



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**List of issues in connection with the consideration of the fifth
periodic report of the United Kingdom of Great Britain and
Northern Ireland, adopted by the Committee at its forty-
ninth session (29 October-23 November 2012)**

Addendum

Replies of the United Kingdom to the list of issues (CAT/C/GBR/Q/5)* **

[27 March 2013]

* Annexes to the present document are available for consultation at the secretariat of the Committee.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

Part I

Reply to the issues raised in part I, paragraph 1, of the list of issues (CAT/C/GBR/Q/5)

1.1 Torture is already a criminal offence in the United Kingdom under section 134 of the Criminal Justice Act 1988, and it carries a maximum penalty of life imprisonment. The Human Rights Act 1998, which came into force in October 2000, gives further effect in UK law to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Article 3 of the ECHR provides that no one shall be subjected to torture, inhuman or degrading treatment or punishment. The Human Rights Act places a statutory obligation upon all public authorities to act compatibly with the Convention rights and strengthens a victim's ability to rely upon the Convention rights in civil and criminal proceedings.

1.2 The United Kingdom is also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in respect of the United Kingdom on 1 February 1989. Since November 2004 the Committee has made five visits to the United Kingdom in 2005, 2007, 2008, 2010 and 2012. They visited Northern Ireland in 2008, Guernsey and Jersey in 2010 and England and Scotland in 2012.

Reply to the issues raised in part I, paragraph 2, of the list of issues

2.1 The UK Government remains committed to the ECHR and to ensuring that the rights contained therein continue to be enshrined in UK law.

2.2 In line with the commitment made in the Coalition Government's Programme for Government the Government established an independent Commission on a Bill of Rights to look afresh at the way rights are protected in the UK, to see if things can be done better and in a way that reflects our traditions.

2.3 The Commission reported just before Christmas and although it did not reach a unanimous view it will make a valuable contribution to the Government's thinking in this area.

2.4 The Commission's report cautioned that the time was not right at present to proceed with a Bill of Rights or changes to the current legislative framework for human rights. The Commission concluded that promotion of a Bill of Rights should be considered following the independence referendum in Scotland, given the way our human rights framework is tied into the devolution settlement. The Government agrees with this analysis.

2.5 The Scottish Government is opposed to the introduction of a UK Bill of Rights. The ECHR remains embedded within the Scotland Act, and the Scottish Government would expect this to continue to be the case under existing constitutional arrangements.

Reply to the issues raised in part I, paragraph 3, of the list of issues

3.1 As has been the position for some time, the UK Government wants to see the issue of a Bill of Rights for Northern Ireland resolved. However, it remains clear that there is currently no consensus among the political parties in Northern Ireland as to whether such a Bill is desirable, or to its potential content.

Reply to the issues raised in part I, paragraph 4, of the list of issues

4.1 Article 1 of the ECHR requires the parties to secure the rights under the other Articles of the Convention "to everyone within their jurisdiction". The European Court of Human Rights (ECtHR) ruled in two judgments (Al-Skeini and Al-Jedda) that, in the

specific and exceptional circumstances of those cases, the UK had jurisdiction in relation to the acts in question notwithstanding that these took place in Iraq.

4.2 All cases on which the ECtHR has ruled against the UK require the UK Government to report to the Committee of Ministers of the Council of Europe on the implementation of their judgments in the form of action plans and progress reports which can be discussed in the Council of Europe and are put on the Council of Europe website (links below).

4.3 Revised action plan - Communication from the United Kingdom concerning the case of Al Jedda against United Kingdom (January 2013)
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2246905&SecMode=1&DocId=1973092&Usage=2>

4.4 Revised Action plan - Communication from the United Kingdom concerning the case of Al-Skeini against United Kingdom (May 2012)
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2082643&SecMode=1&DocId=1885434&Usage=2>

4.5 The UK Government's position on the scope of application of the UN Convention against Torture has not been specifically revised as a result of the Al-Skeini and Al-Jedda judgments. The scope of application of the UN Convention against Torture is not necessarily the same as the scope of application of the ECHR. The Convention does not contain an overarching Article determining the ambit of the entire Convention comparable to Article 1 ECHR. The scope of each article of the UN Convention against Torture must be considered on its terms.

4.6 The UK Government has not revised the position cited by the Committee, namely paragraph 29 of the UK's fifth periodic report. The fifth periodic report was submitted after delivery of the judgments in Al-Skeini and Al-Jedda and publication of General Comment 2.

4.7 In any case, the UK armed forces are at all times, and wherever in the world they are serving, subject to the criminal law of England and Wales. The criminal law of England and Wales explicitly forbids torture. Moreover, as a matter of policy, the UK Ministry of Defence strives to maintain the highest standards of treatment reflecting applicable international law including prohibitions on torture and cruel, inhuman and degrading treatment.

Reply to the issues raised in part I, paragraph 5, of the list of issues

5.1 The UK Government is developing a strategy to implement the UN Guiding Principles on Business and Human Rights, which will clarify for UK companies, including transnational corporations and private security companies, the Government's expectations that British companies will show respect for human rights in their operations in the UK and internationally, and which will set out the Government's position in relation to the provision of remedies.

5.2 The UK Government does not contract with private military companies. In common with many other governments, civil society groups and commercial organisations, we engage the services of private security companies to provide essential protective security services that enable our employees to carry out their work safely in complex environments. The Government does not use private security companies in an offensive or operational role. They do not therefore receive the same set of Standard Operating Procedures or training as military forces. However, Government contracts with private security companies or private security service providers in complex environments include provision that such services must be provided in full accordance with the International Code of Conduct for Private Security Companies and Private Security Service Providers and the Montreux

Document, and any standards which follow there from e.g. such as the ASIS PSC1 standards for land based Private Security Companies.

Reply to the issues raised in part I, paragraph 6, of the list of issues

6.1 The UK Government is of the view that UK law including section 134(4) and (5) of the Criminal Justice Act is consistent with the obligations imposed by the Convention for the reasons set out in our previous reports.

Reply to the issues raised in part I, paragraph 7, of the list of issues

7.1 The Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees ('the Guidance') sets out the standards under which the UK security and intelligence agencies and armed forces operate, making clear that UK intelligence officers must operate in accordance with international and domestic law, including the Convention Against Torture and the Human Rights Act 1998.

7.2 The Guidance provides that UK personnel set out the UK's policy which is that it will not participate in, solicit, encourage or condone the use of torture or cruel, inhuman or degrading treatment (CIDT) or punishment for any purpose. In no circumstance will UK personnel ever take action amounting to torture or CIDT, whether in UK territory or overseas.

7.3 The Guidance considers possible circumstances where UK personnel may be working with, or considering working with, personnel of countries whose practice raises questions about their compliance with international legal obligations. The Guidance makes clear that, in such circumstances, UK personnel must ensure that the UK's co-operation accords with our own international and domestic obligations.

7.4 The Guidance goes on to stipulate that, firstly, UK services must never take any co-operation action where they know or believe that torture will occur; secondly, if they become aware of abuses by other countries, they should report that to the UK Government so that it can take the necessary action to stop it (unless doing so might make the situation worse); and thirdly, whenever UK services judge, when contemplating co-operation, that there is a serious risk of CIDT by the liaison or detaining authority, senior personnel must be consulted. In this third case, unless senior personnel and legal advisers conclude that there is, in fact, no serious risk, or that the threat of mistreatment can be successfully mitigated below the level of serious risk through obtaining reliable assurances, then Ministers must be consulted.

7.5 It follows that, in cases where UK services believe that co-operation with another country would be likely to yield information crucial to saving lives but where there is also a serious risk of mistreatment by the other country, it would be for UK Ministers to decide how to proceed. Ministers will not authorise the proposed co-operation if they believe that doing so would solicit, encourage or condone the use of cruel, inhuman or degrading treatment or punishment.

7.6 The Government believes the Guidance is entirely consistent with its responsibilities under domestic and international law. Where developments call for significant updates that affect the principles and requirements set out in the Guidance, Ministers will be consulted on any changes and an updated version will be published.

7.7 In addition, the independent Intelligence Services Commissioner has oversight of the Guidance and reports on its application. At present, he does so on an administrative basis. If the Justice and Security Bill, presently before the UK Parliament, becomes law, then the Commissioner's oversight role will be placed on a statutory basis.

Reply to the issues raised in part I, paragraph 8, of the list of issues

8.1 The UK Government has made changes to its counter-terrorism legislation to remove the power provided by the Terrorism Act 2006 to extend the maximum period that terrorist suspects could be detained from 14 to 28 days. Part 5 of, and Schedule 8 to, the Terrorism Act 2000, as amended by the Terrorism Act 2006, previously allowed for the arrest of those suspected of being a terrorist and their detention prior to charge for a maximum of 28 days. The Government's 2011 review of counter-terrorism and security powers concluded the limit on pre-charge detention for terrorist suspects should be reduced from 28 to 14 days. The last 28 day order therefore lapsed on 24 January 2011 and the Protection of Freedoms Act 2012 removed the order-making power to increase it to 28 days. The maximum is, therefore, now 14 days. The question (8) posed, therefore, is wrong to suggest that the Home Secretary retains the power to extend to 28 days – the Home Secretary is able to introduce a Bill to Parliament and Parliament has the power to pass primary legislation extend the limit to 28 days.

8.2 There are a range of robust safeguards in place in respect of pre-charge detention of terrorist suspects set out in Schedule 8 to the Terrorism Act 2000. Part II of Schedule 8 to the Terrorism Act 2000 governs the review of such detention under section 41. A police officer (of at least inspector rank in the first 24 hours and superintendent rank after that) must review a person's detention as soon as reasonably practicable after arrest, and at intervals of not more than 12 hours thereafter. Continued detention may be authorised only on specified grounds, including where it is necessary to obtain or preserve relevant evidence, or where it is necessary pending a decision whether the detained person should be charged with an offence. Part III of Schedule 8 to the Terrorism Act 2000 governs the extension of detention beyond 48 hours, by means of warrants of further detention which may be granted by a District Judge (Magistrates Courts) on application by a senior police officer or the Crown Prosecution Service. Such applications are on notice, with the detainee entitled to full legal representation. Courts may authorise detention beyond 48 hours for a period of up to 7 days from the time of arrest with a maximum period of detention of 14 days. Accordingly where a suspect is detained for the maximum 14 day period, that detention will have been the subject of at least two court hearings. Extensions may only be granted where the court considers it necessary to obtain relevant evidence, to preserve relevant evidence or pending the result of the examination of relevant evidence. In addition, the court must be satisfied that the investigation is being conducted both diligently and expeditiously.

8.3 The Government is enhancing these safeguards even further. Section 117 of the Coroners and Justice Act 2009 provides additional independent oversight of terrorist detention by strengthening the role of the Independent Reviewer of Terrorism Legislation (IRTL), currently David Anderson QC, in reporting on the treatment of those held pre-charge and by extending the statutory Independent Custody Visitor scheme to terrorist detainees held under the Terrorism Act 2000. Sub-sections 1-3 of section 117 amend section 36 of the Terrorism Act 2006 so that the IRTL may consider the treatment of terrorist suspects detained under a warrant for further detention. This part of section 117 has been commenced and came into force on 7 August 2012. The outstanding parts of section 117 were subject to public consultation between December 2012 and January 2013. We will shortly commence these remaining powers in the Coroners and Justice Act 2009 to extend the role of independent custody visitors to terrorist detainees.

8.4 Furthermore, under Section 66 of the Police and Criminal Evidence Act 1984, generally referred to as PACE, the Secretary of State for the Home Department has a duty to issue codes of practice to regulate the police in the exercise of their powers, following appropriate consultation and Parliamentary scrutiny. There are eight Codes (A to H) and, together, these set out the core framework of police powers and safeguards for individuals. PACE Code H governs the detention, treatment and questioning by police officers of

persons detained under the Terrorism Act 2000 and individuals in respect of whom authorisation has been given under the Counter-Terrorism Act 2008 to question after charge. This Code was updated in 2012 to reflect the commencement of the post-charge questioning powers and the additional safeguards relating to this power (in particular the requirement to video-record interviews of suspects detained under the Terrorism Act 2000).

Reply to the issues raised in part I, paragraph 9, of the list of issues

9.1 The UK Border Agency has used private sector escorting companies to undertake removals for nearly 20 years, and in all but a handful of cases, staff have acted professionally, ensuring those being removed are treated with dignity and care. These officers operate in very difficult circumstances in which they sometimes suffer serious verbal and physical abuse from those being removed. Nevertheless whilst thousands of detainees are escorted each year, only a small proportion will be restrained using approved techniques. Mr Mubenga's death was the first incident to occur of this nature.

9.2 Detainee Custody Officers (DCOs) undergo thorough security checks and complete extensive training before they are certificated by the UK Border Agency. Training for DCOs includes human rights, welfare and first aid at work, and training in restraint techniques which are taught by Prison Service trained instructors and accredited by the National Offender Management Service. Control and restraint training is refreshed annually.

9.3 There is particular emphasis on only using restraint as a last resort and even then its use must be justified and proportionate. When restraint is used, escort officers must complete an incident report setting out exactly what techniques were used and why they were necessary. This is submitted to the statutory Contract Monitor in the UK Border Agency.

9.4 The work of DCOs is overseen and monitored on a number of different levels, i.e. by their employer, the UK Border Agency and independently by a programme of unannounced inspections by HM Chief Inspector of Prisons and, specifically at Heathrow Airport, an Independent Monitoring Board. Both bodies publish their reports on their websites.

9.5 Where there is an allegation of assault or criminal activity the complaints are always referred to the relevant authorities. In the case of overseas escorts employed by contractors, the relevant authority is the police. Any police investigation is completed in parallel to that of the Professional Standards Unit.

9.6 Where a complainant is not satisfied with the outcome of the investigation into the actions of the overseas escorts, they may refer the matter for independent review to the Prison and Probation Ombudsman (PPO).

9.7 There are also systems in place to review the outcomes of investigations. In the circumstance where an individual officer has had three or more complaints raised against them, in a 12 month rolling period, whether substantiated or not, the UK Border Agency's Contract Monitor will discuss with the service provider whether further training, mentoring or supervision is required.

9.8 In 2012 the number of complaints of inappropriate use of force made against Reliance detainee escort staff during removal was thirty nine.* (Reliance, now known as Tascor Services Ltd, is the service provider contracted to provide both in country, i.e. between locations within the United Kingdom, and overseas escorting services, i.e. to destination, since May 2011.) All were regarding alleged assault although some contained other issues such as not complying with procedures. Of the thirty-nine complaints received, twenty-six were found to be unsubstantiated, one partly substantiated and investigations are ongoing for the remaining twelve. The complaint found to be partly substantiated contained

three allegations with one part upheld. The allegations of assault and duty of care were not upheld but an allegation regarding incorrect information provided by escorts to the detainee was upheld. This referred to arrangements on arrival which were incorrect.

9.9 The police investigation into the death of Jimmy Mubenga has now concluded with no charges brought. The outcome of the inquest and investigation by the PPO is awaited.

9.10 There are no planned changes to the use of private contractors for enforced removals.

*The data on complaints is based on management information only and has not been subject to the detailed checks that apply for National Statistics publications. These figures are provisional and are subject to change.

Reply to the issues raised in part I, paragraph 10, of the list of issues

10.1 Violence against women and girls (VAWG) is an abhorrent crime and the UK Government is committed to ending it. We have published a cross-government strategy for England and Wales, A Call to End Violence Against Women and Girls, and supporting action plan. Our approach focuses on the guiding principles of prevention; provision of services; partnership working; risk reduction and improved justice outcomes. The strategy/plan ensures that victims receive immediate protection, redress and compensation.

10.2 On 8 March 2013 we published an updated action plan, reaffirming our commitment to tackle VAGW. The updated action plan sets out what we have achieved in the past year and our plans to direct national activity over the next 12 months. It contains over 50 new actions which recognise that young people can be more vulnerable to abuse and violence and that changing technologies mean they can be exposed to new threats. The action focuses on prevention and early intervention. The updated action plan also sets out the Government's determination to tackle rape and sexual assault throughout the criminal justice system.

10.3 The Home Office and Ministry of Justice have collectively ring-fenced nearly £40 million of stable funding up to 2015 for specialist local support services and national helplines.

10.4 Key recent activity In England and Wales to tackle violence against women includes:

- Announcing that the **Domestic Violence Definition** would be extended to include those aged 16-17 and include coercive control;
- Launching four **domestic violence disclosure scheme** pilots in Gwent, Wiltshire, Nottinghamshire and Greater Manchester Police to enable the police to disclose information about a person's previous violent offending to help protect new partners from future abuse;
- Funding the development and establishment of a further **five new Rape Crisis Centres** in Mid-Wales, Southend, Leeds, Northumbria and Ipswich;
- Completing the pilot of **Domestic Violence Protection Orders** which ended on 30 June and which will be evaluated by summer 2013;
- Launching a £150,000 fund for **Domestic Homicide Reviews** to help local areas prevent future domestic violence tragedies;
- Announcing that we will create **new criminal offences of forcing someone to marry against their will** and breaching of a Forced Marriage Protection Order. A summer campaign for forced marriage was also launched on 12 July 2012, including three short films to raise awareness of different perceptions and views of forced marriage;

- Launching the national **Teenage Rape Prevention Campaign** on 5 March 2012 (with a re-run from November 2012 to January 2013) and re-running the **Teenage Relationship Abuse Campaign** from 14 February 2013, to change and challenge attitudes and prevent teenagers from becoming victims and perpetrators of sexual and relationship violence and abuse;
- Following public consultation, committing to wide-ranging improvements to support provided to victims and witnesses, including **refreshing the Victim's Code; increasing and extending the Victim Surcharge to raise up to an additional £50 million** from offenders for victims' services, of which a proportion will be committed to fund specialist VAWG services;
- Tightening **sex offender management legislation** and closing loopholes that might be exploited by registered sex offenders;
- Creating **two new stalking offences**, "stalking" and "stalking involving fear of violence or serious alarm or distress" which came into force on 25 November 2012;
- Launching a short film about **female genital mutilation (FGM)** on the NHS choices website in August 2012 aimed at families, young girls, and professionals who may come into contact with girls/families who are from FGM practising communities;
- Launching the '**Declaration against FGM**', signed by Ministers, in November 2012, and providing an additional **£50,000 funding** to support frontline agencies tackling FGM;
- Working with the Director of Public Prosecutions to support the **Crown Prosecution Service Action Plan on FGM**, launched in November 2012, to address the barriers to investigating cases and strengthening prosecutions;
- **Engaging with partners** to identify issues with wider Government reforms, such as those on welfare and legal aid, to ensure they reflect our ambitions for tackling domestic and sexual violence;
- Launching a 12 month national 'Ugly Mugs' pilot scheme run by the UK Network of Sex Work Projects to help **protect sex workers** from violent and abusive individuals, encouraging them to report incidents of violence and abuse.

10.5 Within Northern Ireland, domestic and sexual violence are addressed through the cross-departmental regional strategies 'Tackling Violence at Home' and 'Tackling Sexual Violence and Abuse'. Key measures to support and protect victims of domestic and sexual violence and to bring perpetrators to justice are taken forward under each strategy.

10.6 In Scotland, a number of steps have been taken. These include, but are not limited to: legislative reform, including the creation of a new statutory offence of stalking; improving the likelihood of securing convictions for domestic abuse incidents that happen in private; and strengthening the law in relation to rape and forced marriage. Additionally, £34.5 million has been allocated to tackle violence against women, which supports organisations across Scotland to deliver a range of services.

Reply to the issues raised in part I, paragraph 11, of the list of issues

11.1 **Annex A** contains tables from the Immigration statistics publication (the latest version is available here:

<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q4-2012/>

- Table as.03 of our publication contains the number of asylum applications from main applicants disaggregated by age, sex and nationality between 2008 and 2011.

- Table as.04 provides the same information as Table as.03 but for main applicants and dependants. This should give the information requested for part (a).
- Table as.05 gives the number of initial decisions from main applicants disaggregated by age, sex and nationality between 2006 and 2011. We do not publish figures on initial decisions disaggregated by age, sex and nationality for main applicants and dependants. This should give the information required for part (b).

11.2 For part (c), data on the basis of asylum claims is only held at the level of coordinated paper case files or within the notes section of the UK Border Agency's Case Information Database (CID). Such data is not aggregated in national reporting systems, which would mean this question could only be answered through a disproportionately expensive manual case search to collate the data.

11.3 However, the UK Border Agency publishes annual asylum performance against 15 key performance measures. The statistics cover the financial year 2011-2012, except for the Work in Progress (WiP) figure which is calculated from June 2011 to June 2012. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/further-key-data/>

11.4 The statistics show a system in good health with the majority of measures showing increases in performance, or remaining the same. Including:

- Asylum decision quality (up from 88% in FY 10/11, to 89% in FY 11/12)
- Initial asylum grants (up from 28% in FY 10/11, to 35% in FY 11/12)
- Allowed appeal rate (remaining unchanged at 27%)

Reply to the issues raised in part I, paragraph 12, of the list of issues.

12.1 It is UK Government policy to transfer UK captured detainees suspected of committing an offence under Afghan law to the Afghan authorities for investigation. However, following a number of allegations of mistreatment at NDS Lashkar Gah and Helmand Provincial Prison in April 2012, the UK placed a temporary moratorium on transfers of detainees to these facilities until suitable mitigations and assurances could be agreed. In light of information received at the end of last year, the Secretary of State for Defence decided to maintain the temporary moratorium of transfers into Afghan custody.

12.2 The UK will not transfer detainees where it judges there is a real risk, at the point of transfer, of serious mistreatment or torture. As a matter of priority the UK is working with the Afghan Government to identify a safe transfer route. The UK will continue to support the Afghan Government, in line with its sovereign responsibilities, to strengthen Afghan compliance with human rights, to improve its capacity to manage detention facilities to international standards and provide training and mentoring in correct treatment and investigation of detainees.

Reply to the issues raised in part I, paragraph 13, of the list of issues

13.1 The question asks for information relating to both extradition and deportation. Part A below refers to extradition, while Part B refers to deportation.

Part A:

13.2 Bilateral and multilateral extradition agreements form the basis of the UK's extradition arrangements. These agreements reflect confidence in the legal system of the other State. These agreements therefore do not contain any provisions relating to the monitoring of people who have been extradited. FCO provides a consular service for any British citizens who are extradited.

13.3 Human rights issues are fully considered as part of the extradition process. The Extradition Act 2003 provides the statutory basis for consideration of extradition requests, and requires judges to consider whether human rights, as contained within the ECHR, amount to a bar to extradition (see sections 21 and 87). This would include infringements of Article 3 of the ECHR (and by extension the UN Convention against Torture), and the principle of non refoulement.

13.4 The UK will sometimes seek diplomatic assurances to confirm in particular cases that extradition will not breach a person's ECHR rights, and are relevant to Article 3 of the UN Convention against Torture. Examples of such assurances may include that the requested person will not be subject to the death penalty or that a person will not be refouled to a third country where they may be at risk of Article 3 violations.

13.5 A Memoranda of Understanding (MoU) drawn up for extradition purposes would not cover any visits or monitoring post-extradition.

Part B:

13.6 Since the first Deportation With Assurances (DWA) arrangements were finalised in 2005, ten individuals have been deported under DWA arrangements: nine to Algeria and one to Jordan. The monitoring provisions of the UK's DWA MoUs with Ethiopia, Jordan and Lebanon do allow for frequent and unannounced access to individuals detained following their removal from the UK. The monitoring terms of reference for these countries also require that visits are conducted in private, with an interpreter if necessary, by experts trained to detect physical and psychological signs of torture and ill-treatment. Monitors can also arrange for medical examinations to take place at any time if they have concerns over a detainee's physical or mental welfare.

13.7 The UK's DWA arrangement with Algeria consists of an exchange of letters between former Prime Minister, Tony Blair, and the President Bouteflika. Although there are no specific monitoring arrangements in place with a specific human rights organisation, returned individuals and their families can contact the British Embassy in Algeria if they have any concerns about the treatment of the individual on return. This arrangement has been accepted by the UK Courts as being in accordance with Article 3 of the ECHR.

13.8 No one has been deported under the MoU negotiated in 2005 with Libya and the UK no longer considers this arrangement to be operational. The monitoring arrangements for the UK's DWA arrangement with Morocco are not yet finalised.

13.9 When identifying a third party to act as a monitoring body the UK will consider a number of factors. These can include our existing relationship and knowledge of the third party organisation, open source reporting, independently commissioned reports to establish independence and capacity to fulfil the role, as well as detailed discussions with the third party themselves. A monitoring body must also be able to report directly, and in confidence, to the UK Government. The effectiveness of a monitoring body or other forms of verification can be challenged by the deportee in the UK courts and before ECtHR.

Reply to the issues raised in part I, paragraph 14, of the list of issues

14.1 The only context where the UK would agree a MoU in extradition is following a request from a country with which the UK has no extradition agreement. If we agree to proceed with such a request, we would draw up a MoU with the country concerned, to provide a framework for the request. The only such requests which have gone ahead to date were for four men from Rwanda accused of genocide; the MoUs drawn up in those cases were subject to (and withstood) challenge in court, although the eventual outcome was that the men were discharged.

14.2 Any ad hoc requests for extradition will be considered on a case by case basis. Should a MoU be required, it will be subject to the same human rights considerations mentioned in Answer 13 Part A.

14.3 No further DWA MoUs have been finalised since the UK's last submission to the Committee. It is not possible to comment on current negotiations with other States. We would not finalise any future DWA arrangements unless we were satisfied that they would enable deportation to take place in accordance with the UK's obligations under Article 3 of the ECHR.

Reply to the issues raised in part I, paragraph 15, of the list of issues

15.1 The UK's Immigration & Asylum Chamber, Upper Tribunal, is currently considering the issue of safety on return to Sri Lanka in a country guidance case and their determination is awaited. On 27 February the UK High Court granted a group injunction and ordered that no Tamil failed asylum seeker could be removed to Sri Lanka until the decision in the ongoing country guidance case is promulgated.

15.2 It is important that every asylum claim is considered on its individual merits. The assessment of the risk of persecution is based upon evidence from published and wide-ranging country information obtained from reliable sources, including governmental sources, the United Nations High Commissioner for Refugees, international and national human rights organisations, and news media. Decisions to refuse applications for international protection are subject to a right of appeal to the courts.

15.3 The UK Government is fully aware that ill-treatment amounting to torture does exist in Sri Lanka, this is clear from our human rights reporting. The UK Border Agency recognises this in its Operational Guidance Note (OGN) for Sri Lanka, making clear that certain categories of individual by the fact of their profile, or by accumulative risk factors, might be at risk on return. However, it does not follow that all Tamil asylum seekers are in need of international protection and this view has been endorsed by the European Court of Human Rights.

15.4 The OGN and Bulletin are available on the UK Border Agency's website at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/csap/>

15.5 Figures on returns are published by the Home Office on a quarterly basis. This is available on the UK Border Agency's website at: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q4-2012/>

15.6 Data is recorded for nationality not ethnicity and the figures on asylum enforced returns of Sri Lankan nationals to Sri Lanka (home) is at chart rv.05.

Asylum enforced removals:

- 2010: 102
- 2011: 292
- 2012: 256

Reply to the issues raised in part I, paragraph 16, of the list of issues

16.1 Commissioner Thomas Hammarberg and his delegations, from the Council of Europe's Commissioner for Human Rights, visited the United Kingdom from 5 to 8 February and from 31 March to 2 April 2008. His comments in relation to the detained fast track process are as follows:

16.2 Administrative detention of asylum seekers upon entry, in the context of the “Detained Fast Track” (DFT): While the Commissioner commends the authorities’ efforts to enhance the efficiency of the asylum system, he is concerned about the publicized targets of the UK Border Agency (UKBA) aimed at accelerating further asylum procedures, given that celerity and quality of decision-making in the complex field of refugee law and protection are rarely a matching pair. The Commissioner notably recommends that the UK authorities consider regulating DFT by introducing special legislation that would be fully in conformity with the legislative standards laid down by the European Convention on Human Rights, expressly proscribe DFT in relation to particularly vulnerable persons, such as unaccompanied minors, and expressly provide alternatives to detention measures.

16.3 It has not been considered necessary to introduce special legislation, however asylum instructions explicitly state that the following are unlikely to be suitable for the detained fast track process:

- Women who are 24 or more weeks pregnant;
- Family cases;
- Children (whether applicants or dependants), whose claimed date of birth is accepted by the UK Border Agency;
- Those with a disability which cannot be adequately managed within a detained environment;
- Those with a physical or mental medical condition which cannot be adequately treated within a detained environment, or which for practical reasons, including infectiousness or contagiousness, cannot be properly managed within a detained environment;
- Those who clearly lack the mental capacity or coherence to sufficiently understand the asylum process and/or cogently present their claim. This consideration will usually be based on medical information, but where medical information is unavailable, officers must apply their judgement as to an individual’s apparent capacity;
- Those for whom there has been a reasonable grounds decision taken (and maintained) by a competent authority stating that the applicant is a potential victim of trafficking or where there has been a conclusive decision taken by a competent authority stating that the applicant is a victim of trafficking;
- Those in respect of whom there is independent evidence of torture.

16.4 The UN High Commissioner for Refugees (UNHCR) reviewed the quality of decision making in 2008-09. The concerns raised were that in UNHCR’s view Detained Fast Track (DFT) decisions often failed to focus on the individual merits of the claim; an incorrect approach to credibility assessment; high prevalence of speculative arguments and a lack of focus on material elements of the claim. There was some evidence that an excessively high burden of proof was being placed on applicants.

‘UNHCR recommends that only more experienced Case Owners work within the DFT.’

16.5 DFT did not take on this recommendation for two reasons. Firstly it is not practically possible due to movement of staff and recruitment processes only to have experienced case owners within DFT. Secondly, training has been tailored to DFT decision making; where around half the cases fall within the non-suspensive appeal criteria. All DFT decisions are reviewed by a second pair of eyes to ensure high standards of quality are maintained.

‘UNHCR recommends that Case Owners working within the DFT should receive training that covers, at a minimum:

- The correct approach to assessing credibility
- Key refugee law concepts identified as problematic in UNHCR’s DFT audit
- Identification of ‘complex’ claims not suited to the DFT processes
- How to correctly identify and assess gender issues in asylum claims’

16.6 A new gender asylum instruction accompanied by training was implemented across asylum in 2011-12. The credibility asylum instruction was updated in July 2012 and is currently being reviewed again in the light of CREDO findings.

16.7 Releases from DFT (for all reasons) have reduced from 37% (2010-11) to 27% (2011-12) and are currently below 20% for 2012-13. This has been made possible by creating the National Asylum Intake Unit (NAIU) which ensures that cases accepted into DFT are suitable for the process and not complex claims. The NAIU works closely with the Asylum Screening Unit to ensure that all relevant information is considered before a case is routed into the detained process.

‘Guidance should make clear that it is inappropriate for Case Owners to suggest that medical reports will have no evidential value in deciding the asylum claim.

Guidance should make explicit that it is not appropriate for Case Owners to make medical judgments under any circumstances.’

16.8 The guidance is very clear that decision makers must fully consider medical reports adduced in support of an asylum claim and such evidence must be given appropriate weight. It is also made clear that decisions makers must not make clinical judgements in decisions. The guidance is set out in the ‘Considering the Asylum claim and assessing credibility’ instruction and we are also working with corporate partners to update specific guidance on medical evidence that will complement existing instructions.

‘The Office recommends that the parameters of those cases considered suitable for the DFT (i.e. those cases considered amenable to a “quick” decision) should be clearly set out in guidance for all relevant UKBA staff. All decisions to route cases to the DFT should be accompanied by clear reasoning on the file indicating why the claim meets these published criteria. DFT Case Owners should be required to proactively consider, at regular intervals, whether fair and stringent consideration of the claim requires the exercise of flexibility or removal of the case from the DFT – particularly in the case of vulnerable applicants. Guidance should explicitly require that these safeguards be considered whether or not an express request has been made by the applicant or their legal representative.’

16.9 In UNHCR’s view, lessons can be learnt from the frontloading of legal advice in the Solihull Pilot Project by taking advantage of the presence of legal representatives at DFT interviews to facilitate evidence gathering at an early stage in the process.

‘UNHCR recommends that DFT Case Owners be rotated off DFT decision making duties in order to be exposed to a wider range of cases or to other areas of the asylum business.’

16.10 The DFT Asylum Instruction has been republished as has the Flexibility Instruction. Any case where a quick decision can be made and where the exclusion criteria do not apply can be taken into the DFT process. Files are not minuted as the decision is made by referral and the file may not be available, however, the initial reasons for detention will identify that a case is suitable for fast track and that exclusion criteria do not apply, ongoing detention reviews will continue to confirm that the case is still suitable for the fast track process.

Moreover, the DFT Asylum Instruction now requires our Casework Information Database (CID) to be updated with a concise account of the reasons for a case being entered into DFT.

16.11 Duty legal representatives are available for consultation by any detained fast track case. The Solihull pilot is under evaluation and any recommendations will be considered in relation to the detained fast track process once the evaluation is complete. It has not proved possible to rotate DFT decision makers however, plans are now in place for decision makers to work across a wider range of business within DFT.

16.12 The Quality Audit team within the National Asylum Command reviews the quality of around 10% of asylum decisions monthly and provides a report identifying areas for improvement and concerns. The figures below are based on sample data.

Interview quality in DFT for the past year (2012) has been:

<i>DFT</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>Aug</i>	<i>Sept</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>
%	%	%	%	%	%	%	%	%	%	%	%	%
96.1	92.8	92.7	94.3	94.7	91.9	92	92.8	93.54	94.33	91.38	91.11	

Decision quality in DFT for the past year (2012) has been:

<i>DFT</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>June</i>	<i>July</i>	<i>Aug</i>	<i>Sept</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>
%	%	%	%	%	%	%	%	%	%	%	%	%
95.6	94.7	90.3	94.2	95.4	90.7	92.6	92.1	91.32	90.32	91.22	91.63	

16.13 Whilst this shows a decrease in quality from January 2012 during the period from February 2012 DFT has had over 30 new case owners and quality remains above 90%.

Reply to the issues raised in part I, paragraph 17, of the list of issues

17.1 The UK Border Agency has reviewed its processes for dealing with Rule 35 reports. Following this review a revised Detention Services Order (17/2012) and revised Asylum Instruction on Rule 35 Processes which have been published and issued to staff.

17.2 The revised instructions set out the process that medical practitioners working in Immigration Removal Centres must follow in preparing and submitting Rule 35 reports and the process that UK Border Agency case owners must follow in responding to such reports, including consideration of whether the individual's ongoing detention remains appropriate.

17.3 The UK Border Agency has publicly committed to undertaking an internal review of our recently introduced measures, from which we will seek to identify any further improvements which may be made. We will continue to examine the reports of Her Majesty's Chief Inspector of Prisons to identify any additional opportunities for improvement. We do not at present have plans to commission an additional independent assessment.

Reply to the issues raised in part I, paragraph 18, of the list of issues

18.1 All facilities hold prisoners in decent and humane conditions.

18.2 A high proportion of the contracted out estate are newer establishments, or have been designed in a way that makes them better to hold increased numbers of prisoners by providing a regime that can support them. This includes factors such as regime facilities and the ability to provide meals and sufficient opportunities for visits. The relatively high

levels of crowding in Doncaster (opened 1994), Altcourse (opened 1997) Forest Bank (opened 2000) demonstrate this trend. The average crowding level in contracted prisons in England and Wales in 2011/12, the latest period for which data is available, is 30.02% and in public sector prisons 23.3% for the same period.

18.3 At present, the two private prisons in Scotland are not operating at above capacity. In terms of addressing capacity issues, it remains the Scottish Government's policy to prioritise populating modern establishments; these include the two private prisons as well as some public ones.

Reply to the issues raised in part I, paragraph 19, of the list of issues

19.1 Since the last concluding observations there have been no current or former UK government officials or members of the armed forces who have been prosecuted under the Criminal Justice Act 1988 or Service Law.

19.2 However there is a current prosecution of Kuma Lama for two offences of torture contrary to section 134 Criminal Justice Act 1988. This relates to 2005 when he was a Commanding Officer in the Gorisinghe barracks in Nepal and is alleged to be responsible for the torture of two suspected Maoist prisoners. A provisional trial date has been set for 5 June 2013.

Reply to the issues raised in part I, paragraph 20, of the list of issues

20.1 The UK Government is committed to the full investigation of all deaths by lethal force that occurred during the Troubles. There are a number of ways in which this is being taken forward, including inquests, investigations by the Office of the Police Ombudsman for Northern Ireland (OPONI) and the Historical Enquiries Team (HET).

20.2 Inquests into deaths are conducted by a Coroner, including those which involved, or are alleged to have involved, the security and law enforcement agencies. As a public authority, the Coroner must ensure that any inquest is compliant with Article 2 of the ECHR and consistent with judgments of the European Court of Human Rights.

20.3 Most responsibilities relating to inquests in Northern Ireland have now been devolved. However the UK Government retains responsibilities relating to national security information and Public Interest Immunity applications. The final decision on disclosure in inquests rests with the Coroner.

20.4 OPONI was established under Part VII of the Police (Northern Ireland) Act in July 1998 to create a legislative framework for independent oversight of the police. The work on historic cases was suspended in September 2011 following a report by the Criminal Justice Inspection Northern Ireland (CJINI). This suspension was lifted in January 2013 following a very positive follow-up review carried out by CJINI.

20.5 The HET was set up in September 2005 to investigate unsolved deaths relating to the Troubles from 1968 to the Belfast Agreement. As part of the Police Service Northern Ireland it is now the responsibility of the Northern Ireland Executive.

20.6 The HET maintains a consistent, professional standard towards every case it reviews. HET is reviewing all cases on a chronological basis, whether or not there is family engagement.

20.7 Where an issue of public concern needs investigating, a Minister can establish an inquiry under the Inquiries Act 2005. This Act sets out a statutory framework within which an impartial chairman or panel can conduct an inquiry. The Act allows a degree of Ministerial oversight e.g. in determining terms of reference and in monitoring costs but a 2005 Act inquiry is essentially independent of Government.

20.8 The presumption is that a 2005 Act inquiry will be held in public but part of an inquiry may be held in private e.g. if in the interests of national security and both the chairman and Minister have powers to facilitate this. However, there are strict limits on this power.

20.9 The Inquiries Act 2005 is now the primary means by which Parliament can establish statutory public inquiries, with previous inquiry legislation (1921 Act) having been repealed. The Billy Wright and the Robert Hamill Inquiries were both held under the 2005 Act. They were originally established under earlier legislation but converted at the request of the respective chairmen who believed that the 2005 Act would make their powers of compulsion more effective.

20.10 The Government does not consider that the fact that these inquiries took place under the 2005 Act should be any matter for concern. Each inquiry was conducted by an independent, impartial panel of three individuals chaired by a senior retired judge.

20.11 The Billy Wright Inquiry was published in September 2010 and the Government did not receive the report until 24 hours before publication. The Robert Hamill Inquiry announced in February 2011 that it had completed its report but that it would not be presented to the Secretary of State until related criminal prosecutions were completed.

Reply to the issues raised in part I, paragraph 21, of the list of issues

21.1 It is not possible for the UK Government to provide comprehensive information regarding allegations of torture and ill-treatment made against UK forces in Iraq and Afghanistan. Should such allegations be made against UK Forces most, if not all, are handled and recorded as criminal offences in accordance with section 42 of the Armed Forces Act 2006 (AFA 2006) rather than being recorded as ill-treatment or torture. Therefore, to provide the information requested would require each investigation to be examined in detail.

21.2 However, allegations of unlawful conduct by personnel who fail to uphold the high standards expected are taken extremely seriously. The UK Government does not condone any unlawful behaviour by our forces.

Investigations

21.3 Most, if not all, allegations of torture and ill-treatment will constitute offences that are contained in Schedule 2 to the AFA 2006 or are so-called “prescribed circumstances” offences. Allegations of Schedule 2 and prescribed circumstances offences must be handled in a particular way: if a Commanding Officer is aware of an allegation or circumstances that indicate one of these offences has or may have been committed, he must refer the case to the service police. If a service policeman thereafter considers that there is sufficient evidence to charge a person with one of these offences, he must refer the case to the Director of Service Prosecutions (DSP). And if a service policeman proposes not to refer a potential Schedule 2 or prescribed circumstances case to the DSP then he must consult the DSP. Thus most, if not all, alleged cases of torture and ill-treatment will be referred to and thereafter properly handled by the service police.

21.4 There are three service police forces – the Royal Military Police (RMP), Royal Navy Police (RNP) and Royal Air Force Police. Each has a separate head, a Provost Marshal, who are acknowledged to be separate in statute. The service police forces are given investigation powers under the AFA 2006, which also sets out their duties following an investigation.

21.5 There are a number of safeguards in place to ensure that the service police are independent. In terms of the Provost Marshals, they have a duty, confirmed in the AFA 2006, to seek to ensure that service police investigations are conducted independently of the

chain of command, and they are responsible solely to the Defence Council (not the chain of command) for discharging their duties. This is also set out in their letters of appointment. The Act also provides that Provost Marshals must in the future be appointed by Her Majesty, which highlights and supports their special position, independent from the chain of command. The Provost Marshals' reporting officers do not report or comment on the conduct and direction of police investigations. In terms of safeguards relating to service police personnel and investigations, the AFA 2006 gives nearly all powers of investigation to the service police and specifies offences relating to interference with service police investigations. Joint Queen's Regulations for the three services, and the Manual of Service Law, state that all investigations undertaken by the service police are conducted independently of the chain of command and that the Provost Marshal must ensure they are free from interference. Service police swear an oath that they will investigate impartially and independently all service offences against people and property. Finally, the AFA 2006 provides for the inspection of service police investigations by Her Majesty's Inspectors of Constabulary (HMIC), with focus on the independence and effectiveness of their investigations. Although this provision is not yet in force, each service police force has been inspected by HMIC.

Afghanistan

21.6 Any allegations made of torture and/or ill-treatment by UK forces in Afghanistan are handled in the manner set out above.

Iraq

21.7 Turning to investigations stemming from Iraq, the Iraq Historic Allegations Team (IHAT) was established in 2010 to investigate allegations of mistreatment of individuals by HM Forces in Iraq between March 2003 and July 2009. The IHAT comprises civilian police investigators and members of the Royal Navy Police (see further detail at question 27). IHAT investigations are service police investigations, such that the above safeguards apply. There are approximately 169 claimants whose cases of alleged mistreatment are being considered and who claim a breach of Article 2 or 3 rights under the ECHR. Good progress has been made in their investigations, and several are nearing completion. But the IHAT still needs to interview the individual complainants to gather greater detail about the alleged incidents, the surrounding circumstances and assess whether there is sufficient evidence to charge with an offence. There have been delays in the interviews taking place and the IHAT is seeking to resolve matters with the individuals' legal representatives. In addition, the RMP may have investigated incidents at the relevant time but providing and verifying the precise details of these cases would be an extremely resource intensive task.

21.8 As explained above, if a service policeman considers that there is sufficient evidence following an investigation to charge a person with an offence, he must refer the case to the Director of Service Prosecutions (DSP). The DSP is an independent civilian statutory office-holder who, with his staff, considers cases referred to him, decides whether charges should be brought, and ultimately prosecutes.

Challenging Investigatory Body Decisions

21.9 In general terms, individuals who have not been satisfied that the investigation into their claims of torture or mistreatment was sufficiently independent or effective, have been able to bring a claim for judicial review and seek an ECHR compliant investigation. Whether the IHAT, as currently constituted, is a sufficiently appropriate and independent body to conduct its investigations has very recently been considered by the Court in *Ali Zaki Mousa* (No.2) and judgment is awaited.

21.10 In some judicial review challenges, including *Ali Zaki Mousa (No.2)*, claimants have argued that a public inquiry is the right remedy to look into their allegations. However, criminal investigations and public inquiries have fundamentally different purposes and operate under different legislation. In particular, the Inquiries Act 2005 provides that a public inquiry cannot rule on, or determine, civil or criminal liability. The gathering of evidence by the inquiry cannot be used by the inquiry for that purpose, nor can it be used in evidence in criminal prosecutions unless it has been taken in accordance with criminal law requirements. The Secretary of State for Defence considers that a criminal investigation is the appropriate way for identifying and punishing wrongdoing. Criminal law powers build in essential safeguards for suspects and are sufficiently broad in scope. The Secretary of State for Defence is however keeping under consideration the question whether the criminal investigations into individual allegations may highlight wider systemic issues which warrant further analysis and/or action in order to ensure that appropriate lessons are learned for the future.

Inquiries Act 2005

21.11 The Ministry of Justice carried out post legislative scrutiny (PLS) of the 2005 Act in 2010. The Memorandum submitted in October 2010 found that the 2005 Act was working well but that the Inquiries Rules 2006 were too prescriptive and could inhibit an inquiry chair's flexibility to conduct an inquiry efficiently. However, inquiry chairmen have been able to devise pragmatic approaches to overcome practical difficulties and Ministers decided that it was not a priority to amend the Rules.

Reply to the issues raised in part I, paragraph 22, of the list of issues

22.1 Mr Aamer's case remains a high priority for the UK Government. We continue to use our best endeavours to secure the release and return of Mr Aamer, who has been cleared for transfer but not release. Any decision regarding his release remains in the hands of the United States Government.

22.2 Previous legislation passed by the US Congress, namely the 2011 National Defense Authorisation Act, all but precluded transfers out of Guantanamo Bay. This legislation was renewed by the US Government for 2012, allowing for the US Secretary of Defense to exercise a waiver should stringent conditions be met. Despite the UK Government's best endeavours Mr Aamer was not released in 2012.

22.3 The Foreign Secretary has raised Mr Aamer's case numerous times with the former US Secretary of State and discussions continue with senior officials within the US Administration. In June 2012 the Foreign Secretary and Defence Secretary made representations to the then US Defense Secretary, Leon Panetta. The Defence Secretary went on to raise Mr Aamer's case with the former US Defense Secretary in January 2013.

22.4 The National Defense Authorisation Act (NDAA) has now been renewed for 2013. We continue to work with US counterparts to consider the implications of the NDAA 2013 for Mr Aamer's case.

Reply to the issues raised in part I, paragraph 23, of the list of issues

23.1 Serious allegations have been made about the role the UK has played in the past in the treatment of detainees held by other countries, and in the illegal transfer ("extraordinary rendition") of detainees from one country to another.

23.2 The UK Government has been absolutely clear that we stand firmly against torture and cruel, inhuman and degrading treatment or punishment. We do not condone it, nor do we ask others to do it on our behalf.

23.3 The Government have been clear and remain absolutely committed to ensuring that these serious allegations are examined carefully. As the Prime Minister told the House of

Commons on 6 July 2010, those allegations are not proven, but their consequences are serious.

23.4 The Government remains committed to drawing a line under these issues and have taken a number of steps:

- We have published the Consolidated Guidance which provides clear directions for intelligence officers and service personnel dealing with foreign intelligence services regarding detainees held overseas.
- We have reached a mediated settlement in the Guantanamo Bay civil damages cases.
- We have been clear that allegations of wrongdoing can be investigated by the police, with full co-operation from the Government.
- The allegations made by Mr Mohamed were investigated thoroughly by the Metropolitan Police Service. A joint public statement was made by the Metropolitan Police Service and the Crown Prosecution Service about the outcome of that investigation and another one on 12 January 2012. No further criminal proceedings were considered necessary in those cases.
- In July 2010, the Prime Minister established an independent Detainee Inquiry to examine whether, and if so to what extent, the UK Government and its intelligence agencies were involved in the improper treatment or rendition of detainees held by other countries in counter-terrorism operations overseas, or were aware of the improper treatment or rendition of detainees in operations in which the UK was involved. In establishing the Inquiry, under the chairmanship of Sir Peter Gibson a former Court of Appeal judge, the Government made clear that it would not be able to formally start its work until all related police investigations into detainee allegations had been concluded. The Inquiry therefore embarked on an extensive programme of preparatory work. However, the launch of a new police investigation in January 2012 into allegations against the UK made by two former Libyan detainees, led the Government to conclude it was not going to be possible to get the Inquiry underway in the foreseeable future. As a result, the UK Government announced on 18 January 2012 that it had decided to bring the work of the Inquiry to a conclusion and had asked Sir Peter Gibson to provide a report on the Inquiry's preparatory work, highlighting particular themes or issues that may warrant further examination. The Inquiry sent its report to Government on 27 June 2012. We fully intend to hold an independent judge-led inquiry once all related police investigations are completed.
- We have introduced the Justice and Security Bill containing proposals for strengthening the oversight and scrutiny of the security and intelligence agencies, and improving the courts' ability to handle intelligence and other sensitive material. The Bill improves parliamentary and independent oversight of the security and intelligence agencies. It will make the intelligence services more accountable to Parliament for their actions. Parliament, not the Prime Minister, will have the final say on the membership of the Intelligence and Security Committee (ISC). The Bill also provides the ISC with a statutory power to retrospectively oversee the operational activities of the intelligence community on matters of significant national interest. Additionally, it formalises the ISC's role in overseeing the wider intelligence community, including the Office of Security and Counter Terrorism in the Home Office, certain intelligence functions of the Ministry of Defence, the Joint Intelligence Organisation and other intelligence functions of the Cabinet Office. Finally, it removes the power for agency heads to withhold information from the ISC on the basis of its sensitivity; this power will in future rest solely with Secretaries of State.

Reply to the issues raised in part I, paragraph 24, of the list of issues

24.1 On 18 January 2012, the Justice Secretary announced the Government's decision to bring the Detainee Inquiry to a conclusion, as there was no prospect of it being able to start in the foreseeable future given the launch of a new police investigation into related allegations. In doing so, the Justice Secretary said that the Government fully intends to hold an independent, judge-led inquiry, once all the police enquiries have concluded, to establish the full facts and draw a line under these issues.

24.2 The Government does not agree with the views that have been expressed by some non-governmental organisations and others about the structure of the Detainee Inquiry, but will continue to engage with them over their concerns prior to any new inquiry being established.

Reply to the issues raised in part I, paragraph 25, of the list of issues

25.1 The Baha Mousa Inquiry (BMI) report was published on 8 September 2011. The BMI Chairman (Sir William Gage) made 73 recommendations. Then Defence Secretary, Dr Liam Fox, accepted all the recommendations, in principle, except one recommendation relating to the tactical questioning technique of shouting, also known as the 'harsh technique'.

25.2 Since then, the Ministry of Defence (MOD) has reviewed its tactical questioning techniques, developing a new approach, the 'challenge direct' approach. The 'challenge direct' approach was the subject of a recent Judicial Review which sought to challenge its lawfulness. On 1 February Lady Justice Hallett and Mr Justice Collins found that the 'challenge direct' approach was legal and dismissed the claim as misconceived, saying that its use was strictly controlled and limited. Lady Justice Hallett went on to say of the 'challenge direct' approach "it can save lives without any resort to torture, cruel, degrading or inhuman treatment".

25.3 MOD has made good progress in implementing the recommendations of the BMI. This work is reviewed by a senior committee within the MOD on a quarterly basis and to date over 80% of these recommendations have been addressed. Work continues, at pace, to implement the remaining 20%.

Reply to the issues raised in part I, paragraph 26, of the list of issues

26.1 On Monday 4 March 2013 the Al-Sweady Public Inquiry commenced its full public hearings. The oral hearings are expected to last for 12 months and on this basis the Chairman intends to produce his report by the end of 2014.

26.2 Claims by lawyers acting for the complainants that evidence of mistreatment has been withheld are considered by the Ministry of Defence (MOD) to be entirely baseless and received no support from the Inquiry in December's Direction hearing in which the Chairman fixed the Inquiry's opening date. MOD has complied scrupulously with its obligations to furnish the Inquiry with all the material it requires, and has disclosed over 14,000 potentially relevant documents and other materials to date. Lawyers representing the military witnesses have lodged over 370 draft or finalised statements, including for some of the interrogators, on behalf of their clients to date. While the MOD is unable to compel current and former employees to co-operate with the Inquiry, it is doing everything it can to encourage them to do so. The Inquiries Act 2005 confers powers of compulsion on the Inquiry.

Reply to the issues raised in part I, paragraph 27, of the list of issues

27.1 The Iraq Historic Allegations Team (IHAT) was established in 2010 to investigate allegations of mistreatment of individuals by HM Forces in Iraq between March 2003 and

July 2009. IHAT was originally under the superintendence of the Provost Marshal (Army) and employed a number of Royal Military Police (RMP) personnel, as well as retired civilian police investigators. The IHAT structure was examined by the Court of Appeal in *Ali Zaki Mousa (No.1)*. The Court concluded in November 2011, in summary, that the involvement of the Provost Branch in IHAT meant that the practical independence was, at least as a matter of reasonable perception, substantially compromised. The Secretary of State for Defence accepted the Court's conclusions and re-structured the IHAT to meet the Court's concerns. The RMP role in relation to the IHAT was transferred to the Royal Navy Police (RNP), which is led by the Provost Marshal (Navy). Retired civilian police investigators have retained their involvement. The transfer of roles was substantially implemented by 1 April 2012. The structural connections that gave rise to the problems of practical independence with the IHAT when it comprised members of the RMP, do not exist with the IHAT now comprising members of the RNP and with the Provost Marshal (Navy) at its head.

27.2 The Secretary of State for Defence also decided that the original scope of IHAT investigations should be broadened so that IHAT should undertake additional investigations into some further cases following the judgment of the European Court of Human Rights in *Al Skeini v UK* (the *Al Skeini* cases). A new team was established within IHAT to undertake the *Al Skeini* investigations and IHAT was allocated 50 additional staff as a result. These investigations are likely to require additional information in the form of interviews of next of kin and interviews of any witnesses.

27.3 The Secretary of State for Defence considers that the re-structured IHAT is an appropriate and independent body to conduct investigations into allegations of wrongdoing by HM Forces in Iraq. This has been the subject of a fresh judicial review challenge – *Ali Zaki Mousa v Secretary of State for Defence (No.2)* – in which judgment is awaited.

Reply to the issues raised in part I, paragraph 28, of the list of issues

28.1 It would not be appropriate for the UK Government to comment on the police investigations into the allegations made by Mr Al Saadi and Mr Belhaj. These enquiries are ongoing and the Government is co-operating fully with them.

Reply to the issues raised in part I, paragraph 29, of the list of issues

29.1 The UK Government does not operate any programme of compensation for individuals who have been tortured or ill-treated by other sovereign nations. If an individual alleges that the UK Government is liable in relation to their alleged torture or mistreatment overseas, it is open to them to bring a civil damages claim against the UK Government.

29.2 Victims can apply for an award for compensation under the Criminal Injuries Compensation Scheme but there are conditions for receiving an award. During the reporting period a number of individuals have brought such civil damages claims against the UK Government, alleging complicity in their alleged torture overseas. During the reporting period there have been no instances where either:

(a) A court has found the UK Government to have been responsible for the torture or ill-treatment of any individual; or

(b) The UK Government has admitted responsibility for the torture or ill-treatment of any individual.

29.3 Therefore no payment in respect of any such finding or admission has been made by the UK Government during the reporting period. Although some of the claims have been settled (in a number of cases subject to confidentiality provisions) any payments made in these cases cannot be described as compensation, the allegations having been neither admitted nor established.

29.4 The UK is compliant with the Council of Europe Convention on Action against Trafficking in Human Beings and is implementing the EU Directive on combating trafficking. This Convention provides for a minimum 30 day recovery and reflection period. The UK provides for a 45 day recovery and reflection period during which trafficking victims can access appropriate care and support based on case by case assessments of need. Victims can apply for an award for compensation under the Criminal Injuries Compensation Scheme and also access Legal Aid to pursue compensation claims in respect of earnings.

29.5 Improving Access to Psychological Therapies (IAPT) services came into existence in October 2008, since then the number and capacity of services has been expanding. Currently, there are IAPT services in every Primary Care Trust (PCT) in England except for two PCTs in the East of England. Every IAPT service should be able to treat patients with a diagnosis of Post-Traumatic Stress Disorder (PTSD). Trauma Focused Cognitive Behavioural Therapy, a National Institute for Health and Clinical Excellence (NICE) recommended treatment for patients with PTSD, is a standard component of the IAPT High Intensity Therapist Training Programme. There are an increasing number of therapists within IAPT Services that are trained to treat PTSD with Eye Movement Desensitization and Reprocessing (EMDR), another NICE approved treatment for PTSD, despite this not being part of the IAPT High Intensity Therapist Training Curriculum.

Reply to the issues raised in part I, paragraph 30, of the list of issues

30.1 It is clear as a matter of law that evidence obtained by torture is inadmissible in legal proceedings before the UK courts. This is firstly because of the longstanding prohibition on the admissibility of evidence obtained by torture having been confirmed by the House of Lords' judgment in the case of *A v Secretary of State for the Home Department (No.2)*, which is fully binding on the Government and the courts. And secondly it is a clear policy of the UK Government not to seek to adduce material obtained by torture in legal proceedings.

30.2 The Government has stated its position on numerous occasions. For example, shortly after the judgment was given, Baroness Scotland (then Home Office Minister of State) said in the House of Lords:

“The Government welcome the clarity that their Lordships' judgment has brought to this important and difficult issue. We have consistently condemned torture. It has never been our intention to present to court evidence which we believe to have been obtained by torture, and the effect of the judgment is to replace this policy with an exclusionary rule of law.” (Hansard, 20 Dec 2005, Column 1628)

30.3 And in the House of Commons, Ian Pearson (then Minister for Trade) said:

“it has never been the Government's intention to present to court evidence that we believe may have been obtained by torture. We believe that that would be wrong. The effect of the judgment was to reinforce that clear policy with an exclusionary rule of law. The Government have welcomed the clarity that their lordships' judgment of 8 December has brought to this important and difficult issue.” (Hansard, 15 Feb 2006, Column 514WH)

30.4 The Government believes that its position and the law is clear, and that no further measures are necessary to reflect the judgment.

30.5 There are no examples, following the judgment in *A v Secretary of State for the Home Department (No.2)*, where a court has, in open parts of proceedings where a closed material procedure has been used, ruled evidence inadmissible on the grounds that it was obtained through torture. The Government is unable to confirm or deny whether there are any examples – of the specific and limited types of case in which closed material

procedures are used (which do not include criminal proceedings) - where such a finding has been made in closed proceedings. This is because the entirety of such closed proceedings are protected from disclosure. This includes the material before the court, submissions made by any party, and the court's judgment. It would be a matter for the judge, not the UK Government, in any such case to determine whether, and how, such a ruling should be referred to in an open judgment or publicly by any other means.

Reply to the issues raised in part I, paragraph 31, of the list of issues

31.1 In *A & Others v. United Kingdom* the European Court of Human Rights ruled that, in closed proceedings before the Special Immigration Appeals Commission in relation to Part 4 of the Anti-Terrorism, Crime and Security Act 2001, in order to be compatible with Article 5(4) of the ECHR, the appellant must be given sufficient information about the allegations against him to enable him to give effective instructions to the Special Advocate in relation those allegations.

31.2 The use of closed proceedings and Special Advocates was further considered by the House of Lords in *Secretary of State for the Home Department v AF & Others* [2009] UKHL 28 ("AF (No. 3)"). In that case the Law Lords considered the requirements of Article 6 ECHR in relation to the stringent control order cases before them. The Law Lords adopted the European Court's ruling in *A & Others*, and found that:

"The contolee must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations. Provided that this requirement is satisfied there can be a fair trial notwithstanding that the contolee is not provided with the detail or the sources of the evidence forming the basis of the allegations. Where, however, the open material consists purely of general assertions and the case against the contolee is based solely or to a decisive degree on closed materials the requirements of a fair trial will not be satisfied, however cogent the case based on the closed materials may be."

31.3 The House of Lords' judgment in *AF (No.3)* is binding on UK domestic courts and the Government. The effect of both judgments, and the requirements of a fair trial, is routinely considered on a case-by-case basis by the domestic courts in cases involving closed material and the use of Special Advocates.

31.4 The most significant change to the way the courts have approached the type of cases considered in *A & Others* and *AF (No.3)* is that individuals must be provided with a gist of the allegations against them (this had not taken place in the cases considered by the European Court). It is the court, not the Government, that determines what information must be gisted in order to ensure compatibility with the ECHR and with the requirements of *A & Others* and *AF (No.3)*. In particular the courts ensure, in each case where these requirements apply, that the individual is given sufficient information consistent with their Article 6 ECHR rights about the allegations against them to enable them to give effective instructions in relation to those allegations.

31.5 The UK domestic courts have also considered the requirements of Article 6 in other contexts, and have found that the context will inform the nature of the requirement. The Supreme Court held in *Tariq* - a security vetting case in the Employment Tribunal - that a gist was not required to be provided in that case and that Article 6 does not provide for a uniform gisting requirement in all circumstances where a closed material procedure and Special Advocates are used.

31.6 The UK Government believes that no further steps are necessary to ensure that the requirements of the *A & Others v the UK* judgment are met, and that we should continue to rely on the courts to make decisions on gisting in individual cases.

31.7 The provisions for Closed Material Procedures (CMPs) in civil proceedings, contained in the Justice and Security Bill, have been brought forward to ensure that in civil proceedings the UK courts are able to take into account all relevant information, even if that information would damage the interests of national security if it were disclosed.

31.8 At present, the only way to prevent the disclosure of such highly sensitive national security material in civil litigation is Public Interest Immunity (PII). PII is exclusionary – if a claim is granted the result is that relevant material is excluded from proceedings entirely. The court has powers to summarise, gist and redact material, but all these do is mitigate the impact on the proceedings of excluding relevant material.

31.9 Where the Government's case in litigation rests wholly or substantially on sensitive national security material there is a clear problem. If a claim for PII is successful, the Government has excluded the material it needs to rely on, leaving it with no case to put to the court. If a claim for PII is unsuccessful because the court has decided that the public interest balance favours disclosure, the Government is faced with an order to disclose material that would damage the national security of the UK. That disclosure could potentially put the lives and safety of intelligence officers and their sources at risk and undermine the principle of confidentiality on which international intelligence-sharing arrangements are based.

31.10 CMPs are less fair than fully open proceedings, but they have been found time and time again to be sufficiently fair, and compatible with the ECHR (most recently, in July 2011 by a unanimous decision of 9 Supreme Court justices in the context of Employment Tribunal proceedings). In some cases (e.g. AHK – a challenge to a decision by the Home Secretary to refuse citizenship) the courts have found that challenges to decisions based on sensitive information may automatically fail unless there is a CMP that allows the court to look at the basis for the decision. CMPs can therefore be fairer for claimants than fully open proceedings. Parties to proceedings have also consented to them in the past where they were necessary for cases to go ahead. However, CMPs are no longer available at common law following the Supreme Court's judgment in *Al Rawi* in July 2011 that explicit statutory provision was required.

31.11 The Government remains clear that CMPs are essential to ensure that judges can reach judgments that are informed by all the evidence in the case, including in cases where serious allegations are made about the conduct of the Government and its security and intelligence agencies. The alternative is that cases will continue to be settled, or potentially struck out as untriable, without any ruling on the issues in the case.

31.12 Amendments brought forward by the Government ensure that the judge has full discretion. The Bill states very clearly that a Minister or other party to proceedings may apply to a judge seeking a declaration that the proceedings are proceedings in which a closed material application may be made to the court. The judge may then grant a declaration, but only if he agrees (1) there is material that would be damaging to the interests of national security if it were disclosed; and (2) that a CMP would be in the interests of the fair and effective administration of justice in the proceedings. The Government has also introduced a new power for the judge to revoke a CMP at any point, and the judge must do so at the end of the pre-trial disclosure exercise if a CMP is not in the interests of the fair and effective administration of justice in the proceedings.

Reply to the issues raised in part I, paragraph 32, of the list of issues

Concerning part (a):

Jersey

32.1 Substantial progress has been made towards relocation of the States of Jersey Police Headquarters from Rouge Bouillon to a new site, which will include complete redevelopment of the detention facilities to meet appropriate modern standards.

33.2 In September 2011 the Police Relocation Political Steering Group agreed that the option of a full new build should be progressed to feasibility stage. In December 2011 a feasibility study on the site was completed and in January 2012, the Political Steering Group agreed that the scheme for this site should proceed to Planning Application stage. Public consultation on the proposed scheme was undertaken in February 2012 and the scheme redesigned in advance of making a Planning Application. A capital budget allocation of £21 million has been made available.

Concerning part (b):

England and Wales

32.3 The UK Government takes its responsibilities regarding the safeguarding of juveniles in police custody very seriously. Although we accept that there are arguments in favour of making a change to the law in order to include 17 years olds under the definition of “juvenile” (thereby affording them the protection of an appropriate adult) there are also a number of reasons against making such a change. These are as follows:

- Police and Criminal Evidence Act (PACE) Code C (covering custody) already provides safeguards that protect all individuals detained by police. Principally, these are the rights to have a person informed (at public expense) of their whereabouts (s5.1), a telephone conversation with an additional person for a reasonable time (s5.6) and the right to legal advice (Section 6). The Code also sets a number of basic welfare requirements such as access to medical treatment (s9.5), meals at regular intervals (s8.6) and at least 8 hours uninterrupted rest in a 24 hour period (s12.2). Finally, Association of Chief Police Officers (ACPO) have issued guidance on safer detention and handling of persons in police custody (<http://www.homeoffice.gov.uk/publications/police/operational-policing/safer-detention-guidance?view=Binary>). Section 9 provides particular guidance on the care and treatment of children and young people.
- The UK Government is not currently minded to amend the law to include 17 year olds under the definition of juveniles. The UK Government believes that 17 year olds are of an age to be fully aware of their actions, what consequences may be expected to arise from them, and are of sufficient age to be treated as adults rather than juveniles by the criminal justice system. However the entitlement to the services of an appropriate adults for 17 year olds in police custody is currently the subject of a judicial review – *R (on the application of HC) v Secretary of State for the Home Department* (2013). A substantive hearing took place on 26th and 27th February 2013 and judgment has been reserved. We will endeavour to keep the Committee informed of the outcome in this litigation once it is known.
- Lawyers already carry out many of the functions of an ‘appropriate adult’ (AA). For example, the Solicitors’ Code of Conduct requires that they have proper regard to a client’s mental capacity or other vulnerability (Chapter 1, IB(1.6)), duty to take account of client’s needs and circumstances (Chapter 1, O(1.2) & (1.5)) and that their client can make an informed decision about the services they need, how their matter will be handled and the options available to them (Chapter 1, O(1.12));
- Mentally vulnerable individuals of any age (including 17 year olds) must be provided with an AA;

- The substantial cost of making such a change (our estimate is around £19.1m);

Scotland

32.4 In Scotland the Children's Hearing System takes most of the responsibility for dealing with children and young people under 16, and in some cases under 18, who commit offences or who are in need of care and protection (see the EHRC Submission to the UN Committee Against Torture: List of Issues on the UK 5th Periodic Report (August 2012), footnote 319). This protection for those aged 16 and 17 years comes in the form of compulsory measures of supervision. If a young person aged 16 or 17 is the subject of such compulsory measures of supervision, they are treated as a child whilst in Police Custody and afforded the same protections. Those protections are outlined in Section 14 of the Association of Chief Police Officers in Scotland (ACPOS) Custody Manual of Guidance: http://www.acpos.police.uk/Documents/Policies/Custody_Manual_Guidance_v8.pdf

32.5 If a young person aged 16 or 17 is not the subject of compulsory measures of supervision from a children's hearing they will be treated as an adult whilst in police custody unless they require the assistance of an appropriate adult (if, for example, they have a learning disability).

32.6 The Scottish Government announced in September 2012 that it intends to introduce a bill in the Scottish Parliament to give effect to the recommendations in Lord Carloway's report on criminal law and practice (<http://www.scotland.gov.uk/About/Review/CarlowayReview>). The Bill is expected to be introduced before the start of the Parliament's summer recess, which begins on 29 June 2013. It will include specific recommendations in relation to the treatment of 16 and 17 year olds whilst the subject of police investigations:

- For the purposes of arrest, detention and questioning, a child should be defined as anyone under the age of 18 years. This means that the current provisions concerning notification to a parent, carer or other responsible person and these persons having access to a child suspect should be extended to all persons under 18 years of age;
- There should be a general statutory provision that, in taking any decision regarding the arrest, detention, interview and charging of a child, whether by the police or the procurator fiscal, the best interests of the child shall be a primary consideration;
- Where the child is 16 or 17 years old he/she may waive his/her right of access to a lawyer but only with the agreement of a parent, carer or responsible person; and
- Where the child is 16 or 17 years old he/she may waive his/her right of access to a parent, carer or responsible person. In such cases he/she must be provided with access to a lawyer.

Northern Ireland

32.7 The Justice (Northern Ireland) Act 2002, commenced in August 2005, extended the youth justice system to include 17 year olds.

Guernsey

32.8 Under the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003 (PPACE), 17 year-olds are treated as adults. This means that 17-year-olds can be interviewed without the presence of a guardian/parent. A review of the PPACE Law is currently being undertaken. In all other areas, the Guernsey Home Department treats all persons under the age of 18 years as juveniles, in accordance with the Children (Guernsey and Alderney) Law, 2008.

Concerning part (c):

32.9 The UK Government considers that it is important that arrested persons are provided with information about their rights and entitlements whilst they are in police detention and has opted in to Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings. The Directive will come into force on 2 June 2014. In England and Wales arrested persons are already provided with a written notice of their rights and entitlements, such as the right to access legal advice or to have a third person informed of his or her arrest. The notice is issued in accordance with the Police and Criminal Evidence Act, Code of Practice C, paragraph 3.2. The notice is available in Welsh and 53 other languages. Audio and easy-read versions of the notice are also available. A notice of rights and entitlements is also provided to people in police custody in Northern Ireland.

32.10 In terms of criminal detention, the Criminal Justice (Scotland) Bill, to be introduced in the Scottish Parliament in 2013, will implement the recommendations arising from Lord Carloway's expert review of criminal law and practice. Lord Carloway recommended that a 'Letter of Rights' be provided to all suspects and accused in police custody in Scotland. Therefore, the Scottish Government plans to introduce a non-statutory letter in spring this year and to transpose the EU Directive on the right to information in criminal proceedings into domestic legislation.

32.11 In terms of mental health detention in Scotland, section 260 of the Mental Health (Care and Treatment) (Scotland) Act 2003 prescribes certain minimum information which has to be given to a patient who is either detained in hospital or made subject to certain orders in terms of the 2003 Act or the mental health related provisions in the Criminal Procedures (Scotland) Act 1995.

32.12 In Northern Ireland there are a number of measures in place to increase accessibility of information on rights and entitlements for foreign national prisoners. A Foreign National Committal Template is completed for any foreign national coming into prison in Northern Ireland. Additionally all foreign national prisoners are interviewed within 72 hours of committal, to establish any special needs or cultural issues we should be aware of.

32.13 Both the Police and Guernsey Border Agency have increased accessibility of information on rights and entitlements to detainees since the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) inspection. Notices are given to all detainees and include information regarding access to a police doctor.

32.14 The UK welcomes the role of the CPT and takes its recommendations very seriously. The UK responses to CPT reports are published on the CPT's website which can be found via the following link: [CPT: Documents and Visits: United Kingdom](#)

32.15 The Jersey Government is currently in the process of reviewing implementation of all the recommendations of the CPT. It is anticipated a report will be available before the examination in May 2013.

Reply to the issues raised in part I, paragraph 33, of the list of issues

England and Wales

33.1 The UK Government response to the Corston Report, published in December 2007, accepted 40 out of the 43 recommendations in the report and made a range of commitments across Government departments to take these forward.

33.2 There have been real improvements in the last 5 years, including significant investment in women's community services to address the underlying causes of women's offending such as drug and alcohol addiction, mental health issues and often long histories of abuse. Her Majesty's Prison (HMP) Morton Hall was reassigned in 2011 as an

Immigration Removal Centre, meeting our commitment to reduce the number of places in the female estate by 400.

33.3 Corston called for the establishment of geographically dispersed, small, multi-functional custodial centres to replace existing women's prisons. The Government has now stated that there are no plans to introduce smaller custodial units and that plans for the women's prison estate would be considered as part of a wider strategy looking at the future development of the overall prison estate and will reflect the current and projected prison population, including an assessment of the necessary margin to manage population fluctuation.

33.4 Current health needs of female prisoners are being addressed through the following programmes:

- Piloting Drug Recovery Wings, focusing on providing short-sentenced, drug-dependent prisoners with continuity of treatment between prison and the community, including three in women's prisons from April 2012 – HMP New Hall, HMP Askham Grange and HMP Styal.
- Joint Department of Health, Ministry of Justice and Home Office work to develop and subject to business case approval, roll out youth and adult liaison and diversion services at police custody and courts by 2014 for offenders with a range of vulnerabilities, including mental health problems.
- Looking at how intensive, treatment-based alternatives to custody for offenders with drug or mental health problems might work for women. Four women-only services (in Wirral, Bristol, Birmingham and Tyneside) are among the selected development sites.
- Planning to implement Payment-by-Results pilots for Drug and Alcohol Recovery, which will provide an ideal opportunity to improve the drug and alcohol recovery outcomes for all service users in the criminal justice system, including women.
- As part of the Department of Health/NOMS Personality Disorder (PD) Strategy, developing a women's personality disorder pathway of services, commencing in the East/West Midlands and East of England and involving Foston Hall and Drake Hall prisons. These services would be linked with the national PD services for women at HMP Low Newton and HMP Send.

33.5 The Government published its strategic objectives for the support and rehabilitation of female offenders, and established an Advisory Board to ensure cross-Government coordination in addressing female offending and reoffending, in March 2013.

Northern Ireland

33.6 In November 2010, Northern Ireland Prison Service (NIPS) published "Gender Specific Standards for Working with Women Prisoners". This was underpinned with "Working with Women Prisoners – A Guide for Staff" and further supported with local training for staff working in Ash House.

33.7 Following recommendations from Baroness Corston, the routine use of full searching for women was discontinued. NIPS have established Equality and Diversity Committees at all sites, with gender equality a key focus.

33.8 Two new gender specific pathways have been established to address the specific needs of women. A review of the NIPS Resettlement Strategy is underway.

33.9 NIPS are working collaboratively with other criminal justice agencies and non-statutory partners to establish arrangements for women identified as 'hard to place', to seek

to overcome the difficult issue of suitable and safe accommodation for women upon release.

33.10 General health is delivered based on a primary care model of care. Care is delivered based on need. Female prisoners in Hydebank Wood have access to a range of in-house services – vaccinations, health promotion, well women and smear clinics. All other services are provided by secondary care specialists who either attend the prison or the female prisoners attend outside hospital facilities. A dedicated Mental Health Nurse has been put in post specifically for females with a range of programmes.

Scotland

33.11 In Scotland, the Cabinet Secretary for Justice established the Commission on Women Offenders in July 2011, chaired by Dame Elish Angiolini which reported back to the Scottish Government on 17 April 2012. The Scottish Government agreed the aims of all the Commission's recommendations, accepted 33 of the 37 immediately and is taking time to consider and consult on the remaining 4.

33.12 The national women's prison, HMP Cornton Vale, will be replaced, and the Scottish Prison Service (SPS) have been tasked with producing plans for developing a more suitable national facility which ensures health and safety for a small number of women who are either serving long term sentences or who present a significant risk to the public. This will be located at HMP Inverclyde. A new regional unit will also be developed at HMP Edinburgh.

33.13 On mental health, the Scottish Government published their Mental Health Strategy for 2012-2015 which sets out the priorities for improving health and treating mental illness. The Commission on Women Offenders' mental health recommendations are highlighted in the strategy ensuring improvements to services and treatments.

- Borderline personality disorder (BPD) – effective training of prison staff in a mentalisation approach to working with women with this disorder.
- In partnership with the National Health Service (NHS) Lothian, to test over a two year programme an approach to working with women with BPD and introduce psychological therapy to manage Post Traumatic Stress Disorder.
- The Mental Health Strategy incorporates a commitment to support trauma victims in primary care setting and create a national learning network. In partnership with NHS Tayside and partners, to develop and test an approach to improving the response to distress.
- Provision of health services for prisoners moved from the SPS is being delivered by the NHS.

Reply to the issues raised in part I, paragraph 34, of the list of issues

England and Wales

34.1 The Government's strategy is to replace accommodation which is old, inefficient or has limited long-term strategic value with modern capacity which is designed to better meet the demand for prison places and supports our aim to drive down stubbornly high reoffending rates.

34.2 It is our strategic intent to reduce the number of prisoners held in crowded accommodation. However, this is an aspiration to be worked on over a number of years. Some of the prisons being closed are operating at significant levels of crowding already (such as HMP Shrewsbury).

34.3 We are removing overcrowded places in both the public and private estates. Five of the public sector prisons identified for closure are overcrowded

34.4 Plans to renew the prison estate are not “on hold”. The Justice Secretary has announced the intention to build 1,260 new places across four sites and to start the site search for a new prison in London, North West England or North Wales.

Northern Ireland

34.5 The Northern Ireland Prison Service (NIPS) is currently engaged in fundamental end-to-end reform. The development of the prison estate is part of the ongoing programme of reform. The NIPS Outline Estate Strategy was published for consultation in June 2012. The responses to the consultation have been considered and evaluated and the NIPS Estate Strategy is currently being finalised.

34.6 The NIPS Estate Strategy sets out our strategic vision for the development of the prison estate with regard to each of the main prisoner population groups: young offenders, female offenders, and adult male offenders. It aims to provide accommodation that is not only fit for purpose, but supports rehabilitation and provides value for money.

34.7 The Minister of Justice has committed to the reconfiguration of Hydebank Wood as a secure college and the provision of a dedicated facility for women prisoners combining both custodial and community services.

Scotland

34.8 The Scottish Government is committed to developing a prison service fit for the 21st century and one that meets the needs of the country. A range of initiatives are being taken, including ongoing investment in the creation of a fit-for-purpose prison estate, the introduction of community alternatives to short sentences and a strategic approach towards reducing reoffending across Scotland.

Reply to the issues raised in part I, paragraph 35, of the list of issues

35.1 As part of the National Offender Management Service (NOMS) Specification, Benchmarking and Costing Programme, the processing and resolution of prisoner complaints was reviewed and a revised Prison Service Instruction 02/2012 – Prisoner Complaints, was introduced. Prisons are no longer required to submit centralised prisoner complaints data in respect of timeliness and subject matter. The requirement now is for each establishment to ensure that records of all complaints are retained, stored securely and used to drive organisational improvement. Current policy guidance advocates that data is a useful tool for providing management information from a local perspective and senior management should use data collated locally to indicate where there are particular problem areas and take remedial action.

35.2 Prior to the introduction of the prisoner complaints specification the only data on prisoner complaints which was collated centrally was the number of complaints made overall and the number of replies sent within the allotted timeframe. No information was collated centrally on the different types of complaints submitted. However, the published figure for the number of complaints that NOMS received in 2011/12 is 233,904. The number of complaints has fallen since 2009/10 when 245,811 were submitted.

35.3 Any complaints with an equality or discrimination aspect should be diverted and processed under the Discrimination Incident Reporting Form (DIRF) process. Though there are requirements to report aggregate complaints data to the centre, all prisons hold, manage and monitor their DIRF information locally, in order to inform performance and standards.

Existing complaints process

35.4 In the first instance prisoners should talk to a member of staff as lots of problems can be dealt with fairly and comprehensively at this stage. If the matter cannot be resolved through discussion, the prisoner should submit a written complaint. Complaint forms have a set format and are freely available to prisoners on prison wings. Prisoners deposit their completed complaints into locked boxes, which are located on the residential units. Complaint boxes are emptied daily, logged by the prison's complaints clerk and allocated to a member of staff for reply.

35.5 There are two stages for responding to an ordinary complaint, the initial complaint and one internal avenue of appeal. The response timings for initial complaints must reflect the urgency of the complaint, prioritising the most critical, but subject to over-arching maximum timeframes (prisons have 5 working days to deal with the initial complaint and a further 5 working days to deal with any appeal). Complaints must be fully investigated and responses must address the issues raised within the complaint in a clear and understandable way.

35.6 Under the complaints procedure, a prisoner who has a complaint about a particularly serious or sensitive matter, for example where it would be reasonable for the prisoner to feel reticent about discussing it with wing staff or have it become known to administrative and wing staff through the normal procedures such as a victimisation case, has the right to make a complaint under "confidential access" (in a sealed envelope) to the governor, the Deputy Director of Custody or the local Independent Monitoring Board (IMB).

35.7 At any point during the complaint process a prisoner can make an application to speak to a member of the local IMB or they can if they wish write to their Member of Parliament.

35.8 The complaints process is subject to domestic scrutiny by local IMBs, the Prisons and Probation Ombudsman (PPO) and HM Chief Inspector of Prisons.

35.9 If a complainant is not satisfied with the response to their second stage complaint (the appeal), s/he may seek the assistance of the Independent PPO, who will consider whether to investigate the matter raised in the complaint. The PPO's Annual Report 2011-2012 gives details of the number and subject matter of complaints dealt with by his Office (and includes case examples of complaints investigated). The Annual Report also sets out the PPO's Terms of Reference.

35.10 The report can be accessed via the following link:
[http://www.ppo.gov.uk/docs/PPO_annual_report_content_web_\(10\).pdf](http://www.ppo.gov.uk/docs/PPO_annual_report_content_web_(10).pdf)

35.11 According to the PPO Annual Report 2011-12, 5,294 complaints were received, three more than last year. Of these, 4,726 complaints were about the Prison Service, 433 were about the Probation Service and 135 were about UK Border Agency. Overall, only around half the complaints received were eligible for investigation.

Scotland

35.12 In Scotland, the Scottish Prison Service (SPS) seeks to provide a caring and compassionate service for all offenders who come in to their custody. As such, any allegations of misconduct or inappropriate use of force are treated with the utmost seriousness. SPS has in place a robust and transparent complaints system, supported by statute, and this process has been praised by the Scottish Public Services Ombudsman. Any allegations of excessive force or assault which are reported to or discovered by SPS staff are automatically reported to the police. This process is robustly enforced by all Managers and Governors and where appropriate, a simultaneous internal investigation is conducted. When complaints are substantiated, normal disciplinary procedures and/or criminal

procedures are undertaken. In the last 12 months 4 allegations against staff have been reported to the police. In 3 of these the Crown took no proceedings and 1 case is still under investigation.

Northern Ireland

35.13 Complaints made by Prisoners against Staff:

Table 1

<i>Complaints Staff</i>	<i>Maghaberry (male)</i>	<i>Magilligan (male)</i>	<i>Hydebank Wood (male)</i>	<i>Hydebank Wood (female)</i>	<i>Totals</i>
1 Staff (Stage 1)	833	162	166	128	1289
2 Staff (Stage 2)	250	34	31	37	352
3 Staff (Interview)	8	1	4	0	13
4 Total	1091	197	201	165	1654

35.14 78% of complaints against staff are addressed at Stage 1. Unfortunately, the system does not categorise individual complaints or allow for complaints to be summarised in categories. Each individual complaint would have to be opened separately to identify what action was taken and whether the complaint was satisfactorily resolved.

35.15 The majority of complaints are addressed at either Stage 1 or Stage 2 without recourse to the Ombudsman.

35.16 Complaints are referred to the Prisoner Ombudsman by various methods, including use of the confidential phone number or confidential correspondence. NIPS does not maintain records of the number of complaints referred to the Ombudsman.

35.17 Complaints of Assault against staff:

Table 2

<i>Complaints Assault by Staff</i>	<i>Maghaberry (male)</i>	<i>Magilligan (male)</i>	<i>Hydebank Wood (male)</i>	<i>Hydebank Wood (female)</i>	<i>Totals</i>
1 Assault by Staff (Stage 1)	45	5	6	0	56
2 Assault by Staff (Stage 2)	13	2	0	0	15
3 Assault by Staff (Interview)	1	0	0	0	1
4 Total	59	7	6	0	72

35.18 As above, complaints are recorded individually within our electronic information management system (PRISM), and to identify the action taken would require us to search each individual complaint file.

Reply to the issues raised in part I, paragraph 36, of the list of issues

36.1 The Her Majesty's Inspectorate of Constabulary (HMIC) recommendation to adopt an overarching set of principles on the police's use of force as set out in the report "Policing Public Order- An overview and review of progress against the recommendations of

Adapting to Protest and Nurturing the British Model of Policing” published in February 2011 has now been fully implemented. The Association of Chief Police Officers (ACPO) has developed ten overarching key principles governing the use of force by the police forces in England and Wales and three core questions for police officers to consider as to when force may be used, and to what extent. These are delivered to all Public Order Commanders as part of their initial training and subsequent refresher training. The three core questions are those Commanders need to ask themselves before any public order deployments.

36.2 ACPO has also developed a document that reminds officers of their legal responsibility to use appropriate and proportionate force. This covers Section 3 of the Criminal Law Act and ECHR considerations. This document is given to all Public Order trained officers both in their training and immediately before any operational public order deployment. The national standards and professional practice for policing are set out in the Authorised Professional Practice (APP). The Public Order APP includes the overarching principles and use of force reminders.

Reply to the issues raised in part I, paragraph 37, of the list of issues

37.1 Following the death of Mr Mubenga in October 2010 the UK Border Agency asked the National Offender Management Service (NOMS) to undertake an immediate review of the way restraint is used by escort officers. The use of restraint on scheduled flights was paused between 15 and 25 October 2010 as a temporary measure in order to ensure that the restraint techniques in use were not dangerous. This initial review conducted immediately after the death concluded that the techniques were not fundamentally dangerous, but that they could be made safer.

37.2 The UK Border Agency then asked NOMS to conduct a review of the techniques in order to see if they could be made safer and following that review the UK Border Agency commissioned NOMS to develop a bespoke training package to better meet the needs of escort officers removing individuals from the UK. NOMS have been given a deadline of March 2013 to complete their work.

37.3 The UK Border Agency has also recruited an Independent Advisory Panel on Non-Compliance Management to advise on the quality and safety of the NOMS’ training package. The Independent Advisory Panel on Non-Compliance Management will wish to consider whether there is learning from other sectors which should inform the NOMS package as part of their work.

37.4 It is not possible to provide the number of injuries sustained by detainees following a use of force because details of injuries to detainees are recorded as part of the individual use of force reports, which must be submitted for each incidence of the use of Control and Restraint, to either the Contract Monitor for escorting or to the individual centre managers for Immigration Removal Centres (IRCs) and short term holding facilities (STHF) for review. To provide the number would require the examination of each individual record held at each facility and by the Contract Monitor for escorting.

37.5 Nevertheless, the Operating Standards for Escorting require that every incidence must be examined by the Contract Monitor and, where any concerns arise, the circumstances must be investigated. The Contract Monitor must keep a record of outcomes.

37.6 Also, the Operating Standards for IRCs require that managers must keep a record of every incidence of use of force and in the event of force being used, the Centre must ensure that detainees are seen by a member of the Healthcare team as soon as practicable.

37.7 There is a general obligation on staff to report potential criminal acts to the police, the Detention Centre Rules 45(2) requires a Detainee Custody Officer (DCO) to inform the manager and the Secretary of State promptly of any abuse or impropriety which comes to

his knowledge; this would include any situation where the DCO believes that a crime had been committed.

37.8 The operating standards for IRCs also require there to be local measures of safety and control, all injuries to detainees to be investigated, the action taken to be recorded and for the Centre Manager to monitor all assaults and fights. If a centre manager believed that a crime had been committed they would refer this for investigation to the local police force.

37.9 Injuries to detainees, for any reason, including use of force, are therefore recorded on individual medical records held or archived by Healthcare Teams based at each IRC and STHF. However, information regarding injuries held on medical records is confidential between patient and doctor and may not be accessed by the UK Border Agency without detainee consent. This is because there is a range of statutory provisions that influence the way in which patient information is used or disclosed.

37.10 Where a detainee makes a complaint regarding the use of Control and Restraint, the use of force report is made available to the UK Border Agency's Professional Standards Unit (described at Q.9) for their investigation and also available to any other appropriate independent investigating authority, such as the Prisons and Probation Ombudsman or the police. Information from medical records is available to investigators subject to detainee consent.

Reply to the issues raised in part I, paragraph 38, of the list of issues

38.1 The UK Border Agency regards the health and welfare of all detained persons as being of fundamental importance and ensures that they are held in humane conditions.

38.2 It has always been the UK Border Agency's policy only to detain individuals with mental illnesses in very exceptional circumstances. The policy did not change in 2010 and this has now been confirmed in the appeal in the case of *LE (Jamaica) v Secretary of State for the Home Department*. This case also confirms that the policy was and is relevant only where a mental illness cannot be satisfactorily managed in detention so that the illness was not significantly affected by detention and did not make detention significantly more burdensome.

38.3 In light of the above there are currently no plans to change the guidance as our view is the instructions are clear that only in very exceptional circumstances will those with serious mental health illness and whose condition cannot be satisfactorily managed in detention be detained.

Reply to the issues raised in part I, paragraph 39, of the list of issues

39.1 The Family Unit at Yarl's Wood immigration removal centre closed on 16 December 2010. The following table shows the numbers and duration for detained children since that date.

Children leaving immigration detention, 17 December 2010 to September 2012

<i>Duration of detention</i>	<i>Number of children as part of a family group</i>	<i>Number of Age Dispute Cases</i>	<i>Total</i>
3 days or less	190	20	210
Between 4 and 7 days	35	20	55
Between 8 and 14 days	-	10	10
Between 15 and 28 days	-	10	10
29 days to less than 2	-	10	10

<i>Duration of detention</i>	<i>Number of children as part of a family group</i>	<i>Number of Age Dispute Cases</i>	<i>Total</i>
months			
2 months to less than 3 months	-	*	*
3 months or more	-	*	*
Total	225	75	300

1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

2) Data relates to persons under age 18 leaving detention in the UK in the period from 17 December 2010 to 30 September 2012 having been detained solely under Immigration Act powers.

3) Data excludes detentions in police cells, prison service establishments and short term holding facilities at ports.

4) Figures rounded to the nearest 5 (- = 0, * = 1 or 2) and may not sum to totals shown because of independent rounding.

39.2 Statistics on children entering and leaving detention by reason for leaving detention, by length of detention and their place of last detention are published quarterly. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q3-2012/detention-q3-2012-tabs?view=Binary>.

39.3 The reasons that children enter detention are not published because the circumstances in which this happens are very limited:

39.4 Children, as part of a family group, are accommodated at Cedars pre-departure accommodation immediately prior to their ensured return from the UK, and after advice has been sought from the Independent Family Returns Panel.

- Children, as part of a family group, may be accommodated at Tinsley House while a decision is made as to whether to grant them entry to the UK or, if this is refused, while awaiting a return flight; or where, very exceptionally, a family presents risks which make the use of Cedars pre-departure accommodation inappropriate; or where a foreign national mother and baby from a prison mother and baby unit are being returned during the Early Removal Scheme (ERS) period but it is not practicable or desirable, owing to time or distance constraints, to transfer mother and infant direct from prison to the airport for removal.
- Occasionally we encounter cases in the immigration removal estate where the person's age is disputed. Where an individual detained as an adult is subsequently accepted as being aged under 18 years' of age, they are released as soon as appropriate arrangements can be made for their transfer into local authority care.
- Unaccompanied children are only ever detained in the most exceptional circumstances (for example, where it is necessary to establish the identity of an unaccompanied child and pending suitable alternative arrangements being made for their care and safety, such as whilst awaiting collection by family/friends).

Arrivals

- Paragraphs 16(1), (1A) and (2) of Schedule 2 to the Immigration Act 1971 give power to an immigration officer to authorise detention pending examination or further examination for a decision on the grant, refusal or cancellation of leave, of a person(s) seeking to enter the United Kingdom.
- Any detention of children would have to be extremely justifiable and have gone through a rigorous risk assessment. As a matter of course UK Border Force does not detain children/families except where strictly necessary and cases are prioritised and held for the shortest period possible, usually within a short term holding facility at the port. The maximum time in which they can be held in this facility is 24 hours.
- Occasionally it may be necessary to hold them longer than 24 hours, if, for example, the family is due to be removed and the flight or ship is scheduled to depart a short time after the 24 hour period has passed. In such cases it would be impractical to remove the child/family to alternative accommodation.
- There are also occasions when UK Border Force has completed its actions but is waiting for the assistance of Children's Services. These occasions are also rare but as our statutory duty requires us to safeguard and promote the welfare of children, there are times when we are unable to release a child until they can be collected by Children's Services.
- Children held by UK Border Force in short term holding facilities at ports for 12 hours or more, January 2011 to September 2012

<i>Duration</i>	<i>Number</i>
12 to 15 hours	80
15 to 18 hours	60
18 to 21 hours	75
21 to 24 hours	30
24 to 27 hours	5
27 to 30 hours	*
30 to 33 hours	*
Total	255

(1) All figures quoted have been derived from management information and are therefore provisional and subject to change. This information has not been quality assured under National Statistics protocols.

(2) Data relates to persons under age 18 held in short term holding facilities at ports upon arrival in the United Kingdom in the period from 1 January 2011 to 30 September 2012.

(3) Data on whether children were unaccompanied or part of a family group is not available. Figures rounded to the nearest 5 (- = 0, * = 1 or 2) and may not sum to totals shown because of independent rounding.

39.5 In Scotland, the Government ended the overnight detention of families with children at Dungavel House on 19 May 2010. The Scottish Government remains opposed to detaining any children of asylum seekers anywhere in the UK, including those who may be transferred from Scotland, and has urged the UK Government to end this practice immediately.

Reply to the issues raised in part I, paragraph 40, of the list of issues

40.1 The legal position is explained on the Department for Education's website, at <http://www.education.gov.uk/childrenandyoungpeople/healthandwellbeing/safeguardingchildren/a0072208/physical-punishment-of-children>

40.2 The position was brought to the attention of the public through the public debate and extensive publicity around the time the Children Act 2004 was enacted. The publication of the 2007 review, which set out the legal position, was widely reported in the national and regional press. Directors of Children's Services were informed of the publication and asked to circulate it to staff working with children and parents.

40.3 In September 2009 the then Government circulated a parenting booklet, Being a Parent in the Real World, giving guidance on parenting. 1.5 million copies were distributed with a national newspaper. The guidance contained an explanation in more straightforward terms:

“the defence of ‘reasonable punishment’ cannot be used in criminal proceedings for assaults causing actual bodily harm, grievous bodily harm, or child cruelty.

It is important you know that this means that, although a mild smack is not unlawful, parents who smack their children and cause injuries including grazes, scratches, abrasions, bruising, swellings and superficial cuts may be charged with assault causing actual bodily harm for which the penalty is a fine of up to £5,000 or a maximum of five years in prison.

It is also important to be aware that even if a parent causes no actual injury to a child, some acts such as shaking a child, dragging a child by their hair, using a belt, cane, slipper or other implement may not be accepted by the courts as ‘reasonable punishment.’”

40.4 UK Governments over the last few years have invested significant resources in making it easier for parents to access behaviourally-based parenting courses which have a proven record of helping parents to manage their children's behaviour more effectively and without resorting to physical punishment – though such courses do not necessarily spell out the legal position. The current Government encourages the use of evidence-based parenting courses of this sort.

40.5 The law is different in Scotland and was clarified by section 51 of the Criminal Justice (Scotland) Act 2003. The effect of section 51 is outlined in the Scottish Government's leaflet: “Children, physical punishment and the law – a guide for parents in Scotland”. The Scottish Government's Parenting Strategy commits the Scottish Government to commission new work to develop comprehensive, practical advice on different approaches to assist parents in managing their children's behaviour.

Reply to the issues raised in part I, paragraph 41, of the list of issues

41.1 We believe that the questions that were raised were addressed in the UK's 5th Periodic Review. We have set out the relevant paragraphs against the questions below. We would be happy to provide information orally on any areas the Committee considers have not been addressed during the examination in May:

Question 5(d): Para 117

Question 5(e): Para 119

Question 5(f): Paras 122-125

Question 5(g): Paras 30-42

Question 5(h): Para 63

Question 5(i): Paras 55-60 and 128-129

Question 5(j): Paras 130-134

Question 5(k): Paras 528-531 and 543-551

Reply to the issues raised in part I, paragraph 42, of the list of issues

42.1 The UK Government firmly believes that a high level of protection for the rights protected by this Convention is already afforded by our domestic law, including under the Human Rights Act 1998.

42.2 The UK remains to be convinced of the added practical value to people in the UK of rights of individual petition to the United Nations. The United Nations committees that consider petitions are not courts, and they cannot award damages or produce a legal ruling, whereas the UK has strong and effective laws under which individuals may seek remedies in the courts or in tribunals if they feel that their rights have been breached.

42.3 In 2004, the Government acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW OP). One of the reasons for doing so was to enable consideration, on a more empirical basis, of the merits of the right of individual petition more generally. In 2009, the UK ratified the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities.

42.4 It is still our view that the UK's experience under both protocols has not provided sufficient empirical evidence to decide either way on the value of other individual complaint mechanisms. We remain committed to gathering further evidence, over a longer period, to establish what the practical benefits are.

Part II

Reply to the issues raised in part II, paragraph 43, of the list of issues

Crown Dependencies

Isle of Man

43.1 Home:

In the Isle of Man the position in respect of corporal punishment by a parent or legal guardian in the home is generally the same as that which currently exists in England and Wales in the United Kingdom.

43.2 Schools:

The Education Act 2001 prohibited the use of corporal punishment in a school provided or maintained by the Island's Department of Education (now Education and Children). However, this statutory prohibition did not extend to independent schools. Although, as a matter of policy, corporal punishment was not administered in the Island's independent schools, the Education (Miscellaneous Provisions) Act 2009 amended the 2001 Act to make it unlawful to administer corporal punishment to a minor at any school or other place of education. This prohibition came into force on 1 September 2009 when new section 53A of the 2001 Act came into operation:

53A No right to give corporal punishment.

- (1) Corporal punishment given by, or on the authority of, a teacher to a minor —
 - (a) For whom education is provided at any school, or

(b) For whom education is provided, otherwise than at school, under any arrangements made by the Department, cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the teacher by virtue of his or her position as such.

(2) Subsection (1) applies to corporal punishment so given to a minor at any time, whether at the school or other place at which education is provided for the minor or elsewhere.

(3) For the purposes of this section —

(a) Any reference to giving corporal punishment to a minor is to doing anything for the purpose of punishing that minor (whether or not there are other reasons for doing it) which, apart from any justification, would constitute battery; but

(b) Corporal punishment shall not be taken to be given to a minor by virtue of anything done for the purpose of preventing personal injury to, or damage to the property of, any person (including the minor himself or herself).

(4) In this section ‘teacher’, in relation to a minor, means a teacher who works at the school or other place at which education is provided for the minor, and includes any person who works or otherwise provides services there (whether or not for payment) and has lawful control or charge of the minor.

43.3 Penal System:

No court in the Isle of Man may impose a sentence which involves corporal punishment. Although it had not been used for some years beforehand, the power to impose judicial corporal punishment was formally removed from Isle of Man legislation by the Criminal Justice Act 2001.

Section 16(1) of the Custody Act 1995 states:

“(1) Subject to the following provisions of this Part, the Department [of Home Affairs] shall make rules (‘custody rules’) for the regulation and management of every institution.”

Section 17(1)(d) of that Act then states:

“(1) Custody rules shall not —

(d) Authorise corporal punishment to be inflicted in an institution.”

Therefore no person who is held in a custodial institution (which includes for these purposes, holding cells in a police station) in the Isle of Man may be subjected to corporal punishment.

43.4 Care settings:

(a) Children’s Homes

In the Children’s Homes Regulations 2002, regulation 13 concerns control and discipline. Paragraph (4) of that regulation states:

“Without prejudice to paragraph (1) but subject to paragraph (5), the following measures shall not be used on a child accommodated in a children’s home —

(b) Any form of corporal punishment;

...”¹

(b) Care Homes

43.5 The Residential Homes Regulations (that sit under the Nursing and Residential Homes Act 1988) and the minimum standards that services work to currently do not state anything specific in relation to corporal punishment but this is because it only covers adults.

(c) Childminding

43.6 Although there is presently nothing specific in regulations, the minimum standards for childminders state:

“Under no circumstances must physical punishment be used or practices which frighten or humiliate children.”

43.7 New Legislation:

The Regulation of Care Bill, which should complete its passage through its parliamentary procedures, will extend regulation to include more care services. This will result in a change in that care services will not have individual regulations governing their operation. The primary legislation specifies the majority of the conditions for registration and inspection. The rest will be detailed in the minimum standards for each individual service which, under the new legislation, will be taken into consideration when registering or inspecting a care service.

Jersey

43.8 Home:

Article 35 (1) of the Children (Jersey) Law 2002 (“the Children Law”) provides the offence for causing harm to a child, exposing a child to a risk of harm, or neglecting the child in such a manner likely to cause the child harm. The maximum penalty for a person found guilty of such an offence is 10 years and/or and an unlimited fine.

Article 35(5) of the Children Law is a defence to a charge under Article 35: “Nothing in [Article 35] shall be construed as affecting the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to the child.”

The limits of this defence are however set out in Article 79 of the Children Law:

¹ Where regulation 13(1) states:

“No measure of control, restraint or discipline which is excessive or unreasonable shall be used at any time on children accommodated in a children's home.”;

and regulation 13(5) states:

“(5) Nothing in this regulation prohibits —

- (a) the taking of any action by, or in accordance with the instructions of, a registered medical practitioner or registered dentist which is necessary to protect the health of a child;
- (b) the taking of any action immediately necessary to prevent injury to any person or serious damage to property;
- (c) the imposition of a requirement that a child wear distinctive clothing, for purposes connected with his education or with any organisation whose members customarily wear uniform in connection with its activities;
- (d) the imposition by the authority or the person in charge of the home, having obtained a court order where necessary, of any prohibition, restriction or condition upon contact between the child and any person, if the authority or the person in charge of the home is satisfied that the prohibition, restriction or condition is necessary to protect or promote the welfare of the child.”

Limitation of defence of reasonable corporal punishment

(1) Any defence of reasonable corporal punishment of a child shall only be available to a person who was at the time of the punishment –

- (a) A person with parental responsibility for the child; or
- (b) A person without parental responsibility for the child who:
 - (i) Is the father or relative of the child;
 - (ii) Had care of the child; and
 - (iii) Had the consent of a person with parental responsibility for the child to administer such punishment.

(2) Any defence of reasonable corporal punishment of a child shall not be available if the punishment involved any means other than the use of a hand.

Article 79 therefore restricts the use of corporal punishment as a defence to situations where the defendant has parental responsibility or satisfies the narrow criteria in (b). Further, such punishment may not involve the use of implements, i.e. it may only be administered by hand.

In certain circumstances, a charge of common assault or grave and criminal assault could apply when a child has been harmed. Reasonable corporal chastisement may be available as a defence in such circumstances but of course subject to the limitations in Article 79.

43.9 Schools:

The administration of corporal punishment in Jersey schools has been prohibited by Act of the Education Committee dated 10 December 1986.

43.10 Penal system:

There is no provision for corporal punishment in the Prison (Jersey) Law 1957 or the Criminal Justice (Jersey) Law 1994 or the Prison (Jersey) Rules 2007. Consequently, corporal punishment is not permitted in the penal setting.

43.11 Care settings:

Article 9(4) of the Residential Homes (General Provisions) (Jersey) Order 1995 provides a specific requirement that "The person registered shall ensure that corporal punishment is not used as a sanction in relation to any child in the home".

Currently, the Nursing Homes and Mental Nursing Homes (General Provisions) (Jersey) Order 1995 does not have an equivalent requirement. However, this will be addressed in a proposed Regulation of Care (Jersey) Law that will replace the current legislation with respect to private nursing homes and psychiatric nursing homes, and will also extend to public hospitals.

With regard to residential children's facilities the issue of corporal punishment is dealt with in the policy and procedures manual under the general title of Behaviour Management. Under the sub heading of Dealing with unacceptable behaviour the following requirement applies:

“All staff who are the subject of, or witness unacceptable behaviour are required to deal with the matter at the time, in a calm and professional manner, by informing the resident(s) that their behaviour is unacceptable, and must cease. Further action will be in accordance with the severity of the event and physical punishment of any kind will never be used.”

In all cases any measures taken to respond to unacceptable behaviour will be appropriate to the age, understanding and individual needs of the child, for example taking into account that unacceptable behaviour may be the result of illness, bullying, harassment, certain disabilities or communication difficulties. There may be occasions when the resident's behaviour is so extreme that their actions may be a danger to themselves, or to others, or there is a danger of serious damage to property. In such cases the centre may exercise some form of physical restraint. A separate policy has been drawn up for this type of situation, and an incident record will always be made in such circumstances. The young person will be advised of the consequence of their unacceptable behaviour only after a cooling down period, when the decision has been thoroughly discussed by staff.

Guernsey

43.12 Home:

Corporal punishment is lawful in the home, where “reasonable chastisement” is permitted – same as in the UK.

43.13 Schools:

Corporal punishment is prohibited in state schools by a Government Directive made under the Education (Guernsey) Law (1970). There is no explicit legal prohibition of corporal punishment in private schools, but they are licensed and inspected by the Education Department and have all discontinued the use of corporal punishment.

43.14 Penal System:

Corporal punishment as a sentence for crime is unlawful under article 11 of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law (2006, in force March 2007), which repeals the Corporal Punishment (Guernsey) Law (1957) – same as in the UK.

43.15 Care Settings:

There is no explicit prohibition of corporal punishment in all other institutions and forms of childcare, it is prohibited in care institutions and foster care as a matter of policy. Consideration has been given to legislating to create an explicit prohibition in all alternative care settings and this remains under review.

Overseas Territories

Anguilla:

43.16 Home:

Section 243 of the Criminal Code prohibits cruelty to children. Specifically, it is prohibited to wilfully assault, ill-treat, neglect, abandon or expose a child or cause or procure a child to be assaulted, ill-treated, neglected, abandoned or exposed in any manner likely to cause unnecessary suffering or injury to health (including injury to or loss of sight or hearing or organ of the body and any mental derangement). However, subsection 243(6) specifically provides that right of any parent, teacher or other person who has lawful custody, care or charge of a child or young person to administer “reasonable punishment” is not affected by the prohibition.

43.17 School:

Section 143 of the Education Act abolishes corporal punishment in all schools, public and private.

43.18 Penal System:

Section 373 of the Criminal Code abolishes judicially ordered corporal punishment. That provision replaced the Abolition of Corporal Punishment Ordinance, 1998. Punishments that may be imposed on prisoners are prescribed in sections 33 and 34 of the Prisons Regulations and do not include any form of corporal punishment.

Bermuda:

43.19 Corporal punishment in schools is allowed under defined conditions. However, in practice, schools are moving towards using positive reinforcement for good behaviour. Corporal punishment may not be carried out on any child in care, whether in a children's home or foster care. Any person authorized by law to use force is criminally responsible for any excess,

British Virgin Islands:

43.20 The Corporal Punishment (Abolition) Act, 2000, of the Laws of the Virgin Islands, abolished Corporal Punishment in the penal system in the Virgin Islands.

Corporal Punishment remains in public school, assisted private schools and private schools by the Education Act, 2004, to the extent that:

Section 5(2)

Corporal punishment may be administered where no other punishment is considered suitable or effective, and only by the principal or deputy principal and one senior teacher appointed in writing by the principal for that purpose, in a manner that is in conformity with guidelines issued in writing by the Chief Education Officer.

The Domestic Violence Act 2011 speaks to the ill-treatment of a child, and the duty of persons coming into contact with the child to report such ill-treatment.

There are no laws in the Virgin Islands that address discipline in the home. It is safely concluded that discipline in the home is legal within limits.

Cayman Islands:

43.21 Home:

Corporal punishment is not prohibited in homes by legislation.

43.22 School:

In schools and institutional care current legislation allows corporal punishment 'as a last resort' where no other punishment is considered suitable or effective by the principal, and may be administered by the principal or any teacher appointed in writing by the principal for that purpose. This is not used in practice and the Ministry of Education is revising the Education Law in which corporal punishment will be banned in schools (including private schools).

43.23 Penal System:

Corporal punishment is not used in the penal system as a sentence or as a disciplinary measure.

Falkland Islands:

43.24 Home:

Corporal punishment in the home is not specifically prohibited by legislation.

43.25 School:

Corporal punishment in schools, including private schools, is prohibited.

43.26 Penal System:

Corporal punishment as a sentence for crime in the penal system for children and young people has not been specifically prohibited. However, the Criminal Justice Ordinance, which makes provision in relation to the powers of courts to deal with offenders, does not make any provision permitting corporal punishment. The Prisons Ordinance, which applies to the detention of persons in a young offender institution, does not prohibit corporal punishment. However, arguably it is indirectly prohibited through restrictions on the use of force included in the Prisons Regulations (where force is permitted only in lawful defence or in trying to prevent escape). Moreover Article 3 (Protection from inhuman treatment), and Article 7 (Protection of rights of prisoners to humane treatment) of the Falkland Islands Constitution expressly prohibits corporal punishment.

43.27 Care Setting:

There is no legislation in place to regulate the provision of alternative care (including institutional care and foster care), but work is already underway to address this. Administratively, the Falkland Islands Government forbids corporal punishment of children in the forms of care it operates.

Gibraltar:**43.28 Home:**

Corporal punishment in the home and family context is lawful provided that it is moderate in the manner, the instrument and the quantity of it.

43.29 School:

Corporal punishment has been expressly prohibited in schools in Gibraltar by means of departmental policy instructions which though not a legal instrument have the same effect.

43.30 Penal System:

There is no provision for the imposition of corporal punishment as a sentence for a crime or as a disciplinary measure within penal institutions in Gibraltar.

43.31 Care Setting:

The Gibraltar Care Agency's policy instructions with regard to residential services for children who are in public care expressly prohibit corporal punishment. The Agency's foster care manual also expressly prohibits the use of corporal punishment.

Montserrat:**43.32 Home:**

There is no law against the use of corporal punishment in the home.

43.33 School:

Corporal punishment can be administered in schools but subject to strict guidelines and where no other punishment is considered suitable or effective.

43.34 Penal System:

Corporal punishment is not permitted for young offenders and is not administered in prison.

Pitcairn:

43.35 Assault on a child is illegal under the Pitcairn Children's Ordinance. In 2009 an amendment was passed which reads at Para 7(2) "The common law rules permitting the use of force for punishment of a child are abolished". This amendment was introduced to remove any reasonable force defence for corporal punishment.

St. Helena, Ascension and Tristan da Cunha:

43.36 Corporal punishment is prohibited in the home, schools, the penal system and in all care settings.

Turks and Caicos Islands:

43.37 Section 134 of the Criminal Justice Act (Torture) (Overseas Territories) Order 1988 officially abolished corporal punishment, however, given the culture, admittedly, corporal punishment still exists in homes across the TCI. However, matters have been brought before the courts where parents have brutally treated their children while punishing them. Charges are laid against such persons either under the Offences against the Persons Ordinance 2001 or under section 5 of the Juvenile Ordinance 2009 for being cruel to the child. Reports relating to the welfare of children are made to the Department of Social Development and based on the seriousness of the matter, contact with the Police Department and the Attorney General's Chambers to prosecute such persons who are found to have committed acts of abuse to a child.

Existing law allows for corporal punishment in schools, although in practice it is prohibited in both private and public schools and in all institutions dealing with children and adolescents.

There is no form of Corporal Punishment that is either administered or legislated as part of any Penal Ordinance, regulation or operational and discipline policies at HM Prison, Turks and Caicos Islands. According to the paragraph 30 of the Prisons Regulations, no Prisons Officer can use excessive force on a prisoner and no prisoner shall be employed in any disciplinary capacity under the Prisons Ordinance or any other regulations.

Reply to the issues raised in part II, paragraph 44, of the list of issues**Crown Dependencies****Isle of Man**

44.1 The Isle of Man has legislation that is relevant to article 15 of the Convention in sections 11 and 13 of the Criminal Justice Act 1991 (an Act of Tynwald), which are reproduced below:

11. Confessions

- (1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.
- (2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained:
 - (a) By oppression of the person who made it; or
 - (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.
- (3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence:

- (a) Of any facts discovered as a result of the confession; or
- (b) Where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) applies:

- (a) To any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and
- (b) To any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Chapter I shall prejudice the admissibility of a confession made by an accused person.

(8) In this section ‘oppression’ includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

13. Exclusion of unfair evidence

(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

Jersey

44.2 Jersey complies with Article 15 of the Convention by way of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (“PPCE”).

44.3 Article 74 of PPCE is as follows:

74. Confessions

(1) In any proceedings a confession made by an accused person may be given in evidence against the accused in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained –

- (a) By oppression of the person who made it; or
- (b) In consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by the accused in consequence thereof, the court shall not allow the confession to be given in evidence against the accused except in so far as the prosecution proves to the court beyond reasonable doubt that the

confession, notwithstanding that it may be true, was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in paragraph (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this Article shall not affect the admissibility in evidence –

(a) Of any facts discovered as a result of the confession; or

(b) Where the confession is relevant as showing that the accused speaks, writes or expresses himself or herself in a particular way, of so much of the confession as is necessary to show that the accused does so.

(5) Evidence that a fact to which this paragraph applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by the accused or on his or her behalf.

(6) Paragraph (5) applies:

(a) To any fact discovered as a result of a confession which is wholly excluded in pursuance of this Article; and

(b) To any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part 8 shall prejudice the admissibility of a confession made by an accused person.

(8) In this Article “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence, whether or not amounting to torture.

44.4 Therefore, any confession* induced by torture are inadmissible and the burden is on the prosecution to prove the contrary if there is a representation to the Court this may have occurred. The court has a wide power to, on its own motion, require the prosecution to prove the confession was not induced by oppression, which is defined with sufficient scope in Article 74(8) to capture all forms of ill treatment.

44.5 As regards witness statements induced by torture, Article 76 PPCE provides the Court with the power to exclude evidence that the prosecution wishes to rely on, on the grounds that the admission of the evidence would so adversely affect the fairness of the proceedings that the court ought not to admit it. The Court is to have regard to all the circumstances including the circumstances in which the evidence was obtained. Therefore, it is inconceivable that a court in Jersey would receive evidence which was obtained by means of torture.

44.6 The Royal Court also has a customary discretion to refuse evidence and Article 76(3) PPCE preserves this.

44.7 It is also perhaps worth noting that, should any public/official person (eg police officer) or a person acting under the authority of a public/official person, be involved in the torture of anyone for the purposes of inducing a confession/witness statement, they would

* Confession is defined in Article 1(1) of PPCE: it includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise.

be liable for prosecution of an offence under Article 1 of the Torture (Jersey) Law 1990, with the maximum penalty being life imprisonment (Article 1(6) Torture Law).

Guernsey

44.8 Guernsey complies with article 15 of the Convention by Section 76 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003.

44.9 The Judges' Rules referred to in the previous periodic report have been replaced by the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003. This Law is based on the UK Police and Criminal Evidence Act and the relevant provisions are section 76, which refers to confessions, and section 78, which relates to exclusion of unfair evidence.

44.10 Under section 76 if in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained by oppression of the person who made it that evidence must be excluded unless the prosecution establish beyond reasonable doubt that it was not so obtained. In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

44.11 Section 78 states that the court may refuse any proceedings to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

Overseas Territories

44.12 The Criminal Justice 1988 (Torture) (Overseas Territories) Order 1988, which extends to the Anguilla, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St Helena and her Dependencies, and, Turks and Caicos Islands specifically prohibits all forms of torture, and makes no reference to any circumstance under which torture would be justified.

44.13 In addition, in Anguilla section 13 of the Evidence Act provides that 'evidence in any Court of Justice in England shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any Court in Anguilla'.

44.14 In the specific case of a statement or confession, the applicable law in the British Virgin Islands is the common law. Insofar as torture is concerned, the relevant common law principle is that, the court must exclude evidence if it is obtained by torture.

44.15 In the Cayman Islands, section 3 of the Bill of Rights 'No person shall be subjected to torture or inhuman or degrading treatment or punishment' (which came into force on 6 November 2012), the local courts are likely to apply the UK and ECHR jurisprudence in such a manner as to prohibit the admissibility of such evidence.

44.16 In Gibraltar, in respect of Article 15, evidence obtained by torture is inadmissible in criminal proceedings pursuant to section 356(2)(a) of the Criminal Procedure and Evidence Act 2011 unless the prosecution proves to the court beyond all reasonable doubt that the evidence was not obtained as a result of torture.

44.17 In Montserrat, section 4 of the Constitution order states "No person shall be subjected to torture or inhuman or degrading treatment or punishment.

44.18 The Pitcairn Constitution contains a prohibition on torture in Section 5.

44.19 In St Helena & Ascension the Constitution provides for protection from inhuman treatment and the protection of right of prisoners to humane treatment. The Police and Criminal Evidence Ordinance 8 of 2003, section 65 states that confessions obtained through

oppression are inadmissible in evidence. Section 67 of the same Ordinance gives the court the power to refuse to allow evidence if, having regard to all the circumstances, including the circumstances in which the evidence was obtained, it would have an adverse effect on the fairness of a trial.

44.20 The Bermuda Constitution Order 1968 (Constitution) explicitly prohibits torture. Under Chapter 1 'Protection of Fundamental Rights and Freedoms of the Individual' it states at section 3 (Protection from inhuman treatment) no person shall be subjected to torture or to inhuman or degrading treatment or punishment. In addition, the Police And Criminal Evidence Act 2006 (PACE) reinforces the protection of the Constitution with legislative provisions to protect individuals against the abuse of police powers that could lead to torture.

Crown Dependencies

Guernsey

Reply to the issues raised in part II, paragraph 45, of the list of issues

45.1 Access to a lawyer has not been delayed by the Police or the GBA since the CPT inspection. We are currently undertaking a review of Police Powers and Criminal Evidence provisions and will ensure that section 66 is considered in that review and if necessary amended appropriately to meet international standards.

Reply to the issues raised in part II, paragraph 46, of the list of issues

46.1 The Statutory Legal Aid Scheme has not been brought into force as yet but is expected to be in early 2013. The draft is currently being revised with the Crown Law Officers.

Reply to the issues raised in part II, paragraph 47, of the list of issues

47.1 The Police Complaints (Guernsey) Law, 2008 provides for the establishment of the Police Complaints Commission whose role it is to supervise the most serious of complaints, and the investigation of matters of conduct which are considered, by the Chief of Police or Home Department Board, to be of public importance. In 2012 the Commission were involved in the supervision of 2 complaints.

47.2 The Commission also has responsibility for scrutinising the complaints register and considering appeals from the public in relation to a number of matters established by the Police Complaints (Conduct Proceedings and Investigations)(Guernsey) Regulation, 2011. The Commission was involved in considering one such appeal in 2011.

47.3 The Commission is the impartial overseers of the process surrounding the investigation of public complaints and conduct matters; they do not independently carryout investigations.

47.4 Where necessary investigation of complaints against the Police is conducted by an outside Police Force. It is the role of the Chief Officer of Police to determine appropriate disciplinary action.

Jersey

Reply to the issues raised in part II, paragraph 48, of the list of issues

48.1 Information is appended listing the number and details of non-British nationals held in detention at HM Prison la Moye:

48.2 Annex B - The 'Immigration Act Detainees' lists those held in custody under the Immigration Act only in the last 5 years and also those detained under this Act, following completion of a prison sentence.

48.3 Annex C - The 'Immigrants 2009 - 2013' attachment provides a breakdown of immigrants in custody serving sentences for criminal acts on the 1st January each year and how long they had been in custody on that day. Detained immigrants can seek a judicial review.

Isle of Man

Reply to the issues raised in part II, paragraph 49, of the list of issues

49.1 The UK Government is assessing the Isle of Man's request in order to ensure that the Isle of Man will meet the Optional Protocol to the UN Conventions Against Torture criteria, should the Protocol be extended to it.

Anguilla

Reply to the issues raised in part II, paragraph 50, of the list of issues

50.1 Anguilla has a short term acute care psychiatric institution but no long term chronic care psychiatric facility. The mentally ill persons currently being held at HMP are those accused of committing violent crimes but who have not been convicted due to their inability to stand trial. These persons have their cases reviewed every 6 months under the Mental Health Act by the Mental Health Review Panel. The Government of Anguilla does not currently have the resources to establish a long term chronic care psychiatric facility much less a forensic psychiatric facility.

Reply to the issues raised in part II, paragraph 51, of the list of issues

51.1 The Government of Anguilla is not aware of any breaches of the Code of Discipline for Prison Officers as they relate to the Convention Against Torture.

Reply to the issues raised in part II, paragraph 52, of the list of issues

52.1 The UK Government is financing an extension to the D Wing of Her Majesty's Prison which will provide approximately 32 additional cell spaces. This wing is due to be commissioned in early 2013.

Reply to the issues raised in part II, paragraph 53, of the list of issues

53.1 Please see attached Annex D.

Reply to the issues raised in part II, paragraph 54, of the list of issues

54.1 With respect to persons in Bermuda having the right to access lawyer delayed; no information is compiled to definitively respond to this inquiry. However, Bermuda does give access to legal representation the highest priority particularly as relates to criminal matters. Section 6(2)(d) of the Bermuda Constitution Order 1968 mandates that everyone charged with a criminal offence shall be permitted to defend himself before the court in person or.....where so provided by any law, by a legal representative at the public expense. Hence during the 2011 - 2012 fiscal year legal aid was granted to approximately 70% of those who applied to be assisted for criminal matters. One hundred per cent (100%) of those assisted were able to avail themselves of legal representation.

54.2 Whereas applications for legal aid are processed as of right and certificates are determined in accordance with the stated criteria, applicants may be required to submit additional information to facilitate the processing of applications. Once applications are processed and a certificate granted, an attorney of the certificate holder's choice from the statutorily compiled roster is ordinarily readily available.

54.3 Bermuda has a comprehensive legal aid scheme under the Legal Aid Act 1980, whereby all applications are mandated to be processed and eligibility is determined in accordance with income, capital assets; and the merits of a case as pertains to civil matters. The scheme also establishes a 'duty counsel' role to assist persons charged with crimes

appearing before the court. By section 7(2A) certain obligations are imposed upon the relevant authorities to avail persons of legal aid as follows: As soon as a decision has been made to detain a person at a police station, correctional institution or other similar place the person in charge of the police station, correctional institution or other similar place, as the case may be, shall inform the first mentioned person that he has a right to obtain advice and representation for the purpose of any interview from the duty counsel or Legal Aid Counsel.

British Virgin Islands

Reply to the issues raised in part II, paragraph 55, of the list of issues

55.1 In 2011, a British Virgin Islands Government-appointed Consultant made recommendations. A working group comprising prison officials, people from the Attorney General's chambers and from the relevant Ministry has been set up to draft revised rules, to be completed in 2013.

Reply to the issues raised in part II, paragraph 56, of the list of issues

56.1 The Immigration Detention Centre (IDC) was completed in 2007 and opened in early 2008. In 2012, due to serious overcrowding at the prison, the National Security Council of the British Virgin Islands approved the use of the IDC as extra prison accommodation if necessary.

Montserrat

Reply to the issues raised in part II, paragraph 57, of the list of issues

57.1 A permanent prison was constructed on Montserrat in 2004, following the destruction of the previous one by volcanic activity. All persons who are convicted in the local courts serve their sentence on Montserrat, enabling those who reside on island to keep in contact with their families.

Reply to the issues raised in part II, paragraph 58, of the list of issues

58.1 The new Constitution for Montserrat came into force on 27 September 2011. The new Constitution strengthens and expands the fundamental rights and freedoms of those living in Montserrat, reflecting the European Convention on Human Rights and the International Covenant on Civil and Political Rights. It also establishes a number of new Commissions to deal with complaints including a Complaints Commission which was sworn in, in January 2013.

Turks and Caicos

Reply to the issues raised in part II, paragraph 59, of the list of issues

59.1 Please see attached Annex E
