added at the end of it, but I think that is the fundamental distinction that the Government has to grasp, as does my Party, and I do not see a Bill of Rights this side of a general election.

Mr Straw: You will certainly not see legislation this side of an election. As Mr Wills has said, this has to be a long process. It is fair to say that the incorporation of the Human Rights Act into British law took a very long time. Indeed, I think the first Bill on this was brought forward as a private Member’s Bill to a raspberry from both front benches by a man who happened to my former head of chambers, Sir Edward Gardner, who later became the Member of Parliament for South Fylde. That was in 1987 and it was 11 years after that before the Human Rights Act was incorporated. Mr Shepherd, I, too, happen to believe that the constitutional settlement, aka the Glorious Revolution of 1688–1689, is absolutely fundamental to our constitutional arrangements today. So much of what we take for granted in our liberties goes back to that settlement and the nearly two centuries of conflict, including the English Civil War of the 17th century, which preceded it. The author is right to bring out the importance of liberty. What, however, is the case is that I think it became clear that simply saying that liberty is what Parliament says it is was a necessary but not sufficient protection for liberty. If I just give you one example: not when I started at the Bar because by that stage the scales were falling away from people’s eyes, but when I started as a law student in the mid-1960s, the view was taken that we
were remarkably good to defendants in police stations and they always got a fair hearing and that Dixon of Dock Green was the way the police behaved, and we did not need a statutory provision to protect defendants in police stations or to require them to be released if there was no charge because this was all dealt with under the Judges' Rules, which was some generalised statement of protection which had no proper or explicit authority. Anybody who knew how the police operated in those days knew that Dixon of Dock Green was one of the world's greatest fictions, and a smokescreen for what was going on. It took a whole series of terrible exposures in the 1970s and miscarriages of justice before we ended up with a proper detailed statutory scheme. You can criticise the Police and Criminal Evidence Act and the Royal Commission in between, but I happen to think that people's liberties, including their freedom from arrest and their freedom from oppressive action in police stations and so on, required a greater description and backing by statute law. No-one disagrees with that. There are plenty of other examples and of course—

Q37 Mr Shepherd: We are agreed about that. There is no dispute on what you are saying there. 
Mr Straw: What I was going to say was it was not so much what those who framed the Bill of Rights had in mind, but in the 19th century through Dicey we developed a view that people's rights were defined negatively, but it was never appropriate to define them positively, and I think we have learnt in recent decades, not least because we are now a much more heterogeneous society than we were, that you have got to define rights in a positive way as well.

Q38 Mr Shepherd: There is a very clear distinction. Of course time has changed, modified and amplified the rights that were set out in the Bill of Rights by subsequent legislation and so on, but they are rights, they are affirmative and they are within the justiciable process and therefore they are statute. The original Bill of Rights is no more than a statute and that is all you are doing. We are repeating or reinforcing each other's argument on that point. I do not know where there therefore you are trying to drive.

Mr Straw: If I may say so, nor you me, if you see what I mean. I think we are probably more or less in the same place.

Mr Wills: May I comment on that. First of all could I say thank you for making sure that those very stirring words are on the record of these proceedings.

Q39 Mr Shepherd: That is the heart of it.

Mr Wills: I think there is a profound philosophical debate about the scope of liberty and what those rights are. I am not sure I would necessarily agree with your characterisation of this Committee. I think there is profound philosophical debate about the nature of those freedoms and I think you have just alluded precisely to it. I think the Justice Secretary was also alluding to that and that is, crudely, the distinction between freedoms from and freedoms to and those positive freedoms. This is a continuing debate and people will come down on either side of it. That is precisely the sort of debate we want to have as a Government. I think the Prime Minister would certainly agree with what you said about liberty; he has made speeches where he referred to it as the “golden thread” that runs through our history.

Q40 Mr Shepherd: As did Rumpole!

Mr Wills: I am not sure that was the source of the speech, but this is precisely the debate that we need to have because it is a profound debate and people will come down on different sides of it and what the scope of it should be, but that is what we are in the business to do, have that debate.

Earl of Onslow: I wanted to say, Justice Secretary, that the Committee was not quite as united as it would appear to be by its report. I and one other member took a much more, for want of a better word, chez pardue view than other members. It was completely amicable but we both came to this same view completely independently that what a Bill of Rights is there to do is to restrain executive over-exuberance, to put it at its mildest, and the responsibility of everybody in this room is to do nothing else but obey the law, and if you do not obey the law you accept the consequences. The question of how you carry out policy has been in the hands of the House of Lords since the House of Lords said that it did not want to have anything to do with taxation in 1340, or something like that, and the only way the government can work, as you know much better than I can, is when it pays the bills, and the only way it can get the money to pay the bills is from the House of Commons. That is the absolute total core of our constitution. There was certainly in this Committee—and it is not as Richard Shepherd decided it—a deep and fundamental difference between John Austin and myself. I respect his views but I think that they are profoundly wrong, and because this Government on terrorism legislation, on SOCPA, on civil contingencies and on fraud juries has in effect gone against what I would have thought was set out quite beautifully in those words that not only is a Bill of Rights very necessary but it is necessary to restrain and stop the Government's nasty habits and it is also necessary to support the Human Rights Act rather than undermine it. That is a declaration rather than a question.

Chairman: Can we have questions from Committee members rather than statements as we are here to question the witnesses.

Q41 Earl of Onslow: Does the Justice Secretary agree?

Mr Straw: In parts, Mr Wills, not in other parts, as Mr Wills indicated. My Lord, by your declaration you get to the heart of a whole series of arguments but if I may respectfully suggest it is perhaps better for us to be asked specific questions about this. Of course it is correct that people need to have rights against the potential of an overweening, over-energetic state; of course that is true. There is then an issue of how they enforce those rights and in the area of justice, which everybody understands,
those are enforceable through the courts, but there is a grey area where through judicial review a lot of executive decisions which are not directly related to the judicial system are better enforced by individuals and, as Mr Wills and I both said in response to Mr Austin, there are other areas where we believe it is very sensible to have a Bill of Rights to be declared and also responsibilities to be asserted, but not necessarily for those to be directly justiciable, or at all.

Q42 Chairman: Can I give you a specific example of a social and economic rights issue over the question of housing. Would you agree with the basic premise that it is right in principle that lenders should be able to sell a property which is somebody's home without first having to persuade a court that it is fair and reasonable in all the circumstances to evict somebody? There was the case at the beginning last year of Horsham Properties—

Mr Straw: I am very familiar with it and it is a clash between a section of the Law of Property Act 1925 and a section of the Administration of Justice Act.

Q43 Chairman: For those who are less familiar with it, what happened was the High Court held that lenders were entitled to sell properties without having first to go to court, following a single default on a mortgage payment. The purchaser can then get a possession order against the borrower, ie the mortgagee, the resident, as a trespasser because they no longer own the property.

Mr Straw: I have read the law report and I went into it in great detail and I am very concerned about this and, Chairman, there is a lacuna—

Q44 Chairman: Let me finish the question. The question is: is that not a good example if you had an underpinning right to housing of guaranteeing the procedural safeguards to make sure that nobody is turned out of their house without a court order?

Mr Straw: It depends because under the European Human Rights Convention people have a right to their property. My own view is that what the public and Parliament want is a situation where people cannot be evicted from the home that they are living in and in respect of which they have a mortgage without an explicit court order. There is not an ambiguity; there is a clash between two statutory provisions. This was used in the Horsham Properties case by the mortgagors of some right-to-let properties where they got an order for sale over the heads of the individual tenants. It was slightly different but, anyway, just on that specifically, where the law has ended up—and it is not the court's fault, it is because we have got two sets of statutory provisions which are going in the opposite directions—is not satisfactory and we are urgently looking at making it satisfactory.

Q45 Chairman: The point I am putting to you in the context of social and economic rights is if you had an underpinning right to housing then that could inform on an interpretive basis those decisions.

Mr Straw: It might be able to is the answer. It might also however lead us into just as an ambiguous position as we are at the moment. As I say, dealing with that, because the courts are themselves faced within the Convention explicitly with people's right to their property, I think there is a more sensible way of doing it and simply to have a statutory amendment.

Mr Wills: Can I just add because I think it is a very important point of principle as we go forward in discussing this issue that you have just raised, Chairman, obviously there is a problem here and it needs to be resolved, but embedding this in a Bill of Rights and Responsibilities is not necessarily the only way of resolving it. I think that is what the Justice Secretary has just said. The underlying point of principle is very important and as we go forward in discussing this I think it is quite important that the discussion takes place on the basis of constitutional principle rather than of individual cases.

Chairman: Of course and I was using that as an example but we should move on. Edward Timpson?

Q46 Mr Timpson: Can I take us to the role of responsibilities in any future Bill of Rights.

Mr Straw: Please, yes.

Q47 Mr Timpson: You just started to touch on the details of what the Green Paper may have in it in respect of responsibilities in terms of the responsibility of parents towards children, the NHS Constitution, and responsibilities towards the nation's health. Bearing in mind we now know that it is a matter weeks until the Green Paper is upon us, can you be more precise about exactly where you mean responsibilities will be, how you are going to define it, how far-reaching it will be so that we have got something tangible when we think about responsibilities in any future Bill of Rights?

Mr Straw: Mr Timpson, I am sorry that I cannot anticipate the Green Paper, which is essentially what you are inviting me to do. What are we seeking? Let me say what the objective is from this exercise: It is to get away from what I have described in a couple of lectures as a "commoditisation" of rights where people see rights, as it were, as free goods which they draw on when it suits them but they do not recognise that with rights there are balancing (but not contingent) responsibilities and obligations and that with freedoms there are duties. Society cannot operate unless as well as people drawing on their rights, which inevitably involve not only obligations by the state but usually obligations on other people, they have to show responsibility to others, in biblical terms to respect their neighbours' rights, which involves responsibility. There are people who say if you do not make this justiciable, or additionally justiciable, because there is quite a lot of balancing language within the European Convention and therefore on human rights, it is meaningless. The very fact that we are at long last having a debate about this illustrates that it is actually quite sensible. The examples which I used were tangible. I would certainly find it useful when I am discussing it with some of my constituents when they come to see me.
to assert their rights to say, “Yes but in the same document, the Bill of Rights, it also reminds you that you have got responsibilities and I am not absolutely certain that you are showing quite the level of responsibility that would be expected of you in this situation”. We need to say it anyway but I think it would be helpful to be able to refer to it. As I say, in terms of rights and responsibilities in respect of children, for sure have rights against the state, which is rights on which they draw in terms of education and so on, but parents have very clear responsibilities, which is something we try to get across in very specific terms within the framework of the law and through measures like parenting orders. Ed Balls is anxious to bring that out, and I think he is quite correct to do so. In health there is the development of the NHS Constitution and in that people have rights to a wonderful health service but they have also got responsibilities to themselves, interestingly, about their own health and to take care of their own health as well as not to waste the resources of the Health Service because by wasting the resources of the Health Service then they were denying other people’s rights. It is to stimulate that debate. I see Dr Harris sucking his teeth.

Q48 Dr Harris: Will smokers be in breach of the Bill of Rights?

Mr Straw: This debate is not about being in breach of the Bill of Rights, Dr Harris. We are not talking about denying people. I made it very clear that we are not saying that people’s rights to healthcare are contingent on them showing responsibility, but we are trying to create a society— and society depends on this—in which there is a greater level of responsibility and we need to raise these issues. I saw you sucking your teeth at this suggestion but we have got to bring out this debate. I think it is really, really important.

Mr Wills: I want to pick up a couple of things that the Justice Secretary said in response to this. First of all, I think the context of any potential future Bill of Rights and Responsibilities is that it will be in part aspirational. We have talked a lot about justiciability but what we are doing possibly with it is codifying existing rights and existing responsibilities, including responsibilities to obey the law for example.

Q49 Earl of Onslow: But you do not need to write down that it is your responsibility to obey the law; it goes without saying.

Mr Wills: Sometimes things which people think go without saying actually need to be said.

Earl of Onslow: Are you really saying that you have to write down that we must obey the law otherwise people do not know about it?

Q50 Chairman: That is probably the only justiciable part of responsibilities. Most of the things you are talking about could not possibly be justiciable whereas some of the existing political rights are justiciable. You cannot qualify those legally justiciable rights like a right to a fair trial by a non-justiciable responsibility, can you?

Mr Straw: Let me, if I may, intervene on Lord Onslow’s point. Lord Onslow, we may have different perspectives about this but certainly when I go round prisons and I am canvassed by prisoners about their rights, and they are often conscious of their rights, as well as listening very carefully to their complaints and dealing with them where I think they are justified, I also like to refer to their responsibilities, and, as Mr Wills said, this is in many senses aspirational but it will change the terms of a lot of debates if we can refer to people’s responsibilities directly. I also say to you, Chairman, that although this is, like most analogies, not a direct one, I was reflecting overnight on the development of the law of equity because the common law was very clear that people either had rights or did not have rights and if they had rights they could enforce them and if they did not have rights they could not enforce them, and that actually led to a good deal of injustice. The Chancery Courts developed the law of equity which was very much a balancing exercise where people’s own behaviour, which is encapsulated in the maxims of equity, was considered as part of the overall judgments by the court as to what remedies should be offered. We take that for granted in the law of equity but it has been fundamental to the development of English law and been a gift to the rest of the world. I was not around in a very draughty Westminster Hall as the Chancery Courts have gradually tried to move inch-by-inch to these concepts, which is what they had to do, but what we are seeking to do, if you like, is a similar exercise. Maybe in 30 years’ time some maxims of rights and responsibilities will be taken for granted and they will be easily quoted and, if they are, I think we may see behind those words some changes in the way people relate to their neighbours.

Mr Wills: Can I just add to this point. Firstly, I think we should be clear that in the existing Human Rights Act and the European Convention there are responsibilities inherent, and on occasion explicit, and it would be reprehensible of us if we move forward with a new Bill of Rights and Responsibilities and not reflect what is already inherent and perhaps to make it more explicit. The reason fundamentally for that is that if we are going to codify existing rights and set out fundamental freedoms that people can enjoy, this is a profound constitutional document, and Mr Shepherd very rightly drew attention to the continuing importance of something that took place over 320 or 330 years ago (my arithmetic very quickly). These are profoundly important documents and surely we should be codifying all of those rights and freedoms and those responsibilities which we owe to other people. They are not contingent upon each other, just to repeat myself.

Q51 Dr Harris: I understand the responsibility to respect the rule of law and indeed to respect the rights and freedoms of others which you have just been talking about but you have just raised—and it was your own example—aspirational ones like your responsibility to yourself in respect of health. I hope I am being at least as accurate as the Daily Mail in
quoting you back. Are you really saying that you want to find smokers, which is the best example because there is no safe responsible dose of smoking, or obese people in aspirational breach of a government or parliamentary proclamation? Is that really going to add much?

Mr Straw: Dr Harris, if you look at the NHS Constitution, which has already been promulgated, that contributes to the drafting of this Green Paper on rights and responsibilities, you will see there are statements that say—I have had a note to say that the NHS Constitution is formally to be launched tomorrow so I am ahead of myself!

Q52 Dr Harris: It is in the grid so it counts!

Mr Wills: Successive governments have been spending millions of pounds explaining to people that smoking is irresponsible to themselves and to their families.

Q53 Dr Harris: Health education, yes, but is it for a Bill of Rights and Responsibilities?

Mr Straw: That begs the question which instrument you put it in but certainly I think—and you may say this is rather prosaic but it is rather less prosaic if you are a doctor at the end of this—the specifics would be in a generalised Bill of Rights and Responsibilities, but for example patients’ responsibilities on keeping appointments, on treating NHS staff with respect, on contributing to their own health, and getting across to people not that they will be denied healthcare if they are smokers or they are obese but getting across to people their very clear responsibilities for contributing to their own health care, I think is really important; I just do.

Mr Wills: Because the consequences of them acting irresponsibly in such fundamental matters as their own health are not limited to them themselves or even to their own families. The consequences, as the Justice Secretary has already said, spiral throughout society because of the cost of this and it is precisely because people have those fundamental rights that those costs are there which is why we should have responsibilities.

Chairman: I think we need to move on. I think the way you have described the development of the law of equity for the lawyers amongst us gives us a better idea of where you are coming from. I think that was a very helpful expression of what you are about. Edward, you have another question.

Q54 Mr Timpson: I want to move on to the process of consultation but just before I do I want to get a clarification of exactly where we stand on having a Human Rights Act and having any future Bill of Rights and Responsibilities because essentially we have got two separate instruments there which, bearing in mind that one of the reasons behind looking at a Bill of Rights is that there is a confusion perceived amongst the public as to what the Human Rights Act means for them, how are they going to be able to sit side-by-side as two separate instruments?

How are we going to get any legal certainty when you have those two instruments almost competing against each other?

Mr Straw: They are not designed, Mr Timpson, to compete against each other. I have certainly said, as has Mr Wills and the Prime Minister, that we are not intending to do anything which undermines the Human Rights Act or its incorporation of the articles that are incorporated, still less to denounce the Convention. However, if you look at the Human Rights Act, it made a selection of those Articles which are incorporated, and it incorporated some of the Articles but did not incorporate others. For example, it did not incorporate the Article in respect of remedies. Also in sections 12 and 13 it provided guidance to the courts, for example in respect of the media which, as Mr Wills has already made clear, we made a concession to the media in terms of remedies that could be available, and to the churches and other religious organisations, just a tilt on the tiller as to how they might interpret the competing claims in respect of freedom of expression and freedom of worship. Let us say we ended up with a new instrument out of this, its building blocks so far as enforceable rights were concerned would be the Human Rights Act and the Convention, but it would start off as a non-justiciable document and there will be other statements within it that will not be justiciable. You have to move at a pace which the British public will accept, not jam this down people’s throats. It is really very important if you are going to do this. That is one of the reasons why we have had stability in our constitutional arrangements in this country—because politicians have shown leadership but they have not taken the public to the point where they break away from our constitutional arrangements. There would be other articles within it which dealt with wider issues of economic and social rights, which would not be justiciable, and then this whole issue of responsibilities. I do not think there is any clash there. If you do not mind me saying so, I think there would be a greater clash if a policy which is suggested by some people in your Party, which is that you should stay within the European Convention but repeal the incorporation of those articles and have your own Bill of Rights and Responsibilities, because you would end up in the situation where the British courts have (assuming they can detach themselves from all the jurisprudence that has built up within their own system ) to apply themselves to this British Bill of Rights which directly had nothing to do with the European Convention but because we are still within the Convention the Strasbourg Court could then much more frequently than they do at the moment overrule and collide with what the British courts and British Parliament is doing, which I think is certainly a recipe for confusion.

Mr Wills: Just so that we are absolutely clear, we will build on the Human Rights Act. There is no question of changing it, so that legal certainty remains. What we are opening a debate about is how we build on it, as the Justice Secretary said in his speeches.
Q55 Mr Timpson: But you are moving forward on this on the basis that there will be no legal ambiguity between a future Bill of Rights and the current Human Rights Act?
Mr Straw: Of course.
Mr Wills: Sure, sure, yes.

Q56 Mr Timpson: Can I move on to how we go about consulting over any future Bill of Rights. You have spoken a lot today, Secretary of State, about wanting to reach out to the people. I think you have got to bring out the debate. You will be aware that in Australia they have just begun their own consultation process, the National Human Rights Consultation, which is being conducted by an independent committee, and they will then report back to the Government who will then take their advice and move the matter forward, which would be consistent here if the ultimate decision were to be made by Parliament. In terms of involving the public and having as wide-ranging a debate as possible about the future of any Bill of Rights and Responsibilities, that would seem to be a sensible way forward, so why is it that there is some caution coming from the Ministry of Justice about any future community consultation conducted by an independent committee as opposed to it being done in the way that the Government has proposed?
Mr Straw: Can I say that I do not dismiss the idea of having an independent body to do this but it is a balanced argument. I have thought about it a good deal. I do not speak for the way that the Australians are doing it because although there are many similarities there are many differences, and we have different constitutional traditions. My view is that one is most likely to build up the political consensus with a small "p" if this process is owned by government and this place. I would just say that if we had left the incorporation of the European Convention to a specialised body my betting is that we would still not have a Human Rights Act because that is the way that government and this place works. If you want to make progress I think you have to have people who are engaged in the argument here and ultimately it would be for this place to decide. At the heart of the argument you must have government engaged as well because it would have been the easiest thing in the world if you were able to have some expert committee and you were going to get some experts to produce a report, and then you think this is all very difficult or others around government will say it is all very difficult, that it then it gets left on the shelf. I am not saying that never happens in this Government but some make that allegation. It does happen, it is a truth. The other thing I would say is that we have got the Equality and Human Rights Commission and they will have an interest in this. There is another observation I would make. Before the great reforms and the development of select committees which took place in the early 1980s under the then-St John-Stevas as the Leader of the House, it was very frequent that faced with an issue like this government would agree that there should be a Royal Commission. It was the only way of getting these things examined. Over the last nearly 30 years we have developed a very strong system of select committees with a lot of expertise and a lot of members take a close and assiduous interest in the work of select committees. I think that Parliament is now equipped (and that includes this Committee) to do this kind of work and to lead this kind of debate in a way that perhaps it was not 30 years ago.

Q57 Mr Timpson: Because this is such a fundamental and constitutional decision that is being made there has to be the greatest level of public confidence in what is being done.
Mr Straw: I agree.

Q58 Mr Timpson: I think it is fair to say that other government consultations where there has been a degree of public involvement but not a widespread level of public involvement in many respects have been seen as either a sham or as not being a proper consultation, if I give a slightly less confrontational edge to that. By going down the independent committee route, by engaging as many members of the public as possible in coming together with a document that is an advisory document for the House here to consider, and where the ultimate decision will still be made, does seem to me, and I suspect to other members of the Committee as well, to be a much greater prospect of getting the public and cross-party confidence that is necessary in order for something like this to be carried through, not just by this House but by the whole of the country as well.
Mr Straw: Chairman, I do not rule it out, but I have expressed my anxieties here, which is that if an independent committee working in the way you suggested could produce all those benefits, that is the upside. The downside is that it could be seen by those who do not want to do anything as a means of kicking it into touch. Rather long experience tells me that there will be people around who might treat it in that way rather than the reverse. It could be that as a result of the Green Paper and the discussions it would start the beginnings of a political consensus with a small "p" and that you did then have a vehicle for taking it forward.
Mr Wills: I think we would agree on the objective which is to secure broad public consent to such, and it must be well set out because otherwise this would not endure. Any profound constitutional instrument such as a Bill of Rights and Responsibilities is only worth doing if it is going to endure as long as the 1689 Bill of Rights. It will only do that if it secures public consent and that will only happen if the public broadly feel ownership of that process. We agree with the objectives. The only question really is how we best secure that within a reasonable time-frame, and on that we are open.
Mr Timpson: Talking about time-frames I will stop.

Q59 Lord Morris of Handsworth: I wonder whether I could take us down to a more mundane level of conversation. It is about administration, an area for which the Justice Secretary has responsibility and the Committee have rights of expectation. I think it
was June 2007 that we published a report on human rights judgments which made a number of recommendations about how the Government should co-ordinate its response to adverse judgments on human rights and the provision of information to Parliament. We had what we believe was a legitimate expectation for a response to the recommendations—and for ease of reference I have a copy here—but up to August of the same year 2007 we have not received a reply to these recommendations and we were wondering what is the delay in respect of what is happening to that?

Mr Straw: I am sorry there was a delay. I have actually signed off the response and if there are specific judgments, Lord Morris, you are concerned about I am happy to offer an oral response to these now. Our record overall is pretty good. We take our obligations very seriously. We are due to publish it now and the election in terms of abiding by the statute was declared to be some rather prosaic rather than dismal explanation which is why there should be, not least because the Foreign Office has shared responsibility with my Department for the Council of Europe and the European Convention, but some of the cases that were of concern to the Committee fall within the Foreign Office’s remit.

Chairman: We will come back on issues in particular cases but the recommendations in that report that we were particularly concerned about were systemic ones on how the government operates and deals with human rights issues.

Mr Straw: We have responded to those.

Q60 Lord Morris of Handsworth: So we are wrong in assuming that there just might have been some disagreement with, say, the Foreign Office for example?

Mr Straw: I do not think there has been actually and I cannot think why there should be, not least because the Foreign Office has shared responsibility with my Department for the Council of Europe and the European Convention, but some of the cases that were of concern to the Committee fall within the Foreign Office’s remit.

Chairman: We will come back on issues in particular cases but the recommendations in that report that we were particularly concerned about were systemic ones on how the government operates and deals with human rights issues.

Mr Straw: We have responded to those.

Q61 Chairman: That is what we have been waiting for for 16 months.

Mr Straw: And you should have had an earlier report.

Q62 Chairman: So we are going to get that imminently?

Mr Straw: You are.

Q63 Chairman: By February?

Mr Straw: I have signed it off, is the answer. There was an issue about whether we published it yesterday but I was told that this Committee did not want it to be published yesterday.

Q64 Chairman: It is winging its way to us, is it?

Mr Straw: It is winging its way to you.

Q65 Lord Morris of Handsworth: We have got a guarantee. But why has it taken so long?

Mr Straw: I am afraid to say that the delay has a rather prosaic not to say dismal explanation which is that it should have been dealt with more quickly and it was not and I apologise for that. But was there any conspiracy or argument between other government departments or anything else behind it? So far as I know, absolutely not.

Lord Morris of Handsworth: We will hold you to the February recess.

Chairman: We hope it is tomorrow. Lord Lester?

Q66 Lord Lester of Herne Hill: Secretary of State, as you rightly said, the UK has a good record of complying with the judgments of the European Court of Human Rights. It has an extremely bad record in the case of Hirst v United Kingdom, the prisoner voting rights case. I want to remind you of the background briefly, which is the judgment was in 2005, it was speedily implemented by Cyprus and by Ireland, who gave postal votes very quickly even though they were not parties. In Hong Kong a judgment on 10 December which said that it was unlawful to exclude prisoners from voting in Hong Kong is to be implemented by the Legislative Council within eight months. You carried out a consultation which we thought would lead to legislation or an immediate order or whatever. You are now carrying out another consultation. Lord Bach has not been able to tell me when it will begin or when it will end at all. The suspicion is that what you are seeking to do—and I am sorry to put it in this adversarial way—is to delay it until after the next election for fear that the tabloid newspapers would crucify the Government. What I would like to know from you is how you think you are complying with your international obligations to abide by the judgment binding on the UK by prevaricating in this way and exactly what it is now that you propose to do well before the next general election? Finally, the Scottish position, as you know, in Scotland the exclusion has been held to be unlawful there and there has been a declaration of incompatibility. We are talking about very large numbers of prisoners in Scotland, Northern Ireland, England and Wales, often in prison for rather minor offences (I am not talking about the serious ones) and you propose to do absolutely nothing, as far as I can see, between now and the election in terms of abiding by the judgment, so could you tell us exactly what it is you are going to do?

Mr Straw: We do take our obligations seriously and we do meet our obligations, Lord Lester. Why has this taken some time? First of all, the European Court in Strasbourg said that it was out with the Convention rights for there to be a blanket ban on convicted prisoners voting. It did not provide a very specific remedy for that, except to say that we needed to qualify that restriction. What we have been consulting about is how we meet the obligations in the best possible way and we raised a series in the first consultation. We are about to embark on the second consultation. Why is this difficult? Most of the obligations which are imposed by decisions in the Strasbourg Court are obligations on the executive, and where that for example involves the liberty or freedom of a particular individual, for example Chahal, then they are swiftly implemented because they involve an executive decision. Other cases are rather easier to pursue. If you take the more recent judgment of the Strasbourg Court in Marper, which was about the collection of DNA evidence, whilst what is in the statute was declared to be to some
degree outwith the Convention rights, I believe—and I read the judgment through very carefully—that there will be a way through and that it is possible to find a consensus which meets the will of both Houses of Parliament and establishes a more satisfactory system. The difficulty we have got—and there is no secret about this—is this is an issue of prisoner voting rights on which both the main parties have had a very clear position, which has not been the subject of any significant controversy whatsoever within their parties, that when people are convicted and sentenced to prison they lose their civic right to vote. This is a very unusual situation where the European Court is saying one thing but this is not changing the law, it is not within the gift of the Government, it depends on Parliament. If Members of Parliament decide they are not going to accept what the European Court says then they will not accept it. What we have been seeking to do is to identify the best possible way of meeting the obligations under that decision and to do so in a way that shows respect and achieves consent for that decision, and I happen to think that that is sensible and it recognises the unusual reality of this particular decision.

Q67 Lord Lester of Herne Hill: Why is it that in Cyprus, in Ireland and in Hong Kong they find ways of dealing with this promptly? Why can you not decide as a matter of policy that certain kinds of offences—terrorism and perhaps other serious offences—should not entitle people to vote but in the generality of the prison population they should be in the same position as many other countries? Why can you not introduce a remedial order? You say it is in the gift of Parliament and not government but it is for government to introduce either a remedial order or an amendment to legislation, not for Parliament to do so. What I am suggesting to you is that when the Committee of Ministers at their next meeting come to look at UK compliance with Hirst, they will read what you have just said and they will think that the United Kingdom is in gross dereliction of its obligations, which is not desirable for our international reputation.

Mr Straw: I do not accept that. Lord Lester, if I may say so, if you were in my position you would also wish to have a care for the view taken by both of the largest democratically elected parties in this country. I am afraid I cannot speak for the political class in Cyprus or Hong Kong or wherever else it was; my knowledge does not extend that far. What I do know, not least from my time as Foreign Secretary, is that time and again there were issues which did not feature on our political radar at all which were huge issues of controversy in other EU Member States and vice versa. This is an issue on which both main political parties agree. I cannot ever recall there being a debate in the Labour Party except when there was a proposition by another party which came out at a Labour Party Conference to say we were against voting rights for prisoners. There has been no debate in the Labour Party and I do not think there has been ever in the Conservative Party either. We have to meet our obligations but we need to do it in a way which achieves consent as well as meeting in full our obligations. You beg the question essentially of where and how you draw the line because Hirst did not lay down any precise prescription about which prisoners should or should not be able to vote. They simply said that a blanket ban was unacceptable. What we are having to do is look at which categories of prisoner should be able to vote and, for sure, it would not include those convicted of very serious offences, but what is a maximum prison sentence which would be acceptable, and then whether within that maximum, or you could say outwith it, you give discretion to the court about how that is administratively enforced as well. There are other issues because I think it would be wrong if somebody happened to have a prison in their constituency and the prisoners were registered to vote in respect of their prison address that that could influence the result of an election. There are those issues as well. That is the same explanation that we will offer to the Council of Ministers. I also rely on the fact that this has been an exception, for good reason, to what is, in my view, a pretty exemplary record.

Mr Wills: There are practical issues as well. If prisoners are allowed to vote there is then the issue of putting them on an equal footing with other voters. Other voters have not a right but an expectation of access to parliamentary candidates so that they can judge them first-hand. What implications does that have for prison and prison access at a time when the Prison Service is already very stretched? There are a lot of practical questions as well as principle questions that have got to be addressed and they have got to be got right.

Chairman: I think we need to move on now. Lord Dubs?

Q68 Lord Dubs: You will be familiar with the case of the two Iraqis who were handed over to the Iraqi authorities on 31 December. These two Iraqis were accused of the murder of two British soldiers and the European Court of Human Rights said they should not be handed over until the court had considered whether these two men came under the European Convention on Human Rights. By handing them over to the Iraqi authorities it seemed to me to be breaching two important related principles: one is we should not be in breach of decisions by the European Court of Human Rights; and the second is that we should not hand people over to jurisdictions where they are liable to be given the death penalty. Would you care to comment?

Mr Straw: Yes I would. I think the decision which the Defence Secretary made following the decision of the Court of Appeal was absolutely correct on this. There was not an enforceable injunction from the European Court, as I understand it; it was an indication by them. There is not an edited law report of the decision which the Court of Appeal made on 30 December but I have here the transcript of what Lord Justice Waller and Lord Justice Laws had to say about it. The situation was this: it was effectively impossible to comply with what the European Court was apparently asking in this indication it was
wanting. Even if it had been the case that we were exercising jurisdiction over the appellants within the meaning of Article 1 of the European Convention, which the Court of Appeal found explicitly we were not: we were holding those two prisoners under an agreement with and under the authority of the Iraqi Government which expired the very next day. The very next day we would have had no authority whatsoever to hold them, still less to bring them to the United Kingdom. These were Iraqi prisoners in Iraq. We were holding them on behalf of the Iraqi Government. If we had not handed them over, the next day our right to hold them would have ended and the Iraqi Government would simply have arrested them. What the interim indication failed to take account of was the reality of the situation. The Court of Appeal was absolutely explicit that the United Kingdom could not exercise jurisdiction over the appellants within the meaning of Article 1 of the European Convention and I think, if one reads the transcript, they were dismissive of any suggestion that the European Convention extended to prisoners in a third country quite outside the Council of Europe. We were holding them on behalf of that country by agreement with that country which agreement ended the next day. It would have been an absurdity. There is no way that we could have implemented that indication (not an injunction) from the European Court because we lost all authority over those prisoners the very next day. Lord Justice Laws said on page 149 in the transcript: “In short, the United Kingdom will have no colour .

Mr Straw: I think various assurances of that kind were taken. Lord Dubs, what you are failing to recognise, if you do not mind me saying, is that there is a complete distinction between an individual held within this jurisdiction who is plainly subject to the Convention and the Human Rights Act and somebody we are holding on behalf of another government in a jurisdiction completely outwith the Council of Europe where the Court of Appeal has confirmed it is outwith the Council of Europe. Moreover at page 148 Lord Justice Laws refers to an earlier decision which shows “that an obligation of this kind to return persons to the host state has to be respected, albeit that the holding state in question is subject to ECHR obligations, unless to return the appellants would expose them to a crime against humanity”. We were bound by that decision, being the decision of this Court of Appeal. Then he went on to say: “Neither the death penalty generally nor the death penalty by hanging is shown to be a crime against humanity nor an act of torture”. I am very happy to share this copy of the transcript with the court.

Q71 Chairman: We are not a court! Mr Straw: With the Committee, sorry.

Q72 Dr Harris: Before you start criticising us! Mr Straw: So far as the British Government is concerned, I am told in my notes here that we received assurances from the Iraqi Government that the two appellants, Mr Al-Sadoon and Mr Mufdhi, would be treated humanely when they are transferred to Iraqi custody and indeed both Secretaries of State concerned, that is the Secretary of State for Defence and the Foreign Secretary, consider these assurances to be credible. We have also received assurances that United Kingdom objections to the death penalty will be taken into account during the trial at the Iraqi High Tribunal.

Q73 Chairman: But we had held these people since 2003 and the Iraqis asked for them in December 2007. Why did we leave it right to the very last minute to make a decision about this? On the jurisdiction issue, is that not precisely the issue that the European Court on Human Rights would have decided on—bearing in mind it was an interim decision so why are you relying on the Court of Appeal rather than the European Court of Human Rights? Mr Straw: So far as the time-scale is concerned, Chairman, I am afraid you will need to seek a memorandum from the Ministry of Defence because I am not up on the detail of the timescale. It was an indication from the Registry not a decision of the Court and it is very important just to make that clear. I suspect if the point had been able to be argued they would have recognised the impossibility of doing what they asked. It simply was not possible to do what they asked. What were we supposed to do,
bring these people back when we had no legal power to do so and when the legal power to detain them in Iraq expired the next day?

Q74 Chairman: If the Court of Appeal had decided the other way—

Mr Straw: Happily the Court of Appeal did not decide the other way because the Court of Appeal recognised the reality of the situation and the legality of it, too.

Q75 Lord Lester of Herne Hill: I will be corrected if I am wrong by somebody behind you, if not by you, you said just now that it was an indication from the Registry but my understanding was that it was a Rule 39 letter. If it is a Rule 39 letter then a Rule 39 letter can only be issued on the authority of the President. If that is right, it is considered now as a matter of general practice completely wrong and undermining the authority of the Strasbourg Court to disobey a Rule 39 letter. What it seems to me has happened here—and I will be corrected if I am wrong—is that we have disobeyed a Rule 39 letter. Italy did it and got into trouble for that and we have now done so. It is another example where we have a very fine reputation for abiding by the judgments where we have done something very wrong because, as the Chairman has said, the court would swiftly have decided whether you were right or wrong about jurisdiction instead of which we pre-empted and disobeyed a Rule 39 letter. Am I wrong about the Rule 39 letter?

Mr Straw: I think it is Rule 39 but I have not seen the indication itself. Lord Lester, I just say again—and this was the point made by the Court of Appeal—the Defence Secretary was not acting without lawful authority. We had it from the Court of Appeal of this country in two respects: one was that the United Kingdom was not exercising jurisdiction over the appellants within the meaning of Article 1 of the ECHR; and the second was that we had no alternative but to return these people to the custody of the Iraqi High Tribunal. It was also an unprecedented situation. Essentially in that indication what we were being asked to do was something which was not possible for us to do. That was the point that Lord Justice Laws was making. If you do not mind me saying so, before we go on with extravagant comments about us doing something which was contrary to what the European Court asked us to do, it was not possible to do that. No one has been able to disagree with my point that the next day we would have had to simply unlock the door and they would have been arrested at the door of the prison.

Mr Wills: I was going to ask whether Lord Lester agrees that it would have been a breach of international law for us to retain them?

Q76 Lord Lester of Herne Hill: I do not know and the reason I do not know is because I do not know what the European Court would have decided, nor do I know, but the Foreign Office legal advisers have a view on it, whether one could have said to the Iraqi authorities, “Look, we are in this difficult position, we have a Rule 39 letter, we therefore say that we must at the moment abide by that international obligation to comply with Rule 39. We are in a conflicting situation and therefore this has got to be sorted out” . Instead of which we jumped the gun in the sense that we did not allow the Strasbourg Court or the Iraqi authorities to resolve this difficult problem. I am not saying it was not a difficult problem, but surely I am right in saying that we disregarded not just an indication but a Rule 39 letter, which is like an injunction?

Mr Wills: It is our understanding that the legal advice that was given was that we would have been in breach of international law and heavily criticised for being in such breach had we retained them.

Lord Lester of Herne Hill: I follow that but the other breach is of a Rule 39 letter.

Chairman: We had better move on. Let us hope the two do not get executed. We are well over time now but I was going to ask you to take one further issue.

Q77 John Austin: In response to Lord Morris earlier on you gave reasons for the delay in responding to our report on adverse human rights judgments. We also in 2007, earlier than that, published a report on the meaning of public authority. We should have had a reply on that in May 2007, almost two years ago. That report contained 47 explicit recommendations to the Government concerning contracts, procurement, and in November 2007, more than a year ago, Mr Wills told us that we would get a reply soon. I wonder what Mr Wills means by soon and can we expect a reply before the February recess?

Mr Wills: I understand the concern, Mr Austin. As the Committee will be aware, we have been vigorously engaged in dealing with the issues thrown up by this particular case. In the normal process of events we would have responded well before now but what has actually happened is that events have moved on considerably. As you know, we have dealt with the specific circumstances of the YL case already through the Health and Social Care Bill in the way that we said we would when I last discussed this with the Committee. We said that we would tackle it if we possibly could. Ministers and officials from this Department and from the Department of Health have spent a lot of time dealing with that particular issue. We recognise that there are still issues to deal with within the scope of the Human Rights Act and we are proposing to deal with them. We are launching a consultation. As I am sure you will understand, this is dependent on how we move forward with the Green Paper on the Bill of Rights and Responsibilities because there is a clear connection between the two. Given all that, it seemed to us that we should perhaps address this issue when we had a little bit more clarity about the continuing process of the Bill of Rights and Responsibilities. However, I am very happy—

Q78 John Austin: There could have been an interim report.
Mr Wills: I was just going to say I am very happy, notwithstanding what I have just said, if the Committee would like to have an interim response with all those caveats around it, forgive me but they have to be there, then of course I am happy to produce something, and I think we can do that quite quickly.

Q79 Chairman: I think that would be helpful because a lot of the issues were not directly relevant to the Bill of Rights but simply recommendations on good practice. I am surprised that we have not had a formal letter asking for an extension. How long before you can give us an answer?

Mr Wills: Without wishing to horrify the officials, let us say before the Easter recess. Can I just stress the fact that we will have to take into account, and we will obviously take into account, the specific recommendations which are contingent, but I think the way we move forward from now will be so contingent on the Green Paper that we cannot pre-empt that publication either, as the Secretary of State has already said. That will be before Easter so if you want a rapid response it will inevitably be rather vaguer. If you are happy to give us a little bit more latitude on this we will be able to produce a more considered and full response. Perhaps we can be in touch about the exact timing of it.

Q80 Chairman: One very specific question about SOCPA relating to protest around Parliament, which was contained in the draft Constitutional Renewal Bill, which seems to have suffered a bit of slippage; has there been any discussion in the Home Office about raising it in one of the other bills?

Mr Wills: The answer is yes there is continuing discussion with the Home Office about how exactly we move forward on this.

Q81 Chairman: So we will see something soon?

Mr Wills: Depending on the Home Office and how they are proceeding on this we would hope so.

Chairman: We have a number of issues that we have clearly not got time for today so we will write to you about those. Thank you very much. The public session is adjourned.
Tuesday 24 February 2009

Members present:

Mr Andrew Dismore, in the Chair

Bowness, L  Austin, John
Dubs, L  Harris, Dr Evan
Lester of Herne Hill, L  Sharma, Mr Virendra
Onslow, E  Timpson, Mr Edward
Prashar, B

Witnesses: Professor Monica McWilliams, Chief Commissioner, NIHRC, Professor Colin Harvey, Commissioner, NIHRC, and Dr Nazia Latif, Investigations Policy and Research worker, NIHRC, gave evidence.

Q1 (24.02.09) Chairman: Good afternoon and welcome to this evidence session of the Joint Committee on Human Rights. We are looking at the work of the Northern Ireland Human Rights Commission in the context of the work we are doing on the Bill of Rights for the UK. We have been joined by our witnesses: Professor Monica McWilliams, who is the Chief Commissioner to the Northern Ireland Human Rights Commission, Professor Colin Harvey, who is one of the Commissioners in the Northern Ireland Human Rights Commission, and Dr Nazia Latif, Investigations Policy and Research worker of the Northern Ireland Human Rights Commission. Do you wish to make any opening remarks or shall we get straight on? Professor McWilliams: Firstly, thank you very much for the opportunity to give this evidence. We are delighted that on International Human Rights Day, December 10 2008, the 60th anniversary of the universal declaration that the Northern Ireland Human Rights Commission presented its advice to the Secretary of State for Northern Ireland. This advice came from the mandate to the Commission from the Good Friday Agreement, further endorsed by St Andrew’s, that there should be a Bill of Rights and that it should fall to the Commission to scope the advice for such a Bill of Rights for Northern Ireland. It goes much further back than that in fact; indeed, Lord Lester will remember that it goes as far back as the early Seventies, and indeed others were involved throughout the years from the Seventies onwards when there were calls for the incorporation of the European Convention on Human Rights as far back as then as one of the ways to address the issue of human rights in Northern Ireland. Right throughout the conflict, and the 40 years now of the troubles, there were calls for a Bill of Rights for Northern Ireland. It finally made its way into the Good Friday Agreement on April 10 1998. The Commission was established a year later in 1999 and immediately began its work on the advice for a Bill of Rights. There were some delays along the way and indeed we were very heartened finally as a consequence of St Andrews that a forum was established which consisted of political parties and civic society sectors to discuss what would be in a Bill of Rights and to see if there could be consensus achieved and that that report would be given to the Human Rights Commission as part of its thinking. There had also been huge extensive consultation with civic society sectors throughout these ten years, so it has been a long process, but finally we have fulfilled our piece of the work and have handed this over. The question is what happens now? We believe there is some urgency attached to taking this advice forward, particularly in the term of this parliament. The Northern Ireland Office has given a commitment to consult for 12 weeks in Northern Ireland and elsewhere on our advice, so they will give their response to our advice. We would like to have that undertaking as soon as possible. There has been a view that perhaps they will do this in the Spring but, a bit like the Green Paper in the UK bill, we would not wish to see any delays in that commitment because obviously what follows on from delay means that there may not indeed be a legislative slot. That is the first message that, having fulfilled the mandate, having presented the advice, we would now like to see the Northern Ireland Office consult as soon as possible on our advice and to work our way towards legislation. It is one of the final pieces of the Good Friday Agreement and its history precedes the discussions on the UK Bill of Rights and Responsibilities, and indeed you may want to take us further on that. We see no contradiction between having the UK Bill of Rights and the Northern Ireland Bill of Rights and indeed the Government has said they see no contradiction either. We would be concerned if there was any delay as a consequence of one being seen as being more important to get it done first and the Northern Ireland one follow. We believe we have been a long way down this road and we would really like to see our process now coming towards a completion, particularly as it is a final piece of the Belfast Agreement as further endorsed at St Andrew’s. Those are the main issues for us. We would be happy to take questions on any of those issues, either on the substance of what we have put in the Bill or indeed on the process.

Q2 (24.02.09) Chairman: What has been the Government’s reaction so far to your proposals? How has your advice been received by them so far?
Professor McWilliams: The Government received the advice on 10 December and have committed to 12 weeks' consultation. Until we see the response to our advice we would not be in a position to say how they feel about the advice that we have offered.

Q3 (24.02.09) Chairman: What do you think are the most innovative recommendations that you have made?

Professor McWilliams: There is quite a range of rights, some of which speak particularly to issues that came out of the conflict, but on others, because this would be a modern day Bill of Rights, we had to address that issue. We believe that those who are vulnerable in Northern Ireland or are marginalised by society should see themselves in this Bill of Rights advice that we have offered. The issue particularly that focused our attention was to what extent should the advice just focus on the two main communities, or should it go beyond those rights and address the rights of others who are marginalised and vulnerable? We have done both. We believe we have achieved that. So far the response from the groups in the non-governmental organisations, community sectors and voluntary organisations has been very positive. We are looking forward to seeing what they say in their responses to the Northern Ireland Office’s consultation. We were very taken by your own Joint Committee on Human Rights report. It came out just as we were coming towards the end of our process. It was enormously helpful to us and we were very pleased to see that your thinking and our thinking were very similar. We, I think, say a little more than you did on some issues of the rights for victims, and we perhaps would say that given that we have come out of a conflict situation. We say a little more on some of the issues that Northern Ireland is focused on: issues of sectarianism—for example and the right not to be subjected to sectarian harassment and violence. We also speak to children’s rights so we have said a little more than you did on some of those issues. On many of the other issues we walk very similar territory. I think we went a little further than you did on the socioeconomic rights, but again we took great heart from what you were doing on the socioeconomic rights.

Q4 (24.02.09) Chairman: One of the things that you recommend which is very similar to us is the JCHR type committee for the Northern Ireland Assembly. How do you see that working and how do you see its relationship with us?

Professor McWilliams: As you may know, there was a recommendation in the Belfast Agreement of April 10 1998 that there should be such a committee. It was referred to in terms of an equality and human rights committee. That committee was never established and to date has still not been established. We have recommended in our advice that if a Bill of Rights goes forward that it is a priority for the Northern Ireland Assembly to establish a committee such as this for a number of reasons. We think that this is a really effective committee. We believe that the executive and the legislature should work together in the way that they have through this committee; that it should have powers to ask for testimony and evidence; that it should be able to scrutinise legislation and none of that is happening at the moment. Indeed, when we saw what your committee has been doing, not just on the issue of the Bill of Rights, but on all of the issues of human rights that fall to parliament, we think it would be enormously helpful, both to a country that is coming out of conflict, but also enormously helpful to the Assembly itself in having the political parties in all of their diversity being able to discuss human rights. Again, we think that that would be a powerful addition to the Northern Ireland Assembly.

Q5 (24.02.09) Lord Dubs: Some of your critics, and there are a few from Northern Ireland, as you know, have argued that in producing your report on the Bill of Rights you have gone beyond your mandate or terms of reference. Would you like to comment on that criticism?

Professor McWilliams: There were three parts to our mandate: one was to address rights that were supplementary to the European Convention: then there were the rights that were particular to the circumstances of Northern Ireland and there were those that paid attention to the issue of parity of esteem and mutual respect of the two main communities. We focused on all three parts and indeed our methodology that we devised in June 2007 was shared with all the political parties and we also shared that methodology with all the civic society sectors. We set seven questions out in that methodology and we said here is the way that we are testing ourselves that we have met our mandate as appropriate and the response was extremely positive. Of course there is going to be diversity of opinion in a country like Northern Ireland on what should be in the Bill of Rights. We take great heart that all parties are agreed that there should be a Bill of Rights and those who hold a diverse opinion do so because they have a different opinion of what constitutes the particular circumstances. I think that is where the difficulty lies. Nonetheless, on the way we set out the advice before we give our own recommendations we ourselves say here is how the following recommendations meet particular circumstances and here is how they are supplementary to the European Convention and here is how they meet international best standards, so anyone reading the report would immediately be able to see that, as far as possible, we have focused our attention on those three pieces.

Q6 (24.02.09) Lord Dubs: What do you think the Government can learn from your work when it considers the Bill of Rights for the UK?

Professor McWilliams: The process itself was extremely engaging. There was extensive consultation. It fell to the Commission because that is the way the legislation established how the advice would be taken forward so that also was a different
way of approaching this issue. Political parties at a very late stage were engaged and that would be a lesson to try and get political parties and civic society working more closely together at a much earlier stage than they were in our process. We were pleased that the Northern Ireland Office invested in a Bill of Rights forum in which delegates and elected representatives sat down together and deliberated. It was a good exercise in deliberative democracy as well as participative democracy. That was a very good lesson. A further lesson was if this Bill of Rights goes nowhere that will be an enormous lesson for a process that is coming out of conflict—if it is stymied, if it is delayed, if it is stopped after all the expectations that have arisen in Northern Ireland that one day there would be a Bill. We wait to see whether or not that actually happens, but at the moment that would be a lesson in itself. On the substance there are obviously various lessons. How much do you draw down on international standards? How do you make the substance of the rights that you are recommending something that people really believe in? How do you make rights important moment for them and that they should be engaging in this process? How do you make rights real? How do you embed a culture of rights and how do you make the substance of the rights that you are recommending something that people really believe in? Professor Harvey will maybe add to this in some way.

Professor Harvey: Could I draw the two questions together in the sense that the Northern Ireland Human Rights Commission was not starting with a blank piece of paper. We approached the Bill of Rights process with a mandate that was laid down for us in the Belfast (Good Friday) Agreement. As Monica has made absolutely clear, we stuck rigidly and we followed that mandate very carefully through an agreed methodology. The current Commission, over the last two years leading up to the advice, held 54 meetings of an internal working group at which the mandate featured prominently in our discussions. The Northern Ireland process, while there are lessons to be drawn for your own process, is in some senses a distinct process flowing out of our own peace process linked to the Belfast (Good Friday) Agreement with a very specific mandate that has been consulted on widely by this Commission and which we followed very closely in formulating our final advice delivered last year. I think it is important, as Monica said, to underline that.

Q7 (24.02.09) Lord Lester of Herne Hill: I should declare an interest as I was an independent unpaid adviser to the Commission in its work just as I was 30 years ago to the Queen. You mentioned, Professor McWilliams, how far one should draw down on international standards. I wondered what the Commission think about the oddity of the UK situation where the question that we always ask is not is this constitutional or is this in accordance with a British Bill of Rights, the question we ask is: is this compatible with Convention rights? We are the only country out of 47 in Europe that asks that as its first question. Is your thinking about a Bill of Rights for Northern Ireland, or for that matter for the UK, that maybe we should move beyond that kind of question and ask instead is this compatible with the Bill of Rights for Northern Ireland or, if we had one, a British Bill of Rights? In other words, do you think it is a good idea that the people of Northern Ireland no longer regard themselves as dependent on the European Treaty for their rights?

Professor McWilliams: This was in the mandate. The mandate did not just speak to the European Convention on Human Rights; it also spoke to international standards and experience. We have no difficulty in being able to look at both. Where, if anywhere, that we would have had a problem was in relation to the protocols that the UK has not incorporated into Section 1 of the Human Rights Act. We took those protocols separately and addressed each one. There are two particular protocols that we have included that speak to the particular circumstances of Northern Ireland. We have no difficulty, Lord Lester, in looking at international standards. The UN covenant on political civil rights in particular would have been enormously important to us in relation to some of the rights that we were addressing and spoke particularly to the circumstances of Northern Ireland, some of the violation of rights that had occurred down through the years in relation to liberty or in terms of the detention issues, some were in relation to the fair trial issues, but it goes back to the Chairman’s question to me in opening which was in terms of addressing what were the innovative rights. A Bill of Rights for Northern Ireland also looks to some of the political rights which are in those international standards. Some might criticise us for having included the issue of not just the right to vote in fair and free elections, but indeed the Good Friday Agreement further endorsed at St Andrew’s spoke to the issue of democratic rights and protections. We do address the issue of proportional representation in that section on our advice which makes us very different from the rest of the UK, but it was regarded as a safeguard and protection in the Agreement and we were very heartened to read in the international standards that some of these rights could also be found there. We drew very strongly from the Canadian Charter because Canada experienced similar problems that we did in relation to the issue of individual rights and group rights. We drew, like you did in the Joint Committee, on the South African Bill of Rights and indeed Justice Albie Sachs came on numerous occasions to Northern Ireland to advise us on their process. As the South Africans have told us often in Northern Ireland, we are not here to teach you how to do it, but every time they came and every time we went to South Africa id to us perhaps you can learn something similar from how we have done it. Both the Charter and the Bills of other countries are enormously important and not just the international covenants.
**Professor Harvey:** A starting point for us in our process has always been Human Rights Act plus. What our Bill of Rights is doing is supplementing the European Convention on Human Rights and that has been taken as read as a starting point for our process. That has been built into our mandate because our mandate makes absolutely clear it is rights supplementary to the Convention. An important lesson for us in going through this process has been looking at the European Convention and looking at the Human Rights Act as a starting point upon which we can build and if there is a lesson for the UK-wide process it is that the Human Rights Act can be built upon and not undermined as part of that process. That was written into our mandate but there is an important and a wider point there too.

**Q8 (24.02.09) Lord Dubs:** In your opening statement you emphasised the need to give quick effect to the work you had done to implement the Bill of Rights. How do you anticipate that the process for agreeing a Bill of Rights for Northern Ireland will fit in with the process for drafting a Bill of Rights for the whole of the UK?

**Professor McWilliams:** As I said in the opening remarks, we see no contradiction in having a separate Bill of Rights for Northern Ireland if there is to be a UK Bill of Rights; that would not be an issue. Scotland may have its own Bill of Rights some day as well. We look forward, and have for a long time, to seeing what is in this Green Paper. We do not know if the intention in the Green Paper is to have a declaratory bill, to have the rights set out as aspirational, to bring together the rights that may already be in existence and to bring them all under one cover. We actually do not know what is going to be in a UK bill and we are very much looking forward to seeing what will be laid out in the Green Paper. There has been no contradiction, Lord Dubs, for a long time in having a devolved Bill of Rights for a devolved region; indeed, we speak to that issue in our own advice and we address that very issue.

**Q9 (24.02.09) Lord Dubs:** You do not think that the process for agreeing your Bill of Rights as opposed to the principle may get tangled up with the drafting of a Bill of Rights for the UK?

**Professor McWilliams:** We think that the process for agreeing your Bill of Rights as opposed to the principle may get tangled up with the drafting of a Bill of Rights for the UK. We do not think that the process for agreeing your Bill of Rights as opposed to the principle may get tangled up with the drafting of a Bill of Rights for the whole of the UK.

**Q10 (24.02.09) Earl of Onslow:** As you may know, Lady Trimble gave us a piece of paper which raises some very serious points. She says, for instance, that she was not allowed to do a minority report. What percentage of your Commission would it have represented? Was it just her or did you make sure that, say, a third of the people or half or 40% did not put their view might say “We are not allowed to”?

**Professor McWilliams:** Let me explain the process. I am very much aware of Lady Trimble’s note of dissent and I did address the issue of a diversity of opinion. First, the Commission is representative of the community. Second, it was an option that Lady Trimble wished for and that was to have a minority report but it is important for the record that there never was a minority report.

**Q11 (24.02.09) Earl of Onslow:** I know, because you did not allow it.

**Professor McWilliams:** No, that is not the case. We actually asked if there was a minority report and could we see it. There was not a minority report but there was a note of dissent. It is also important to note that I proposed, as Chair, that we read the note of dissent or we take the note of dissent and we were more than happy to have any dissenting opinion recorded in the minutes; indeed, we said we would go as far as to have the minutes published before the advice so that that dissent could be widely disseminated. Lady Trimble did not take up that option. I would also wish not to mislead you in that we did not wish the entire note of dissent to be read into the minutes. What we said was that we would take the issues of dissent and the points of dissent and we would record them in the minutes.

**Q12 (24.02.09) Earl of Onslow:** What percentage of your Commission was with Lady Trimble or was she as lonely as a petunia?

**Professor McWilliams:** On her desire for a minority report she was alone. On the note of dissent there was another commissioner who also wished to have his views recorded and indeed they were. The two of them are noted on the face of the advice on the front of our report as having dissented from the opinions of the others and we have no difficulty in making that known publicly.

**Q13 (24.02.09) Earl of Onslow:** What she draws attention to is particularly how far you have gone on socioeconomic rights. She says, and I must admit that I am totally inclined to agree with her, “These are matters for the Ministry of Education ... they are matters of policy, they are matters of revenue.” They are not a matter which should be legislated basically. Either the right has to be drawn so broadly as to be valueless, or it is too restrictive on elected politicians. After all, we elect people to boss us about and to govern us; we do not ask judges to do it if we can possibly avoid it. That is one point. The other point she makes here, which I think is worth airing, is she says: “The report proposes to enshrine proportional representation and inclusive participation in a regional governmental Bill of Rights. The agreement of course read advisedly is putting in a Bill of Rights that would be contrary to
the agreement which, by providing for reviews in its provision, contemplates the possibilities of the parties changing these provisions. The Commission has no right to forbid our elected representatives from making changes in the future. The extension to local government is equally egregious." That seems to me perfectly reasonable.

Professor McWilliams: I will address both points. On the first point we say that there is a role for the executive, the legislature and the judiciary and we do not believe that we have overplayed our hand in relation to the economic and social rights in terms of the role of the judiciary. In fact, we took great heart from the Joint Committee on Human Rights report itself and we had a conference in Belfast where indeed Murray Hunt and others came to address us on the issue of economic, social and cultural rights. Cultural rights are added to economic and social rights in this instance as well and it would be strange for us in Northern Ireland to have left cultural rights out of the advice on a Bill of Rights given the make-up of Northern Ireland and the issues over language rights, identity rights and cultural rights. The second issue on economic and social rights, we take the view that these rights are interdependent and indeed the legacy of Northern Ireland would speak to what happened when we did not address the issues of social rights, such as housing and unemployment. If you remember, some of the Commissions established and appointed by Government in the early days of the troubles were to address those very issues. I think our issue was, and your Joint Committee similarly addressed this issue, was this giving too much power to the judiciary rather than to the executive? We do not believe that that has been the case; that we have very clearly defined what we mean by “progressive realisation” and unique to Northern Ireland, unlike the rest of the United Kingdom, the Government in Northern Ireland, each year when it sets out its programme for Government, it sets out its priorities for action on the economic and social issues, health, education being a perfect example. It then says what are the targets and then it sets itself a timetable. How we address that in our advice is to say here is a perfect example of how the executive and the legislature hold each other accountable on these issues and where the role would be in relation to progressive realisation of these rights. In having an Assembly Committee on Human Rights that would then address whether or not these were being progressively realised. On the second issue, Lord Onslow, there is an amendment provision in our advice which allows the Assembly to have a role should it wish to change the Government’s position set out in the Belfast Agreement and indeed endorsed at St Andrew’s. If it wishes in the future to change that it can do so through an amendment that is placed to change the Bill with cross-community consensus, so it means that no one section of the community can decide to go back to majority rule without the consent of the other part of the community through its elected representatives, and we do allow for that in our Bill. Lady Trimble would have a view that we set in stone these safeguards forever more. That is not the case. We say that coming out of conflict all of the parties to the Agreement and the referendum of the people to the Agreement agree that these were protections. That coalition government and those institutions of government are something which is well established and it allows for a review to ensure that they are working effectively and the view is that of course if a Bill of Rights means anything to the people of the country, it should mean that we can build trust in each other and trust in our government. Those were the issues that we addressed when we offered that advice, but we left it to any future Assembly in some future day, if the country is at peace with itself, to say that they now think the time has arrived for an amendment to be placed with the support of both sides of the community to see that there is no longer a need for this particular safeguard.

Q14 (24.02.09) Baroness Prashar: Professor McWilliams, I want to move on to the question of co-ordination with Government. Your predecessor, Professor Dickson, when he gave evidence to us in 2003, said that the Government departments both here and in Northern Ireland tend to forget that you exist. Has that changed? Do you find that they actually listen to you particularly when they are developing legislation which has human rights implications?

Professor McWilliams: In terms of the Northern Ireland Assembly or in terms of the Government?

Q15 (24.02.09) Baroness Prashar: Both the Assembly and the Northern Ireland Office.

Professor McWilliams: We would take the view that in the absence of the Joint Committee of Human Rights at the Northern Ireland Assembly there is a huge lacuna and it is through the effectiveness of this Committee that we have seen how you have been able to hold the Government accountable. We believe that if there was such a committee established it would be enormously helpful to answering that very question of taking these issues much more seriously. There has not been a lot of primary legislation to actually test at the moment the effectiveness of human rights compliance. All the legislation comes to us first.

Q16 (24.02.09) Baroness Prashar: Do they actually consult you?

Professor McWilliams: Yes, they must. It is set down in the Northern Ireland Act that all pieces of legislation must come to the Commission for scrutiny in terms of Human Rights compliance.

Q17 (24.02.09) Baroness Prashar: Do they pay attention to what you say?

Professor McWilliams: We would say that we should be in at a much earlier stage. It is too late when it is coming and it has a stamp on the front of it saying that this piece of legislation is compliant with the Human Rights Act. We would like to be in at a much earlier stage at the policy-making stage when the legislation is being drafted and decisions are made on that. Like yourselves, we have made submissions
on legislative proposals and given evidence to various committees and we are sometimes very disappointed at how they have not taken on board some of the recommendations. At the moment we have made many submissions to the bills that are currently going through parliament and we are quite heartened that not just parliamentarians but also the Northern Ireland Office has engaged with us.

Q18 (24.02.09) Baroness Prashar: Can you give some specific examples?
Professor McWilliams: At the moment the Coroners Bill is going through. We have enormous concerns about the secret inquest provision.

Q19 (24.02.09) Earl of Onslow: You are not the only one.
Professor McWilliams: We have made submissions on that issue. The Northern Ireland Office has come back to us saying that some of the concerns we have raised are being taken on board. My understanding is that the Minister will shortly write to us on how this is going to work differently in Northern Ireland because clearly we are coming out of the situation of having a legacy of inquests that still have to be heard and those families indeed will want to know whether these provisions be applied to them. As the Bill is being scrutinised we are pleased that some of these views that have been put forward have been taken up. Going back to the Assembly, we feel that the Bill itself would be a good example that if we have a Bill of Rights for Northern Ireland it would raise the awareness of human rights to a whole new level. Obviously once they start putting forward primary legislation we would be engaged much more with them. We are a very small commission. The resources question in terms of giving expert evidence at all of these committees if they do get up and running will be another question, but we would be looking forward to that day and we would be glad to have that opportunity, but it has not arrived yet.

Q20 (24.02.09) Lord Lester of Herne Hill: Could I ask a question in follow-up briefly about the Joint Committee on Human Rights and the Northern Irish gap which you identified. The Good Friday Agreement was meant as a common standard north and south of the border, as I understand it. We went to Dublin and sought to persuade the government there that there should be a committee in the Dail and we got nowhere at all. Should it not be a matter of concern that crosses boundaries that the parliaments and legislators of both Irelands and all parts of them should have proper scrutiny of human rights when legislation and other measures are introduced?
Professor McWilliams: You have raised a very important point. Obviously our Commission can only speak to what happens in our jurisdiction and therefore the recommendation that we make in our advice is to have such a committee in the Northern Ireland Assembly. I understand that my fellow Commissioners—we are mandated to meet every three months as a consequence of the Belfast (Good Friday) Agreement—on the Irish Human Rights Commission equally look forward to that happening. They are also concerned that their annual report is not placed in parliament, it goes to the minister and they would like to see that change made in the way that our report goes to parliament and they would like to address parliamentary committees and obviously if there is a joint committee it would be a much stronger relationship. We have been invited to give oral evidence on the Bill of Rights to a joint committee and that should be taking place quite soon, but it is a committee known as the Implementation of the Good Friday Agreement Committee. It is not a committee on human rights. Nonetheless, we are very pleased to give that evidence and now that you have mentioned, Lord Lester, the issue of the Bill of Rights and the committee in Northern Ireland, the Belfast Agreement also asks us jointly with the Irish Human Rights Commission to scope out the advice for a Charter of Rights for the island of Ireland. You can see, Chairman, the very different context of our Bill of Rights. It has come out of the peace agreement. We have been asked to put forward our advice to the Secretary of State and following this, which we have now completed that task, we are being asked to start the work on the Charter of Rights for the island of Ireland. Therein also lies the question that if there is delay on the Bill of Rights will there also be further delay on a Charter of Rights? The two commissions are very much looking forward to the issue of addressing the equivalency of human rights in the two jurisdictions.

Q21 (24.02.09) Earl of Onslow: We have had some reservations about the Justice and Security (Northern Ireland) Bill (now Act 2007), for example, restrictions on your new powers to compel evidence and to visit places of detention. Have these restrictions hampered your work in the ways you had envisaged?
Professor McWilliams: We were very concerned about the fettering of our power in the sense that if we were to undertake an investigation we have to give 15 days' notice before we would enter a place of detention, for instance, to undertake that investigation. One of the concerns that we would have as a Human Rights Commission that if we decided to do an investigation it would be as a consequence of a serious concern, perhaps a systemic issue in terms of human rights violation. Giving 15 days' notice that you are about to undertake an investigation we think—

Q22 (24.02.09) Earl of Onslow: The shredder comes into play.
Professor McWilliams: Exactly. That would have been one of the concerns to give notice and then to have a 15 day wait and also, secondly, that the party to whom we would be going to investigate had the right to contest the terms of reference of such an investigation by both parties going to court, and again we felt that the only reason why you would use those powers is if someone was preventing you from trying to do what you were about to investigate. Nazia, who is head of Investigations and Research
and Policy, has just completed a year long investigation and perhaps would say more about the fact that of many of the powers which we were pleased to get we did not have all of the powers. Nonetheless, I understand that the Northern Ireland Office has said that they can review these and some day in the future will review these powers. We would very much look forward to that review.

Q23 (24.02.09) Earl of Onslow: That they will need to change the act in light of the finding.

Professor McWilliams: Indeed, it would have to be an amendment to the legislation.

Q24 (24.02.09) Earl of Onslow: It is less than nil.

Professor McWilliams: Yes. We would like to have seen it in the first place, but given that we did not succeed in the first place we are not saying that it will not ever happen in the future and we look forward to that happening. Nazia, perhaps you could say if it did impact on the investigation that you have just completed?

Dr Latif: It certainly impacted on that particular investigation because we did not have the statutory powers at the time to compel evidence or witnesses. We were relying entirely on the good will of the Home Office officials at the time, but even with the statutory powers there are serious limitations, one of them being the access to places of detention. We said at the time that those powers were not fitting of a national human rights institution and that the restrictions would not allow us to be designated under the Optional Protocols to the Convention Against Torture, despite the recommendation of the Committee Against Torture. And so government did not give us the powers and now subsequently said you do not have the powers so we cannot designate you. It is a very unsatisfactory situation both in terms of us doing our work at a national level, but also in the international arena with national human rights institutions.

Q25 (24.02.09) Earl of Onslow: I would much rather you had those powers. You have had powers to mess about with housing. I think that is for the Bill of Rights and making sure that rights are not abused. In this failure to address the majority of your concerns about the Justice and Security Act, are they symptomatic of a lack of weight given to your advice by the Government or are you happy with the advice?

Dr Latif: We, of course, think that our advice should always be given much more weight by the Government. As Professor McWilliams said, often Government is late in coming to us and Government also often overlooks the particular impact on Northern Ireland of its legislation.

Q26 (24.02.09) Earl of Onslow: This is a Northern Ireland bill.

Dr Latif: Even having consulted with the Commission and being very aware of what the Commission’s views were on its statutory powers, as I said before, the powers are not fitting of a national human rights institution. We do the best we can in very difficult circumstances.

Q27 (24.02.09) Earl of Onslow: What I am trying to get at is does the Government take you seriously?

Dr Latif: I think it takes us seriously but could do better.

Q28 (24.02.09) Mr Sharma: Your Annual Report 2007-08 states: “...we have developed positive and constructive relationships with colleagues in the new Equality and Human Rights Commission in Great Britain . . . and with the new Scottish Human Rights Commission, focusing on policy matters of mutual interest.” What specific work have you engaged in jointly with those commissions? Do both commissions routinely seek your views about matters of mutual interest?

Professor McWilliams: We were the first Commission so we were much longer established than the GB Commission and the Scottish Commission. In fact, we were the first to be designated with ‘A’ accreditation by the United Nations. That is an example of collaborative work because when we attend the United Nations’ meetings the three Commissions will now in future share their accreditation. Scotland has yet to be accredited and, as you know, the GB Commission has just, we are delighted to hear, in the past month been awarded its A status, so we will now share the highest status possible as a national human rights institution and we worked together on that. We did not wish to see either Commission lose its status as a consequence of one being awarded it. Instead, we entered a partnership where we engaged with the United Nations on that issue. The areas where we would have most partnership would be in the areas of immigration and the citizenship issues and indeed our legal officer and policy and research officer would frequently make contact with the EHRC on these issues. The Scottish Commission again were particularly interested in some areas of work with Alan Miller as set forward in their strategic plan for vulnerable and marginal groups. It may be the case that we will learn from his work and that commission’s work on the issue of Travellers. The Irish Human Rights Commission, who is outside the jurisdiction but is the fourth commission on these islands, has proposed and we have agreed that all four commissions will now meet together in June when all of the Commissions are up and running, all have their staff complement in place and that we start making partnership and liaison arrangements with each other on various pieces of work. The pieces of work that the commissions are very active on with the Irish Commission are on the issue of anti-racism which would be a priority for all of the commissions at the moment. Nazia, perhaps you would want to say more in terms of your direct involvement with the Equality and Human Rights Commission?

Dr Latif: Certainly at a staff level there is very frequent contact between members of staff of both commissions. We work very closely on the
international treaties and, as Professor McWilliams says, we share our A accreditation now at UN level. Both the formal and the informal relationships have been working very positively up until now.

Q29 (24.02.09) Mr Sharma: The Northern Ireland Assembly has been restored since May 2007. What regular contact do you have with the Assembly?

Professor McWilliams: The Speaker of the Northern Ireland Assembly sends us the legislation and asks us to scrutinise that. That is part of his function and it is part of our function. We engage with Committees of the Northern Ireland Assembly as they scrutinise their legislation. We make submissions, as we do to parliament, on legislation. What we have also done more recently is we have asked the departments to engage with us at the policy level before they start advising on legislation and then we ask them to follow up with us on how seriously they have taken our recommendations and, if they have not taken them seriously, why not? This is a more innovative piece of work that we are engaging with; it is not just to send off the submissions, but to actually follow up on why the submissions were not incorporated or, if none of the advice was taken, or if some of the advice was taken on board, then we give evidence to committees. We meet frequently with the political party human rights spokespersons and we have a meeting with the First and Deputy First Minister on the Bill of Rights. There are two junior ministers in that office who have responsibility for equality. As you know, equality has been devolved to Northern Ireland but human rights is reserved, so there is quite an interesting complex relationship there and we still have to emphasise to the Northern Ireland Assembly that it would be better if they were to take human rights and equality together each time that they are considering policy and legislation.

Q30 (24.02.09) Mr Timpson: From listening to you this afternoon I sense that there is a slight feeling of frustration on your part that all the work you have done is not getting the impetus or perhaps the profile that it deserves. You have spoken a lot this afternoon about what you are doing within government to try and raise the profile. What are you doing outside of the executive and legislative to try and raise the profile of what you are trying to achieve? If I am brutally honest, if I had not been sitting on this Committee I probably would not have been aware of the work you are doing. Could you give me a flavour of how you are trying to counteract the difficulties you are facing inside of government outside of government?

Professor McWilliams: There are three different parts to the functions of the Human Rights Commission and clearly one part of our mandate was to produce the advice for the Bill of Rights. The other is to take cases to court and we have the power of our own motion to do so which means we do not have to wait on a victim. But we do assist victims. Each time that we are successful in court we make sure that that success is well-known through newspapers and our press functions and our public relations function. There is a unit inside the Commission that deals with communications and we have a very effective communications strategy. Obviously the press are very often interested in whether a case has been a success or not and if not, why not. So we take every opportunity to engage at that level. We also produce our own newspaper and that newspaper goes right across the whole of the sectors. It is known as a review but it is in the shape of a newspaper and so we report on the cases. We report on anything of interest to the public and we engage with our stakeholders in that way. For the Bill of Rights, for instance, we had a huge project known as BORIS—not the Mayor of London, I hasten to add—but the acronym was the Bill of Rights in Schools. Practically every child in the country in the end knew who Boris was because of that engagement at the schools level. We had gone into primary schools developing the tools for the teachers and we translated BORIS into Irish, so it was not just in English. Where possible, we try to have all our communications translated into the other languages in Northern Ireland of migrant workers. For instance, our migrant workers rights document, which has become known as an example of good practice at the Council of Europe, was translated into a total of eight languages and is widely disseminated. We did that in partnership with the Law Centre in Northern Ireland. Occasionally we engage in partnerships with other NGOs or non-statutory bodies to make sure that our work gets out there and we work very effectively with the other commissions. I am not sure if you are also aware that Northern Ireland has a Police Ombudsman, a Children’s Commissioner and an Equality Commission. With these other commissioners we ensure that we do not duplicate but where there is overlap they can validate any systemic issues of human rights violations that we find in our investigations. We ensure that we work with them and other stakeholders to raise that awareness wherever we can because many of them work with different kinds of sectors. It would be true to say that nearly all the sectors in Northern Ireland know exactly who the Human Rights Commission are and work with us very effectively. That is why we were so pleased that the Bill of Rights advice was seen as a successful project in terms of engagement with the NGOs and indeed with the support the NGOs gave to the Commission in taking forward this very difficult task. You are quite right if you sense a sense of frustration right now in where we go next. It is more a concern that this project does not get left on the shelf now, having engaged and worked so hard to have been timely in our advice, in producing it, in making sure that everybody out there was with us as much as you can ever have every political party in Northern Ireland with you. We have undertaken that task as much as we possibly could and to ensure now that it is not delayed or parked in some way because there is a UK Bill of Rights discussion or because there is not the will to see this through its final legislative stage.

Professor Harvey: In chapter 5 of our report, which is called ‘Realising a Bill of Rights’, we do make recommendations about what should happen next in
order to achieve that widespread knowledge and understanding. We are very keen as an organisation to work in partnership with others. We see it as an important part of our role working with others to do that. To underline again what the Chief Commissioner has said, it is very important now that the sort of public consultation exercise that we have urged the Northern Ireland Office to begin in a timely fashion begins as soon as possible, in order to continue to raise awareness about our recommendations and ensure we get to the legislation, but that consultation process now is vital and we would urge the Northern Ireland Office to move rapidly with a response to our document and then to consult widely on it.

Q31 (24.02.09) John Austin: In answer to Virendra Sharma you referred to obligations that the UK signs up to where responsibility may be devolved. If I could take you on to the area of human trafficking, you will be aware that there was some criticism from this Committee and from Members here about the delay in the UK ratifying the European Convention on trafficking. One of the many reasons given by the Government for that delay was the need to ensure compliance before ratification and the need to consult with the devolved parliaments and assemblies who would have responsibility. Were you involved or were you aware of discussions that were taking place with the Northern Ireland Assembly or the NIO and were you at all involved in those discussions about the implementation of the Convention?

Professor McWilliams: We were certainly involved in recommending the implementation. We did it more through this parliament than the Northern Ireland Assembly, although there were members of the Northern Ireland Assembly who had put down motions for debate on that subject. We did engage with the Minister and Secretary of State on this issue but at our request. I have to say that we were proactive on that. We are in the final stages of completing a scoping study on human trafficking in Northern Ireland and the issue of sex trafficking with the Equality Commission. The Irish Human Rights Commission through the NGOs in the Republic have completed quite a large scale study and we were very interested to see the impact of their legislation, particularly the concept of the period of recovery and the amount of time that someone was to be allowed to remain in the country. Most of the engagement on this issue in Northern Ireland came from us. The reason why I mention it is because the police had for a long time been saying that there was not a great problem and we said perhaps it is like many of the other problems like domestic violence in the Seventies—it cannot be seen as a problem until somebody puts a name on it, then goes out and identifies it and then does a scoping study or research on it—and that is what we are currently doing. We are about to publish our scoping study, but most of the submissions we were making on trafficking were being made here to Parliament.

Q32 (24.02.09) John Austin: That has partly answered the next part of my question. Clearly the Convention is human rights based and looks at the position of the victims. You have identified in the leaflet you produced with the Law Centre of Northern Ireland the advice and support services for people who have been trafficked. Have you made some assessment of the support services that are available for trafficked persons and are you satisfied that Northern Ireland can be compliant with those parts of the Convention?

Professor McWilliams: First, the Migrant Workers Rights book does not speak to the issue of trafficking; it is the rights for migrant workers. Second, we have enormous concerns about what would happen to trafficked individuals as a consequence of Operation Pentameter. We have been engaged with what happens to the women in particular who have been rescued in those situations. I recall myself once having visited Dungavel because there is no holding centre in Northern Ireland and anyone that is held in Northern Ireland is sent out of Northern Ireland to Dungavel in Scotland. I recall on that visit asking what happened to trafficked individuals and I was alerted to the fact that those in whose care they were placed had been so poorly trained. The individual at the time in whose care they were placed said they were an incredible problem for her when they came to Dungavel, that the women who had come from Sheffield had created uproar and they could not wait to get them out the other side. To me that is not very good care for individuals who are trafficked. Bringing that example back to Northern Ireland shows how incredibly important it is to have highly trained individuals and to have a place of safety. I do understand that there has been some discussions with Women’s Aid in relation to having a hostel set aside as a place of safety. I am certainly aware that when Women’s Aid were first asked to do this it refused on the grounds that they had not been set aside extra resources and that their priority is for abused women in intimate relationships and trafficked women are victimised in a completely different context. That was the level at which the discussions have taken place. I do believe it has since moved on but we would still have some concerns, though I do know that some training has been put in place.

Q33 (24.02.09) Earl of Onslow: It has been reported over here that militias on either side of the divide have now dissolved themselves into profitable criminal gangs. It would seem to me therefore that this is exactly the sort of thing from which there would be probably be quite a lot of money to be made from their point of view. Have you any evidence that this is the case or am I just guessing?

Professor McWilliams: You are just guessing. You are probably speculating and your speculation could turn out to be correct, but at the moment we do not have the evidence to ascertain whether that is or is not the case. Indeed, there has been one court case where that was exactly the case where the individual gave evidence at the court that he was a member and had pressure put on him by a paramilitary
organisation but that was one individual court case that we do know about. From the scoping study that we are currently completing the difficulty I understand from those who have been undertaking that research has been to find the evidence. I think it does take a specially trained kind of person, both inside the police and the immigration service, to be able to know what they are looking for and to know what to do when they have got to the core of the problem that this individual has been trafficked. There is so much fear attached to disclosing that you have been a victim. It is very similar to what has happened to victims of violence—if you tell anyone I will make sure that that is the last person you tell—and that is enough to stop people from telling. Until we get to the stage where the message gets out that this is a country where safety will be put in place for you, then the limited evidence will be as it is at the moment, very limited. Nazia has been involved in overseeing a piece of work on that. Is there anything that you would wish to add on that?

Dr Latif: No, just exactly what the Chief Commissioner has said. One of the primary problems is do the relevant agencies know how to recognise a victim of trafficking in the first place to be able to shed more light on the scale of the problem in Northern Ireland.

Professor McWilliams: I think you are correct in one sense in that the jurisdiction of Northern Ireland and the separate jurisdiction of the Republic of Ireland, we are an island with a land border that is not a physical border and therefore makes it much easier for trafficking to take place without it being detected. We do not know the scale of it. All we know is that in the Republic of Ireland it is certainly a very serious issue and the NGOs working in that area—Ruhama is one of the projects that is working in the Republic—most of its experience was with prostitution and it has now been producing reports on trafficking. The Northern Ireland experience is trying to build on their learning in this area and to see to what extent traffickers are using the system so that the people who are being detected as trafficked can then be moved to Northern Ireland out of the Republic or vice versa.

Q34 (24.02.09) Chairman: Going back to what you were saying about the secret inquest proposals—obviously it is an issue that we have been concerned with as well and I spoke on the second reading about it—you referred to the historical context being particular to the Northern Ireland region but presumably the concern here is retrospectivity with this whole string of European Court of Human Rights cases around inquests in Northern Ireland. Are there any other particular Northern Ireland features, apart from the historical context, that you feel are different to these issues that you have been raising in relation to the mainland?

Professor McWilliams: Initially when this proposal came up in the Counter-Terrorism Bill, we made our views known about our concerns and also there was the issue of the special appointed coroner. That will not be the case in Northern Ireland. There will be no special appointed coroner. The coroners that are appointed at the moment remain the coroners. That was the first issue. The second was that we made it known to the Minister that we would have liked to have been engaged at a much earlier stage when we realised the impact that secret inquests were going to have on Northern Ireland given our work as a human rights commission on the inquests that we are currently supporting. Some of those have come out of the judgment of the European Court—they are known as the Jordan cases—the Commission has direct involvement and we are currently assisting and indeed funding those inquests, so it is of particular interest to us to have concerns about what should happen after all these judgments about open, effective, transparent inquests that there should be such proposals on introducing special inquests now. Those are the questions we asked: what is going to happen to these inquests there is a substantial number of deaths involved, in the thirties—and in a number of cases we still have an interest in ensuring that they have their Article 2 right to life effective investigations as recommended by the European Court in the Jordan cases. Nazia, in particular, has been following up with the Committee with the amendments and the scrutiny that has taken place. We have been engaged with also someone in the Northern Ireland Office on this as well.

Q35 (24.02.09) Chairman: The information that seems to be coming out of Government during both the previous attempt at counter-terrorism legislation and now is that they are particularly concerned about two cases that are currently in existence which I had the impression were not Northern Ireland cases. Have you had any assurances from the Government so far that the proposals, to the extent that they may be retrospective, would not affect any of these cases?

Dr Latif: You may be aware that the Northern Ireland Office has issued a statement saying that it is not their intention to use these provisions in terms of the legacy cases, but we have yet to see whether there will be that assurance on the face of the primary legislation or whether we will just have to take the Government’s word for it. Certainly the Commission would like to see it on the face of the Bill that it will not be used retrospectively. You may also be aware that not all of the provisions apply to Northern Ireland. At the minute it would seem that it is just the certificate to exclude the jury, not to exclude the next of kin or to have a specially appointed coroner, but we are really trying to get to the bottom of what is the logic of excluding the jury whenever there is already provision in the Coroners Council has issued a statement saying that it is to the previous attempt at counter-terrorism legislation and now is that they are particularly concerned about two cases that are currently in existence which I had the impression were not Northern Ireland cases. Have you had any assurances from the Government so far that the proposals, to the extent that they may be retrospective, would not affect any of these cases?

Q36 (24.02.09) Chairman: You have had assurances so far that the legacy cases will not be caught by this rule.
Dr Latif: That is not their intention to apply the provisions to the legacy cases.

Q37 (24.02.09) Chairman: But you want to see some rather firmer action in place of both.  
Dr Latif: Yes.

Q38 (24.02.09) Chairman: We will be producing a report on the Bill relatively soon, so if there are specifically any other features that you would like us to take into account, it would be very helpful to hear from you because obviously this is one of the very serious issues that we are concerned about in relation to this and it would be helpful again if you could flag up the particular differences between Northern Ireland and England and Wales in the way in which the Bill has actually been drafted in case we might have missed them.

Dr Latif: Clause 5 of the Bill actually introduces some positive changes to the inquest system in England and Wales and they do not extend to Northern Ireland. We would like to see the extension of the rights of appeal and to the broadening of the definition of the purpose of an inquest extended to Northern Ireland, which is not the case at the minute.

Q39 (24.02.09) Chairman: You do not get all the good bits!  
Dr Latif: Yes, that is it.  
Professor McWilliams: In the discussion with the Coroner in Northern Ireland when I asked about this, his view was that it was likely to fall to the Northern Ireland Assembly as one of their first pieces of legislation after the devolution of Policing and Justice. The good pieces of the Bill are not being extended to Northern Ireland at the moment and we would worry if there was then going to be a huge delay in that Bill being passed with the good pieces in it only applying to GB—since Northern Ireland has been waiting for the devolution of Policing and Justice for a long time.

Q40 (24.02.09) Chairman: The Policing and Justice Bill was published yesterday and I saw a copy this morning. I have not had chance to read it properly yet. I do not know whether you have or not, but if you have not you cannot answer whether you think there are serious human rights implications in the Bill. If you are not sure or if you want to reserve judgment, then please come back to us on it.

Professor McWilliams: We have been following all that. The difficulty for us is when are the political parties in government going to declare that they will trigger the mechanism to bring Policing and Justice down to Northern Ireland so that it becomes a devolved matter and no longer a reserved matter? We still do not have a date for that. Therefore, if the rest of the pieces that are in the Coroners Bill get delayed it means that you have a piece of legislation here in Britain that is working and is actually a positive duty now that is falling to the coroner and widens out the inquests. We would very much like to see that coming into Northern Ireland from a human rights perspective as soon as possible.

Q41 (24.02.09) Lord Lester of Herne Hill: I would like to ask you about delays in giving effect to the judgments of the European Court of Human Rights in a number of cases, including those involving the use of force by security forces in Northern Ireland. Have the Commission attempted to persuade the Government to implement those decisions without delay?

Professor McWilliams: Yes, of course. We have been involved in execution of some of the judgments, following up with the Council of Europe Committee of Ministers with how these judgments are being effectively taken forward. Obviously some of them were to do with the inquest cases but any of the European Court decisions that affect Northern Ireland we are engaged with the Government on making sure that they are effectively implemented.

Q42 (24.02.09) Lord Lester of Herne Hill: Do you agree with the Government that they have done pretty well all they need to do?

Professor McWilliams: No, we would have a different view on that. Some of this falls now to the legacy of the past issues and dealing with the past. As you know, the Government has set up a committee under the leadership of Archbishop Eames and Denis Bradley. I understand that they are giving evidence tomorrow to the Northern Ireland Affairs Committee on the report that has just been published. It is out for consultation and we will respond to that. Equally the Government has taken that as one of the steps it has taken to deal effectively with the outstanding issues of the past in terms of some of the justice issues and truth recovery issues. The Commission would take a different view on some of this. Anything that has been dealing with the past, whether it be inquests or inquiries or commissions that are now to be established, for example one proposal is for an international independent commission on truth recovery that all of these should be human rights compliant. We have spoken to that in our Bill of Rights—that we need to be constantly engaged in how these are best taken forward by the Government.

Q43 (24.02.09) Lord Lester of Herne Hill: One of the measures that the Council of Europe has been pressing on the UK and other countries to make sure that judgments of the European Court are speedily implemented is that there needs to be a national mechanism whereby the national courts have a mandate themselves to give effect to those judgments. If you look at the judgment reported in today’s Times in the Purdy case, the assisted suicide case, you will see the Court of Appeal there again say that they are bound by decisions of the House of Lords even if they are incompatible with the Convention, and they have no authority to not follow them because of the doctrine of binding precedent. I wonder whether your Commission, as our Committee, has made representations to the Government about the need to free our judges from what some might regard as the shackles of binding precedent of that kind so that when a judgment is given in Strasbourg and it affects a case which is
before our courts, the courts can then give effect to it without waiting for the Government to legislate or making a remedial order. Is that something that your Commission has, under this chapter under getting the stuff implemented, is that something you have dealt with because our Committee probably never has done?

Professor McWilliams: It is not in our Bill of Rights advice, although we are aware of the European Court decision on the right to vote for prisoners, for instance, and this would be an example where we speak to such an issue. We do not give a particular right to vote for prisoners but outside our recommendations but in our Section 69 duty under our functions we are asked to keep government appraised of policy, practice and law. We do say to government on those issues that we are concerned about that delay.

Q44 (24.02.09) Lord Lester of Herne Hill: I am asking you about whether you would like the courts to be free to give effect to these judgments without bureaucracy having to intervene?

Professor McWilliams: I was only using that as a particular example which would have fallen in terms of a faster remedy without a delay. We have not given that the attention that you have but I will certainly take it back to the Commission and we will think that through and come back to you on it. I was using that example as an example of the complexity for us in addressing that issue here was a judgment that, as you have said publicly, both Ireland and Cyprus moved quickly to put their house in order and the UK did not and in fact therefore it had a crossover for our advice in that we would have liked to have given that right but we say it must fall to parliament to legislate quickly on it. I see the point that you are making in relation to the judiciary as a remedy and we will take that back to the Commission.

Q45 (24.02.09) Lord Bowness: In 2008, the UK’s human rights practice was considered by the Human Rights Council as part of the new Universal Periodic Review process and in 2009 will be examined by the UN Committee on the Elimination of All Forms of Racial Discrimination, the UN Committee Against Torture and the UN Committee on Economic, Social and Cultural Rights. Do you think there are ways in which the Government could ensure a better participation by NGOs, including those in Northern Ireland, in the process before and being followed up with reports to these international monitoring bodies?

Professor McWilliams: Indeed. We ourselves have just responded to the ICCPR and are currently about to respond to the ICESCR, but our example on CEDAW, for instance, was probably a good practice example where the Commission engaged with civic society sectors, in particular the women’s sector, to build capacity in that sector to engage in the Shadow Report. Indeed, the Commission went to New York and gave evidence and gathered some of the evidence and testimonies from the various NGOs, and when we came back under the terms of concluding observations or engaging with our partner commission, the Equality Commission, with the NGOs sector on the ground about the importance of these international treaties, that CEDAW Committee in particular made some recommendations in relation to abortion in Northern Ireland which is a huge issue. Again we, in our advice, had to take on board what the UN and CEDAW said which was that the UK should undertake a consultation on that issue and we gave that advice separately in another chapter in our advice. The reason why I am saying that is because we are very aware of these issues in terms of human rights issues, but also the sectors interest in these issues and how we were going to deal with it and how we respond to the international treaties and do an examination of the concluding observations on those issues. Again, Nazia might want to pick up on some of that in relation to the examination on torture and indeed on the economic and social rights examination and the UN Convention on the Rights of the Child, all of which the Commission engaged in at the UN level.

Dr Latif: We would remark that the approach of governments so far has been a London-centred one in relation to engaging with civil society on the treaties and the meetings tend to take place at the Ministry of Justice in London which does make it difficult for regional NGOs in civil society to engage in the process. As the Chief Commissioner has just said, CEDAW was a good example because for the first time we saw a Northern Ireland specific series of meetings around the drafting of the Government’s report on how the sector could then engage with that. We would like to see more of that but there is no indication that that will be the case with the two treaties that you have just mentioned. We are certainly pushing for it and we would also like to see a particular role for the national human rights institutions. At the minute we tend to be seen very much as part of the NGO sector when we feel that we have a much more distinct role to play.

Q46 (24.02.09) Dr Harris: On this question of CEDAW, in your report on the Bill of Rights you do have this paragraph on termination of pregnancy and you identify exactly as you have said that it is a controversial issue in Northern Ireland. You do not actually quote the CEDAW report which states that it notes that “...the Abortion Act does not extend to Northern Ireland where, with limited exceptions, abortion continues to be illegal with detrimental consequences for women’s health.” Are you recommending that the Government responds to that? Is that the UK Government and only the UK Government, or is that something that you could draw to the attention of the Assembly who are dealing with these issues?

Professor McWilliams: It has to be drawn to the attention of the UK Government as the state party that responds to CEDAW. CEDAW’s concluding observation was that the UK should undertake that consultation. I am sure, Dr Harris, that you are very aware that the Assembly has already debated this
very issue and are very divided on the issue. Our view is that it falls to the UK to respond to the CEDAW’s concluding observations.

Q47 (24.02.09) Dr Harris: If the UK just says that it is up to the Assembly, which it might well do because it has announced that there has been agreement to transfer responsibility for criminal law under which the Abortion Act comes, but that does not take us anywhere further, does it?

Professor McWilliams: It does not.

Dr Latif: The same recommendation would apply. The Assembly should still be expected to consult and then respond appropriately to the outcome of the consultation process.

Q48 (24.02.09) Dr Harris: In your very interesting report you make a recommendation that a provision should be drafted on education and that education in all its forms must be directed to the promotion of human rights, equality, dignity of the person and respect for diversity and tolerance. You have particular experience of a divided education system and the move towards integration. Can you offer a view on how that debate plays into human rights, particularly the non-segregation in education?

Professor McWilliams: We took the view that the issue of non-segregation and integration is a policy decision and it falls to the Education Department and to the Government to decide on that. We did take the view that awareness in terms of what we have spelt out in the actual rights and recommendations in terms of understanding and tolerance and human rights awareness in schools and in education itself, not just at the primary level but at secondary and tertiary, is extremely important and that is the piece of advice that ended up as a recommendation. What I am saying to you is that there is not a right to integrated education.

Q49 (24.02.09) Dr Harris: I have one final point on this interesting report and it is what you say about children’s rights, that “... a provision should be drafted to ensure that public authorities must take all appropriate measures to ensure the rights of every child to be informed of their rights, have his or her views respected, considered and given due regard in all matters affecting the child, take into consideration the child’s age, level of understanding, oral capabilities, the Fraser competence test.” That must be an issue again in education where in both the Province and in the rest of the UK children at school are made to pray. It is compulsory that they should pray by the state. Presumably at some point they may have a view that that is the wrong god that they are being made to pray to or under the wrong rights for them. Is that something that you bore in mind when framing that recommendation? I am talking about collective worship and going to mass at school.

Professor McWilliams: That differs in terms of how they worship and pray. You are quite right that it is compulsory to have religious education instruction in the curriculum of Northern Ireland. However, the rights that we pay attention to are in terms of the rights of the child. Those are coming from international standards and in particular in terms of that the UN Convention on the rights of the child.

Q50 (24.02.09) Dr Harris: If a child is punished for refusing and they are judged to know what they are doing in asserting their rights, how do you deal with that in Northern Ireland?

Professor McWilliams: If a child is punished?

Q51 (24.02.09) Dr Harris: For not doing what they are told to do in respect of instruction for worship.

Professor McWilliams: Children can be withdrawn.

Q52 (24.02.09) Dr Harris: But if their parents do not withdraw them and if it is a child of an age decides that they do not want to do it?

Professor McWilliams: That would not just go for that religious instruction; that might well go for all kinds of instruction.

Q53 (24.02.09) Dr Harris: A right to religious freedom—I do not want to pursue the point but it is just one example—there is a right to freedom of religion and there is no qualifying age. When you are in school you do not lose that right whether you are a teacher or a pupil as long as you are old enough to make that decision and you have actually stressed this. The Fraser competence for reproductive rights comes in significantly earlier than 16, so if a 15-year-old says that they do not want to do this any more because it is just not their religion and their parents will not withdraw them and they are punished by the school for refusing to go, how do you deal with that in Northern Ireland?

Professor McWilliams: That would fall to the Children’s Commissioner who has responsibility for ensuring that children’s rights are respected and upheld and no doubt if such a case arose I have no doubt that the Children’s Commissioner would assess that and then decide if there was a genuine complaint and assist that child as a victim to take that case to court. If there was not a victim, and the Commission has just been found in a recent court judgment that it cannot be in the absence of a victim, it would fall to us because we are the only commission that has the power to take a case on our own motion. It may well be that such a case would come to the Commission and we would have to take it through the criteria of our legal committee to see if it met the criteria for assistance to take the case into court.

Q54 (24.02.09) Lord Lester of Herne Hill: On the question of abortion—I declare an interest on behalf of the Family Planning Association of Northern Ireland, a case where I acted—is it not the position that your court of appeal decided that, without any question about changing the law, there should be any guidance? In fact, the guidance was accepted by the Government but it is now blocked in your Assembly and therefore there has not been any translation into practice yet. Is that not the current position on that?
Professor McWilliams: The current position is that it went out for consultation and we have no idea where the guidance is sitting at the moment.

Q55 (24.02.09) Chairman: We have come to the end of our questions. Thank you for coming. Is there anything you want to add before we conclude the formal session?

Professor McWilliams: Firstly, we would thank you for the opportunity and we very much look forward to working with you on both the issue of the Bill of Rights for Northern Ireland but also when the Green Paper comes out. We want to make sure that there is a clear road between ourselves in Northern Ireland and anything that might happen in the UK Bill. 

Chairman: Thank you very much. The open part of the agenda is now concluded.
Wednesday 2 December 2009

Members present:

Mr Andrew Dismore, in the Chair

Bowness, L
Dubs, L
Falkner of Margravine, B
Morris of Handsworth, L
Onslow, E

Mr Virendra Sharma

Witnesses: Rt Hon Michael Wills MP, Human Rights Minister, and Mr Edward Adams, Head of Human Rights Division, Ministry of Justice, gave evidence.

Q1 (02.12.09) Chairman: Good afternoon, everybody. Welcome to the Joint Select Committee on Human Rights evidence session with Michael Wills, who is the Human Rights Minister at the Ministry of Justice. We are looking at the work of the MOJ Human Rights Minister. We will be joined shortly by Edward Adams, who is the Head of Human Rights Division at the Ministry of Justice. Do you want to make any opening remarks, Minister?

Mr Wills: If I may, Chairman. As I am not standing for re-election this will be my last session with you, I think.

Chairman: You never know!

Q2 (02.12.09) Earl of Onslow: Will Lords Bowness, Morris and Onslow be seeing you again, do you think? Are you expecting elevation?

Mr Wills: Certainly not!

Lord Dubs: Some of us would like that.

Q3 (02.12.09) Lord Bowness: It is not that bad!

Mr Wills: I do not think I have done anything to deserve that. Thank you very much for this opportunity. I think it might be helpful if I just set out briefly what has been happening over the last year. A lot of the work is continuing what we have been doing already and really this is just an update on what I have said in previous sessions. We are committed to embedding a human rights culture throughout Whitehall, and that work continues with the Senior Human Rights Champion Network that meets regularly at a senior level in the Civil Service. We think it has been successful as an enterprise so we are now seeking to replicate that throughout the United Kingdom’s inspectorates and regulatory bodies. We have set up a forum, which is going to be co-chaired with EHRC, to provide leadership on embedding human rights within those bodies as well. We are reviewing the human rights guidance that we provided and we have now made some really significant progress in this area. There are very large amounts of information provided by Government on the human rights implications of Bills, including in the Explanatory Notes. All Bill teams now receive individual support from officials in the Ministry of Justice to make this happen. I hope you will agree that there has been a significant improvement in this and I would just like to place on record my view that this has happened and also my thanks to all the officials who make this happen day in and day out. As I say, ministers can claim little credit for any improvement, but the officials can do so and I would like to pay tribute to them. Finally, I would just like to draw the Committee’s attention to the fact that we have begun, not with a lot of publicity, the exercise of deliberative events that I may have spoken to you about before on a possible Bill of Rights and Responsibilities. This has looked at this from various aspects, but essentially there have now been five regional events which have consisted of 100 people selected randomly but to be demographically representative of the population as a whole, and they have been broadly representative in that way, to deliberate, to discuss three main areas largely focused on a statement of values which the Prime Minister has committed to, which could form part of a preamble to any new Bill of Rights and Responsibilities. Quite a lot of time was spent on a Bill of Rights and Responsibilities. This has looked at this from various aspects, but essentially there have now been five regional events which have consisted of 100 people selected randomly but to be demographically representative of the population as a whole, and they have been broadly representative in that way, to deliberate, to discuss three main areas largely focused on a statement of values which the Prime Minister has committed to, which could form part of a preamble to any new Bill of Rights and Responsibilities. Quite a lot of time was spent on a Bill of Rights and Responsibilities: should we have one; what will it consist of; how will it be enforced; all questions that are very familiar to this Committee. At the start of each of these sessions the group were polled on key questions and then they had six hours of deliberation and were polled at the end of it. We are still digesting the results of all these events but we will be publishing them and will be happy to write to you with the details of the results. If Members of the Committee have any particular questions on this I would be happy to address them as best I can. We have then had two further events which have been reconvened events, in other words they consist of a large number of the people who took part in the original events, to discuss these
questions further having had the chance to reflect on them. There will be one further event in the New Year and then we will take stock and see where we are on this. The headline is that there is a real popular appetite, judged by these events at least, to discuss these issues and a very significant majority in favour of having a new Bill of Rights and Responsibilities. I should say we have made it clear throughout that this would not be a replacement for the Human Rights Act but in addition to it. With those remarks, I conclude my opening statement.

Q4 (02.12.09) Chairman: Thank you for that. The first thing I would like to talk a bit more about is what you have just mentioned, the national debate. You said 100 people were involved, was that 100 at each of the five events or 100 in total?  
Mr Wills: 100 at each event.

Q5 (02.12.09) Chairman: What do you think you have learnt from these discussions?  
Mr Wills: We have learnt that such deliberative events are very valuable, that people appreciate taking part in them. They have demonstrated the wisdom of crowds. People have engaged very vigorously and sceptically with all the issues. There is a real appetite for such a Bill of Rights. We are still digesting the results. There is a pretty strong appetite for entrenching in some way economic and social rights, although quite a wide range of opinion about how far they should be entrenched. I should say we need to be very careful about drawing too many general conclusions from this. As I say, this is demographically representative but we have to be careful about this and I would not want firm conclusions to be drawn politically and administratively from these events. They are a start of the process and reveal something that the Committee I know will be aware of, that these are very complex and difficult issues. The idea that the Human Rights Act is unpopular when people look at what it means I think is wrong and, therefore, as we look at the debate which will undoubtedly intensify as we come towards a General Election I do not think anyone need have any fear about robustly defending the Human Rights Act. I certainly will not have any such doubt.

Q6 (02.12.09) Chairman: It has not come up with the same view that the EHRC findings did from their survey that 42% of people think it is all about criminals and terrorists?  
Mr Wills: No. What happens when people think about these things rather than responding to one question is they come up with a very sophisticated answer and understand the importance of human rights. Of course people are worried by those sorts of stories in the press. In each event we went through a sort of myth-busting exercise with them asking them about certain stories that had appeared in the press, some of them true, some of them not true, as a way of getting them to engage about what human rights actually means as compared with the way they are perceived.

Q7 (02.12.09) Chairman: How do you see taking this process forward? You have mentioned the follow-up meetings, but engaging with a few hundred people is not really selling it to the public at large. How do you think you can take it forward into the wider public arena?  
Mr Wills: I do not want to speculate at the moment because we have got to digest the statistical evidence. That will be available fairly soon and I would be happy to come back, assuming I am still here, early in the New Year to discuss specifically going forward. Realistically, the next few months are not going to be taken up with the Government’s view of a Bill of Rights but with the Opposition’s version of a Bill of Rights which should, in their view, replace the Human Rights Act. There is quite a profound division between the Conservative Party and both the other main parties. I do not wish to speak for the Liberal Democrats, but my understanding is that they, like us, believe that the Human Rights Act is good legislation and should not be repealed. That is a political divide and certainly as a minister I shall be engaging very vigorously with the Conservative policy which I believe is profoundly mistaken.

Q8 (02.12.09) Mr Sharma: You have partly answered that the Leader of the Opposition has made a statement that one of their pledges is the replacement of the Act. Is there a danger of the debate degenerating into a General Election fight about how best to replace the Human Rights Act?  
Mr Wills: I think there is a danger. I am not trying to be politically partisan about this, but this is very irresponsible politics and, if I may, I will explain to the Committee why I think that. This is not a genuine division between the parties on ideology or values and there are, of course, differences between political parties, things like the size of the state and so on, and that is fine, but this is irresponsible politics. It is irresponsible because the Conservative Party have made it clear that they want to incorporate in some form the European Convention on Human Rights. If they wanted to de-incorporate that is fine, and if they wanted to resign from the European Convention that is their choice, but they would be profoundly mistaken. They do not want to do it, they have made it clear that they will incorporate, but in doing so and saying they are going to scrap the Human Rights Act they are raising expectations in sections of the media and the general population who wrongly, in my view, nevertheless believe the Human Rights Act is profoundly flawed legislation.  
Earl of Onslow: Minister, the temptation to go Tory bashing is even quite strong in some of us Tories, but is it really necessary on this? I quite understand your point but we are actually asking you what your views are.

Q9 (02.12.09) Chairman: I am chairing the meeting. I think it is fair for the Minister to put his point of view.
Mr Wills: And then by all means attack me on it! It is fair to say that in all the appearances I have made before this Committee I cannot remember a time that I have steered into politically partisan terrain.

Earl of Onslow: This is why I am surprised at your present behaviour.

Q10 (02.12.09) Chairman: He was asked a question and he is allowed to answer it.

Mr Wills: If you will allow me to finish my case you will see it is not so much a politically partisan case, it is more a constitutional case, if I may. The point that it is irresponsible is that in practice expectations have been raised which will not be fulfilled. That is the point about this. If you incorporate the European Convention in some form or another you are going to get all the issues under that bit of legislation as arise under the Human Rights Act and nothing that an Opposition spokesman has said gives any reason to doubt that will be the case. The problem that you have got, as you rightly say, Mr Sharma, is we will have what in the end will be a sterile debate. There will be a debate about this, undoubtedly, but it will be sterile and it will do nothing for the democratic trust of the British people in their politicians. In the end, if there is a Conservative government and they do this, three or four years down the line they will end up in exactly the same place as we are and the task for all responsible politicians who believe in human rights and want to remain signatories to the Convention and incorporate the European Convention in some form of domestic legislation is to make the case for these rights and promote a human rights culture among everybody because that, in the end, protects the individual against the state and all responsible politicians actually want that.

Chairman: Do you want to put a different point of view?

Q11 (02.12.09) Earl of Onslow: No. My difficulty is I happen to agree with the Minister. I think we would be wrong to scrap the Human Rights Act and I will say so to my party quite loudly. Whether they will pay a blind of notice to me or not is a totally different question.

Mr Wills: They certainly will not pay a blind bit of notice to me!

Q12 (02.12.09) Lord Bowness: Minister, I am not sure that this question really is going to advance matters very far because it tends to refer to the debate which you have just been talking about with Mr Sharma. Perhaps I can put it this way: the Shadow Secretary of State made some statements in the autumn about Essex Police not being able to name and shame, and without going into the rights and wrongs of that, or whether he should or should not have said it, I think the response to that by the Secretary of State for Justice was to dismiss it as Tory “spin”. I suppose my question to you is would it not be better for ministers to answer those sorts of statements by a detailed and factual response to establish why something is not a myth, if indeed it is not a myth, rather than perhaps politicising the whole thing still further?

Mr Wills: Yes is the answer to that. I am not saying that to criticise my boss because I do not know the circumstances in which he said that. All I can tell you is in all my experience of working for him he is meticulous in providing evidence, as you would expect from a former barrister, for everything that he says. You are absolutely right, of course ministers should engage. This should not be a matter for party political debate, I agree. We should engage with the evidence, with the facts, and where policy needs changing we should change it.

Q13 (02.12.09) Lord Bowness: Are you able to give us some evidence of where Government ministers in particular have actually embarked on this? My recollection is, and, Chairman, you will correct me if I am wrong, that we produced a report not so long ago when either Mr Straw or Lord Falconer were suggesting that a review of the Act might be necessary to counter the effects of some of the decisions which had been made. I think this Committee took the view that it was just bad implementation and interpretation of the Act and not a case where the Act needed amending. We made the point at that time very clearly that these sorts of myths were like straight bananas in Europe, if you let it be said often enough people start to believe it. Mr Wills: We try, wherever we spot any misrepresentation of the way the Human Rights Act works to counter it. I write letters to the newspapers, our press office ring newspapers to try and educate them about this and ministers make speeches all the time, not that they get reported very much. We do go out and about saying these things. It is hard to quantify the impact of this. My impression is, even over the last two, two and a half years, that the kinds of misrepresentations in the press are declining. I think the Media Trust have just put out a report in which Jon Snow wrote the foreword, and I am probably paraphrasing here, where he he said something like, “It’s hard to overestimate the degree of ignorance among the press about the Human Rights Act”. That is largely correct. My impression, however, is that it is getting better, that every time we ring up and correct the myths about Dennis Nilsen or gay pornography or whatever it is, there is just a little bit less of it next time. It still comes up from time to time, but we try to counteract it wherever we can and will go on doing so. It should not be party political. The substance of all the main political parties agree on a necessity for having some protection for human rights, they agree that there should be incorporation in domestic legislation and there should not be a party political dice about this, these rights are too precious and too important for that.

Q14 (02.12.09) Lord Morris of Handsworth: Minister, in Australia the National Consultation on a Bill of Rights for Australia has recently recommended that Australia should have its own Joint Committee on Human Rights. What role do
you see for Parliament and parliamentarians in any future human rights settlement, whether under a Bill of Rights for the UK or otherwise?

Mr Wills: It is not really for me to say, with respect, what Parliament should do. I think ministers have to be quite careful about that.

Q15 (02.12.09) Lord Morris of Handsworth: You do have a point of view.

Mr Wills: I do have a point of view.

Q16 (02.12.09) Lord Morris of Handsworth: Share it with us.

Mr Wills: I will give you my personal point of view. Personally, I think the sort of scrutiny that the Joint Committee provides, the way we are held to account, not only by this Committee but by others, is very valuable for us and I would like to see that continue. Where we go beyond that, forgive me, I should not trespass on constitutional grounds but I am happy to share my views privately on another occasion.

Q17 (02.12.09) Earl of Onslow: From your perspective as Human Rights Minister, is the EHRC doing enough to fulfil its human rights mandate? It has come in, not unreasonably I think, for a certain amount of stick recently. As you know, we have been hearing evidence about it.

Mr Wills: Yes.

Earl of Onslow: To this particular member of the Committee it appears that its senior ranks are split all over the place and it seems to be malfunctioning. Where we go beyond that, forgive me, I should not trespass on constitutional grounds but I am happy to share my views privately on another occasion.

Q18 (02.12.09) Earl of Onslow: As my Chairman rightly reminds me we have not finished taking evidence yet, but the first evidence is very strongly along those lines.

Mr Wills: As you will be aware, my Lord, I am not responsible ministerially for the governance of the EHRC, so if you will forgive me I will not address myself to that. For that, you will have to address GEO ministers. However, in answer to your first question my answer is no, I do not think they are doing enough to promote human rights and the Human Rights Act. We have made our views clear on that. We will encourage them to carry on fulfilling their statutory duties to do that, but I have to say we were disappointed in their response to the good report that was produced earlier this year. It is full of aspiration and too light on what I would call concrete goals that can be delivered within a specified timeframe. We are actively working in good faith on all sides with the EHRC to add some meat into that particular offering.

Q19 (02.12.09) Earl of Onslow: Can you give us some examples of the chops and sirloins which you are wishing to add to this?

Mr Wills: I think we can indicate in broad outline that we would like their strategy to be more specific, more detailed and to set out clear timeframes within which their objectives are going to be delivered. Beyond that, this is a matter for them. They are independent, and should be so, and they should work in that spirit. What we do want to see is some detailed engagement with the issues, and I am afraid we have not seen that yet, but I am confident that we will. We have expressed our views at official and ministerial level and my impression is that the EHRC are actively engaged in addressing our concerns. Although we are disappointed up until now, I am confident that we will cease to be disappointed in the very near future.

Q20 (02.12.09) Chairman: Just building on that, we had this inquiry into human rights by the EHRC that took a year effectively. Do you think that was a useful exercise? Do you think it taught us anything we did not already know?

Mr Wills: The inquiry?

Q21 (02.12.09) Chairman: Yes.

Mr Wills: Personally, I thought it was a very useful exercise. I gave evidence to it and was impressed by the questioning and thought it was a useful exercise. It went into a lot of areas that needed to be gone into in public service delivery and the impact that human rights can have on that. I thought it was a useful exercise, yes.

Q22 (02.12.09) Chairman: What was new that came out of that that has not already come out of work that either you or we have done, for example?

Mr Wills: There was nothing that was revolutionary about it or in some ways unexpected but, nevertheless, to have distinguished thinkers looking at this systematically over a period of time taking a wide range of evidence and pulling it together was a very useful exercise. We may look at it and think, “Well, I knew that already and I knew that already”, but to bring it altogether in what was a fairly authoritative, thoughtful piece of work was very valuable, I think. I am not sure that I would agree with any implication that having distinguished, thoughtful people deliberating on these things and coming up with conclusions is not valuable; I think that is always valuable.

Q23 (02.12.09) Chairman: Perhaps we can look at some of the conclusions. Some of the conclusions and recommendations are pointed at the Government. What are you doing to consider those and implement them, if you agree with them?

Mr Wills: We do not agree with everything, but we are considering them very carefully and moving forward as I have already suggested we are going to move forward.

Q24 (02.12.09) Chairman: How are you taking it forward? Give us some examples.

Mr Wills: We have certain responsibilities in promoting human rights and, indeed, in defending the Human Rights Act. We, the Government, taxpayers, are spending a lot of money on the EHRC to fulfil its statutory duties: to promote human rights and the implementation of the Human Rights Act.
We expect them to do that. When you point the finger at Government, that is fair enough, and we are doing what I have said we are going to do, but as part of the process that Lord Onslow referred to we now need to make quite clear that we expect the EHRC to do their job on this. That is where I think the focus should be. We will do our job and will continue to do our job in the way that I have outlined, but I would not want any attention to be deflected away from the proper role and function of the EHRC on this.

Q25 (02.12.09) Earl of Onslow: Something has come to my notice recently and I have got a motion down in our House on Monday on the operation of the Proceeds of Crime Act which originally the Government said that either a policeman or customs officer or anybody else who is named by the minister, and nobody noticed this third clause was particularly broad and allowed the Government to put another 25 people down, I think. That is not the exact point I am raising because that is going to come up in the debate. In the Statutory Instrument it said, “We do not have to comment on this from a human rights point of view”. My interpretation of human rights is the gross increase of the power of the state should be resisted. How do you answer that? I accept it is very technical and it has taken me three days to get my head round the whole thing.

Mr Wills: I am afraid I will have to write to you about that, my Lord, I am just not sighted at all on

Q26 (02.12.09) Earl of Onslow: I understand that, but it is an important point.

Mr Wills: On your fundamental point of principle about the onward encroachment of powers by the state, of course they must be resisted.

Earl of Onslow: On the Statutory Instrument it said—

Q27 (02.12.09) Chairman: Hang on. It is very technical and detailed and it is not his Department. Mr Wills: I will write to you, I am afraid I am just not sighted on it.

Chairman: It is a Home Office issue. It is a question you should have asked yesterday.

Earl of Onslow: I know, but I had not done my homework yesterday.

Q28 (02.12.09) Mr Sharma: Minister, it is generally not clear what is the division of responsibilities between the EHRC and the Government, for example who counters media myths about human rights. Do you think more should be done to clarify the respective responsibilities of the Government and the EHRC?

Mr Wills: No, I do not think so. They are actually clear, although, as with all these things, always in Government there is going to be blurring around the edges. As you will be aware, the Ministry of Justice is responsible for the Human Rights Act itself, the legislation, the development of Human Rights policy generally and we provide advice throughout Whitehall on the application of the Human Rights Act and, indeed, the European Convention on Human Rights and do all the other things that I have already outlined. The EHRC has a statutory duty to promote equality and human rights and has, as it were, the lead responsibility for promoting the culture of human rights, which we have discussed on several occasions as being fundamental. Inevitably, ministers cannot remove themselves from that work of promoting culture, but we are politicians and we are tainted and our ability to be able to persuade people outside is always going to be limited. It is far better that this work is led by an independent body and independent non-political figures who, better or worse, are more likely to command credibility and do a better job of promoting that culture. It is not to say that I will not stand up vigorously and do what I can, I will, but it is better that the EHRC take the lead on this and, as I have said—I am trying to avoid a cliché—are now stepping up to the plate.

Q29 (02.12.09) Mr Sharma: What sort of dealings do you have with the EHRC and do you meet Trevor Phillips regularly?

Mr Wills: I do meet Trevor Phillips regularly and I will continue to do so. I met the Human Rights Commissioner regularly and now a new one has been appointed—an excellent appointment if I may say—I have asked to have a meeting with her as quickly as she is available; and I will continue, I hope, to meet her regularly. I very much hope that she will want to do that and I certainly do.

Q30 (02.12.09) Chairman: What input did you have into the reappointment of Trevor as Chair? Did you discuss it with Harriet and Maria?

Mr Wills: It is not my responsibility.

Q31 (02.12.09) Chairman: So you had no input at all into Trevor’s reappointment?

Mr Wills: No; but nor would I expect to. This is not our ministerial responsibility.

Q32 (02.12.09) Baroness Falkner of Margravine: It is interesting you say that. You must have a view on the appointment of the Commissioners, surely? Or is that not your responsibility and you therefore do not take an interest in who is appointed?

Mr Wills: I have a view on everything I am afraid to say, and of course I take a keen interest in it but I have no ministerial responsibility for it.

Q33 (02.12.09) Baroness Falkner of Margravine: Do you articulate your view in any sense to Trevor Phillips or others in terms of the appointments?

Mr Wills: No. The first I knew about whom the new appointee was was when I was informed I think 24 hours beforehand; but I would not have expected to have any input either.

Q34 (02.12.09) Baroness Falkner of Margravine: I was referring to the Commissioners—forgive me if there is a misunderstanding. Eight out of the 15 Commissioners, the board, are new. Did you have any discussion of criteria and express any views in any sense on who they were?
Mr Wills: No.

Q35 (02.12.09) Baroness Falkner of Margravine: But you would have your view on them.

Mr Wills: As I say, I am afraid I have views on everything and in this particular case on the appointment my view is that it is an excellent appointment and I was delighted and I would have said that if I had been consulted, but I was not. Nor would I expect to have been; I would not expect to have been consulted and I was not consulted.

Q36 (02.12.09) Baroness Falkner of Margravine: I think I am slightly confused!

Mr Wills: Sorry.

Q37 (02.12.09) Baroness Falkner of Margravine: It may be my fault; I am new to this Committee and I am also new to this inquiry, forgive me. I am actually talking about the number of new appointments.

Mr Wills: I am the Human Rights Minister; I do not have responsibility for disability or anything else—I am Human Rights. So the previous Human Rights Commissioner resigned and a new one was appointed. In that process I was not consulted and I would not have expected to have been consulted but I think that the lady who was appointed is an excellent appointment. That is my personal view.

Q38 (02.12.09) Baroness Falkner of Margravine: I find it rather curious that you see human rights, which surely is a cross-cutting theme, in terms of the Equality and Human Rights Commission as very narrowly defined. I would have expected the Ministry of Justice to take a position overall on the suitability or otherwise of Commissioners per se, and not just the Commissioner who wears that particular hat. But can I move on—I will accept what you say, and perhaps other people will come in—and suggest that there are eight members of the Labour Party out of 15. There is one Liberal Democrat but there does not seem to be anyone who we can identify as Conservative. Would you accept that the Equality and Human Rights Commission perhaps looks like it is captured by one particular political group? And even if it is a perception with which you do not agree, would you accept that people might rightly have that perception?

Mr Wills: On this I have to confess my ignorance. I am just not aware of the party political complexion of the Commissioners. Speaking from memory I have no briefing on any other of the Commissioners. Just to go back to that particular point, government does sometimes look fairly arbitrarily divided up, but it just is; and, as it so happens, responsibility for the EHRC corporately falls to the GEO; it does not fall to the Ministry of Justice. It could have fallen to the Ministry of Justice perfectly logically, and perfectly logically it could have fallen to the GEO and the decision was taken not by me that it should go to the GEO, and that is where it is. So I only get briefing on the Human Rights Commissioner. As far as I am aware I was not told whether or not she was a member of any political party and I do not know. I just do not have the knowledge that you have on this. I am sorry; I should have but I do not. In terms of is it a good idea to have cross party people involved—of course; and the broader the political base for independent bodies like this the better under all circumstances always. It is not always possible and I have no idea how the selection process was conducted, whether it was, as it were, party political blind, which it might have been—I just do not know.

Q39 (02.12.09) Baroness Falkner of Margravine: I do not think it would have been.

Mr Wills: I do not know. I can find out and I am happy to come back to you about the process but as a matter of broad principle what you are saying—and I would agree with—is that these appointments should be party political blind; there has to be a degree of expertise and experience in the particular areas. It may so happen that what emerges out of that process is a particular skew to one political party or another.

Q40 (02.12.09) Baroness Falkner of Margravine: In the spirit of lessons learnt from this are you perhaps likely to suggest to your colleagues in the government equalities office that they may perhaps be slightly more open to this kind of information and knowledge and perhaps act to counter these perceptions because human rights, of course, is the ownership of all citizens and not just a particular creed or ideology.

Mr Wills: As you have just discovered I am shamefully ignorant about the selection process so I had better inform myself before I make any further representations on it, but I will inform myself.

Baroness Falkner of Margravine: Thank you.

Q41 (02.12.09) Lord Morris of Handsworth: Minister, you will be aware that the Supreme Court has refused permission to appeal in the case of Weaver. Can you now set out the government's timetable for action in respect of clarifying the meaning of public authority under the Human Rights Act?

Mr Wills: As you know this has been a continuing subject of great interest to us and indeed to you and others and clearly this is a very difficult issue for us. My understanding is that the Supreme Court indicated, although they refused leave to appeal in this particular case, that they are anxious to get an early opportunity to these issues. As you know, we have said that we will go out to consultation. I have explained on previous experiences here why we have not yet done so; the whole history of the Green Paper on rights and responsibilities and, I am afraid, the inevitable ins and outs of all this. I think given that the Supreme Court has made it clear that they want to have a look at it—and clearly if that happens and I assume that it will happen—at the earliest opportunity, which I think is the wording they have used or something similar, that could have a huge impact on this. This whole debate was sparked off by a decision of the Law Lords in YL and we must assume that if they look at this area again that whatever they rule will equally have a huge impact.
and I think it would be imprudent and hasty to go out to consultation until we have a better idea of what was going to come out of that.

Q42 (02.12.09) Lord Morris of Handsworth: Has the Department received any representations since the decision of the Supreme Court?

Mr Wills: We were certainly aware of it and I am not sure, Edward, have we received any representations?

Mr Adams: I do not know of any representations that we have specifically received, no.

Q43 (02.12.09) Chairman: Can I just come back to this? Has the government now effectively abandoned the original intention as expressed by the then Lord Chancellor when the Human Rights Act was enacted that it should apply to private bodies performing a public function?

Mr Wills: No, we have not abandoned that at all, although we have been trying as a result of our continuing work on this to fathom out what exactly Parliament intended at the time—it is not as clear as it might be, I have to say. As I have said to this Committee before there is a clear issue here and I know, Mr Chairman, that you and the Committee equally take a very strong view that that is the case and that this needs to be resolved one way or the other so that there is clarity here. It is in no-one’s interests that a lack of clarity should persist. But for various reasons we have not been able to get to a point where we can bring that clarity with any certainty and in all honesty I think it is going to be a long process whatever happens. It is certainly going to continue long past my time in Parliament.

Q44 (02.12.09) Chairman: It has been a pretty long process so far since the YL case and of course the ones before YL when it all started to unravel. So why is it taking so long to form a view on an issue which is actually relatively straightforward when you think about it? The question is: if the government, if a local authority, if a health service commissions services that it is statutorily required to provide from a private body to provide those services, for whatever reason—privatised or contracted out—why should not the people who receive those services have the protection of the Human Rights Act as against the provider? A simple question.

Mr Wills: I agree with you that it has taken a long time. I am afraid I do not agree with you that it is a simple process—it is not; it is very difficult.

Q45 (02.12.09) Chairman: What is complicated about it?

Mr Wills: I would refer you to the judgment in YL, which was a three to two split, so the extremely learned Law Lords who are far more intelligent, sophisticated and knowledgeable about the law than I am certainly did not find it relatively simple or straightforward.

Q46 (02.12.09) Chairman: But it is for Parliament to decide, is it not? The Law Lords’ job is to interpret the law and it is for Parliament to write the law.

Mr Wills: I was going to go on to remind the Committee of the reasons that it has taken this particular government, this particular minister the time that it has taken. You will recall that the original intention was to include as part of the consultation on the Green Paper on rights and responsibilities a consultation on this—

Q47 (02.12.09) Chairman: Actually the original intention goes back before that. When I first introduced a Private Member’s Bill I was promised a solution by Christmas and that was three years ago, four years ago?

Mr Wills: Yes. I was referring to this government under this Prime Minister with this Human Rights Minister, which does predate your Bill.

Q48 (02.12.09) Chairman: I was talking about your predecessors, I suspect.

Mr Wills: I know but I am answering for myself. I am sure that they would be delighted to come back and answer for them as well but I am answering for myself and, as you know, I have not sat on my hands on this particular issue; I have done what I felt I could do to try to advance it. In the particular case of YL we did deal with the mischief that we felt was created by that and we dealt with it as pretty expeditiously as we could. I gave that commitment to your Committee that we would do that and we did do that—I did do that.

Q49 (02.12.09) Chairman: I fully accept that the specific problem created by the YL case in relation to care homes was dealt with.

Mr Wills: And dealt with expeditiously.

Q50 (02.12.09) Chairman: And I would not argue with that. The issue is the wider application of the generality. We have just seen another case in Weaver where it has all had to be argued through again and there will be more and more and more of them.

Mr Wills: I was trying to explain—and I have explained on previous occasions. As I said, the intention was that we would include the consultation on how we should define public authority and with great respect this is not quite as simple as it seems. There are all kinds of different ways of approaching it; the Freedom of Information Act approaches it one way and there are lots of different ways that this could be approached. Lawyers will find lots of different ways to define it and each of those ways actually have consequences. We have to be very clear about an issue which is (a) as important as this, and (b) as far reaching as this that we do not create unforeseen consequences, perverse consequences which no one would actually want.

Q51 (02.12.09) Chairman: Like what?

Mr Wills: If I may finish the point? That requires a consultation which is going to be far longer and deeper than the usual statutory Cabinet Office of 12 weeks. How we do that is a matter for debate as well. My original intention, just to answer one of your previous questions, was that we would consult on this in the context of the Green Paper. As it turns out
we made a judgment—I made a judgment shared by my colleagues—that we did not want the Human Rights Act to be a subject for deliberation for the reasons that I mentioned earlier, and I will not upset Lord Onslow by going back to them. But we made that decision, as I have explained to the Committee before. This meant that we had to have, as it were, a stand-alone consultation and that is still our intention. However, it is also the case that the legal context is shifting. The mere fact, in my view, that the Supreme Court has made this indication, and although they refused the right of appeal in the case of Weaver none the less specifically said that they wanted an early opportunity to consider this, tells me that we would be wise to wait for them to do so because it could have a dramatic impact on the nature and scope of the consultation and, indeed, the nature and scope of any eventual decision. It is not easy. I understand your impatience, Mr Chairman; I do understand your intense frustration and impatience and if I was sitting where you are sitting I would be even more frustrated—

Q52 (02.12.09) Chairman: Is this not putting the cart before the horse? 
Mr Wills: ... but things are not sometimes that simple or tidy—I wish they were, but they are not.

Q53 (02.12.09) Chairman: I have yet to hear what is complicated about the issue other than it is complicated. Give me an indication of one of the complications—just one.
Mr Wills: What we want to make sure about, for example, is that we do not have perverse consequences.

Q54 (02.12.09) Chairman: What? Give me an example.
Mr Wills: I was just about to go on and give you an example. What I was going to say was that we are talking here about the provision of public services. We have to make sure that there is no perception that the provision of public services would be rendered more difficult, more expensive for the provider by bringing it within the ambit of the Human Rights Act. It is my own view, strongly, that the application of the Human Rights Act and, profoundly so, the principles of human rights of dignity and respect improve the service delivery of public services, and therefore it is a good thing; and the evidence that we have, some of the evidence that the Department has produced and others show that that is the case. So I am not worried about this myself, but I am not the only player here and we have to be extremely careful that rightly or wrongly, accurately or inaccurately we do not discourage providers of public services from continuing to do so. For example, the other complication is, with all respect—and I know you are a distinguished lawyer, Mr Chairman—all the legal advice I have had is that actually defining this in a way that is not subject to perverse consequences and does not give rise to endless litigation is quite complicated.

Q55 (02.12.09) Chairman: Baroness Hale pointed the way and that was picked up in the last version of my Bill.
Mr Wills: I will happily study it again and I am very happy to write to you about the issues that it gives rise to.

Q56 (02.12.09) Chairman: Before I bring colleagues in, does it not actually amount to this: that what is going on is basically you are pandering to the private sector here who are worried about that somehow they are going to have these appallingly heavy duties on them which is yet another myth that the government has failed to bust?
Mr Wills: I have just tried to say that whether you think that people are mistaken or not will transpire in the course of time. What we have to make sure about is that provision of public services will not be disrupted or interfered with in any way. That is one of the issues; it is not the only issue. What we are actually talking about here is a process point—not a point of principle or anything else. The real reason right now is to do with what the Supreme Court has said. I have no idea when they will be able to look at this case but it will be in the near future. Even if they did it tomorrow and we were clear about what their view was this process of consultation is going to take some considerable time, I am afraid. It is going to long outlast me. I understand your impatience but I think everyone is going to need to be a little bit patient for a little bit longer.
Chairman: I have to say that it sounds to me like prevarication.

Q57 (02.12.09) Lord Morris of Handsworth: I wonder what the difficulty is because there are two principles here. One is to provide a duty and the other is a service user or consumer rights. Why it is taking so long for some sort of basic guidance to be issued defies understanding.
Mr Wills: There are several issues here. The first is the scope; how we define public authority is more complicated than it might seem. The Freedom of Information Act does it in a very simple way because it designates it; it says, “This is”. The Human Rights Act takes a different view and it is a view that is subject to interpretation by the courts and the courts have interpreted it in a way that was actually frankly a surprise to government. That is what has happened. Maybe it should not have been a surprise but it was a surprise and that has created consequences. When you look at legislation we should always—we do not always but we should—make sure that we know what the consequences of legislating any particular area are. Of course, private sector providers are going to be worried about extra burdens put on them; it is not unreasonable of them to be worried about this. Having run a small business myself I am very conscious of all the strains and pressures on providers of services. It is not something to be deplored, it is just a fact of life; it is the way that they are and all of us would be if we were in their position too—and I have been in their position and I was like that. It does not mean that we cannot legislate because they are worried about it,
but what we have to make sure is that we do not worry them so much that they stop providing services. We can demythologise it but we have to be careful how we do this. We do not want to see, as I say, the delivery of public services interrupted. There are a large range of government departments who have a large range of views about this and all of that has to be taken into account and we will move forward on this. I just cannot—

Q58 (02.12.09) Chairman: So when do you expect it to happen?
Mr Wills: With all respect, Mr Chairman, can I just finish the point and then I am happy to answer the next question. I just cannot tell you when.

Q59 (02.12.09) Chairman: Are you seriously expecting the private sector providers who contract government or local authority services to go on strike because the Human Rights Act would not apply to them?
Mr Wills: I have no idea.

Q60 (02.12.09) Baroness Falkner of Margravine: I should declare an interest as a director of an RSL of the Hyde Group. Let me see if I can help you a little bit. There are two things here I think that are extremely pertinent to the decisions that you take. One is of course the new regulatory regime and the establishment of the TSA, which does provide guidance—copious guidance as I can see it. Are you by any chance waiting to see how this new regulatory regime also beds down? The other point is of course the complexity of these organisations in that the range of services that they offer are now extremely complex and is that part of the issue that makes you wait to see, particularly the funding regime, in light of borrowing on money markets and capital markets, and the increasing production in grant and how those bodies, RSLs, change year on year in terms of their business plans and how that grant giving also changes?
Mr Wills: The latter is a very good example, a microcosmic example of some of the complexities of defining exactly how the scope should apply. There are two things here I think that are extremely pertinent to the decisions that you take. One is of course the new regulatory regime and the establishment of the TSA, which does provide guidance—copious guidance as I can see it. Are you by any chance waiting to see how this new regulatory regime also beds down? The other point is of course the complexity of these organisations in that the range of services that they offer are now extremely complex and is that part of the issue that makes you wait to see, particularly the funding regime, in light of borrowing on money markets and capital markets, and the increasing production in grant and how those bodies, RSLs, change year on year in terms of their business plans and how that grant giving also changes?
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be defined. It is not easy. All the advice that I get is not the advice that you, Lord Onslow, and Mr Chairman, seem to be getting, that it is legally very straightforward. My advice is that it is not.

Q64 (02.12.09) Chairman: Maybe we should be thinking about whether we want to have as our contractors people who are not prepared to accept the responsibilities of the Human Rights Act towards their clients.

Mr Wills: Of course we should but in the meantime, given the complexity of the way that we provide public services, we do need to be careful that the users of these services are still able to have them provided. Our concern should always be with the users. The final point I would say is that of course you are right about the legal position there but there are other protections other than human rights’ protection. I would not want anyone to think that these users of public services are not protected, because they are.

Chairman: We can argue about the extent of that public protection, which is what the YL case was all about. Just a quick point on the consequences of the Weaver judgment: will you be issuing guidance to RSLs at the same time to users of RSLs, i.e. their tenants, about what the implications of the Weaver judgment are?

Mr Wills: I am not sure that we will be doing that.

Mr Adams: That will be a question for CLG to consider if they think that guidance is necessary and I am sure that if they do they will consult us.

Q65 (02.12.09) Chairman: Will you consult them?

Mr Wills: We will get an answer for you and we will write to you, or CLG will write to you, as appropriate.

Chairman: Thank you.

Q66 (02.12.09) Earl of Onslow: The government has rejected our recommendation that the Ministry of Justice should adopt a coordinating role for responding to adverse human rights judgments. What practical steps have you taken at the Ministry of Justice to ensure that government departments effectively implement human rights judgments? It is, incidentally, depressingly to think that one government department reacts in a different way to another. Some are keen and some are not so keen. I thought that joined-up government was what everybody was supposed to aim for.

Mr Wills: Edward, do you want to respond to that?

Mr Adams: Initially, before I do, can I apologise to the Committee for being slightly late to the hearing? There was a traffic disruption in Trafalgar Square. I could have gone in response to what the Minister said at the very outset of the hearing pay tribute to him and to the very strong political leadership that he has delivered in the management of human rights in the time that he has been Human Rights Minister, without which, of course, we as civil servants would have had no traction.

Q67 (02.12.09) Earl of Onslow: Are you angling for a “K”?

Mr Adams: No!

Q68 (02.12.09) Chairman: He has to go up the tree a bit yet! I should say, Edward, that we have really appreciated our relationship with you as well because I think you have worked very closely with us over the years.

Mr Adams: Thank you very much; that is very kind of you, Chairman. On this coordinating role for the implementation of judgments it is not a question of saying that we have no role in the Ministry of Justice because we clearly do; but, on the other hand, when an adverse judgment is issued against the government it does actually impact upon the department and the minister responsible for that department in that particular area; and because these decisions are not purely administrative there can be big political choices to be made, and those have to be in the hands of the minister responsible for that. To take an example at random, the Marper case has been a very salient recent example.

Q69 (02.12.09) Chairman: I am going to ask you some questions about that shortly.

Mr Adams: You may. But just to keep it at a very general level about Marper it really is not actually for the Ministry of Justice ministers to be deciding what the policy is about because that is the fundamental responsibility of the Home Secretary. It is our job to make sure that we keep the pressure on, to keep asking them, “What are you doing? How far have you got? What is the next stage? Anything we can do to help?” And to keep supporting them and also to an extent holding them to account to make sure that they do respond in a timely way to adverse judgments both in Strasbourg and in the domestic courts. Having done this job for a while now that feels about right to me actually.

Q70 (02.12.09) Earl of Onslow: What you are basically saying is that you do do it; that you do keep tabs on those judgments and you ring up Lord Mandelson and say, “Will you get off somebody’s yacht and pull your finger out and react to this judgment against you?” I am using this story totally metaphorically, you understand!

Mr Adams: We do keep tabs and we do ring up his civil servants rather than the Secretary of State himself. We might be in danger of arguing about the meaning of words here. Whether that is a coordinating role, I am not sure; I would pitch it just slightly below a coordinating role. But it is a role of holding the ring, making sure that progress is maintained across the whole of the piece and that we continue to uphold our international obligations in relation to the European Convention.

Earl of Onslow: That seems quite satisfactory.

Q71 (02.12.09) Chairman: In that case can I ask you about Marper and the extent to which you have been tracking Marper’s DNA through the bureaucracy. I suppose—the bureaucratic DNA. We have now seen the government’s announcement about what it plans to do in relation to retention of DNA. Do you think that these proposals are compatible with the
presumption of innocence under Article 6 and the respect for an individual’s private life under Article 8?

Mr Wills: It is our view that it is compatible, yes; otherwise we would not be proposing it.

Q72 (02.12.09) Chairman: How are you going to make sure that those who have not been convicted and wish to have their DNA removed have access to an independent appeals mechanism, which is what, for example, the Human Genetics Commission recommended?

Mr Wills: I am always happy to answer questions on anything; I just feel that you probably need to ask the Home Office as it is their responsibility—it is this concept of maintaining DNA samples in the way that human rights operate in the world that proportionality is a key. There are three concepts that are fundamental to human rights—dignity, respect and proportionality, in my view.

Q77 (02.12.09) Earl of Onslow: But as Human Rights Minister, surely if there is a doubt or a cusp you come down on the side of human rights? At least that is what I would interpret to be a duty of the Human Rights Minister.

Mr Wills: I am sorry, what I was trying to suggest was that often these are not questions that this is in defence of a human right or in breach of it; it is often the question of a fine judgment either side of the line. It is not a breach that the Court has found—not a breach of human rights that the DNA database should be maintained. It is worth just pointing out that one of the values of the DNA database is that innocent people who have been convicted should be released.

Q78 (02.12.09) Earl of Onslow: There is no doubt that the use of DNA has helped both in clearing the innocent and convicting the guilty—nobody is denying that.

Mr Wills: So the question really is: is it being applied proportionately? The UK Government had one view, the Court took a different view and we have adjusted our approach accordingly in the way that we believe is compatible.

Q79 (02.12.09) Chairman: Let us move on. Before I bring in Baroness Falkner there is one further question from me, going back to the theme that the Earl of Onslow was raising earlier. Have you provided any further guidance to departments over the last year on how best to implement human rights judgments?

Mr Wills: I think we will have to write to you?

Mr Adams: I do not think generally, no.

Q80 (02.12.09) Chairman: If you have can we see it?

Mr Wills: Of course. We will find out and come back to you.

Chairman: Baroness Falkner—and this is in your department’s domain.

Q81 (02.12.09) Baroness Falkner of Margravine: I would like to move you on to prisoners’ voting rights. You have carried out a second consultation and this closed at the end of September. There is no timetable as yet as to when you are going to come up with legislation. I wonder whether you can tell us when you plan to publish the outcome of your consultation and whether there is any timeline that might comply with the need for a general election in 2010. In other words, will prisoners have voting rights?
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rights by the time the election is called or will we continue in the UK to be in breach of the judgment in Hirst?

Mr Wills: No. We are very conscious of the need to bring this matter to a close. It is very difficult and the fundamental difficulty is that there is cross-party consensus and has been for many, many, many years that prisoners should not be enfranchised.

Q82 (02.12.09) Baroness Falkner of Margravine: Forgive me, that is not the case at all.

Mr Wills: I am sorry, across the two main parties I should say. I beg your pardon, you are quite right to correct me. The two main parties—you are right. But that still does not negate my basic point, which is that whatever the court says we will have to legislate for this; we will have to get the legislation through Parliament. Therefore, we have to proceed in a way that as far as possible takes parliamentary colleagues with us.

Q83 (02.12.09) Baroness Falkner of Margravine: Could I interrupt you there?

Mr Wills: Of course.

Q84 (02.12.09) Baroness Falkner of Margravine: As I understand it, Her Majesty’s Opposition does not think that all prisoners should have a denial of their voting rights—there are certain categories of prisoners, as I understand it, that they would be perfectly content to see given voting rights. As I understand it from ministerial responses in the House of Lords, where I myself have been involved in questions, the issue is to determine what categories of prisoners should have rights and to then move forward. I want to pick up the point in gaining consensus and taking colleagues with one. I have only been in here for six years but I can tell you that in those six years I have not come across all areas of legislation that started from a premise of consensus. I only need to talk about 90-day detention before charge in counter-terrorism cases. I have never seen this government held back for the lack of consensus in pursuing its legislative agenda and I wonder why they have in this particular case of vulnerable people—some of whom are vulnerable—it has abandoned its precepts on the idea that rehabilitation does matter and that society tries to rehabilitate prisoners and therefore bringing them in to giving them minimal rights of political engagement might be a factor in their rehabilitation.

Mr Wills: You have raised a number of points. Just as a point of fact we try on all kinds of areas, and certainly areas for which I am responsible, to proceed on the basis of consensus and we have certainly retracted proposals on the basis that we could not reach consensus, and I am referring particularly to the PPE Bill, which has just become law, which was a very long protracted business and I can assure you that I was there, and that was done entirely on the basis of trying to secure consensus. Of course, basically on some areas you do try to proceed on the basis of consensus and you retreat when you cannot secure it; and others, government has to get its business through and that is the nature of the Executive. So sometimes you do and sometimes you do not. This is an area where we felt, rightly or wrongly, that we should as far as possible try and take both Parliament and the public with us. We know that this has to change. But then the second point you make I agree with, and that is that of course there is a discussion to be had and that is the discussion we have been having on which prisoners to enfranchise. Nobody has suggested that all prisoners should be enfranchised but there are consequences depending on which prisoners do you enfranchise. There are some practical difficulties about the administrative arrangements and so we felt it was proper to move deliberately on this. But we know that within a short timeframe we will be issuing our response to the consultation and then we will have to make provision for this. But whether it will be this side of a general election I cannot tell you at the moment. I think that in all honesty it is unlikely.

Q85 (02.12.09) Baroness Falkner of Margravine: What do you envisage the timeframe to be?

Mr Wills: I cannot tell you because we are still digesting the consultation, but to try and be helpful I think it is unlikely that there will be legislation this side of the general election just because of the very short and very cramped legislative timetable there is. There are just not that many legislative days left.

Q86 (02.12.09) Baroness Falkner of Margravine: Can you not propose a Remedial Order or amendments to the Constitutional Reform and Governance Bill?

Mr Wills: We have to be always very careful about making Bills into Christmas trees and the Constitutional Reform Bill is already under huge pressure with all sorts of other things and almost certainly going to have to bring in other amendments on very pressing issues and I think it is highly unlikely that we will get consent from anybody to do that in relation to the Constitutional Reform Bill. It is better to do this I think deliberately. I know it is taking a long time; I regret that. It has taken a long time, longer than I think anyone would have wished, but it is complex and it is difficult and you have to move very, very carefully in relation to electoral reform. Why I said we moved so carefully with the PPE Bill, of all this legislation anything to do with the wiring of the constitution—although this is a narrow area and—

Q87 (02.12.09) Baroness Falkner of Margravine: Extremely narrow.

Mr Wills: I agree. It is a narrow area of constitutional reform and it is also one that does deal in part with vulnerable people as you have suggested and I agree with all of that. Nevertheless, as a matter of principle anything to do with the wiring of our constitution should as far as possible move slowly, deliberately and on the basis of consensus. That is not only in relation to prisoners’ voting rights—but let me just underline that point—because the approach that we took with the PPE Bill we have been much criticised for the length of time it has taken us to produce the Green Paper—by this Committee, I
think, among others. Almost every area of constitutional reform for which I have been responsible has moved slower than I would have wished, deliberately and carefully and as far as possible on the basis of consensus.

Q88 (02.12.09) Baroness Falkner of Margravine: You will be aware, of course, that our constitutional obligations also involve International Treaty obligations. Have you had representations from the Foreign Office? You are working with colleagues who actually have to appear in Europe and admit that we are not proceeding with this and have no good excuse not to proceed with it, other than to say, “We would love consensus”, without having tested the waters through votes to see whether there is a consensus or not?

Mr Wills: I am not sure that we have had representations. I do not think that the Foreign Office works like that.

Q89 (02.12.09) Baroness Falkner of Margravine: Have there been discussions?

Mr Wills: We are in constant discussion with them and of course we have to be. We are being held to account in Europe, of course we are, and they are the ones who are being held to account for us. So we are in constant discussion and, as far as I am aware, they share our view on this.

Q90 (02.12.09) Baroness Falkner of Margravine: And they are quite happy for the UK to be cited as not conforming to its obligations, are they?

Mr Wills: As a former member of the Foreign Office I cannot recall any of my colleagues ever being very happy about anything!

Baroness Falkner of Margravine: I would have expected you to have a bit more sympathy with their position in that regard! Thank you.

Q91 (02.12.09) Mr Sharma: We have been told that we can expect a Remedial Order to remove the certification of approval provisions for alleged “sham” marriages, after the decision of the Court of Appeal and the Supreme Court in Baiai. Can you give us any more detail on the likely timetable for the Order?

Mr Wills: It is certainly our understanding that that is going to be the process that the Home Office will use for this. Again, forgive me, this is not a direct ministerial responsibility but our understanding is certainly that. What the Remedial Order will do is remove this scheme as it applies to marriage and there will be a number of consequential decisions as well as that. What we are told is that the best estimate, given that there will be a delay caused by the general election, is that that order will come into effect at the end of next year or possibly at the beginning of 2011. That is the estimate that we have been given.

Q92 (02.12.09) Mr Sharma: The Certificate of Approval scheme is currently being challenged in Strasbourg in the case of O’Donoghue v UK. Does the government now intend to attempt a friendly settlement in that case? If not, why not?

Mr Wills: As I say, as we understand it the Home Office is planning to use this procedure to deal with the case of Baiai, but I cannot, I am afraid, discuss the detail of other cases that are currently before the Court.

Q93 (02.12.09) Chairman: Thank you. Those are all the issues that we wanted to raise with you. Is there anything else that you would like to add to anything you have had to say?

Mr Wills: Can I just say thank you. If this is indeed my last appearance I would like to thank all of you for your courtesy over the last two and a half years. I wish you well; I hope that you will all continue in your work in a way that I am not going to continue in mine. You do an excellent job as a Committee; I am very grateful to you and long may you continue.

Chairman: Thank you and thank you for the way in which you have tried to push the human rights agenda forward, albeit sometimes with a little opposition from within the powers that be.
Written evidence

Submission from the Northern Ireland Human Rights Commission

The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights, advising on legislative and other measures which ought to be taken to protect human rights, advising on whether a Bill is compatible with human rights and promoting understanding and awareness of the importance of human rights in Northern Ireland. In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding “soft law” standards developed by the human rights bodies.

The Commission welcomes this opportunity to submit this initial briefing paper on its advice on A Bill of Rights for Northern Ireland and looks forward to its evidence session in front of the Joint Committee on Human Rights on 24 February 2009.

Background

On 10 December 2008 the Commission provided advice to the Secretary of State for Northern Ireland as required in Paragraph 4, in the Rights, Safeguards and Equality of Opportunity section, of the Belfast (Good Friday) Agreement, and under Section 69(7) of the Northern Ireland Act 1998, namely:

“. . . to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and—taken together with the ECHR [European Convention on Human Rights]—to constitute a Bill of Rights for Northern Ireland.”

Issues for consideration by the Commission were to include:

"the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland; and a clear formulation of the rights not to be discriminated against and to equality of opportunity in both the public and private sectors.”

The Process of Formulating the Commission’s Advice

From January 2006 to November 2008, the current Commission convened 54 meetings of an internal Working Group and held seven weekend seminars. All Commissioners attended these meetings and engaged in the process of formulating the advice. The Commissioners deliberations benefited from evidence provided by an extensive public consultative exercise that took place over eight years. It also paid rigorous attention to proposals made by the Bill of Rights Forum, the members of which included political and civil society representatives (pp 10–13).

A methodology reflecting the mandate, unanimously agreed by Commissioners, was used to guide discussions and help determine the content of the advice (Appendix A). The Commissioners considered in detail therefore the fundamental issues of whether the proposals

— were justifiable because of the particular circumstances of Northern Ireland?
— were supplementary to the ECHR and HRA and compatible with their existing provisions?
— were in line with best practice according to international instruments and experience?
— would help reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem?

Relationship Between a Bill of Rights for Northern Ireland, HRA and ECHR

It was necessary for the Commission to determine the possible relationship between the HRA and a Bill of Rights for Northern Ireland. The Commission was clear that under no circumstances should its advice undermine existing domestic human rights protection. For this reason it concluded that the HRA should be retained in its present form, and the rights contained in Schedule 1 of the HRA should be re-enacted, alongside supplementary rights, in separate legislation for Northern Ireland. Thus new legislation, which could then sit alongside the HRA, would constitute a Bill of Rights for Northern Ireland (pp 18, 52).
When the Commission’s mandate was set out in the Belfast (Good Friday) Agreement, the Government had still to give domestic effect to the provisions of the ECHR. When it did so, through the HRA, it did not incorporate the whole of the Convention and its protocols.

For the purposes of developing advice on a Bill of Rights, the Commission adopted a working interpretation of the scope of the term ECHR, which refers only to the main body of the Convention rather than including its protocols.

Although the decision to give Convention Rights domestic effect must be made on a UK-wide basis, the Commission, pursuant to its mandate, is nonetheless of the view that some Convention Rights not found in the HRA, but which reflect the particular circumstances of Northern Ireland should be included in a Bill of Rights; namely:

- The Fourth Protocol, Article 1: No one shall be deprived of his liberty merely on the ground of the inability to fulfill a contractual obligation (pp 24).
- The Fourth Protocol of Article 2 (1,4): 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society (pp. 39).

**THE RECOMMENDATIONS**

The Commission, in accordance with its mandate, found a strong evidence base to justify the inclusion of a range of additional protections in a Bill of Rights for Northern Ireland. The criteria to determine each recommendation was not predicated upon a comparative analysis between Northern Ireland and other parts of the United Kingdom. It was focused on specific issues relating to the conflict its causes and impacts. This included considering if the rights in question had been abused, neglected or restricted by state or non-state actors in a distinct manner, whether the rights had been a cause or location of the conflict and the extent to which the rights were recognised and referenced in the Belfast (Good Friday) Agreement. On this considered basis the Commission has recommended that a Bill of Rights for Northern Ireland should include, in addition to existing HRA provisions, protections in the following areas:

- The right to life (p 20)
- The right to liberty and security (p 24–25)
- The right to a fair trial and no punishment without law (p 26–27)
- The right to marriage or civil partnership (p 32)
- The right to equality and prohibition of discrimination (p 33–34)
- Democratic rights (p 36–36)
- Education rights (p 38)
- Freedom of movement (p 39)
- Freedom from violence, exploitation and harassment (p 40)
- The right to identity and culture (p 41)
- Language rights (p 42)
- The rights of victims (p 43)
- The right to civil and administrative justice (p 44)
- The right to health (p 45)
- The right to an adequate standard of living (p 46)
- The right to accommodation (p 47)
- The right to work (p 48)
- Environmental rights (p 49)
- Social security rights (p 50)
- Children’s rights (p 51)

**EFFECTIVE ENFORCEMENT AND IMPLEMENTATION**

In addition to the proposed rights the Commission considered matters of enforcement and implementation. These issues had been central to the discussions and public discourse developed on the subject of a Bill of Rights for Northern Ireland. Indeed, the Bill of Rights Forum itself made a series of recommendations addressing such concerns. The Commission’s advice has a section dedicated to the subject, but two issues that are of considerable significance and which have already drawn some attention are of particular note; the first relates to entrenchment and amendment, the second relates to justiciability.
On the question of entrenchment, the Commission recognises the established political process and therefore accepts that the adoption of a Bill of Rights for Northern Ireland should be undertaken by Westminster in accordance with the Belfast (Good Friday) Agreement 1998. However, on the related matter of any subsequent amendments, the Commission believes that such decisions should only be undertaken by Westminster with the cross-community approval of the Northern Ireland Assembly. The rationale for this second recommendation is that cross-community approval in the Assembly would provide an appropriate degree of political constraint in keeping with the institutional arrangements according to which government operates in Northern Ireland.

On the question of justiciability, the Commission has taken the view that all rights in a Bill of Rights for Northern Ireland must be capable of enforcement. Certain recommendations made by the Commission confer immediately enforceable rights on individuals. Others impose programmatic obligations on public authorities. Other recommendations in the Commission’s opinion, in line with international human rights thinking, should be best subject to progressive realisation.

For those rights that are subject to progressive realisation, the Commission recommends that there must be a minimum core obligation which is immediately realiseable. Where possible, the “minimum core obligation” of each right recommended for inclusion in a Bill of Rights for Northern Ireland has been identified in the advice.

Where rights are subject to progressive realisation, the Commission believes that the Northern Ireland Executive should be required to report annually to the Northern Ireland Assembly, and, similarly the UK Government should report annually to Parliament, on the progress made during the previous year in realising these rights in Northern Ireland.

20 February 2009