

**INTERNATIONAL  
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ON CIVIL AND  
POLITICAL RIGHTS**



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Initial reports of States parties due in 1977

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[18 August 1977]

Introduction

1. The International Covenant on Civil and Political Rights does not itself have the force of law in the United Kingdom of Great Britain and Northern Ireland or in any of its dependent territories. The obligation assumed under Article 2 (2), which leaves each High Contracting Party free to decide the method by which it gives effect to the rights recognized in the Covenant, is fulfilled there by the provision of safeguards of different kinds operating in the various legal systems concerned, independently of the Covenant but in full conformity with it.

2. The explanations provided in the present Report are mainly confined to the legal system of England and Wales. The legal rules of that system fall into two main categories - rules prescribed by legislation and rules to be deduced from the decisions of courts of authority. Those of the latter category are themselves derived from two sources - first, the common law proper (that is, the laws and customs which have received judicial recognition from early times) and, secondly, the interpretation of legislation. The legal rules concerning human rights and freedoms are not embodied in any one legislative instrument or in a series of such instruments. They derive both from legislation, in many fields, and from case law and, particularly because of the nature of the latter, cannot be succinctly and comprehensively enumerated. This Report contains, however, short general explanations, Article by Article, of legal rules concerning the rights recognized in the Covenant, citing, where appropriate, the principal legislative enactments, cases and administrative instructions in which the rules are embodied. (The full texts of these instruments can of course be supplied to the Human Rights Committee.) The explanations in this Report should not, therefore, be regarded as an exhaustive statement of the safeguards provided.

3. The measures giving effect to the Covenant in Scotland and Northern Ireland are broadly similar to those in England and Wales. However, there are a number of differences. In particular, while some of the enactments referred to in this

Report also extend to Scotland and Northern Ireland, in other cases corresponding provisions are contained in separate legislation which applies only in those parts of the United Kingdom, and in a few cases the legislation concerned has no counterpart in Scotland or Northern Ireland. For example, the Matrimonial Causes Act 1973, which is referred to in the section of this Report dealing with Article 23 of the Covenant, does not extend to Scotland or Northern Ireland. Corresponding provisions on divorce are, however, contained in the Divorce (Scotland) Act 1976. Conversely, in some cases legislation concerning matters relevant to the Covenant has been introduced in Scotland or Northern Ireland which contains provisions not applicable in England and Wales. A recent example is the Prevention of Incitement to Hatred Act (Northern Ireland) 1970, which contains provisions proscribing the use of written or spoken words to stir up hatred against a section of the public on grounds of religious belief, colour, race or ethnic or national origins (cf the section of this Report dealing with Article 20).

4. A supplementary report describing the position in the United Kingdom's dependent territories will be submitted separately.

#### Article 1

1. It has been the consistent policy of successive British Governments since the end of the Second World War to promote self-government and independence in the dependent territories of the United Kingdom, in accordance with the wishes of the inhabitants and the provisions of the United Nations Charter. On ratifying the Covenant the Government of the United Kingdom maintained the declaration in respect of Article 1 which had been made on signature, namely, their understanding that by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter, their obligations under the Charter will prevail.

2. The majority of the dependent territories which were in existence when the Covenant was drawn up have since attained independence and have been admitted to membership of the United Nations, and proposals for constitutional advance are under discussion in a number of those which now remain. The United Nations has been kept fully informed of developments in this field.

#### Articles 2 and 3

1. The measures which, in the United Kingdom, give effect to the rights recognized in the Covenant, are described in this Report in relation to each Article. They do not discriminate between individuals on any such basis as is mentioned in Article 2 and, as is described in relation to other Articles, certain specific measures have been taken to secure the equal and effective protection of all persons against such discrimination. However, members of the armed forces and persons detained in penal establishments are governed by special rules for the preservation of service and custodial discipline and accordingly, on ratifying the Covenant, the Government of the United Kingdom reserved the right to apply to these persons such laws and procedures as they may from time to time deem necessary for this purpose.

2. Although English law does not confer a specific right of action in respect of violation of any basic rights or freedoms as such, prevention of the free exercise of the rights and freedoms set forth in the Convention will normally involve some unlawful interference with the person, liberty or property of the victim for which the law provides a civil remedy or a criminal sanction. The principal remedies and sanctions are described in this Report in relation to each Article of the Covenant.

The fact that a defendant was acting in an official capacity affords no defence, and proceedings can be brought against public authorities (including, in general, the Crown) as they can against private individuals. Proceedings against the Crown are regulated by the Crown Proceedings Act 1947. There are no restrictions on a person's right of recourse to the courts and legal aid is generally available for those who cannot afford to pay for legal assistance.

#### Article 4

There have been in recent years campaigns of organized terrorism related to Northern Irish affairs which have involved murder, attempted murder, maiming, intimidation and violent civil disturbance and in bombing and fire-raising which have resulted in death, injury and widespread destruction of property. This situation constitutes a public emergency within the meaning of Article 4.1 and the Government of the United Kingdom have found it necessary to take powers, to the extent strictly required by the exigencies of the situation, for the protection of life, for the protection of property and the prevention of outbreaks of public disorder, and including the exercise of powers of arrest and detention and exclusion. These powers are contained in temporary legislation which is subject to close scrutiny and renewal at frequent intervals by Parliament. In so far as any of these measures is inconsistent with the provisions of Articles, 9, 10.2, 10.3, 12.1, 14, 17, 19.2, 21 or 22 of the Covenant, the United Kingdom, when ratifying the Covenant, derogated from its obligations under those provisions. The sections of this Report dealing with those provisions should accordingly be read subject to that derogation.

#### Article 5

##### Paragraph 1

The United Kingdom has taken no action aimed at the destruction of the rights and freedoms recognized in the Covenant or at their limitation to a greater extent than is provided for in the Covenant. The sections of this Report dealing with the rights and freedoms concerned describe the limitations which have been placed on their exercise.

##### Paragraph 2

As appears from the introduction to this Report, the safeguards which, in the United Kingdom, give effect to the rights recognized in the Covenant exist independently of the Covenant which does not itself have the force of law. The absence of any rights from the Covenant or their restriction thereunder could not therefore be used as a pretext for derogating from any of the other fundamental human rights enjoyed by persons in the United Kingdom.

#### Article 6

##### Paragraph 1

1. The right to life recognized in this paragraph is protected both by the criminal law and by the civil law. The taking of a person's life, save in certain exceptional conditions, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to murder, manslaughter or infanticide, according to the circumstances. The exceptional conditions include cases where the taking of life occurred:

- (1) in pursuance of a sentence of a court;

- (2) in exercise of the right of self-defence (provided that no more force is used than is reasonable in the circumstances);
- (3) in the prevention of crime, provided, again, that no more than reasonable force is used.

2. If death is caused by a negligent act or by an intentional and unjustified act, it is a wrong against the deceased, and his personal representatives can, by virtue of the Law Reform (Miscellaneous Provisions) Act 1934, bring an action in tort (i.e. civil wrong) against the person whose act caused the death or against the latter's employer if the act was carried out in the course of that person's employment. If the deceased would have had an action against any person in respect of the act which caused the death (if death had not ensued) any dependants of the deceased have a right of action for any pecuniary loss they have suffered by virtue of the Fatal Accidents Acts 1846 to 1959.

3. The above-mentioned provisions of the criminal law (and probably also those of the civil law) do not apply in relation to unborn children. However, an attempt to procure an abortion will generally constitute an offence under section 58 of the Offences Against the Person Act 1861, punishable with life imprisonment, unless authorized under the Abortion Act 1967. This Act provides for the medical termination of pregnancy, under prescribed conditions, where two registered medical practitioners are of the opinion:

- (a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or
- (b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

#### Paragraph 2

Since the Murder (Abolition of Death Penalty) Act 1965, judgment of death can be passed only for treason and for crimes of piracy in which violence is committed (there have been no such judgments in recent times). The penalty can only be carried out pursuant to a final judgment given by a competent court.

#### Paragraph 3

The United Kingdom is a party to the Convention on the Prevention and Punishment of the Crime of Genocide. Under the Genocide Act 1969, genocide is an offence punishable with imprisonment for life if the offence consists of the killing of any person, or, if not, with imprisonment of not more than 14 years.

#### Paragraph 4

In those exceptional cases where a person may be sentenced to death, he has the right, under section 1 of the Bill of Rights 1688, to petition the Crown for a pardon or for the commutation of his sentence. A pardon or commutation of sentence may be granted in all cases in the exercise of the royal prerogative of mercy.

Paragraph 5

In those cases (treason, piracy) where the death penalty has not been abolished, judgment of death cannot be passed upon any person who, at the time of the offence, was under the age of 18: Children and Young Persons Act 1933, s.53 (1); Murder (Abolition of Death Penalty) Act 1965, s.1 (5). Nor may it be passed upon an expectant mother: Sentence of Death (Expectant Mothers) Act 1931, s.1.

Article 7

1. The right not to be subjected to torture or to other forms of ill-treatment or punishment is protected both by the criminal law and by the civil law. Any use of force against a person, save in exceptional circumstances, is (provided that the requisite degree of intention or criminal negligence can be proved) a criminal offence, usually amounting to assault or battery. The exceptional circumstances include cases where the use of force occurs:

- (1) in self-defence or the defence of property, provided that no more force is used than is necessary for the purpose;
- (2) in the prevention of crime or in the lawful arrest or detention of an individual, provided that no more force is used than is reasonable in the circumstances;
- (3) in the course of the lawful correction of a child by its parent or of a pupil by its teacher, provided that the correction is reasonable and moderate considering the age, health and sex of the child.

2. A person who has been ill-treated may bring an action in tort for damages against the person or persons who, it is alleged, were responsible for the assault. If the assault was committed by a person in the course of his employment the action would lie both against that person and against his employer. And in a case where it was not possible to identify which of several employees was responsible for an assault, an action for damages could still be maintained against their employer.

3. Apart from these general provisions further rules have been adopted to ensure the protection of the individual in particular circumstances. For example, in addition to their liability to prosecution for any criminal offences they commit, police officers are liable to be dealt with in internal disciplinary proceedings for any infringement of the police discipline code. Under this code (at present set out in Schedule 2 to the Police (Discipline) Regulations 1977) it is an offence, among other things, for a police officer to use any unnecessary violence towards a prisoner or other person with whom he may be brought in contact in the execution of his duty. Where a police officer is charged with a breach of the code, the case is heard by a chief constable (normally the one commanding the force in which the accused officer serves) or, in the Metropolitan police, a disciplinary board (but see paragraph 4 below). If the officer is found guilty, the punishments which may be imposed range from a reprimand or a fine to dismissal from the force. A right of appeal against any findings of guilt and against punishment lies to the Secretary of State.

4. A criminal or disciplinary offence committed by a police officer against a private person may come to light through a complaint made by that person or someone acting on his behalf. Under section 49 of the Police Act 1964 a chief officer of police must record, and cause to be investigated, any complaint made by a member of the public against an officer of his force. Such an investigation is carried out

by an officer not below the rank of superintendent, who in the ordinary course of his duties has no responsibility for or connexion with the officer who is subject of the complaint. If the chief officer thinks it appropriate or the Secretary of State so directs the investigating officer may be from another police force. On receiving the report of the investigation the chief officer, unless satisfied that no criminal offence has been committed, must send it to the Director of Public Prosecutions, who as a prosecuting authority entirely independent of the police decides whether criminal proceedings should be instituted. After any necessary reference to the Director, the deputy chief constable considers whether it would be appropriate to bring a disciplinary charge or charges. If he decides against bringing any charge arising out of the complaint, he is required by the Police Act 1976 to send the report of the investigation to the Independent Police Complaints Board; if the Board disagrees with his decision they may recommend, and in the last resort direct, that disciplinary charges should be brought. Where disciplinary charges are brought arising out of a complaint and are denied by the officer, the Police Complaints Board will consider whether there are exceptional circumstances making it desirable that the charges be heard by a tribunal, on which the Board will be represented, instead of by the chief officer sitting alone.

5. It is an absolute rule that a confession which is found by the judge to have been obtained by oppression is inadmissible as evidence against the person who made the confession. In a jury trial, this question is decided by the judge after hearing evidence and argument in the absence of the jury and, if the judge rules that the confession is inadmissible, no reference to the confession may be made when the trial proper recommences.

6. Prison officers, like police officers, are subject to a code of discipline in addition to their normal liability under the criminal and civil law: see the section of this Report dealing with Article 10 of the Covenant.

#### Article 8

1. There is no slavery or servitude, nor any forced or compulsory labour as described in this Article. Labour is given freely under contract and it is customary for service contracts to be terminable by either party on due notice; in cases of breach of contract the courts will not generally order specific performance. Any contract smacking of servile obligations is illegal as contrary to public policy.

2. The right of action for false imprisonment ensures the protection of the subject from wrongful detention or confinement, whether for the purpose of exacting labour or for any other purposes. False imprisonment is also a criminal offence at common law. Any unlawful threat or use of physical violence for the exaction of labour or any other purpose gives the sufferer a right either to prosecute the offender or to bring a civil action against him. The common law right to the writ of habeas corpus is available in all cases of unlawful detention, whether in prison or in private custody. By this writ the High Court may command that the person detained be brought before the Court, so that the causes of his detention may be enquired into. If the detention is shown to be unlawful, his release will be ordered.

3. Under the Slave Trade Act 1824, all operations in connexion with the slave trade are illegal. Dealing and trading in slaves, and associated acts, are offences punishable by imprisonment for a term not exceeding 14 years.

4. Imprisonment with hard labour may not be imposed as a punishment for a crime. A convicted prisoner may, unless excused by the medical officer, be required to do useful work for not more than 10 hours a day and may be paid for his work at rates approved by the Secretary of State (Prison Rules 1964, Rule 28). The Powers of Criminal Courts Act 1973 empowers a court which has convicted a person of an offence punishable with imprisonment to make a community service order requiring him to perform unpaid work for not less than 40 or more than 240 hours. Before making a community service order the court must explain to the offender its purpose and effect. It must not make an order unless the offender consents and the court has been notified by the Secretary of State that appropriate arrangements exist for persons to perform work under such orders and is satisfied that the offender is a suitable person to perform work under such an order and that provision can be made for him to do so. The work is carried out under the instructions of a probation officer.

#### Article 9

##### Paragraph 1

1. Among the most important common law rights are liberty of the person and freedom from arbitrary arrest. These rights have their origin in Magna Carta (1215) which declared that "no free man shall be taken or imprisoned ... or in any way destroyed ... except by the lawful judgment of his peers or by the law of the land". Any person who arrests or detains another without lawful cause will be liable not only to a civil action in damages for false imprisonment but also to criminal prosecution for a criminal offence. Every restraint of the liberty of one person under the custody of another, either in a prison, house or in the street, is treated as an imprisonment.

2. A general review of the rights of persons suspected or accused of criminal offences will be undertaken by a new Royal Commission whose establishment was announced in June 1977. The Royal Commission will examine the processes of investigation and prosecution in the period before trial.

##### Paragraph 2

In general, an arrested person must be informed of the true ground of his arrest. If this is not done the person who effected the arrest, whether a policeman or a private person, may be liable for false imprisonment. This requirement turns on the basic proposition that a person is, prima facie, entitled to his freedom and is only required to submit to restraint on his freedom if he knows in substance the reasons why it is claimed that restraint should be imposed. All summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him. Chief officers of police have been advised by the Home Office that the accused should be given a written notice containing particulars of the charge in simple language as soon as a firm decision to bring a charge has been reached.

##### Paragraph 3

1. As a general rule a person taken into custody without a warrant must be brought before a court as soon as practicable: if the offence is not serious, and it will not be practicable to bring him before a court within 24 hours, he must be bailed immediately. Whether the apprehension is with or without a warrant there must be no unnecessary or unreasonable delay in taking the person before a court.

2. Under the Bail Act 1976, a person awaiting trial must generally be released on bail unless there are exceptional circumstances; in particular, that the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would:

- (a) fail to surrender to custody, or
- (b) commit an offence while on bail, or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

The defendant may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody at the time and place appointed. He may also be required by a court to comply with any other requirements that appear to the court to be necessary for this purpose. Where it appears that he is unlikely to remain in the country, he may be required to give security.

#### Paragraph 4

The remedy of habeas corpus, which puts an end to illegal confinement, defends the right of personal freedom. The writ of habeas corpus may be obtained by any person detained against his will, not by a lawful sentence or order of a court, on probable cause being shown in an affidavit. It may also be obtained by any person acting on behalf of the person detained. Unless the detention is shown to be lawful, the person detained will at once be set free; discharge under the writ is final and cannot be questioned.

#### Paragraph 5

1. There is a right of action at common law for damages for false imprisonment where a person has been arrested or otherwise detained in circumstances in which the detention was not expressly or implicitly authorized by law. A person may also obtain damages against anyone who procures his arrest or imprisonment by means of criminal proceedings which are instituted maliciously and without reasonable cause. Reasonable cause has been described as:

"an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed."

2. In each of the above cases, the claim for damages is enforceable by normal process of law by action in the civil courts against the person responsible for, or for procuring, the arrest or detention.

#### Article 10

##### Paragraph 1

1. The regulation and management of all penal establishments are governed by statutory rules made by the Home Secretary and laid before Parliament. In what they prescribe both for the conduct and responsibilities of staff at establishments and for the supervision and care of prisoners, the rules take full account of the United Nations Standard Minimum Rules for the Treatment of Prisoners.



2. So far as adults are concerned, the Prison Rules 1964 (as amended) make explicit provision for the physical welfare of prisoners and for the care of their physical and mental health. Apart from those Rules which are directly aimed at preventing any ill-treatment of prisoners (see below), there are others which carry the same implication. For example, Rule 2 (1) provides that order and discipline shall be maintained with firmness but with no more restriction than is required for safe custody and well ordered community life.
3. All penal establishments are subject to the direction of the Home Secretary who is answerable to Parliament for their proper administration. All establishments are subject to visits by senior officers from the regional and central headquarters of the Prison Department. Any magistrate has a statutory right to visit a prison to which his court commits prisoners. In addition, each penal establishment has its own Board of Visitors which is appointed by the Home Secretary and must include a proportion of magistrates.
4. The work of members of Boards of Visitors is voluntary and unpaid and covers three main formal functions:
  - (a) they constitute an independent body of representatives of the local community to which any inmate may make a complaint or request, both at their regular monthly meetings and during the visits which individual members make between meetings;
  - (b) their members regularly visit and inspect all parts of the establishment, paying particular reference to the state of premises, the quality of the administration as it affects inmates, and the treatment - in its widest sense - which inmates receive, with a view to reporting and making recommendations to the Home Secretary on any matter which they consider expedient. The Board is required to inform the Secretary of State immediately of any abuse which comes to their knowledge, and have power in any case of urgent necessity to suspend any officer until the decision of the Secretary of State is known.
  - (c) as the superior disciplinary authority of the establishment they adjudicate when inmates are charged with any of the relatively serious offences against discipline.
5. To enable them to carry out their tasks the Prison Rules give members of Boards the right to enter all parts of the establishment at any time, to examine its records and to talk to any inmate out of sight and hearing of the Governor and other members of the staff.
6. Boards report direct to the Home Secretary, both by formal annual reports and also as occasions may require, on every aspect of the administration of their establishment; and they are obliged to enquire into and report on any matter which he may refer to them.
7. The Prison Rules also contain specific provisions concerning particular aspects of prison treatment. For example, a prisoner may not be removed from association with other prisoners for the maintenance of good order and discipline or in his own interests for more than 24 hours without the Governor obtaining authority from the Board of Visitors or the Prison Department acting on behalf of the Home Secretary (Rule 43). Such authority may be given for a period not exceeding one month although it can be renewed.

8. If the Governor orders that a prisoner be put under restraint to prevent him injuring himself or others, he is required to give notice of this as soon as possible to the Board of Visitors and to the medical officer (Rule 46). The medical officer is required to say whether he concurs in the order and if he makes any recommendation the Governor is required to give effect to it. Again, the authority of the Board of Visitors or of an officer of the Secretary of State is required for a prisoner to be kept under restraint for longer than 24 hours and the grounds for the restraint and the time during which it may be continued (which the rule states must not be longer than necessary) must be given.

9. Temporary confinement in a special cell is permitted for a prisoner who is refractory or violent, but not as a punishment nor may a prisoner be so confined after he has ceased to be refractory or violent (Rule 45).

10. The circumstances in which prisoners may be punished for offences against discipline are prescribed in detail in the Rules as are the offences themselves. The rules require that, where a prisoner is to be charged, the charge shall be laid as soon as possible, that the prisoner shall be informed of the charge as soon as possible and in any case before the charge is inquired into, and that the inquiry must begin not later than the next day (provided this is not a Sunday or public holiday). At the inquiry the prisoner must have the opportunity of presenting his own case. All adjudications must be conducted by the Governor or, in more serious cases, by the Board of Visitors. The punishments which may be awarded are prescribed in the rules. (They are: caution, forfeiture of privileges, exclusion from associated work, stoppage of earnings, cellular confinement and forfeiture of remission of sentence. In addition unconvicted prisoners may lose certain of their special privileges.) The maximum periods for which these punishments may be awarded are prescribed by the Rules.

11. The Code of Discipline for prison officers is approved by the Secretary of State under Rule 84 of the Prison Rules 1964. It governs the general conduct of all members of the prison officer class as civil servants and, in addition, those aspects of conduct which arise directly from their unique employment as prison officers. Similarly, because of the nature of the employment, it lays down strict rules of procedure for dealing with offences against discipline.

12. The use of force in dealing with inmates is governed by Rule 44 of the Prison Rules 1964, and the Code of Discipline includes provision accordingly. With regard to the treatment of inmates, a prison officer commits an offence against discipline if he is guilty of:

Section 1

(xi) - "Unlawful or unnecessary exercise of authority, that is to say if he

(a) deliberately acts in a manner calculated to provoke a prisoner or

(b) in dealing with an inmate uses force unnecessarily or, where the application of force to an inmate is necessary, uses undue force."

## Section 1

(viii) (c) - "Improper relation with inmates or ex-inmates, that is to say if he

- (a) communicates with an inmate for an improper purpose, or
- (b) uses obscene, insulting or abusive language to an inmate."

Governors do not have delegated authority to deal with charges involving the use of force, which have to be remitted to the Home Secretary for determination. Penalties under the Code include dismissal.

13. In general only cases involving minor assault are dealt with within the prison department. Prison officers are of course liable to prosecution for any criminal offences, including assaults, committed whilst on duty, and it is usual to refer a case to the police for investigation where an inmate has clearly suffered bodily harm. Similarly, unless investigation shows that an allegation is clearly groundless, any case involving an allegation of indecent assault is referred to the police for inquiry.

14. It is also possible for inmates or ex-inmates to take out private summonses against staff for assault, although this is rare, and under certain conditions to institute civil actions against staff.

15. Prisoners have the right to petition the Home Secretary, or see the Board of Visitors or a visiting officer of the Home Secretary about any matter of prison treatment. (The Prison Rules require that their attention must be drawn to these rights and this is done by means of information cards placed in each cell which also contain particulars of their other entitlements under the Rules.) If the prisoner does not get satisfaction from any of these sources, he is allowed to write to his Member of Parliament, who is then free to take up the case as he wishes. Normally the Member would first write to the Home Secretary but he can also refer the case to the Parliamentary Commissioner for Administration (the "Ombudsman"), or ask a Parliamentary Question or raise the matter in an adjournment debate in Parliament. Where the complaint relates to a decision of the Prison Department Headquarters, the prisoner may write to a Member of Parliament without any preliminaries.

Paragraph 2 (a)

Rule 3 (2) of the Prison Rules requires that unconvicted prisoners shall be kept out of contact with convicted prisoners as far as this can reasonably be done. An unconvicted prisoner may be allowed to have, so far as is consistent with discipline and good order, any articles which were in his possession when arrested and are not required for the purposes of justice or suspected of being wrongly acquired by him. He may also have at his own cost such books, newspapers, writing materials or other means of occupation as are not considered objectionable. He may have food and drink sent in from outside the prison and may wear his own clothing and have changes of it sent in. Work is optional, and if an unconvicted prisoner elects to work he receives payment for it. He may send and receive as many letters and may receive as many visits as he wishes within such limits and subject to such conditions as the Secretary of State may direct.

Paragraph 2 (b)

1. Under the Children and Young Persons Act 1969 a child or young person under the age of 17 who is before a court charged with an offence and is not released on bail is normally remanded to the care of a local authority. It is then for the local authority to decide how he (or she) shall be accommodated.
2. Persons between the ages of 17 and 21 may be remanded to a Prison Department establishment; so may young persons of 14 to 16 years, but only if the court certifies that the person concerned is of so unruly a character that he cannot safely be remanded to the care of a local authority. In most such cases detention will be in remand centres (which are primarily for young people aged 17 to 20) but in a few cases detention may be in a prison. In both cases, persons under the age of 21 are, so far as the facilities available will allow, generally kept apart from others, except in the case of women and girls where complete segregation is not considered necessarily desirable (cf the section of this report dealing with Article 10.3). Governors have instructions to notify Court and Circuit administrators of every case where someone under the age of 21 has been awaiting trial for more than 8 weeks.
3. The Children and Young Persons Act 1969 provides for the raising of the age at which young people can be committed to Prison Department establishments i.e. remand centres or prisons, and the Government is committed by its White Paper on the 1969 Act, published in May 1976 (Cmd 6469) to ending all such remands. As a first step, an Order ending the remand of 14 year old girls to such establishments came into effect on 15 March 1977. Further steps will be taken as alternative accommodation becomes available. Local authorities are currently engaged in building projects for secure accommodation for children in their care aided by a Government grant scheme and the provision of these and other places in future should eventually make it possible to end the need for any young person aged under 17 to be committed to a Prison Department establishment on remand. Nevertheless, at the time when the Covenant was ratified it was recognized that there would continue to be cases where complete separation of juveniles from adults would not be practicable or, in some cases, desirable and the United Kingdom accordingly reserved the right not to apply Article 10.2 (b) in those cases.

Paragraph 3

1. Rule 1 of the Prison Rules 1964 provides that the purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life. Rule 3 (1) provides that prisoners are to be classified having regard to their age, temperament and record and with a view to maintaining good order and facilitating training and, in the case of convicted prisoners, of furthering the purpose of their training and treatment as provided by Rule 1. Specific aspects of training and treatment are governed by particular rules. For example, Rule 29 (2) requires that programmes of evening educational classes shall be arranged at every prison and, subject to any directions of the Secretary of State, reasonable facilities shall be afforded to prisoners who wish to do so to improve their education by correspondence courses or private study, or to practise handicrafts, in their spare time. Rule 31 (2) provides that a prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the Governor, best promote the interests of his family and his social rehabilitation. Under Rule 32, from the beginning of a prisoner's sentence, consideration is to be given, in consultation with the appropriate after-care organization, to the prisoner's future and the assistance to be given him on and after his release.

2. A person under 17 years of age may not be sentenced to imprisonment, nor may any court impose imprisonment on a person under 21 years of age unless the court is of opinion that no other method of dealing with him is appropriate (Powers of Criminal Courts Act 1973, s.19). A person between the ages of 10 and 18 who has been convicted of murder must be sentenced to detention at Her Majesty's pleasure, while a child between the ages of 10 and 14 and a young person between the ages of 14 and 17 found guilty of an offence punishable in the case of an offender over 17 with imprisonment for 14 years or more may be sentenced to detention for such period, not exceeding the maximum permitted as a term of imprisonment for the offence, as the judge may direct. The detention takes place in a community home or its equivalent, a Borstal institution or the young prisoner's wing of a prison.

3. Where a person between the ages of 15 and 21 years old is convicted on indictment of an offence punishable with imprisonment the court may, if certain conditions are satisfied, pass a sentence of Borstal training. Such a person who is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment may be committed to the Crown Court for sentence to Borstal training. The objects of Borstal training are to bring to bear every influence which may establish in the inmates the wish to lead a good and useful life on release, and to fit them to do so by the fullest possible development of their character, capabilities and sense of responsibility (The Borstal Rules 1964, Rule 1 (2)). Methods of training may vary as between one Borstal and another, according to the needs of the inmates allocated to them. Inmates must be allocated to Borstals, as far as practicable, in accordance with their age, character and capabilities and so as to make the best use of training facilities available.

4. In any case where a court has power, or would have power but for the statutory restrictions upon the imprisonment of young offenders, to pass sentence of imprisonment on an offender under 21 but not less than 14 years of age, the court may order him to be detained in a detention centre. Where he has attained the age of 17 or is convicted before the Crown Court and the maximum term of imprisonment for which the court could, or could but for any such restriction, pass sentence in his case exceeds three months, an order may be made for any term of not less than three nor more than six months; in any other case an order may be made for a term of three months. The rules governing the running of detention centres (The Detention Centre Rules 1952 as amended) correspond broadly to the Prison Rules mentioned above.

5. The above provisions concerning custodial sentences for juvenile offenders result in only a restricted number of young offenders being admitted to adult prison establishments. Those who are admitted are generally segregated from adults. However, there are cases when lack of suitable accommodation makes this impracticable. Moreover, in certain cases complete segregation is not considered necessarily desirable. Older women, who are less likely to be committed to a criminal way of life than adult males, can have a stabilizing influence on girls if they are allowed to associate at certain times, e.g. at work in the case of girls over school-leaving age. The Advisory Council on the Penal System in its report on Young Adult Offenders, published in 1974, took the view that young women need not be separated from older women (Recommendation 25). Accordingly, the United Kingdom, when ratifying the Covenant, reserved the right not to apply Article 10 (3) in these cases.

Article 11

Domestic law does not permit the imprisonment of any person on the ground of his failure to fulfil a contractual obligation. Any person imprisoned on this ground would be entitled to bring proceedings for habeas corpus to secure his release, or for damages for false imprisonment. The imprisonment would also amount to a criminal offence: see the section of this Report dealing with Article 9. More generally, a person may be committed to prison for default in paying a debt only where the debt arose:

- (a) under a High Court, county court or magistrates' court maintenance order; or
- (b) under a judgment or order for the payment of certain rates, taxes, national insurance premiums and redundancy fund contributions; or
- (c) under a legal aid contribution order in a criminal case.

(Administration of Justice Act 1970, ss. 11, 12 (b)).

Article 12

Paragraph 1

1. Domestic law does not generally permit any interference with the right of a person lawfully within the United Kingdom to liberty of movement and freedom to choose his residence within the United Kingdom. Any unlawful interference with that right by a public authority would, in so far as it amounted to an imprisonment, be restrained by application for a writ of habeas corpus or proceedings for false imprisonment (see the section of this Report dealing with Article 9). Otherwise proceedings for certiorari may lie to quash the act or order complained of. As regards the powers of exclusion, see the comments under Article 4.

2. Individuals who are lawfully within the territory of a dependency of the United Kingdom do not by virtue of their lawful presence there have an automatic right of entry to the United Kingdom. Such a right is mainly confined to those who, under the Immigration Act 1971, have the right of abode in the United Kingdom by virtue of certain connexions. Accordingly, on ratifying the Covenant, the Government of the United Kingdom reserved the right to interpret the provisions of this paragraph relating to the territory of a State as applying separately to each of the territories comprising the United Kingdom and its dependencies.

Paragraph 2

Domestic law does not generally permit any interference with the right of a person to leave the United Kingdom. Any unlawful interference with that right could be restrained by application for a writ of habeas corpus or proceedings for false imprisonment or certiorari as appropriate.

Paragraph 3

Restrictions on the rights in paragraphs 1 and 2 of this Article occur mainly in cases of arrest and detention which are dealt with in relation to Article 9 of the Covenant.

Paragraph 4

1. The Immigration Act 1971 lays down that those persons who have the right of abode in the United Kingdom may not be prevented from entering the country. Persons who do not have the right of abode in the United Kingdom are, however, subject to immigration control. Accordingly, on ratifying the Covenant the United Kingdom reserved the right to continue to apply such immigration control in respect of those persons as they may deem necessary.

Article 13

1. Subject to certain exceptions, any person who does not have the right of abode but who is lawfully in the United Kingdom may be deported under the Immigration Act 1971 if a court has recommended deportation after convicting him of an offence punishable with imprisonment or if, having only a limited leave to enter and remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave or if the Home Secretary deems his deportation conducive to the public good. There is also power to deport the wife and children under 18 of someone against whom a deportation order has been made.

2. Where a court has recommended deportation, there is an appeal to a higher court against the recommendation. In all other cases, there is an appeal direct to the independent appellate authorities constituted under Part II of the 1971 Act, except where the decision has been taken personally by the Home Secretary in the interests of national security or for reasons of a political nature. Those cases are subject to a non-statutory procedure. The person proposed to be deported is informed, so far as is possible, of the nature of the allegations against him and is given the opportunity to appear before a panel of three independent advisers and to make representations to them before they tender advice to the Secretary of State. After he has received their advice, the Secretary of State decides whether the deportation should proceed. If he does so decide and gives directions for the person's removal to a named destination, that person may then appeal under the Immigration Act against the directions on the ground that he ought to be removed (if at all) to a different country or territory specified by him.

Article 14

Paragraph 1

1. Domestic courts and tribunals are open to all persons on an equal basis. Only certain minor distinctions in the procedural rights of litigants are made on grounds of their status. For example, an infant may only carry on proceedings by his guardian or some other person, who is called his next friend (Rules of the Supreme Court, Order 80, rule 3 (2)).

2. All criminal proceedings are conducted in public, with the exception of cases involving public security (Official Secrets Act 1920, s.8 (4)), cases heard in the juvenile courts from which the public, but not the press, are excluded (Children and Young Persons Act 1933, s.47 (2)), and cases in which, on the ground of public decency, the judge has a discretion to close the court while evidence of a particularly intimate character is being given by a child or young person. In the trial of charges under the Official Secrets Acts 1911-1939, the court is only closed (if at all) during the hearing of such parts of the trial as the judge, in his discretion, deems desirable and the sentence must always be passed in public. Civil proceedings must also be conducted in open court, except in certain cases where press and public may be excluded on grounds of a kind contemplated in paragraph (1) of this Article.

3. Impartiality of all judicial proceedings is safeguarded by the rule of natural justice that no man may be judge in his own cause (nemo iudex in causa sua) and by the independence of the judiciary, which is free to administer the law under the protection of the law without fear or favour. If, for any reason, a real likelihood of bias can be established, the judgment is voidable. No inquiry is made whether any bias has in fact been shown; it is sufficient to prove that the judge had an interest in the proceedings. Trial by jury for serious criminal offences provides a further general safeguard against prejudice in the administration of the law. As regards the independence of the judiciary, High Court judges are removable from office only for misconduct and then only on an address of both Houses of Parliament.

Paragraph 2

It is a fundamental principle of the criminal law that an accused person is presumed innocent until proved guilty. The guilt of the accused must be proved beyond reasonable doubt, and the accused must be acquitted if there is any reasonable doubt as to his guilt. In general, the burden of proof is on the prosecution, and never shifts. In a very few cases, however, the persuasive burden is on the accused. It is for the accused to prove the defences of insanity and diminished responsibility; and in some cases statutes have placed the burden of proving certain facts or excuses on the defence. Thus by statute (Explosive Substances Act 1883), a person charged with making or possessing an explosive substance in circumstances giving rise to a reasonable suspicion that he was not doing so for a lawful object must prove that he was doing so for a lawful object. When the burden of proof is on the accused, it is sufficient for him to prove the exculpatory fact on a balance of probabilities. The burden of proof on the accused is thus never as high as that on the prosecution.

Paragraph 3 (a)

Summonses and warrants of arrest must give the accused reasonable information of the nature of the charge against him. A person arrested without warning must be told the reason for his arrest; and a written copy of the charge against him is always given to him. Where trial is on indictment, the accused is also entitled to a copy of the information and to a copy of the indictment (a formal written accusation of the charge).

Paragraph 3 (b)

The accused must, as a matter of natural justice, be given an adequate opportunity to prepare his defence. If the trial is due to take place before he has had such an opportunity he may apply to the Court for an adjournment. If the application is genuine, it must be granted; if it is not granted, the conviction is liable to be quashed on appeal. As regards facilities, in any trial on indictment it is the duty of the prosecution to inform the defence of the identity of their witnesses and of the nature of their evidence. Should any available relevant credible evidence be withheld, and subsequently discovered by the defence, an appeal can only result in the conviction being quashed; the Court of Appeal cannot order a new trial in these circumstances. In the preparation of his defence, the accused has the right to instruct a solicitor and counsel of his own choice.

Paragraph 3 (c)

Unless the Crown Court has ordered otherwise, the trial of an accused person must begin not later than the expiration of eight weeks beginning with the date of



his committal (Courts Act 1971, s.7 (4)(b), (i), Crown Court Rules 1971, r.19). In cases decided before the 1971 Act, the absence or illness of a material witness has been held grounds for postponement of a trial.

Paragraph 3 (d)

1. In general a defendant has a right to be present at his trial, but the proceedings may in exceptional circumstances be continued in his absence if he voluntarily refrains from attending.

2. The right of an accused person to defend himself in person or to be represented by solicitor and counsel of his own choice is an accepted principle. It is the duty of the judge or magistrate to inform a defendant who appears unrepresented of his procedural rights and particularly of his rights to cross-examine witnesses for the prosecution and, at the close of the prosecution case, to give sworn evidence on his own behalf or to make an unsworn statement, to call witnesses and to address the court.

3. Legal aid in criminal proceedings is governed by the Legal Aid Act 1974, Part II, and normally consists of representation by a solicitor and counsel, including advice on preparing the case. The power to grant legal aid is exercisable where it appears to the court desirable to do so in the interests of justice and the court must make an order in certain cases, e.g. where a person is committed for trial on a charge of murder. Where a doubt arises whether an order should be made for the giving of aid to any person, the doubt must be resolved in that person's favour. An order must not be made unless it appears to the court that the means of the persons concerned are such that he requires assistance in meeting the costs which he may incur. A legally assisted person whose income and capital resources exceed a specified amount may be ordered to make such contribution in respect of the costs incurred on his behalf as appears to the court reasonable having regard to his resources and commitments.

Paragraph 3 (e)

The accused person, or his counsel if he is represented, has the right to question the witnesses of the prosecution and to call witnesses on his own account. The defence may secure the attendance of a person as a witness on behalf of the accused by the issue of a subpoena, which compels the person on whom it is served to attend a court.

Paragraph 3 (f)

Where a prisoner who is ignorant of the English language is being tried and is undefended, the evidence must be interpreted for him. If he is defended, the evidence should be interpreted except when he, or his counsel on his behalf, expresses a wish to dispense with the interpretation, and the judge thinks fit to permit the omission; but the judge should not permit it unless he is of the opinion that the accused substantially understands the evidence to be given against him. The expenses properly incurred on the payment of an interpreter must be paid out of central funds (Administration of Justice Act 1973, s.17).

Paragraph 3 (g)

1. An accused person is in all cases entitled to make a plea of not guilty. Under section 6 (1) of the Criminal Law Act 1967, when a person is arraigned on an indictment:

- (a) he shall in all cases be entitled to make a plea of not guilty in addition to any demurrer or special plea;
- (b) he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment;
- (c) if he stands mute of malice or will not answer directly to the indictment, the court may order a plea of not guilty to be entered on his behalf, and he shall then be treated as having pleaded not guilty.

2. A defendant is a competent witness for the defence at every stage of criminal proceedings either on his own behalf or on behalf of any person who is tried with him. But he cannot be called as a witness except upon his own application, and his failure to give evidence must not be made the subject of any comment by the prosecution (Criminal Evidence Act 1898, s.1).

#### Paragraph 4

1. A magistrates' court before which a person under 17 is charged with an indictable offence must deal with it summarily unless:

- (a) the charge is one of homicide; or
- (b) he is over 14 and the offence is so grave that under specific statutory powers he may if found guilty be sentenced to be detained for a long period; or
- (c) he is charged jointly with a person who has attained 17 and the court considers it necessary in the interests of justice to commit them both for trial.

Subject to a few exceptions, all charges against a person under 17 which are dealt with summarily must be heard by a juvenile court (Children and Young Persons Acts 1933 to 1969).

2. A juvenile court is composed of magistrates specially appointed for the purpose who must retire at 65. Whenever possible the Court must consist of at least one man and one woman and not more than three persons in all. A juvenile court must not sit in a room in which sittings of a court other than a juvenile court are held if a sitting of that other court has been or will be held there within an hour before or after the sitting of the juvenile court. The only persons who are permitted to be present in court are:

- (1) members and officers of the court;
- (2) parties in the case, and solicitors, counsel and witnesses;
- (3) newspaper reporters;
- (4) other persons specifically authorized to be present.

No newspaper report or report by sound or television broadcasts of any proceedings in a juvenile court may reveal the name, address or school or include any particulars calculated to lead to the identification of any person under 17 who is

accused or is a witness, and no picture of any such person may be published in a newspaper except by direction of the court or of the Home Secretary. The parent or guardian of the accused may be required to attend the court at all stages of the proceedings and must attend at any stage where the court thinks it desirable, unless the court is satisfied that it would be unreasonable to require his attendance. The court must explain the substance of the charge in simple language, and in those cases where the accused is not legally represented and makes assertions the court must put such assertions to the witness in the form of questions. After there is a finding of guilt the court is required to receive the fullest possible information from a variety of sources.

Paragraph 5

1. Any person convicted of an offence on indictment may appeal from the Crown Court to the Court of Appeal (Criminal Division) against his conviction (Criminal Appeal Act 1968, s.1 (1)). Appeal also lies against any sentence passed for an offence, unless fixed by law; against a verdict of not guilty by reason of insanity; and against the finding of a jury that the defendant was under a disability.
2. If an appeal against conviction is based upon any ground which involves a question of law alone, or the judge of the court of trial grants a certificate that the case is fit for appeal on a ground which involves a question of fact or a question of mixed law and fact, the appeal lies without leave; in any other case, the leave of the Court of Appeal is required (Criminal Appeal Act 1968, s.1 (2) (b)).
3. Appeal lies with leave to the House of Lords from any division of the Court of Appeal on an appeal to it. Leave cannot be granted unless the Court of Appeal certifies that a point of law of general public importance is involved in the decision and it appears to it or to the House of Lords that the point is one which ought to be considered by the House.
4. In the case of summary offences, there is a right of appeal under the Magistrates' Courts Act 1952, s.83 (1) from a magistrates' court to the Crown Court:
  - (a) against sentence when the accused pleaded guilty; and
  - (b) against conviction or sentence when the accused did not plead guilty.
5. An appeal on points of law and jurisdiction lies by way of case stated to the High Court from a magistrates' court and from the Crown Court when that court has determined an appeal from a magistrates' court. There is a further appeal, under certain conditions, from the High Court to the House of Lords.

Paragraph 6

1. There are no provisions conferring a right on a person convicted of a criminal offence but later exonerated to receive compensation from public funds for any loss or hardship he may have suffered.
2. However, a person may have a right to bring a civil action for damages against the person or authority responsible if criminal proceedings have been instituted maliciously and without reasonable cause. In the case of such a civil action damages are assessed and payment may be enforced by the courts according to the normal rules applicable in such cases.

3. Moreover, there is a procedure for making ex gratia payments out of public funds where, after a person has been convicted by a final decision of a criminal offence, as the result of the emergence of fresh information the conviction is found to be wrong. This excludes acquittal in the normal process of trial and appeal, but applies to cases in which the Home Secretary, in the light of the fresh information, either recommends the grant of a Free Pardon or refers the case to the Court of Appeal (Criminal Division), and the Court either quashes the conviction or orders a retrial which results in an acquittal.

4. In cases in which innocence is demonstrated in one of these ways the Home Secretary will be prepared to make an ex gratia payment from public funds if the person concerned asks for compensation and has in fact suffered hardship (such as wrongful imprisonment). The facts of the case are, after consultation with the claimant, put by the Home Secretary before an independent assessor for advice as to the appropriate amount to be paid. In making his assessment the assessor applies principles analogous to those governing the assessment of damages for civil wrongs. The assessment will take account of both pecuniary and non-pecuniary loss arising from the conviction and any loss of liberty.

5. The recipient of an ex gratia payment is required to give an undertaking not to bring civil proceedings against any public authority. In effect he has the option either to rely on the civil law or to accept the ex gratia payment.

#### Paragraph 7

It is a long established principle of common law, which has been reaffirmed in several statutes (e.g. Unlawful Oaths Act 1797) that a person may not be tried for a crime: (i) in respect of which he has previously been acquitted or convicted; (ii) in respect of which he could on some previous indictment have been lawfully convicted; (iii) if the crime is in effect the same or substantially the same one in respect of which (a) he has previously been acquitted or convicted, or (b) he could on some previous indictment have been convicted. (Archbold, Criminal Pleading, Evidence and Practice, 39th Edition, ss 373 et seq.).

#### Article 15

1. Parliament is competent to enact ex post facto criminal legislation if it regards this as necessary, but there is a powerful presumption against its doing so, and there is almost certainly no case where a general criminal statute has created a crime retrospectively. It is also a fundamental rule that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication: see R v Miah (House of Lords) 1974 2 All ER 377). Moreover, an expression of Parliament's intention that retrospective effect is not to be given to its enactment without specific authority is to be found in the duty imposed on the Select Committee on Statutory Instruments, which scrutinises subordinate legislation and is instructed, inter alia, to bring to the attention of the legislature any Statutory Instrument which purports, without specific authority of the parent Act, to have retrospective effect. The position as regards the penalty attached to a crime is similar, as has recently been confirmed by a judgment of the Northern Ireland Court of Appeal in R v Deery (unreported).

#### Article 16

There are no cases in which a person may be deprived of the protection of the law. Outlawry proceedings, which had long been obsolete, were finally abolished

by the Administration of Justice (Miscellaneous Provisions) Act 1938, s.12. As regards the position of unborn children, see the section of this Report concerning Article 6.

#### Article 17

1. Any power a public authority may have to interfere with a person's right to respect for his private and family life, his home and his correspondence must be provided by law. No public authority has any right to interfere with these rights other than those provided by law. Although there is no general statutory right to privacy, particular intrusions may be the subject of actions in the courts. For example, any unauthorized entry on land or buildings is a trespass which may be restrained by injunction and which will give rise to an action for damages.

2. Rights of intervention are only granted to public authorities for purposes contemplated by Article 17. The empowering provisions are found in various statutes. Some examples of powers of entry are the following - the Children and Young Persons Act 1969, s.54; the Agriculture Act 1947, s.106; and the Rights of Entry (Gas and Electricity Boards) Act 1954, s.1.

3. As regards correspondence, private rights are protected by ss.55, 56 and 58 of the Post Office Act 1953.

4. Control of prisoners' correspondence is provided for by Rules 33 and 34 of the Prison Rules 1964. (These Rules are, however, subject to Rule 37A concerning a prisoner's right to correspond with his legal adviser.)

5. Her Majesty's Government is aware of the danger to privacy that could arise from computers and has recognized a need for legislation to be introduced in this field. Such legislation would establish a set of objectives which would determine standards governing the use of computers that handle personal information. It would also establish a permanent agency to oversee the use of computers in both the public and private sectors to see that they were operated with a proper regard for privacy and with adequate safeguards for the confidentiality of the personal information which they contain. As a first step a special Committee - the Data Protection Committee - has been established to prepare advice for the Government on the form of the legislation, and on the powers of the proposed permanent agency.

#### Article 18

1. There are no restrictions imposed by law on freedom of thought, conscience and religion or on freedom to change religion or belief. Liberty of religious worship is further assured by statutes which expressly allow assemblies for religious purposes (e.g. the Liberty of Religious Worship Act 1855), the performance of religious services at marriages and funerals and the registration of places of worship (Places of Religious Worship Registration Act 1855).

2. Freedom to manifest one's religion or beliefs is restricted by law only to the extent that this is necessary to secure public safety, order, health or morals or the rights of others.

3. Interference with any of these freedoms will normally constitute a civil or criminal wrong under the common law, but in addition a statutory offence is committed by anyone who disturbs a religious meeting or obstructs a clergyman or other minister in order to prevent him from officiating at a religious service (e.g. Toleration Act 1688, s.15; Places of Religious Worship Act 1812, s.12; Offences Against the Person Act 1861, s.36).

4. Although religious worship and instruction is an essential feature of the curriculum of county and voluntary schools, parents may insist on their children being excused from attendance at religious worship and instruction (Education Act 1944, s.25).

#### Article 19

The common law knows of no restrictions on the right to hold opinions; and it does not inhibit freedom of expression save in respect of statements which are in contempt of court, blasphemous, seditious, defamatory of another person, in breach of confidence or likely to provoke a breach of the peace. Any restrictions on freedom of expression and the freedom to receive and impart information other than these can result only from legal provisions enacted by or approved by Parliament in the public interest. Examples of such statutory and other provisions are as follows:-

- (a) the Official Secrets Acts 1911-1939 (which are concerned with the protection of Government information in the interests of national security, etc.);
- (b) the Public Order Act 1936 and the Race Relations Act 1976 (the relevant provisions of which are concerned with the prevention of disorder and incitement to racial hatred);
- (c) the Obscene Publications Acts 1959 and 1964, the Indecent Advertisements Act 1889, the Children and Young Persons (Harmful Publications) Act 1955, the Theatres Act 1968, the Customs Consolidation Act 1876, s.42 and the Judicial Proceedings (Regulation of Reports) Act 1926 (which are concerned with the protection of morals);
- (d) the BBC Royal Charter and Licence and Agreement 1969 and the Independent Broadcasting Authority Act 1973 and Licence under which the broadcasting authorities are empowered to provide public broadcasting services and are required to ensure that so far as possible the programmes do not contain any matter offensive to public feeling or decency or likely to encourage crime and disorder.
- (e) the Rehabilitation of Offenders Act 1974 (which places restrictions on the disclosure of a person's previous convictions if these are "spent" convictions under the provisions of the Act: information about such convictions may only be disclosed in the course of official duties).

It is in the discretion of the broadcasting authorities in carrying out their duty to provide as a public service television and sound broadcasts of information, education and entertainment what persons or bodies shall have access to the broadcasting media; this discretion is exercised free from government intervention or control in accordance with constitutional arrangements that have been in force since the inception of public broadcasting about 50 years ago. There is no government censorship or control of the press or over any programme broadcast. As to control of prisoners' correspondence, see the section of this Report dealing with Article 17.

## Article 20

1. Although criminal law does not in terms prohibit the distribution of propaganda for war, if the propaganda, or its manner of presentation, was such as to bring the sovereign or government into hatred or contempt or generally to create disorder, discontent or dissatisfaction, it may amount to sedition, at least if there is an intention to provoke a breach of the peace. Or if the propaganda were intended or tended to cause a breach of the peace, and the language used were threatening, abusive or insulting, a prosecution may lie under the Public Order Act 1936.

2. While, again, criminal law does not prohibit the advocacy of national, racial or religious hatred in the terms provided by paragraph 2 of this Article, advocacy of hatred may, in certain circumstances, give rise to the offence of sedition and to an offence under the Public Order Act 1936. Moreover, under the Race Relations Act 1976 a person commits an offence if:

- (a) he publishes or distributes written matter which is threatening, abusive or insulting;
- (b) he uses in any public place or at any public meeting words which are threatening, abusive or insulting,

in a case where having regard to all the circumstances, hatred is likely to be stirred up against any racial group by the matter or words in question.

3. When ratifying the Covenant, the Government of the United Kingdom considered that to the extent (if at all) that the rights recognized in Article 20, when read in the context of Articles 19 (freedom of expression) and 21 (right of peaceful assembly) were not fully reflected in the above-mentioned provisions of domestic law, there was nevertheless not at the present time any practical need for further legislation for this purpose and accordingly reserved the right not to introduce any such further legislation.

## Article 21

Freedom of peaceful assembly is one of the oldest common law rights and there are no restrictions on the exercise of this right other than those prescribed by law in the interests of the community as a whole and for the protection of the rights and freedoms of others. Common law, for example, forbids assemblies convened with the express object of effecting a breach of the peace and the Public Order Act 1936 makes provision for the regulation of processions along the highway.

## Article 22

1. There are no legal objections to complete freedom of association other than those concerned with public safety, national security, and the prevention of crime. It is unlawful, for example, to organize an association for the purpose of usurping the function of the police or of the armed forces of the Crown, or for the use or display of physical force in promoting any political object (Public Order Act 1936, s.2).

2. As regards trade unions, that the usual objects of a trade union are lawful can be seen from the following Acts, viz:

Trade Union Act 1913

Trade Union (Amalgamations etc.) Act 1964

Trade Union and Labour Relations Acts 1974 and 1976.

There are no substantive or formal conditions that must be fulfilled upon the establishment of a trade union.

3. The United Kingdom is a party to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise.

#### Article 23

##### Paragraph 1

1. Domestic law accords to the family the protection required by its position as the natural and fundamental group unit of society.

2. The Marriage Act 1949 lays down the formalities required for the solemnization of marriages. These formalities are designed to ensure, inter alia, that so far as is practicable a marriage entered into under its provisions may not subsequently be impugned. A breach of these provisions may attract criminal sanctions.

3. During the subsistence of a marriage the rights of each spouse vis-à-vis third parties are protected, inter alia, by the common law action for loss of consortium if this was due to the defendant's breach of contract or tort. (The common law actions for enticement and harbouring, and the right to claim damages for adultery were abolished by the Law Reform (Miscellaneous Provisions) Act 1970.) Under the Fatal Accidents Acts 1946 and 1949 damages arising from death caused by the defendant's wrongful act may be recovered by the deceased's wife, husband, parent, grandparent, child, grandchild, sister, uncle, aunt and the issue of a brother, sister, uncle or aunt. Under section 56 of the Offences Against the Person Act 1861 it is an offence to take away or detain any child under the age of 14 years with intent to deprive its parent of its possession or to harbour a child knowing it to have been obtained in this way. Section 20 of the Sexual Offences Act 1956 makes it an offence for a person acting without lawful authority or excuse to take an unmarried girl under the age of 16 out of the possession of her parent against her parent's will.

4. A marriage may be terminated only by the death of one of the parties or by a decree of dissolution, divorce or nullity pronounced by a court of competent jurisdiction. Under the Matrimonial Causes Act 1973 a divorce may be granted on the application of either spouse on the ground that the marriage has irretrievably broken down. Proof of certain facts (e.g. the respondent's adultery) will give rise to a presumption of breakdown. Save in exceptional circumstances, a court may not pronounce a decree absolute of divorce unless satisfactory arrangements have been made for the welfare of any children of the marriage.

##### Paragraph 2

5. The right to marry derives from common law and the only general statutory restrictions on this right are those contained in the Marriage Act 1949 and the Marriage (Enabling) Act 1960. In order that a person domiciled in England should have capacity to contract a valid marriage, the following conditions must be satisfied:



- (a) one party must be male and the other female;
- (b) neither party must be already married;
- (c) both parties must be over the age of 16; and
- (d) the parties must not be related within the prohibited degrees of consanguinity or affinity.

Paragraph 3

1. It is necessary for a valid marriage that the parties should consent to marry one another. If, therefore, there is a mistake as to the person with whom the marriage ceremony is performed or as to the nature of the ceremony itself, the marriage is void. However, when a person of full age and mental capacity goes through a ceremony of marriage there is a presumption of consent which can only be rebutted by clear evidence.

2. Fraudulent misrepresentation or concealment does not, apart from duress or mental disorder and apart from the concealment of pregnancy by another man or of a venereal disease in a communicable form, affect the validity of a marriage to which the parties freely consented with a knowledge of the nature of the contract. But if a person is induced to go through a ceremony of marriage by threats or duress, or in a state of intoxication and without any real consent to the marriage, it is invalid. In all such cases the test of validity is whether there was any real consent to the marriage.

Paragraph 4

A number of steps have been taken in recent years to ensure equality of the rights and responsibilities of spouses. For example:

- (a) the Matrimonial Proceedings (Magistrates' Courts) Act 1960 increased the powers of a magistrate's court to make matrimonial orders during the subsistence of a marriage including, in particular, orders concerning the custody and maintenance of children of the family. A child of the family is defined for this purpose as a child of both spouses or a child of one of them who has been accepted as a member of the family by the other, and in either case the child may be legitimate, illegitimate or adopted. It is proposed to introduce legislation to replace the Act of 1960, which would provide for complete reciprocity in the obligations of spouses to support each other during marriage;
- (b) the Matrimonial Homes Act 1967 gives to either spouse a statutory right to occupy the matrimonial home in circumstances where the other spouse alone is otherwise entitled to occupy it;
- (c) the Matrimonial Causes Act 1973 gives to a court hearing a petition for divorce, nullity or judicial separation wide powers to order appropriate financial provisions to be made by either spouse, including the transfer and settlement of property. The court is to exercise its powers so as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other;

- (d) the Domicile and Matrimonial Proceedings Act 1973 abolished the common law rule that a woman acquired the domicile of her husband on marriage. In future a married woman's domicile is to be ascertained independently of her husband's.

As regards the protection of children, see the section of this Report dealing with paragraph 1 of this Article.

## Article 24

### Paragraph 1

1. By reason of their status as minors, children enjoy a wide measure of protection by domestic law (without discrimination on any basis). Perhaps the most important provision in this respect is to be found in section 1 of the Children and Young Persons Act 1933 under which:

"If any person who has attained the age of sixteen years and has the custody, charge or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes him to be assaulted, ill-treated, neglected, abandoned or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of [an offence] ..."

2. By section 17 of the Act the following are liable under section 1:

- (a) the parent or legal guardian of the child;
- (b) any person legally liable to maintain him;
- (c) any person to whose charge the child is committed by any of the above;
- (d) any person having actual possession or control of him.

A parent or other person legally liable to maintain a child or young person is deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or lodging for him or taken appropriate steps to procure it.

3. The 1933 Act also contains provisions concerning particular aspects of children's welfare e.g. by imposing restrictions on their employment.

4. Primary responsibility for the care and upbringing of a child is placed on its parents, and section 85 (2) of the Children Act 1975 provides that, subject to the case of separation agreements between husband and wife, a person cannot surrender or transfer to another any parental duty he has as respects a child. It is, for example, the duty of the parent of every child between the ages of 5 and 16 to ensure that he receives "efficient full-time education suitable to his age, ability and aptitude either by regular attendance at school or otherwise" (Education Act 1944, ss 35 and 36). Parents who fail to perform this duty are liable to be prosecuted.

5. In disputes between the parents, either may apply for a court order for custody of or access to their child under the Guardianship of Minors Act 1971. Section 1 of that Act provides that the court must in any such proceedings regard the welfare of the child as the paramount consideration. As to provision on divorce, see the section of this Report dealing with Article 23.1.

6. The Children Act 1948 imposes a duty on all local authorities to receive orphans and deserted children into their care. It also places a duty on a local authority which has received a child into its care to exercise its powers with respect to the child so as to further his best interests, and to afford him opportunity for the proper development of his character and abilities; and makes provision for the maintenance by local authorities of accommodation for children in their care.

7. Under the Children and Young Persons Act 1969 a local authority is under a duty to investigate if it believes that there are grounds for bringing care proceedings and to bring them if necessary. A juvenile court before which a child is brought may make various kinds of order according to the circumstances, including a care order removing the child from the care and control of its parents and committing him to the care of a local authority.

#### Paragraph 2

1. Section 2 of the Births and Deaths Registration Act 1953 provides that in the case of every birth it is the duty:

- (a) of the father and mother of the child; and
- (b) in the case of the death or inability of the father and mother, of each other qualified informant,

to give to the registrar, before the expiration of a period of 42 days from the date of the birth, information of the particulars required to be registered concerning the birth.

"Qualified informant" includes -

- (i) the occupier of the home in which the child was to the knowledge of that occupier born;
- (ii) any person present at the birth;
- (iii) any person having charge of the child.

The particulars required to be registered include the name and the surname by which at the registration of the birth it is intended that the child shall be known.

2. Failure by a parent to give information concerning the birth of his child, and wilful refusal by any qualified informant to answer any question put to him by the registrar relating to the particulars required to be registered constitute criminal offences.

#### Paragraph 3

1. With certain minor exceptions, every person born within the United Kingdom and Colonies acquires citizenship of the United Kingdom and Colonies by birth

(British Nationality Act 1948, s.4). A person born abroad will acquire citizenship of the United Kingdom and Colonies by descent provided that his father is a citizen of the United Kingdom and Colonies by birth or naturalization at the time of his birth. If his father is himself a citizen of the United Kingdom and Colonies by descent only, and if the birth occurs in a foreign country but not a Commonwealth country, citizenship is acquired, provided that certain further conditions are fulfilled; in particular, it must be registered at a United Kingdom consulate within one year of its occurrence or, with the permission of the Secretary of State, later (British Nationality Act 1948, s.5). A person born abroad is entitled to be registered as a citizen of the United Kingdom and Colonies if he satisfies the Secretary of State that he is and always has been stateless and that his mother was a citizen of the United Kingdom and Colonies at the time he was born (British Nationality (No. 2) Act 1964).

2. These provisions create a wide basis for the grant of British nationality. They are not, however, immutable, and are at present under review. Accordingly, when ratifying the Covenant the Government of the United Kingdom reserved the right to enact such nationality legislation as they may deem necessary from time to time to reserve the acquisition and possession of citizenship under such legislation to those having sufficient connexion with the United Kingdom or any of its dependent territories.

#### Article 25

1. The right to take part in the conduct of public affairs is primarily secured by the elections of representatives to Parliament and to local authorities. Subject to certain exceptions, all persons are eligible for election to membership of the House of Commons. The persons who are excluded are aliens, persons under the age of 21, the mentally ill, bankrupts, certain members of the clergy, peers and peeresses in their own right and the holders of specified offices (including most major judicial offices), those employed in the civil service of the Crown and members of the regular armed forces of the Crown (House of Commons Disqualification Act 1975). A person who has been reported guilty of a corrupt or illegal practice at a previous election may be excluded for a period of 5, 7 or 10 years depending on the circumstances. The persons entitled to vote as electors at a parliamentary election in any constituency are those persons of 18 years or over who are resident there, are not subject to any legal incapacity to vote and are either British subjects or citizens of the Republic of Ireland (Representation of the People Act 1949 s.1). Persons subject to a legal incapacity include peers, persons suffering from severe mental illness and convicted persons detained in a penal institution. A person found guilty of a corrupt or illegal practice at a previous election may also be disqualified from voting for a period of five years.

2. Subject, again, to certain exceptions, a person is qualified to be elected and be a member of a local authority if he is a British subject or citizen of the Republic of Ireland, has attained the age of 21 and fulfils any of the following conditions: (a) he is a local government elector for the area of the authority; (b) he has during the whole of the preceding 12 months occupied as owner or tenant any land or other premises in that area; (c) his principal or only place of work during those 12 months has been in that area; (d) he has during the whole of those 12 months resided there or (e) in the case of a member of a parish or community council he has during the whole of the 12 months resided either in the parish or community or within three miles of it (Local Government Act 1972 s.79). A person is generally disqualified if he holds any paid office or employment, appointments to which are or may be made or confirmed by the local authority or any committee or sub-committee or by a joint board or joint committee on which the authority are

represented or by any person holding any such office or employment; or if he has been adjudged bankrupt or has within five years before the day of election been surcharged by a district auditor to an amount exceeding £500, or has within that period or since his election been convicted of any offence and has had passed on him a sentence of imprisonment for a period of not less than three months; as at Parliamentary elections, a person may also be disqualified for a limited period in certain circumstances. The persons entitled to vote at a local government election are those persons of 18 years or over who are resident in the area for which the election is held, are not subject to any legal incapacity to vote and are either British subjects or citizens of the Republic of Ireland (Representation of the People Act 1949 s.2). Legal incapacities for voting at a local government election correspond broadly to those for voting at a Parliamentary election, save that a peer may vote at a local government election.

3. The effect of the Parliament Act 1911 is that a general election must be held at least once every five years. At such a general election, no person may vote more than once (Representation of the People Act 1949 s.1 (3)). Voting is by secret ballot (*ibid.*, s.53).

4. With certain exceptions, nobody may be appointed to a permanent situation in the civil service until his qualifications have been approved by the Civil Service Commissioners and they have issued a certificate of qualification in his favour (Civil Service Order in Council 1969, Article 2). In matters concerning the selection of individuals for civil service appointments the Civil Service Commission are completely independent of ministers. They have made regulations (the Civil Service Commission General Regulations 1969) prescribing the conditions on which they may issue certificates of qualification. The regulations concern, for example, the age, health and regularity of attendance, knowledge and ability and nationality of candidates. They prescribe that the normal method of entry to the civil service shall be by open competitions. The Sex Discrimination Act 1975 and the Race Relations Act 1976, which prohibit discrimination in the employment field on the grounds of sex and on racial grounds respectively apply to employment in the civil service. The Race Relations Act however permits the application of the nationality requirement contained in Civil Service Department regulations.

#### Article 26

The rule of law is a fundamental principle of the constitution:

"It means the absence of arbitrary power; effective control of and proper publicity for delegated legislation, particularly when it imposes penalties; that when discretionary power is granted the manner in which it is exercised should as far as is practicable be defined; that every man should be responsible to the ordinary law whether he be private citizen or public officer; that private rights should be determined by impartial and independent tribunals; and that fundamental private rights are safeguarded by the ordinary law of the land." (Wade and Phillips, Constitutional Law, 8th Edition, pages 76 to 77.)

It follows that no person could be deprived of the equal protection of the law except by express legislation of Parliament.

#### Article 27

There are no restrictions on the enjoyment by any group of persons of the rights as to culture, religion and language which are the subject of this Article,

other than those such as are referred to in Article 22 (2) of the Covenant relating to the right of association. Members of any group of persons are entitled to the same protection of the law as others. Although it is hoped that minority groups will ultimately be fully integrated into British society, integration is seen not as a flattening process of assimilation, but as equality of opportunity accompanied by cultural diversity in an atmosphere of mutual tolerance.

#### General

1. Although, like the Covenant, it does not form part of domestic law, the European Convention on Human Rights constitutes an important safeguard for the rights and freedoms of the individual. The United Kingdom has been a party to the Convention since 8 March 1951, and has recognized the right of individual petition under Article 25 since 14 January 1966. The cases brought against the United Kingdom under the Convention have raised a wide variety of issues, and all of the rights and freedoms set out have been invoked in one form or another. Only one application has resulted in a decision that there was a breach of the Convention, namely the Golder case in which the European Court of Human Rights held that a restriction on the right of a convicted prisoner to seek legal advice without the consent of the Home Secretary was contrary to Articles 6 and 8 of the Convention. The restriction was subsequently removed.

2. Moreover, although the European Convention does not form part of domestic law, the courts of the United Kingdom will have regard to it on the principle that, as with any other international treaty:

"There is a prima facie presumption that Parliament does not intend to act in breach of international law, including therein specific treaty obligations; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is consonant is to be preferred." (Salomon v Commissioners of Customs and Excise [1967] 2 QB 116 at page 143.)

For an example of the application of this principle in relation to the European Convention see the case of R v Miah, which is referred to in the section of this Report dealing with Article 15.

3. The United Kingdom is also a party to a number of other Conventions whose object is to promote the rights and freedoms of the individual. Apart from those mentioned in this Report and the International Covenant on Economic, Social and Cultural Rights, these include the International Convention on the Elimination of All Forms of Racial Discrimination.

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