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**United Kingdom of Great Britain and Northern
Ireland***

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I. General information

A. Demographic, economic, social and cultural characteristics of the State

1. Background statistical information on the United Kingdom, using the most up-to-date figures available, is as follows:

United Kingdom¹

Population

Size ²	60,975,300
Growth on previous year ³	0.64%
Density ⁴ (people per sq km)	250
Number of men per 100 women ⁵	96
Ethnic groups ⁶	White 92.1%, Mixed 1.2%, All Asian or Asian British 4.0%, Black or Black British 2.0%, Chinese 0.4%, Other ethnic groups 0.4% (April 2001).
Percentage of population under 16 ⁷	18%
Percentage of population over 65 ⁸	16%
Percentage of population in urban areas ⁹	79.7% (April 2001)
Religion ¹⁰	Christian 71.8%, No religion 15.1%, Not stated 7.8%, Muslim 2.8%, Hindu 1.0%, Sikh 0.6%, Jewish 0.5%, Buddhist 0.3%, Any other religion 0.3% (April 2001).
Infant mortality rate ¹¹ – number of deaths of children aged under 1 year per 1,000 live births	54.8

¹ Figures are for 2007 or mid-2007 unless otherwise stated.

² *Mid-2007 population estimates*, Office for National Statistics.

³ *Mid-2007 population estimates*, Office of National Statistics.

⁴ *Mid-2006 population estimates*, Office for National Statistics.

⁵ *Mid-2007 population estimates*, Office of National Statistics.

⁶ *Census*, April 2001, Office for National Statistics. More recent “experimental” figures released by the Office of National Statistics give the following breakdown of the population of England in mid-2004: White (89.5%), Mixed (1.5%), Asian or Asian British (5.1%), Black or Black British (2.6%), Chinese (0.6%), Other (0.6%).

⁷ *Mid-2006 population estimates*, Office for National Statistics.

⁸ *Mid-2006 population estimates*, Office for National Statistics.

⁹ *Census*, April 2001, Office for National Statistics, using 2004 Urban/Rural classifications. Note that this figure is for England and Wales only.

¹⁰ *Census*, April 2001, Office for National Statistics. Note that this figure is for Great Britain (England, Wales and Scotland) only.

Population

Birth rate ¹²	772,200 live births in 2007 (12.7 per 1,000 of population)
Death rate ¹³ – per 1,000 population	
Males	9.1
Females	9.6
Life expectancy ¹⁴ – years at birth	
Men	77.2
Women	81.5
Fertility rate ¹⁵ – children per woman	1.90
Average household size ¹⁶	2.4 people per household (April 2001)
GDP ¹⁷	£1.4 trillion
GDP per head	£22,992.91
Inflation ¹⁸	3.0%
Government deficit/surplus ¹⁹	-£78bn (5.4% of GDP)
Government debt ²⁰	£750.3bn (52% of GDP)
Employment rate ²¹	74.1% (29.36m) (June–August 2007)
Adult literacy ²²	99.0% (2009)

Indicators on the political system

<i>Indicator</i>	<i>Value</i>
Number of recognised political parties at the national level	125 political parties (plus independent candidates) ²³

¹¹ Population Trends 134 (2008), Office of National Statistics.

¹² Population Trends 134 (2008), Office of National Statistics.

¹³ Population Trends 134 (2008), Office of National Statistics. Figures are for England and Wales only.

¹⁴ Population Trends 134 (2008), Office of National Statistics.

¹⁵ Population Trends 134 (2008), Office of National Statistics. Note that this figure is for England and Wales only.

¹⁶ *Census*, April 2001, Office for National Statistics.

¹⁷ *UK GDP for 2007*, Office for National Statistics.

¹⁸ Consumer Price Index (CPI). Office for National Statistics, January 2009.

¹⁹ *UK Government Debt and Deficit*, Office for National Statistics, December 2008.

²⁰ *UK Government Debt and Deficit*, Office for National Statistics, December 2008.

²¹ *Labour Market Statistics*, Office for National Statistics, December 2008.

²² CIA World Factbook, 5 March 2009.

²³ As contested at 2005 General Election.

<i>Indicator</i>	<i>Value</i>
Proportion of the population eligible to vote	Average registration rate of 91% ²⁴
Proportion of non-citizen population registered to vote	Non-registration around 8–9%
Number of complaints about the conduct of elections registered, by type of alleged irregularity	2 petitions received at 2005 General Election ²⁵
Vote compared to seats at 2005 General Election	Labour 35.3% and 356 seats (55%), Conservatives 32.3% and 198 seats (31%), Liberal Democrats 22.1% and 62 seats (10%), others 10.3% and 30 seats (4%).
Percentage of women in Parliament	128 women MPs elected – just under 20% of all MPs ²⁶
Proportions of national and sub-national elections held within the schedule laid out by law	All elections (100%)
Average voter turnouts in the national and sub-national elections by devolved administrations	UK Parliament: 61.4% (2005) 59.4% (2001) 71.4% (1997) Northern Ireland Assembly: 61% (2005), 59%(2001) 72% (1997) ²⁷ Scottish Parliament: 52%(2007) 49%(2003) 58%(1999) ²⁸ Welsh Assembly: 43.7% (2007) 46% (1999) ²⁹

B. Constitutional, political and legal structure

1. Government

2. The system of parliamentary government in the United Kingdom is not based on a written constitution, but is the result of a gradual evolution spanning several centuries. The essence of the system today, as it has been for more than two centuries, is that the political leaders of the executive are members of the legislature and are accountable to an elected assembly, the House of Commons, comprising members from constituencies in England,

²⁴ 44,775,185 persons out of population of approximately 60.6 million The Franchise in the UK is that British Citizens, Irish Citizens resident in the UK and Commonwealth Citizens legally resident in the UK, who have attained the age of 18 can vote in all elections. EU nationals, resident in the UK, can vote in European Parliament and local elections.

²⁵ Both petitions concerned the postal votes system and in both cases, the petition was dismissed/struck out.

²⁶ At 2005 General Election.

²⁷ Turnout at the last three General Elections.

²⁸ Turnout at last three Scottish Parliament elections.

²⁹ Turnout at the last two Welsh Assembly elections.

Scotland, Wales and Northern Ireland. The Government's tenure of office depends on the support of a majority in the House of Commons, where it has to meet informed and public criticism by an Opposition capable of succeeding it as a Government, should the electorate so decide.

3. The Parliament of the United Kingdom is made up of three elements — the Queen and the two houses of Parliament (the House of Lords and the elected House of Commons) — which are outwardly separate. They are constituted on different principles and they meet together only on occasions of symbolic significance such as a coronation, or the State opening of Parliament when the Commons are summoned by the Queen to the House of Lords. As a law-making organ of State, however, Parliament is a corporate body and with certain exceptions (see below) cannot legislate without the concurrence of all its parts.

4. The Parliament Act 1911 fixed the maximum life of a Parliament at five years, although a Parliament may be dissolved and a general election held before the expiry of the full term. Because it is not subject to the type of legal restraints imposed on the legislatures of countries with formal written constitutions, Parliament is virtually free to legislate as it pleases: generally to make, unmake, or alter any law; to legalise past illegalities and to make void and punishable what was lawful when done and thus reverse the decisions of the ordinary courts; and to overturn established conventions or turn a convention into binding law.

5. In practice, however, Parliament does not assert its supremacy in this way. Its members bear in mind the common law, which has grown up over the centuries, and have tended to act in accordance with precedent and tradition. Moreover, both houses are sensitive to public opinion, and, although the validity of an Act of Parliament that has been duly passed, legally promulgated and published by the proper authority cannot be disputed in the law courts, no Parliament would be likely to pass an Act which it knew would receive no public support. The system of party government in the United Kingdom helps to ensure that Parliament legislates with its responsibility to the electorate in mind.

(a) *The Crown and Parliament*

6. Constitutionally, the legal existence of Parliament depends upon the exercise of the royal prerogative (broadly speaking, the collection of residual powers left in the hands of the Crown). However, the powers of the Crown in connection with Parliament are subject to limitation and change by legislative process and are always exercised through and on the advice of ministers responsible to Parliament.

7. As the temporal "governor" of the established Church of England, the Queen, on the advice of the Prime Minister, appoints the archbishops and bishops, some of whom, as "Lords Spiritual", form part of the House of Lords. As the "fountain of honour", she confers peerages (on the recommendation of the Prime Minister who usually seeks the views of others); thus the "Lords Temporal", who form the remainder of the upper House, have likewise been created by royal prerogative and their numbers may be increased at any time.

8. Parliament is summoned by royal proclamation, and is prorogued (discontinued until the next session) and dissolved by the Queen. At the beginning of each new session the Queen opens Parliament. At the opening ceremony the Queen addresses the assembled Lords and Commons; the Queen's speech is drafted by her ministers and outlines the Government's broad policies and proposed legislative programme for the session.

9. The Sovereign's assent is required before any legislation can take effect: Royal Assent to bills is now usually declared to Parliament by the speakers of the two houses. The Sovereign has the right to be consulted, the right to encourage and the right to warn, but the right to veto legislation has long since fallen into disuse.

(b) Parliamentary sessions

10. The life of a Parliament is divided into sessions. Each session usually lasts for one year and is usually terminated by prorogation, although it may be terminated by dissolution. During a session either house may adjourn itself, on its own motion, to whichever date it pleases.

11. Prorogation at the close of a session is usually effected by an announcement on behalf of the Queen made in the House of Lords to both houses, and operates until a fixed date. The date appointed may be deferred or brought forward by subsequent proclamation. The effect of a prorogation is at once to terminate nearly all parliamentary business. This means that all public bills not completed in the session lapse, and have to be reintroduced in the next session unless they are to be abandoned.

12. Parliament is usually dissolved by proclamation either at the end of its five-year term or when a government requests a dissolution before the terminal date. In modern practice, the unbroken continuity of Parliament is assured by the fact that the same proclamation which dissolves the existing Parliament orders the issue of writs for the election of a new one and announces the date on which the new Parliament is to meet.

13. An adjournment does not affect uncompleted business. The reassembly of Parliament can be accelerated (if the adjournment was intended to last for more than 14 days) by royal proclamation, or at short notice, if the public interest demands it, by powers conferred by each house on its speaker.

(c) Devolution

14. In the United Kingdom, devolved government was created following simple majority referendums in Wales and Scotland in September 1997 and in Northern Ireland³⁰ in May 1998. In 1999, the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly began to exercise their powers. The purpose of devolution is to decentralise power; to enable executive decision making on matters (such as health, education and the environment) that have been transferred to the devolved legislatures and administrations. The UK Parliament remains sovereign and retains the right to legislate on all matters, devolved or reserved (such as defence, national security and foreign affairs), but it has chosen not to do so in relation to devolved matters without first seeking the consent of the relevant devolved legislature or legislature(s).

15. Under the terms of the Scotland Act 1998, the Scottish Parliament was established with 129 members elected every four years on the Additional Member System (a form of proportional representation).

16. Following the Government of Wales Act 1998 (which was subsequently succeeded by the Government of Wales Act 2006), the National Assembly for Wales was established with 60 members, with 40 members elected by “first past the post” and 20 member elected by the Additional Member System.

17. The Belfast Agreement opened the way for the devolution of power to Northern Ireland through the Northern Ireland Act 1998. An Assembly of 108 members with a similar range of legislative and executive powers to the Scottish Parliament was established.

18. As a consequence of devolution, the UK Parliament (“Westminster”) has recognised that in devolved matters, it is for the devolved parliament and assemblies to legislate in

³⁰ Following the Belfast Agreement in April 1998.

relation to matters within their own competence, although it retains the right to legislate if it wishes. Westminster has however, retained control of foreign affairs, defence and national security, macro-economic and fiscal matters, employment and social security.

19. The Scottish Parliament operates broadly on the Westminster model, electing a First Minister who heads an Executive (now rebranded as the Scottish Government). The Scottish Parliament and Executive have responsibility for most aspects of domestic, economic and social policy. Matters which are “reserved” to Westminster and the UK Government are listed in the Scotland Act 1998. All matters not listed are considered to be devolved. The Scottish Parliament is funded by a block grant from the UK Government.

20. The Government of Wales Act 2006 formally separated the National Assembly as a legislature and the Welsh Assembly Government as an executive. The National Assembly for Wales has the power to pass Assembly Measures on specific Matters (or defined policy areas) under the devolved Fields of Government (as listed in Schedule 5 to the Government of Wales Act 2006) Once Schedule 5 has been amended through the insertion of a Matter, the Assembly has the ability to pass a Measure(s) which can do anything which an Act of Parliament can do (subject to certain restrictions). The Assembly’s legislative competence is not as wide as that of the Scottish Parliament (for example in relation to Wales, the UK Government retains responsibility for the police and the legal system).

21. The Government of Wales Act 2006 makes provision for the holding of a referendum on whether the Assembly should have primary legislative powers in relation to the devolved Fields of Government. For the referendum to go ahead both the House of Commons and the House of Lords at Westminster and the Assembly would have to approve the referendum order. Under the Government of Wales Act 2006, functions exercised by the Assembly transferred to the Welsh ministers. Welsh Ministers also make subordinate legislation. The First Minister for Wales is the executive head of the Welsh Assembly Government. The First Minister is nominated by the Assembly and will then appoint portfolio Ministers. The Assembly and the Welsh Assembly Government are funded by the annual block grant from HM Treasury.

22. The Northern Ireland Executive comprises a First Minister and Deputy First Minister, and 10 Ministers, allocated in proportion to party strengths represented in the Assembly. Committees for each of the main executive functions the membership and chair of each is allocated in proportion to party strengths. These Committees have scrutiny, policy development, and consultative functions. The Northern Ireland Act lists those matters which are ‘transferred’ (matters which the Assembly can legislate on) “reserved” (matters which can only be legislated on by the Assembly with the Secretary of State’s consent) and “excepted” matters (which are those retained by Westminster). On 4 October 2002, devolution to Northern Ireland was suspended, but was restored on 8 May 2007 after the leaders of the two largest parties, the Democratic Unionist Party (DUP) and Sinn Féin, held face-to-face discussions for the first time and publicly announced their commitment to enter into power-sharing government.

(d) *The European Community*

23. Since the United Kingdom acceded to the European Community in 1973 the provisions of the European Communities Act 1972, applying the Treaty of Rome, have come into force. Special parliamentary procedures have been adopted to keep members of both Houses of the Westminster Parliament informed about developments within the European Union. These procedures take the form of parliamentary scrutiny of EU legislative proposals whereby the Government deposits new EU proposals in Parliament accompanied by explanatory memoranda (which cover, for example, the principle of subsidiarity, the legal basis of the proposals and their impact on fundamental rights, as well as the broader policy and financial implications for the UK).

(e) The composition of Parliament

24. The two-chamber system is an integral part of British parliamentary government. The House of Lords (the upper house) and the House of Commons (the lower house) sit separately and are constituted on entirely different principles. The process of legislation involves both houses.

25. Since the beginning of Parliament, the balance of power between the two houses has undergone a complete change. The continuous process of development and adaptation has been greatly accelerated during the past 75 years or so. In modern practice the centre of parliamentary power is in the popularly elected House of Commons, but until the twentieth century the Lords' power of veto over measures proposed by the Commons was, theoretically, unlimited. Under the Parliament Acts 1911 and 1949 certain bills may become law without the consent of the Lords. The 1911 Act imposed restrictions on the Lords' right to delay bills dealing exclusively with expenditure or taxation and limited their power to reject other legislation. Under the 1911 Act the Lords were limited to delaying bills for two years. This was reduced to one year by the 1949 Act.

26. These limitations to the powers of the House of Lords are based on the belief that the principal legislative function of the modern House of Lords is revision, and that its purpose is to complement the House of Commons, not to rival it.

(i) House of Commons

27. The House of Commons is a representative assembly elected by universal adult suffrage, and consists of men and women (members of Parliament, "MPs") from all sections of the community, regardless of income or occupation. There are 646 seats in the House of Commons representing the United Kingdom as a whole.

28. Members of the House of Commons hold their seats during the life of a Parliament. They are elected either at a general election, which takes place after a Parliament has been dissolved and a new one summoned by the Sovereign, or at a by-election, which is held when a vacancy occurs in the House as a result of the death or resignation of an MP or as a result of the elevation of a member to the House of Lords.

(ii) House of Lords

29. The House of Lords currently has seven hundred and forty-three members.³¹ Reform of the House of Lords has been at the forefront of the current Government's political agenda since it took office in 1997. Although reform is still under way, some radical changes have already been implemented. The House of Lords Act 1999 reformed the composition of the chamber by providing for the removal of the sitting and voting rights of most hereditary peers. As a result of this evolution, those holding the majority of seats in the House of Lords are now 'life-peers'; individuals who are appointed under the Life Peerages Act 1958. Life Peers hold approximately 600 seats. In addition, 92 hereditary peers and 26 Archbishops and Bishops of the established Church of England remain members of the House of Lords.

30. The Government has made it clear about its desire to take forward comprehensive reform to deliver on the results of the free votes in March 2007 in the House of Commons, for either a 100% or 80% elected second chamber. In a number of the consultations that have taken place, common themes about the intended achievements of reform are evident.

³¹ February 2009: www.parliament.uk/directories/house_of_lords_information_office/analysis_by_composition.cfm.

The key operational principles of the reformed House of Lords can be summarised as follows:³²

- Reform must not undermine the primacy of the House of Commons
- Total eradication of hereditary peerage, and introduction of an elected element to the House and
- Reform needs to ensure that the House of Lords works both effectively and legitimately

31. Although this reform seems far reaching, it has been acknowledged that both the powers and the role of the house will remain largely the same, and it has been acknowledged that any reform is largely for Parliament to decide. One of the most significant changes in the role of the House of Lords is a result of the introduction of the Constitutional Reform Act 2005, which eliminates the judicial function of the House of Lords by providing for a Supreme Court of England and Wales. In October 2009, the Supreme Court took over the House of Lords' role as the final court of appeal for all matters in the whole of the United Kingdom, except Scotland. The High Court of Judiciary remains the supreme court for criminal matters in Scotland.

32. The Constitutional Reform and Governance Bill, which is currently before Parliament, includes provisions which will phase out the hereditary principle from the House of Lords by ending arrangements to replace hereditary peers who die. The Bill will also make it possible for members of the House of Lords to resign or be disqualified, expelled or suspended in certain circumstances. The Government also intends to bring forward comprehensive proposals for a reformed second chamber.

(f) *Parliamentary elections*

33. For the purpose of parliamentary elections, the United Kingdom is divided into geographical areas known as constituencies, each of which elects one member to the House of Commons. To ensure equitable representation, Boundary Commissions for England, Scotland, Wales and Northern Ireland review the parliamentary constituencies every 8 to 12 years, and recommend any redistribution of seats that may seem necessary in the light of population movement or other changes. A Commission may also submit interim reports on particular constituencies if, for instance, it is necessary to bring constituency boundaries into line with altered local government boundaries.

34. The law relating to parliamentary elections is contained in the Representation of the People Acts. Under their provisions, election to the House of Commons is decided by secret ballot. British citizens, citizens of other Commonwealth countries and citizens of the Irish Republic resident in the United Kingdom are entitled to vote provided they are aged 18 years or over and not legally disqualified from voting. Persons not entitled to vote in a Parliamentary election include: peers who are members of the House of Lords; convicted offenders detained in custody; and anyone convicted within the previous five years of corrupt or illegal election practices. To be eligible to vote in a particular constituency, an elector must be registered in the electoral register for that constituency. In Great Britain, the electoral register is compiled by local electoral registration officers in each constituency who will conduct an annual canvass of eligible electors in the area for which they are responsible. In addition, under "rolling registration" arrangements introduced in 2000, individuals may apply at other times to have their names added to the electoral register.

³² Evidence from the Government Response to the Joint Committee on Constitution report of session 2005–2006; 'Conventions of the UK Parliament'. Cm 6997.

This caters for individuals who move house during the course of the year. Under more recent changes to electoral law, prior to an election, eligible persons may now register to vote up until 11 days before polling day throughout the UK.

35. A different system of voter registration exists in Northern Ireland where individual (rather than household) registration has been in place since 2002. This means that in order to register, every eligible elector must complete their own registration form and provide their date of birth and national insurance number. The Chief Electoral Officer for Northern Ireland may check entries on the register with other public authorities and against the national insurance database to ensure that they are correct. This system of individual registration was originally introduced to address perceptions of electoral fraud and it has contributed significantly to ensuring a high level of accuracy in the register. Therefore in 2006 the requirement for an annual canvass in Northern Ireland was removed, although the Chief Electoral Officer will still be required to conduct a canvass periodically as set out in legislation.³³

36. Voting is not compulsory, but at a general election the majority of the electorate (61.36 per cent at the general election in May 2005) exercise their right to vote. At by-elections, polling percentages may be lower. Electors may vote in person at polling stations especially established for the purpose. Alternatively, electors may apply for a postal vote or appoint a proxy to vote on their behalf.

37. Any person who is a British citizen, a qualifying citizen of another Commonwealth country or a citizen of the Irish Republic, who has reached the age of 18 and is not otherwise disqualified may stand as a candidate at a Parliamentary election. Those disqualified from standing as a candidate include: undischarged bankrupts; persons sentenced to more than one year's imprisonment while detained; peers who are members of the House of Lords; a candidate convicted of or reported to an election court for corrupt or illegal practice (the disqualification lasts for 5 years for the former and 3 years for the latter) and those precluded under the House of Commons Disqualification Act 1975 – for instance, holders of judicial office, civil servants, members of the regular armed forces or the police service, or British members of the legislature of any country or territory outside the Commonwealth. A candidate usually belongs to one of the main national political parties, although smaller parties or groupings also nominate candidates, and individuals may stand without party support as “Independent” candidates. A candidate's nomination for election must be signed by two electors as proposer and seconder, and by eight other electors registered in the constituency.

38. The system of voting used is the “first past the post” system: in each constituency, the candidate who receives the highest number of votes is elected.

39. Questions concerning the franchise and changes in electoral law and practice have in the past been considered periodically at a Speaker's Conference, consisting of MPs selected by, and meeting under, the chairmanship of the Speaker of the House of Commons. As with other parliamentary committees, the party composition of the Conference reflects that of the House. The proceedings of previous Conferences were held in private and recommendations were published in the form of letters from the Speaker to the Prime Minister. The current Conference, though not a select committee, is a committee of the House and will receive and publish written evidence and take oral evidence in public on the same bases as select committees and will report to the House at the end of its investigations. Its deliberations will be private, and shall consider and make recommendations for

³³ Section 3 of the Northern Ireland (Miscellaneous Provisions) Act 2006.

rectifying the disparity between the proportion of women, ethnic minorities and disabled people in the House of Commons and their proportions in the UK population.

(g) *The party system*

40. The existence in the United Kingdom of organised political parties, each laying its own policies before the electorate, has led to well-developed political groupings in Parliament, which are considered to be vital to democratic government. Whenever there is a general election (or a by-election) the electorate indicates, by its choice of candidate at the polls on election day, which of the policies it would like to see put into effect.

41. Since 1945, the Labour Party and Conservative Party, have each won an overall majority of seats in eight elections, and in one election, neither party won a majority, but the Labour party formed a minority government, as the winner of the largest number of seats. The great majority of members elected to the House of Commons have represented either one or other of these two parties. The general election of May 2005 was the third consecutive win for the Labour Party.

(h) *Government and Opposition*

42. The leader of the party which wins the most seats (but not necessarily the most votes) at a general election, or which has the support of a majority of members in the House of Commons, is by constitutional convention invited by the Sovereign to form a government and is appointed Prime Minister. On occasions when no party succeeds in winning an overall majority of seats, a minority government may be formed.

43. The Prime Minister chooses a team of ministers, including a Cabinet of about 20 members, whom he or she recommends to the Sovereign for appointment as Ministers of the Crown. Together they form Her Majesty's Government.

44. The party with the next largest number of seats is officially recognised as "Her Majesty's Opposition" (or "the Official Opposition"), with its own leader and its own "shadow cabinet", whose members act as spokesmen on the subjects for which government ministers have responsibility. Members of any other parties and any independent MPs who have been elected support or oppose the Government according to their own party or their own views.

45. The Government has the major share in controlling and arranging the business of the two houses. As the initiator of policy, it indicates which action it wishes Parliament to take, and explains and defends its position in public debate. Most present-day Governments can usually count on the voting strength of their supporters in the House of Commons and, depending on the size of their overall majority, can thus secure the passage of their legislation substantially in the form that they originally proposed. This is the result of the growth of party discipline, and has strengthened the hand of the Government, but it has also increased the importance of the Opposition. The greater part of the work of exerting pressure through criticism now falls on the Opposition, which is expected and given the opportunity, according to the practice of both houses, to develop its own position in Parliament and state its own views.

(i) *Parliamentary control of the Executive*

46. Control of the Government is exercised finally by the ability of the House of Commons to force the Government to resign, by passing a resolution of "no confidence" or by rejecting a proposal which the Government considers so vital to its policy that it has made it a matter of confidence, or ultimately by refusing to vote the money required for the public service.

47. As a representative of the ordinary citizen, an MP may challenge the policy put forward by a minister (i) during a debate on a particular bill, when he or she may object to its broad principles in the second reading or, as regularly happens, may put forward amendments at committee stage, (ii) through the institution of parliamentary questions and answers, (iii) during adjournment debates or (iv) during the debates, on “Opposition days”. In addition, the expenditure, administration and policy of the principal government departments is closely scrutinised by the select committees of the House of Commons.

(j) *Question Time*

48. Question Time in the House of Commons is regarded as the best means of eliciting information (to which members might not otherwise have access) about the Government’s intentions, as well as the most effective way of airing, and possibly securing some redress of, grievances brought to the notice of MPs by their constituents. Ministers may also make public statements by submitting a Written Ministerial Statement.

49. The conventions governing admissible questions have been derived from decisions taken by successive speakers in relation to individual questions. Practice and procedure of Question Time is also reviewed from time to time by the House of Commons Select Committee on procedure.

2. The Law

(a) *Administration*

50. The UK does not have a unified judicial system, apart from a few exceptions.³⁴ The judiciary in the jurisdictions of the United Kingdom (England and Wales, Scotland, and Northern Ireland) is independent of the Government in its judicial functions, which are not subject to ministerial direction or control. The most senior judicial appointments are made by the Queen on the recommendation of the Prime Minister. Some other judicial appointments are made by the Queen on the recommendation of the Lord Chancellor (on recommendation of the Judicial Appointments Commission) in respect of England, Wales and Northern Ireland, and on the recommendation of the Secretary of State for Scotland (with the advice of the Lord Advocate) in Scotland.

(i) *England and Wales*

51. In the Constitutional Reform Act 2005, judicial independence in England and Wales has been laid down in legislation for the first time. This Act replaced the Lord Chancellor as head of the judiciary in England and Wales with the Lord Chief Justice – who also holds office as the President of the Courts. Unlike the Lord Chancellor, the Lord Chief Justice is not a Minister and Parliamentarian but is independently appointed by a special panel convened by the Judicial Appointments Commission.

52. In addition to replacing the Lord Chancellor as head of the judiciary and related reforms, the Constitutional Reform Act introduced a number of significant changes. It established a new Supreme Court; imposed a duty on the Government to safeguard the independence of the judiciary; established the Judicial Appointments Commission (JAC); and established the Judicial Appointments and Conduct Ombudsman (JACO).

53. The Constitutional Reform Act 2005 is of great constitutional significance because of way it changed the leadership of the judiciary, the way in which the judiciary is

³⁴ The Asylum and Immigration Tribunal’s jurisdiction covers the whole of the UK. England, Scotland and Wales have a single Employment Tribunal System.

appointed and the manner in which complaints against the judiciary are dealt with. Furthermore, although the Act did not abolish the role of Lord Chancellor, the transfer of his judicial functions to the Lord Chief Justice reinforces the independence of the judiciary in the UK. As head of the judiciary, the Lord Chief Justice has some 400 statutory responsibilities,³⁵ central to which are the deployment of the judiciary, the allocation of work to and training of the judiciary and acting as representative of judicial opinion to the executive and legislator.

54. Alongside having responsibility for recommendations for the appointments of judicial office holders, the JAC also has the remit to have regard for the diversity of those eligible for appointment to the judiciary. The Commission consists of 15 individuals, 12 of whom (including the Chairman) are appointed for a term of five years by open competition.

55. Under joint responsibility of the Lord Chancellor and the Lord Chief of Justice, the Office for Judicial Complaints (OJC) ensures that all complaints about the conduct of individual members of the judiciary are dealt with fairly and that judicial discipline is consistent and effective. The OJC is an associated office in the Ministry of Justice, the government department responsible for support of the judiciary in England and Wales. Working separately to the OJC, the Judicial Appointments and Conduct Ombudsman has the responsibility for dealing with complaints about the appointment of members of the judiciary or of the handling of judicial discipline or conduct. Although the JACO is also an associated office of the Ministry of Justice, it works completely autonomously of both the judiciary and the Government.

56. There are about 1,448³⁶ full-time (salaried) judges in England and Wales. In addition to these full-time judges, there are about 1,305³⁷ recorders. These are practising lawyers sitting on a part-time (fee-paid) basis in the Crown Court and county courts. Some lawyers also sit from time to time as Deputy High Court Judges, and others sit part-time in the county court as Deputy District Judges. There are also some 30,000 magistrates who sit in magistrates' courts. These are ordinary citizens who give up some of their time to administer local justice (without remuneration). They usually sit in benches of three with a legally qualified clerk to advise them on points of law. Thus, a notable feature of the administration of justice is that a small number of professional judges are supplemented by a large number of magistrates who dispose of the vast majority of minor criminal trials.

57. It is a cardinal principle that, in the exercise of their judicial function, all judges are completely independent. It is inevitable and proper that the law, and the operation of the law in the courts, should be scrutinised by Parliament and the executive. However, it is a generally accepted convention that members of Parliament and politicians should not criticise particular judicial decisions, albeit that Parliament has the power to reverse their general effects by legislation. As Parliament and the executive are not expected to interfere in the judicial sphere, so judges are expected to distance themselves from politics. Full-time judges are disqualified from being members of the House of Commons. Under the Constitutional Reform Act 2005, the judges of the Supreme Court are barred from sitting or voting in the House of Lords, a committee of that house or in a joint committee of both houses.

58. The Attorney General and the Solicitor General are the Government's principal advisers on English law, and represent the Crown in appropriate domestic and international

³⁵ Set out in Constitutional Reform Act 2005.

³⁶ Figures relate to judges in the Court system. Taken from; 'Statistics – Monthly Judicial Statistics Overview' (April 2008) produced by the Judiciary of England and Wales.

³⁷ Taken from; 'Statistics – Monthly Judicial Statistics Overview' (April 2008) produced by the Judiciary of England and Wales.

cases. They are senior barristers, elected members of the House of Commons or House of Lords, and hold ministerial posts. The Attorney General is also Attorney General for Northern Ireland. As well as exercising various civil law functions, the Attorney General has final responsibility for enforcing the criminal law: the Director of Public Prosecutions is subject to the Attorney General's superintendence. The Attorney General is concerned with instituting and prosecuting certain types of criminal proceedings, but must exercise an independent discretion and must not be influenced by government colleagues. The Solicitor General is, in effect, the deputy of the Attorney General. The Welsh Assembly Government has its own principal legal advisor in the form of the Counsel General.

(ii) Scotland

59. The Scottish legal system is separate from that of the rest of the United Kingdom. The Scottish Minister for Justice is responsible for civil and criminal law and justice, social work services, police, prisons, courts administration, legal aid and liaison with the legal profession in Scotland. Working closely with the Scottish Courts Service, an executive agency of the Scottish Executive, duties of administration of the courts include financing operations, appointments of members of the judiciary and dealing with complaints. The Scottish Courts Service takes responsibility for the day-to-day administration and, more specifically, the administration of the Supreme Court and sheriff courts, while local authorities deal with the district courts.

60. Judges and Sheriffs in Scotland are appointed by the Queen on the advice of the First Minister (on recommendation of the independent Judicial Appointments Board). The Lord President of the Court of Session, who also acts as the Lord Justice General, is the head of the judiciary and presiding judge of the College of Justice and the Court of Justice, as well as being head of the High Court of Judiciary.

61. The Lord Advocate is the chief legal adviser to the Scottish Executive. He is the chief legal officer of the Government and the Crown on civil and criminal law in Scotland, except reserved matters. As a result of recent constitutional reform, the Lord Advocate no longer acts as the advisor to the UK Government on Scots law, as this is now the responsibility of the Advocate General, a Law Officer of the Crown.

62. The Lord Advocate has overall responsibility for the prosecution of crime in Scotland and, although they hold a ministerial post, must exercise an independent discretion in carrying out this responsibility. The Solicitor General for Scotland assists the Lord Advocate, also being responsible for the Crown Office and Procurator Fiscal Service, the criminal prosecution service in Scotland. Justice of the Peace courts are the administrative responsibility of the Scottish Courts Service; the judges are lay Justices of the Peace and the local authorities may appoint up to one quarter of their elected members to be ex-officio justices. In Glasgow there are four full-time and five relief stipendiary magistrates. They are full-time salaried lawyers and have equivalent criminal jurisdiction to a sheriff sitting under summary procedure.

(iii) Northern Ireland

63. In Northern Ireland, responsibility for criminal justice (including courts) has not yet been devolved to the Northern Ireland Assembly. The Secretary of State for Northern Ireland is responsible for the substantive criminal law and policing matters in Northern Ireland and discharges his responsibilities through the Northern Ireland Office. The Northern Ireland Court Service is responsible for the administration of the courts in Northern Ireland and its Minister is the Lord Chancellor. The Northern Ireland Court Service is also the sponsor department of the Northern Ireland Judicial Appointments Commission. The Commission is an independent public body which selects and

recommends candidates for appointment to judicial office in Northern Ireland. The Lord Chief Justice of Northern Ireland is the Chair of the Commission.

64. As in England and Wales, the Constitutional Reform Act 2005 appointed the Lord Chief Justice as head of the judiciary in Northern Ireland. As head of the judiciary, the Lord Chief Justice has numerous statutory responsibilities including responsibility for the deployment of the judiciary, their training and guidance, and representing the views of the judiciary to Parliament, the Lord Chancellor and Ministers of the Crown generally.

(b) *The criminal law*

65. In England and Wales the initial decision to begin criminal proceedings in minor offences lies with the police; otherwise the decision to bring a criminal charge lies with the independent Crown Prosecution Service. In Scotland public prosecutors (procurators fiscal) decide whether or not to initiate proceedings, in Northern Ireland it is the Director of Public Prosecutions. In England and Wales (and exceptionally in Scotland) a private person may institute criminal proceedings. Police may issue cautions, and in Scotland the procurator fiscal has a number of alternatives to prosecution, including warnings and referrals to the Social Services Department.

66. In April 1988 the Serious Fraud Office, a government department, was established to investigate and prosecute the most serious and complex cases of fraud in England, Wales and Northern Ireland. A similar unit, the Crown Office Fraud and Specialist Services Unit, investigates such cases in Scotland.

(i) England and Wales

67. The Crown Prosecution Service (CPS) was established in England and Wales by the Prosecution of Offences Act 1985. The Director of Public Prosecutions is the head of the Service, which is responsible for the prosecution of most criminal offences in magistrates' courts and the Crown Court. The Director of Public Prosecutions is answerable to Parliament for the Service through the Attorney General. The Service provides lawyers to prosecute cases in the magistrates' courts, and briefs barristers to appear in the Crown Court. Although most cases are dealt with in the regional area where they arise, some cases are dealt with by "Central Casework": these include cases of national importance, exceptional difficulty or great public concern and those which require that suggestions of local influence be avoided. Such cases might include terrorist offences, breaches of the Official Secrets Acts, corruption cases, and some prosecutions of police officers.

(ii) Scotland

68. In Scotland, discharging his duties through the Crown Office and the Procurator Fiscal Service, the Lord Advocate is the head of systems of criminal prosecution, and investigations of deaths and complaints against the police. There is no general right of private prosecution; with a few minor exceptions crimes and offences may be prosecuted only by the Lord Advocate, Solicitor General or advocate deputies (collectively known as Crown Counsel) or by the Lord Advocate's local representatives, the procurators fiscal, who decide whether or not it is in the public interest to prosecute, subject to the directions of the Lord Advocate.

69. Under the Criminal Procedure (Scotland) Act 1995 a procurator fiscal may offer a direct measure to an alleged offender in respect of certain minor offences as an alternative to prosecution: the offender is not obliged to accept an offer but if he or she does so the prosecution loses the right to prosecute.

(iii) Northern Ireland

70. The Criminal Justice System of Northern Ireland comprises seven organisations, each of which takes responsibility for various areas of criminal justice including the prison service, the probation service, the police, youth justice, the court service and the public prosecution service.

71. The Public Prosecution Service for Northern Ireland is the executive agency responsible for the prosecution of all people charged with criminal offences. This involves working closely with the police, who undertake the investigation, to advise on possible prosecutions, authorise charge, review cases and to prepare for and present cases in court. The Public Prosecution Service is headed by the Director of Public Prosecutions, who is appointed by, and responsible to, the Attorney General for Northern Ireland.

(c) *The criminal courts*

(i) England and Wales

72. In England and Wales, criminal offences may be grouped into three categories. Firstly, offences triable only on indictment — the very serious offences such as murder, manslaughter, rape and robbery — are tried only by the Crown Court presided over by a judge sitting with a jury. Secondly, summary offences — the least serious offences and the vast majority of criminal cases — are tried by unpaid magistrates or paid district judges sitting without a jury. The third category consists of offences such as theft, burglary or malicious wounding (known as “either way” offences) which can be tried either by magistrates or by the Crown Court depending on the circumstances of each case and the wishes of the defendant.

73. The Crown Court deals with trials of the more serious cases, the sentencing of offenders committed for sentence by magistrates’ courts, and appeals from magistrates’ courts. It sits at about 78 centres. All contested trials take place before a judge who might be a High Court judge circuit judge or a recorder, and a jury of twelve people.

74. In addition to dealing with summary offences and the “either way” offences which are entrusted to them, the magistrates’ courts send indictable only cases to the Crown Court and commit for trial those “either way” offences in which the defendant has elected for Crown Court trial or which it has been determined will be tried in the Crown Court. Committals for sentence occur when the defendant in an “either way” case has been tried summarily but the court has decided to commit him or her to the Crown Court for sentence.

75. There are now close to 30,000 Magistrates in England and Wales, who each undergo training supervised by the Judicial Studies Board. Magistrates are unpaid voluntary judicial office holders. Magistrates deal with around 95% of all criminal cases in England and Wales, as well as some family and civil cases. They are recruited and selected by 101 local Advisory Committees, who recommend successful candidates for appointment by the Lord Chancellor, with the concurrence of the Lord Chief Justice. Magistrates sit as a ‘bench’ of three and are supported in Court by a trained legal advisor who provides guidance on points of law and procedure. Each magistrate is assigned to a Local Justice Area but have a national jurisdiction pursuant to the Courts Act 2003.

76. In addition, District Judges (Magistrates Courts), of whom there are about 136, deal with the more complex or sensitive cases. These judges are required to have at least seven years’ experience of practice as a solicitor or barrister and an additional two years’ fee-paid experience.

77. With a few exceptions cases involving people under the age of 18 are heard in youth courts.³⁸ These are specially constituted magistrates' courts which either sit apart from other courts or are held at a different time. Only limited categories of people may be present and media reports must not identify any young person appearing either as a defendant or a witness. Where a young person under the age of 18 is charged jointly with someone aged 18 or over, the case is heard in an ordinary magistrates' court or the Crown Court. If the young person is found guilty, the court may transfer the case to a youth court for sentence unless satisfied that it is undesirable to do so.

78. A person convicted by a magistrates' court may appeal to the Crown Court against the sentence imposed if he or she has pleaded guilty, or against the conviction or sentence imposed if he or she has not pleaded guilty. Where the appeal is on a point of law or jurisdiction, either the prosecutor or the defendant may appeal from the magistrates' court to the High Court. Appeals from the Crown Court, either against conviction or against sentence, are made to the Court of Appeal (Criminal Division). The Supreme Court is the final appeal court for all cases, from either the High Court or the Court of Appeal. Before a case can go to the Supreme Court, the court hearing the previous appeal must certify that it involves a point of law of general public importance, and either that court or the Supreme Court must grant leave for the appeal to be heard.

79. Where a person has been tried on indictment and acquitted (whether on the whole indictment or some counts only), the Attorney General may refer to the Court of Appeal for its opinion on any point of law which arose in the case. Before giving its opinion on the point referred, the Court must hear argument by, or on behalf of, the Attorney General. The person acquitted also has the right to have counsel to present argument on his or her behalf. Whatever the opinion expressed by the Court of Appeal, the original acquittal is unaffected. By making a reference, the Attorney General may obtain a ruling which will assist the prosecution in future cases, but she cannot ask the court to set aside the acquittal of the particular accused whose case gave rise to the reference. The point may also be referred to the House of Lords if it appears to the Court of Appeal that it ought to be considered by the Law Lords.

80. The Attorney General may also refer a case to the Court of Appeal if it appears to her that the sentence passed by the judge in the Crown Court was unduly lenient or illegal. Her power applies to indictable only offences and certain specified "either way" offences sentenced in the Crown Court. The Court of Appeal must give leave to refer the sentence. The Court of Appeal may quash any sentence and replace it with a greater or lesser sentence which is deemed appropriate for the case, provided that this would have been within the power of the Crown Court judge who imposed the original sentence. In general the double jeopardy rule means that once a person has been acquitted of an offence they cannot be prosecuted a second time. However, under Part X of the Criminal Justice Act 2003, it is now possible for re-trials to take place in respect of certain very serious offences, where new and compelling evidence has come to light since the acquittal.

(ii) Scotland

81. In Scotland, the High Court of Justiciary tries all serious crimes such as murder, treason and rape; the sheriff court is concerned with less serious offences and the justice of the peace court with minor offences. Criminal cases are heard either under solemn procedure, when proceedings are taken on indictment and the judge sits with a jury of 15 members, or under summary procedure, when the judge sits without a jury. All cases in the

³⁸ These circumstances are cases in which a person under 18 is being tried as an adult, or being jointly tried with an adult or alternatively if it is a rape or manslaughter case.

High Court and the more serious ones in sheriff courts are tried by a judge and jury. Summary procedure is used in the less serious cases in the sheriff courts, and in all cases in the district courts. Maximum sentencing powers vary.

82. In Scotland, children under the age of 16 who have committed an offence or offences or are for any other reasons specified in statute considered to need compulsory measures of care or protection would normally be brought before a children's hearing. The hearing comprises three members drawn from a panel of volunteers who have been appointed by Scottish Ministers. Both sexes must be represented at each hearing. Following a hearing, the child or parents may appeal against any decision, but must do so within 21 days. This appeal is also brought before a sheriff. A small number of children who have committed serious crimes may still be dealt with in the adult criminal justice system.

83. Scotland's six sheriffdoms are further divided into sheriff court districts, each of which has one or more sheriffs, who are the judges of the court. The High Court of Justiciary, Scotland's supreme criminal court, is both a trial and an appeal court. Any of the following judges is entitled to try cases in the High Court: the Lord Justice General (the head of the court), the Lord Justice Clerk (the judge next in seniority) or one of the Lord Commissioners of Justiciary.

84. All appeals are dealt with by the High Court. In both solemn and summary procedure, an appeal may be brought against conviction, or sentence, or both. The Court may authorise a retrial if it sets aside a conviction. There is no further appeal to the House of Lords. In summary proceedings the prosecutor may appeal on a point of law against acquittal or sentence. The Lord Advocate may seek the opinion of the High Court on a point of law which has arisen in a case where a person tried on indictment is acquitted. The acquittal in the original case is not affected.

(iii) Northern Ireland

85. The structure of Northern Ireland courts is broadly similar to that in England and Wales. The day-to-day work of dealing summarily with minor cases is carried out by magistrates' courts presided over by a full-time, legally qualified person, termed a District Judge (Magistrates' Court). Children under the age of 18 are dealt with by the Youth Court consisting of a District Judge (Magistrates' Court) and two lay members (at least one of whom must be female) who are specially trained in youth justice matters. As in England and Wales, reporting restrictions apply to cases in the Youth Court preventing the publication of the defendant's name or picture. Appeals from magistrates' courts (including youth courts) are heard by the county court.

86. The Crown Court deals with criminal trials on indictment. It is served by High Court and county court judges. Proceedings are generally heard before a single judge, and all contested cases, other than those involving offences specified under emergency legislation, take place before a jury.

87. During the period of sectarian violence and terrorism from the 1970s, the hearing of cases arising under emergency legislation by a judge sitting without a jury became necessary because jurors were being intimidated. This "Diplock system" was repealed on 31 July 2007 and replaced with a new system of non-jury trial under the *Justice and Security (Northern Ireland) Act 2007*. The new system focuses on the circumstances of the offence, not the offence itself, and requires an assessment of the risk that the administration of justice might be impaired. There is now a presumption for jury trial in all cases subject to the Director of Public Prosecution's decision to certify cases as being suitable for non-jury trial.

88. Appeals from the Crown Court against conviction or sentence are heard by the Northern Ireland Court of Appeal. Procedures for a further appeal to the House of Lords are similar to those in England and Wales.

(d) *Criminal proceedings*

(i) Trial

89. Criminal trials in the United Kingdom take the form of a contest between the prosecution and the defence. Since the law presumes the innocence of an accused person until guilt has been proved, the prosecution is not granted any advantage, apparent or real, over the defence. A defendant (in Scotland, called an accused) has the right to employ a legal adviser and may be granted legal aid from public funds. If remanded in custody, the person may be visited by a legal adviser to ensure a properly prepared defence.

90. Criminal trials are normally in open court and rules of evidence (concerned with the proof of facts) are rigorously applied. If evidence is improperly admitted, a conviction can be quashed on appeal. During the trial the defendant has the right to hear and cross-examine witnesses for the prosecution, normally through a lawyer; to call his or her own witnesses who, if they will not attend voluntarily, may be legally compelled to attend; and to address the court in person or through a lawyer, the defence having the right to the last speech at the trial. The defendant cannot be questioned without consenting to be sworn as a witness in his or her own defence. When he or she does testify, cross-examination about character or other conduct may be made only in exceptional circumstances; generally the prosecution may not introduce such evidence.

91. In England, Wales and Northern Ireland during the preparation of the case, the prosecution, with the exception of minor charges, is required either automatically or on request to disclose to the defence all evidence against the accused on which the prosecution propose to rely. In addition, the disclosure test requires the prosecution to disclose any material not previously seen by the accused that may undermine the prosecution's case or assist the case of the accused. However present law permits certain unused material to be withheld if a court rules that there is a stronger public interest in preserving confidentiality (and disclosure is not necessary for a fair trial).

92. In Scotland, the Crown has a duty to proactively provide to the defence all material evidence for or against the accused and includes all information of which the Crown is aware which either materially weakens the Crown case or materially strengthens the defence case.

93. The defence or prosecution may suggest that the defendant's mental state renders him or her unfit to be tried. If the jury (or, in Scotland, the judge) decides that this is so, the defendant is admitted to a specified hospital.

(ii) Jury

94. In jury trials the judge decides questions of law, sums up the evidence for the jury and instructs it on the relevant law, and discharges the accused or passes sentence. Only the jury decides whether the defendant is guilty or not guilty. In England, Wales and Northern Ireland, if the jury cannot reach a unanimous verdict, the judge may direct it to bring in a majority verdict provided that, in the normal jury of 12 people, there are not more than two dissentients. In Scotland, where the jury consists of 15 people, the verdict may be reached by a simple majority, but no person may be convicted without corroborated evidence. If the jury returns a verdict of "not guilty" (or, in Scotland "not proven", which is an alternative verdict of acquittal), the prosecution has no right of appeal and the defendant cannot be

tried again for the same offence. In the event of a “guilty” verdict, the defendant has a right of appeal to the appropriate court.

95. A jury is completely independent of the judiciary. Any attempt to interfere with a jury once it is sworn in is punishable under the Contempt of Court Act 1981.

96. The prosecution and defence have a right to challenge potential jurors by giving reasons where they believe an individual juror is likely to be biased. There is no automatic right of challenge without giving a reason. In addition, the prosecution can also exercise the right to request stand-by of a juror, or the judge can use his or her discretionary powers to discharge a juror should the circumstances warrant that. The Criminal Justice (Scotland) Act 1995 abolished the right of peremptory challenge in Scotland.

97. People between the ages of 18 and 70 whose names appear on the electoral register and who have lived in the UK for a continuous period of at least five years since the age of 13, are liable for jury service, unless they are ineligible or excused. Persons ineligible for jury service include: those who have been sentenced in the UK to five years or more of imprisonment; those who have been sentenced in the previous ten years to three months or more of imprisonment, detention or youth custody, have received a suspended sentence or have been subject to a community order; and if they are regularly receiving treatment by a medical practitioner or are resident in a hospital or similar institution for any form of mental disorder.

(e) *The investigation of deaths*

98. In England, Wales and Northern Ireland, coroners investigate violent and unnatural deaths or sudden deaths where the cause is unknown. Deaths may be reported to the local coroner (who is either medically or legally qualified, or both) by doctors, the police, the registrar, public authorities or members of the public. If the death is sudden and the cause unknown, the coroner need not hold an inquest if, after a post-mortem examination has been made, he or she is satisfied that the death was due to natural causes. Where there is reason to believe that the deceased died a violent or unnatural death, or died in prison or in other specified circumstances, the coroner must hold an inquest, and it is the duty of the coroner’s court to establish how, when and where the deceased died. A coroner may sit alone or, in certain circumstances, with a jury. Neither the coroner nor the coroner’s jury may express any opinion on questions of criminal and civil liability, which fall to other courts to determine.

99. In Scotland the local procurator fiscal inquires into all sudden and suspicious deaths, and may report the findings to the Crown Office. In a minority of cases a fatal accident inquiry may be held before the sheriff. For certain categories (such as deaths in custody) a fatal accident inquiry is mandatory. In addition, the Lord Advocate has discretion to instruct an inquiry in the public interest in cases where the circumstances give rise to public concern.

(f) *Prisons, probation, parole*

100. In May 2007, the Justice Secretary took responsibility for the prison service and the probation and after-care service in England, Wales. The commissioning and delivery of adult offender management services in custody and the community in England and Wales is the responsibility of the National Offender Management Service (NOMS) Agency (an executive agency of the Ministry of Justice).

101. The Justice Secretary appoints to each prison establishment an Independent Monitoring Board representing the local community, to provide an independent view on the standards of fairness and humanity with which those placed in custody are treated and on the range and adequacy of the programmes preparing them for release. The Board inform

the Justice Secretary of any concerns they have, and report annually to the Justice Secretary on how well the prison has met the standards and requirements placed on it and what impact these have had on those in its custody.

102. Prisons are subject to inspection by Her Majesty's Chief Inspector of Prisons who is appointed by the Queen and reports directly to the Justice Secretary. The effectiveness of probation work is inspected by Her Majesty's Chief Inspector of Probation, who is appointed by, and reports directly to the Justice Secretary.

103. The Justice Secretary also appoints the Prisons and Probation Ombudsman. The Ombudsman's role is to investigate and make recommendation relating to individual complaints from prisoners, offenders under probation supervision, and immigration detainees. The Ombudsman is also responsible for investigating any deaths occurring in prisons, approved premises and immigration detention facilities. They report annually to the Justice Secretary. The Justice Secretary is advised by a special Parole Board on the release of prisoners on licence.

104. NHS Primary Care Trusts are responsible for commissioning prison health services in the publicly-run prisons in England.

(g) *Pardons*

105. The Home Secretary is responsible for advising the Queen on whether there are exceptional grounds for exercising the royal prerogative of mercy such as, in the absence of a court-based remedy, to pardon a person convicted of an offence or to remit all or part of a penalty imposed by a court. The Home Secretary's responsibilities regarding the royal prerogative extend to England and Wales. The Secretaries of State for Scotland and Northern Ireland have similar responsibilities.

(h) *The civil law*

106. The main subdivisions of the civil law of England, Wales and Northern Ireland are: family law, the law of property, the law of contract and the law of torts (covering injuries suffered by one person at the hands of another irrespective of any contact between them and including concepts such as negligence, defamation and trespass). Other branches of the civil law include constitutional and administrative law (particularly concerned with the use of executive power), industrial, maritime and ecclesiastical law. Scottish civil law has its own, largely comparable, branches.

107. Unified procedural rules for the County Court and High Court, the 'Civil Procedure Rules', to ensure that the Courts deal with cases justly, were introduced in 1999. The Civil Justice Council was also established to oversee and co-ordinate the modernisation of the Civil Justice System in England and Wales. Its main role is to review the system constantly and reform it accordingly.

(i) *The civil courts*

(i) *England and Wales*

108. The civil jurisdiction of magistrates' courts is limited. It includes certain family law proceedings, nuisances under public health legislation and the recovery of taxes. Committees of magistrates license public houses, betting shops and clubs.

109. The jurisdiction of the 216 county courts covers actions founded upon contract and tort (with minor exceptions), trust and mortgage cases and actions for the recovery of land. Cases involving claims exceeding set limits may be tried in the county court by consent of the parties or, in certain circumstances, on transfer from the High Court.

110. Other matters dealt with by the county courts include hire purchase, the Rent Acts, disputes between landlord and tenant, and adoption cases. Divorce cases are determined in those courts designated as divorce county courts, and outside London, bankruptcies are dealt with in certain county courts. The courts also deal with complaints of race and sex discrimination (outside of employment). Where small claims are concerned, especially those involving consumers, there are special arbitration facilities and simplified procedures.

111. All judges of the Supreme Court (comprising the Court of Appeal, the Crown Court and the High Court) and all circuit judges and recorders have power to sit in the county courts, but each court has one or more circuit judges assigned to it by the Lord Chancellor and they generally take the regular sittings of the court. The judge normally sits alone, although the court may, exceptionally, order a trial with a jury.

112. The High Court of Justice is divided into the Chancery Division, the Queen's Bench Division and the Family Division. Its jurisdiction is both original and appellate and covers civil and some criminal cases. Particular types of work are assigned to each division. The Family Division is concerned with all jurisdiction affecting the family, including that relating to adoption and guardianship. The Chancery Division deals with the interpretation of wills and the administration of estates. Maritime and commercial law are the responsibility of admiralty and commercial courts of the Queen's Bench Division.

113. Each of the 108 judges of the High Court is attached to a division on appointment but may be transferred to another division while in office. Outside London (where the High Court sits at the Royal Courts of Justice) sittings are held at 27 High Court trial centres. For the hearing of cases at first instance, High Court judges sit alone. Appeals in civil matters from lower courts are heard by courts of two (or sometimes three) judges, or by single judges of the appropriate division.

114. In England and Wales, the Family Division of the High Court hears appeals in matrimonial, adoption and guardianship proceedings heard by magistrates' courts. Appeals from decisions of the licensing committees of magistrates are heard by the Crown Court. Appeals from the High Court and county courts are heard in the Court of Appeal (Civil Division), consisting of the Master of the Rolls and 35 Lords Justice of Appeal, and may go on to the House of Lords, the final court of appeal in civil and criminal cases. The judges in the House of Lords are the 11 Lords of Appeal in Ordinary, who must have a quorum of three, but usually sit as a group of five, and sometimes even of seven. As of October 2009 however, the Supreme Court will replace the House of Lords as the final court of appeal.

(ii) Scotland

115. The main civil courts in Scotland are the sheriff courts and the Court of Session. The civil jurisdiction of the sheriff court extends to most kinds of action and is normally unlimited by the scale of the case, the sheriff having a jurisdiction in virtually all matters of civil law and all types of procedure with the exception of certain statutory appeals and applications to the Court of Session. Much of the work is done by the sheriff, against whose decision an appeal may be made to the sheriff-principal or directly to the Court of Session. The sheriff also hears a number of statutory appeals and applications such as appeals from the decisions of Licensing Boards.

116. The Court of Session sits only in Edinburgh, and in general has jurisdiction to deal with all kinds of action. The main exception is an action exclusive to the sheriff court, where the value claimed is less than a set amount. The Court is divided into two parts: the Outer House, a court of first instance, and the Inner House, mainly an appeal court. The Inner House is divided into two divisions of equal status, each consisting of four judges – the first division being presided over by the Lord President, and the second division by the

Lord Justice Clerk. Appeals to the Inner House may be made from the Outer House and from the sheriff court. The judges of the Court of Session are the same as those of the High Court of Justiciary. The Lord President of the Court of Session holds the office of Lord Justice General in the High Court of Justiciary. The Court of Session has a number of special procedures for particular types of action notably commercial cases and actions for damages for personal injuries and death. It has exclusive jurisdiction in certain international cases, notably under international conventions dealing with child abduction and custody.

117. The Scottish Land Court is a special court which deals exclusively with matters concerning agriculture. Its chairman has the status and tenure of a judge of the Court of Session and its other members are lay specialists in agriculture.

(iii) Northern Ireland

118. Minor civil cases in Northern Ireland are dealt with in county courts, though magistrates' courts also deal with certain classes of civil case. The superior civil law court is the High Court from which an appeal may be made to the Court of Appeal. These two courts, together with the Crown Court, comprise the Court of Judicature of Northern Ireland and their practice and procedure are similar to those in England and Wales. In October 2009, the UK Supreme Court replaced the House of Lords as the final civil appeal court.

(j) *Civil proceedings*

(i) England and Wales

119. In England and Wales, civil proceedings are instituted by the aggrieved person, who is referred to as the "claimant". No preliminary inquiry on the authenticity of the grievance is required. The usual way to commence civil proceedings, in both the High Court and the County Court, is by issuing a document known as the "claim form. The early stages of civil proceedings are dominated by the exchange of formal statements of case by the respective parties.

120. Civil proceedings can usually be abandoned or ended by compromise at any time. Actions brought to court are usually tried by a judge without a jury. However, subject to the court's agreement there is a right to trial by jury in actions involving claims for deceit, libel, slander, malicious prosecution and false imprisonment. The jury decides questions of fact and damages awarded to the injured party. Verdicts should normally be unanimous, but if a jury cannot agree then majority verdicts may be accepted.

121. In a Magistrates' court, an action is begun by the court serving the defendant with a summons, containing details of the complaint and the date on which it will be heard. Parties and witnesses give their evidence at the court hearing. Family proceedings are normally heard by not more than three lay justices including, where practicable, a woman; members of the public are not allowed to be present. The court may order provision for residence, access and supervision of children, as well as maintenance payments for spouses and children.

122. If a party refuses to comply with a judgment or order of court, a range of enforcement procedures are available. Where the judgment is for a sum of money, the most common method of enforcement is either by seizure of the debtor's goods or by an attachment of earnings order. If the judgment takes the form of an injunction, a refusal to obey the injunction may result in imprisonment for contempt of court. Normally the court orders the costs of an action to be paid by the losing party.

(ii) Scotland

123. In Scotland, civil proceedings in the Court of Session or ordinary actions in the sheriff court are initiated by serving the defender with a summons. A defender who intends to contest the action must inform the court; if he or she does not appear, the court grants a decree in absence in favour of the pursuer. For ordinary actions in the sheriff court the case is initiated by initial writ, and the defender has to lodge a notice of intention to defend and thereafter submit defences followed by an options hearing. In family actions the parties attend the options hearing, and the court can send cases for mediation. After the options hearing cases go to debate on legal issues or proof.

124. In summary causes (involving actions of value from £750 to £1,500) in the sheriff court the statement of claim is incorporated in the summons. The procedure is designed to enable most actions to be carried through without the parties involved having to appear in court. Normally they (or their representative) need appear only when an action is defended. These summary causes proceed on a fixed timetable and involve minimum written pleading and cover certain classes of payment action and actions for repossession of heritable property.

125. A small claims procedure was introduced into Scotland in 1988, which provides for all cases of up to £750 to be initiated in a form similar to that available for summary cause. Where the pursuer in the action does not have legal representation, the court will assist in completing and serving the summons. Although similar to summary cause, the procedure in small claims is designed to be very informal, and the court is encouraged to adopt less strict rules of procedure and evidence at proof. Legal aid is not available for small claims, and the expenses are strictly limited.

(iii) Northern Ireland

126. Proceedings in Northern Ireland are similar to those in England and Wales. County court proceedings are commenced by a civil bill served on the defendant; there are no pleadings in the county court. Judgements of civil courts are enforceable through a centralised procedure administered by the Enforcement of Judgments Office.

(k) *Restrictive Practices Court*

127. The Restrictive Practices Court is a specialised United Kingdom court which deals with monopolies and restrictive trade practices. It comprises five judges and up to ten other people with expertise in industry, commerce or public life.

(l) *The Tribunals Service*

128. Tribunals deal with a wide range of disputes, mostly between individuals and the state, and were traditionally sponsored by the same government department whose decisions they were reviewing. The need to reform the Tribunals system was first set out in Sir Andrew Leggatt's review *'Tribunals for Users – One System, One Service'*. The Government accepted his proposals and the Tribunals Service, formed out of over 16 existing tribunals, was created on 3 April 2006 as an executive agency of the Ministry of Justice (MoJ). It reflected the most radical change to this part of the justice system for 50 years.

129. The Tribunals, Courts and Enforcement Act 2007 created a First-tier Tribunal and an Upper Tribunal on 3 November 2008. The First-tier Tribunal is the first instance tribunal for most jurisdictions. The Upper Tribunal mainly, but not exclusively, reviews and decides appeals from the First-tier Tribunal. It also has the power to deal with judicial review work delegated from the High Court and Court of Session. Both Tribunals are administered by the Tribunals Service. Because the structure is flexible, in the future, if Parliament decides

to create a new appeal right or jurisdiction, it will not be necessary to create a new tribunal to administer it.

130. The First-tier Tribunal is currently divided into five chambers – the General Regulatory Chamber, the Social Entitlement Chamber, the Health, Education and Social Care Chamber, the War Pensions and Armed Forces Compensation Chamber and the Tax Chamber.

131. The responsibilities of the Senior President of Tribunal include representing the views of the tribunal judiciary to Ministers, Parliament and for training, guidance and welfare. In addition, the Lord Chief Justice has delegated to the Senior President certain of his powers under the Constitutional Reform Act 2005, particularly in relation to judicial discipline of most tribunal judges and members.

132. The Tribunal Procedure Committee makes rules governing the practice and procedure in the First-tier Tribunal and Upper Tribunal. The Committee was established in May 2008. Upon transfer to the First-tier or Upper Tribunals, existing rules for all tribunals are replaced by chamber specific rules made by the Committee.

(m) *The Administrative Justice and Tribunals Council*

133. The Administrative Justice and Tribunals Council (AJTC) is an advisory non-departmental public body. It is the successor body to the Council on Tribunals. In addition to taking on the Council of Tribunals' previous role in respect of tribunals and inquiries, it keeps under review the administrative justice system as a whole with a view to making it accessible, fair and efficient. It also advises ministers and the Senior President on the development of the new system and refers proposals for change to them. The AJTC seeks to ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers reflect the needs of users. The AJTC has a statutory seat on the Tribunal Procedure Committee ensuring it is at the centre of the rule making process for tribunals.

(n) *Non-governmental organisations*

134. There are many human rights non-governmental organisations operating in the UK. For tax purposes, non-governmental organisations mainly take the form of a charity. There is no unified system under which charities and other non-governmental organisations are governed in the UK. The operation of charities in England and Wales, Scotland, and Northern Ireland are each governed by different laws.

135. In England and Wales, bodies wishing to benefit from "charitable" status must be registered as "charities", a process overseen by the Charity Commission. Apart from a number of exceptions, the registration procedures must take place in accordance with the Charities Act 1993 (as amended by the Charities Act 2006).

136. The operation of charities in Scotland is also overseen by a supervisory body: the Office of the Scottish Charity Regulator. In order for the body concerned to be deemed "charitable", it must comply with the provisions laid down by the Charities and Trustee Investment (Scotland) Act 2005 and then be registered in the Scottish Charity Register.

137. In Northern Ireland, the law relating to charities is distinctly different because charities do not have to undertake compulsory registration. They mainly carry out their functions under the Charities Act (Northern Ireland) 1964 and the Charities Act (Northern

Ireland) Order 1987. The operation of charities is overseen by the Department for Social Development.³⁹

138. Being defined as a charity in the UK results in a number of tax benefits. In general, UK charities can claim tax relief from most income or gains and also on profits from some activities. Furthermore, charities are also entitled to claim tax repayments on income received on which tax has already been paid.

II. General legal framework within which human rights are protected

A. Acceptance of international human rights norms

139. The UK has ratified all of the following major United Nations human rights instruments, as follows:

- (a) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- (b) International Covenant on Civil and Political Rights (ICCPR);
- (c) International Covenant on Economic, Social and Cultural Rights (ICESCR);
- (d) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- (e) Convention on the Rights of the Child (CRC);
- (f) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- (g) Convention on the Rights of Persons with Disabilities (CRPD).

140. The UK has also ratified the Optional Protocols for CAT, CEDAW, CRC and CRPD.

141. The UK has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC).

142. The UK has also provided a report as part of the Universal Periodic Review process.

143. International treaties ratified by the United Kingdom are not directly incorporated into UK law. Instead, and in general, the UK complies with its international obligations by enacting or amending domestic legislation to ensure compatibility with its treaty obligations. The Government makes such changes, following normal parliamentary procedures, before it becomes a party to the treaty. The United Kingdom will not ratify a treaty unless the Government is satisfied that domestic law and practice enable it to comply. The International Convention for the Elimination of all forms of Racial Discrimination, and other major human rights treaties, is adhered to in this way.

³⁹ www.dsdni.gov.uk.

B. Legal framework for the protection of human rights at a national level

1. Constitutional protection and incorporation

144. The UK does not have a written constitution as part of its national law. People in the UK have long enjoyed a strong tradition of individual liberties but it has not always been easy to say precisely what was involved – or what to do when unwritten liberties conflict with other laws.

145. The European Convention on Human Rights (ECHR), which the UK ratified in 1951, enshrines fundamental civil and political rights. Although the UK was bound to comply with its obligations under the ECHR as a matter of international law from ratification, the ECHR was not directly incorporated into UK law and Convention rights were not directly enforceable before UK courts. The UK Government introduced the Human Rights Act 1998 (“the Act”) to give further effect to the rights in the ECHR. This Act came into force on 2 October 2000.

146. The Act enables victims of a breach of Convention rights to complain directly to a UK court and receive a remedy including damages if a breach is found. It ensures that Convention rights, and the supporting judgments of the European Court of Human Rights, are fully available to UK courts. It also ensures that Parliament has to reflect carefully, in considering proposed legislation, on the difficult question of where the balance lies between the individual’s rights and the needs of the wider community. The key principle of the Act is that wherever possible there should be compatibility with Convention rights and it provides a clear legal statement of their basic rights and fundamental freedoms.

147. The Act requires our courts to respect laws passed by Parliament. However, it allows a higher court to declare that a law cannot be given a meaning compatible with the Convention rights. Parliament can then decide whether and how to amend the law. In this way, the Act balances the rights and responsibilities of the law-making and judicial parts of our Constitution, leaving the final word to the democratic process.

148. The Act is a major shift in the UK political and legal system works. Before the Act, UK law did not spell out that public authorities and courts had to respect ECHR rights; and the courts would only look at the ECHR in exceptional cases, for example if UK legislation was unclear.

149. Under the Act, all core public authorities (such as central and local government, the army, the police etc) must ensure that everything they do is compatible with Convention rights unless an Act of Parliament makes that impossible.

150. The Act works in three main ways. First, it requires all legislation to be interpreted and given effect as far as possible compatibly with the Convention rights. Where it is not possible to do so, a court may quash or disapply subordinate legislation (such as Regulations or Orders) or, if it is a higher court, make a declaration of incompatibility in relation to primary legislation. This triggers a power that allows a Minister to make a remedial order to amend the legislation to bring it into line with the Convention rights.

151. To date, on every occasion when the courts have declared legislation to be incompatible with the Convention rights (and where this has not been overturned on appeal), the Government has either referred the incompatibility to Parliament to achieve a legislative remedy or is preparing to do so.

152. Second, it makes it unlawful for a public authority to act incompatibly with the Convention rights and allows for a case to be brought in a UK court or tribunal against the authority if it does so. However, a public authority will not have acted unlawfully under the Act if as the result of a provision of primary legislation (such as another Act of Parliament) it could not have acted differently.

153. The Courts will look, with “anxious scrutiny”, to see if the interference with the right in question was really necessary to achieve one or more of the stated aims recognised by the Convention. If the answer is no, the Courts will find that the public authority has acted unlawfully. The Courts will not, however, simply replace the decision maker’s view with their own, and so their role is still one of “review” rather than a full redetermination of the original decision. It is just that the nature of the review is now more intensive.

154. Third, UK courts and tribunals must take account of Convention rights in all cases that come before them. This means, for example, that they must develop the common law compatibly with the Convention rights. They must take account of Strasbourg case-law. For example, the Act has been relied on to determine cases involving the competing interests of privacy and freedom of expression.

155. The Act also imposes a duty on Government ministers when introducing new legislation. Under the Act, the minister in charge of any proposed primary legislation has to give a statement to Parliament about the compatibility of the Bill’s provisions with the Convention rights. This ensures that the Government considers the impact of the legislation on human rights before the Bill is debated in Parliament, and assists Parliament in its task of scrutiny.

156. In the explanatory notes accompanying the Bill, the Government also draws attention to the main human rights issues arising from the Bill. In the course of going through Parliament, most Bills are considered by the Joint Parliamentary Committee on Human Rights, which may make proposals on how a Bill can be made more consistent with the Convention or with other human rights instruments.

157. Since 2000, only once has a Bill been presented to Parliament with a statement that it could not be certified as being compatible with the Convention rights. This was the Bill that became the Communications Act 2003, which dealt with restrictions on funding for political advertising. This approach was supported at the time by the Joint Parliamentary Committee on Human Rights and was endorsed by Parliament, which passed the legislation. The legislation has subsequently been tested in the High Court and the House of Lords and has been upheld. The specific case will be considered by the European Court of Human Rights.

158. The 1998 Belfast Agreement tasked the Northern Ireland Human Rights Commission with advising the Secretary of State for Northern Ireland on “the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland”. Following the October 2006 St Andrews Agreement, a Bill of Rights Forum was established to assist this process. On 31 March 2008 the Forum presented recommendations to the Northern Ireland Human Rights Commission who, having considered the Forum’s report, presented its advice to Government on 10 December 2008. The Government is currently considering this advice and plans to consult publicly on proposals.

159. Section 1(2) of the Act provides that Convention rights take effect in domestic law subject to any designated derogation or reservation. Under Article 15 of the Convention, the UK has the right to derogate from its obligations in exceptional and prescribed circumstances. Section 14 of the Human Rights Act preserves this right of derogation in domestic law to ensure consistency with the UK’s derogations under international law. Similarly, under Article 57 of the Convention, the UK has the right in prescribed circumstances to enter a reservation in relation to its Convention obligations. Section 15 of the Act ensures that these reservations apply to domestic law to ensure consistency with the UK’s reservations under international law. At present, the UK has entered one reservation to the Convention, this being Article 2 of the First Protocol. Section 15 expressly maintains

this reservation and invests the Secretary of State with power to designate further reservations from the Convention which the UK may enter in the future.

160. The Human Rights Act applies to the Devolved Administrations and legislatures as public authorities, but they are also subject to additional legal requirements to comply with the ECHR. The Scotland Act 1998, which created the Scottish Parliament and the Scottish Executive, requires the Scottish Ministers to act in compliance with the ECHR rights and provides that any acts by them that contravene the ECHR are ultra vires. It also provides that any legislation passed by the Scottish Parliament that is incompatible with the ECHR would be outwith the Parliament's legislative competence and thus invalid. This allows domestic courts to strike down any Scottish legislation that is not in compliance with ECHR. The Northern Ireland Act, which created the Northern Ireland Assembly, similarly requires Northern Irish Ministers to act in compliance with the ECHR rights and deems law contravening the rights contained in the ECHR to be ultra vires.⁴⁰ Under the Government of Wales Act 2006, provisions in Measures of the National Assembly for Wales which are incompatible with the ECHR would be invalid. Actions of the Welsh Assembly Government which are similarly incompatible would be ultra vires. Thus the Courts could strike down any Welsh legislation which was not ECHR-compliant.

2. Constitutional reform

161. In July 2007, the Government published the 'Governance of Britain' Green Paper: a programme proposing a range of options aimed at strengthening the relationship between Government, Parliament and the people.

162. Various reports and consultations have been carried out. The Green Paper included a desire to discuss further the ideas of a more formal statement of rights and responsibilities, articulating the relationship between individuals and between the state and the citizen. On 23 March 2009, the Government published a Green Paper on this subject entitled 'Rights and Responsibilities: developing our constitutional framework'. The public consultation is aimed at exploring how best to build on the Human Rights Act to reflect the rights, responsibilities and values that underpin UK society.

163. The Government is developing a Constitutional Reform and Governance Bill which will include provisions on issues such as the ratification of international treaties, the placing of the civil service on a statutory footing and the rules concerning removal and suspension of members of the House of Lords.

3. Remedies, compensation and rehabilitation

Legal aid

164. In all three jurisdictions of the UK there is a comprehensive system whereby a person in need of legal advice or representation in court may receive financial assistance out of public funds. This scheme is referred to as "Legal Aid" and is fundamental to the realisation of each individual's legal rights. It is aimed at those on low and modest incomes and may be granted in full or subject to financial contribution by the individual. If legal aid is granted, the case is conducted in the normal way, except that no money passes between the individual and their solicitor; all payments are made through the legal aid fund. Ministerial responsibility for legal aid in England and Wales rests with the Lord Chancellor and with Scottish ministers in Scotland.

⁴⁰ s.6(2)(c) Northern Ireland Act 1998.

165. In England and Wales, the Legal Services Commission administers legal aid, which falls under the two distinct heads of the Community Legal Service and the Criminal Defence Service.

166. Under the Community Legal Service, a network of organisations fund, provide and promote civil legal services. The rules relating to the provision of civil legal aid are in the Funding Code. An individual will only be granted financial assistance if their case is within the scope of the scheme and passes the means and merits tests. In addition to legal assistance the Legal Services Commission runs a helpline that provides free, confidential and independent legal advice.

167. The Criminal Defence Service provides criminal legal aid to assist individuals who are under investigation or facing criminal charges. Eligibility for criminal legal aid will be determined firstly, by the court in which the case is being heard. In the Magistrates Court, a defendant will only qualify if they pass a financial means test and satisfy the “interests of justice” test. In the Crown Court the defendant only needs to satisfy the interests of justice test. However, the court may issue an order to recover expenses incurred if they believe that the defendant could pay. Following consultation, the Government has decided to extend the financial eligibility test to the Crown Court and will introduce the new scheme in five early adopter courts in January 2010, with national rollout following between April and June 2010.

168. In Scotland, the Legal Aid Board manages legal aid. This includes providing legal advice and assistance and deciding who should receive financial assistance. As in England and Wales, the scheme is divided under two heads; Civil Legal Assistance and Criminal Legal Assistance. To be eligible for civil legal aid an individual must qualify financially, have a legal basis for their case, and must not have financial assistance available elsewhere. To be eligible for criminal legal aid an individual must demonstrate that their income and capital are within the current financial limits set by Parliament.

169. In Northern Ireland, the Northern Ireland Legal Services Commission is responsible for the provision of legal aid. Eligibility for legal aid in civil or criminal matters is determined by a means and merits test.

170. In the event that an individual feels that their rights under the ECHR have been violated and intends to bring their case before the European Court of Human Rights, there are number of schemes available to provide them with legal advice and assistance. Domestically, under the legal help scheme, an individual may be assisted by an experienced solicitor or legal advisor in the preliminary stages of their application. In the event that the European Court of Human Rights in Strasbourg declares the application admissible, an individual may get financial assistance directly from Strasbourg. Eligibility is determined on the basis of whether or not an individual would be eligible for domestic legal aid.

171. In a number of urban areas, law centres provide legal advice and representation which may be free depending on means. These law centres, which are financed from various sources, often including local government authorities, usually employ full-time salaried lawyers; many also have community workers. Much of their time is devoted to housing, employment, social security and immigration problems. Free advice is also available in Citizens Advice Bureaux, consumer and housing advice centres and in specialist advice centres run by various voluntary organisations. The Refugee Legal Centre and the Immigration Advisory Service, both of which receive government funding, provide free advice and assistance to asylum seekers, with the Immigration Advisory Service also providing free advice and assistance to persons with immigration rights of appeal.

4. Compensation for wrongful conviction or detention

172. The Criminal Cases Review Commission⁴¹ will investigate and consider cases of alleged wrongful conviction and refer appropriate cases to the Court of Appeal.

173. Under the Criminal Justice Act 1988, a person convicted of a criminal offence which has been quashed by the Court of Appeal, has the right to apply to the Secretary of State for payment of compensation. If the person concerned has died, his or her personal representative may submit an application to the Secretary of State.

174. In determining whether compensation should be paid under the 1988 Act, the Secretary of State will consider whether the decision of the Court of Appeal to quash the conviction or the grant of a pardon, was due to a new or newly discovered fact showing, 'beyond reasonable doubt', that there was a miscarriage of justice. This criterion is less restrictive than that specified in article 14 (6) of the ICCPR, which requires the newly discovered fact to show 'conclusively' that there has been a miscarriage of justice. The Secretary of State will, in reaching a decision on whether compensation is payable, also take into account whether the non-disclosure of the new fact was wholly or partly attributable to the person applying for compensation.

175. Section 133 of the Criminal Justice Act 1988 does not provide for compensation in cases where a person has been detained in custody charged with an offence which has subsequently not been pursued, or where there has been an acquittal at the court of trial or on an appeal made within the normal time limits allowed for an appeal. In such circumstances, and provided that a person has been detained in custody, the Secretary of State may upon application to him authorise an ex gratia payment of compensation.

176. An ex gratia payment of compensation will only be considered where the detention of the applicant has resulted from serious default on the part of a member of the police or some other public authority, or in other exceptional circumstances, for example where facts emerge at trial which completely exonerate the accused. Applications for compensation will not be considered simply because, at trial or on appeal, the prosecution was unable to sustain the burden of proof beyond a reasonable doubt in relation to the charge brought.

177. If the Secretary of State considers that payment of compensation is justified under section 133 of the Criminal Justice Act 1988, the amount is determined under that legislation by an independent assessor. The Secretary of State has agreed to be bound by the sum recommended by the assessor as an award in all ex gratia cases. In all successful claims the assessor will also approve the payment of any reasonable legal costs incurred by the claimant.

178. Persons detained in custody for other reasons without lawful authority, for example through an error in the calculation of a sentence imposed by a court or a failure to act promptly upon a court direction to release a person on bail, may also apply to the Secretary of State for an ex gratia payment of compensation. They may also take legal action to recover damages.

5. Victims of crime

179. The courts may order an offender, on conviction, to pay compensation to the victim for personal injury, loss or damage resulting from an offence. In England and Wales the courts are obliged to consider compensation in every appropriate case and to give reasons where no compensation is awarded. Compensation for a victim must come ahead of a fine

⁴¹ Established by the Criminal Appeal Act 1995, and became operational in 1997.

if the court is considering both, and the recovery of amounts awarded in compensation must be put ahead of recovery of fines.

180. Where the Crown Prosecution Service declines to prosecute, victims may prosecute privately, but in practice seldom do so. Victims may also sue for damages in the civil courts. Court procedure has been simplified so that persons without legal knowledge can bring small claims for loss or damage.

181. Victims of any nationality who suffer injury as a result of violent crime in England, Wales or Scotland may apply for compensation from public funds under the Criminal Injuries Compensation Scheme. Compensation is based on a tariff of awards, and payments range from £1,000 to £500,000 for the most seriously injured victim.

182. Separate arrangements exist in Northern Ireland, where compensation can in certain circumstances be paid from public funds for criminal injuries, and for malicious damage to property, including the resulting loss of profits.

183. There are three organisations in the UK that provide generic support to victims of crime: Victim Support, which covers England and Wales, Victim Support Scotland and Victim Support Northern Ireland. These receive funding from the Government.

184. In June 1996 the Government published a new Victim's Charter which was subsequently made a statutory requirement through the Victims Code of Practice in April 2006. Victims now have the legal right to a high quality of service from the criminal justice agencies. The code also tells victims how to complain if they do not receive a high quality of service. The future introduction of the Witness Charter next year will give witnesses a similar set of standards of service. All victims of reported crime are given a "Victims of crime" leaflet which gives practical advice about what to do in the aftermath of a crime. It explains simply the police and court processes, how to apply for compensation and what further help is available.

6. National machinery for the implementation of human rights

(a) Joint Committee on Human Rights

185. As an aid to oversight of progress on the promotion and protection of human rights in the United Kingdom, Parliament has created a specialist Committee — the Joint Committee on Human Rights — to undertake inquiries on human rights issues and report its findings and recommendations to Parliament.

186. The Committee consists of twelve members appointed from all parties both from the House of Commons and the House of Lords. The Committee scrutinises all Government Bills and selects those with significant human rights implications for further examination. Although it cannot take up individual cases, the Committee looks at Government action to deal with judgments of the UK courts and the European Court of Human Rights where breaches of human rights have been found. As part of this work, the Committee looks at how the Government has used remedial orders to amend legislation following a finding by the courts of an incompatibility with the Convention rights.

(b) Human Rights Commissions

187. There are three independent national human rights commissions in the United Kingdom: the Equality and Human Rights Commission (EHRC), the Northern Ireland Human Rights Commission (NIHRC) and the Scottish Human Rights Commission (SHRC). All are publicly funded, but are independent of government.

188. The NIHRC is an independent statutory body set up in 1999. Its role is to promote awareness of the importance of human rights in Northern Ireland, to review existing law

and practice, and to advise government on what steps need to be taken to protect human rights in Northern Ireland. It is able to conduct investigations, to assist individuals when they are bringing court proceedings, and to bring court proceedings itself.

189. The EHRC was established on 1 October 2007. Its remit is to champion equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights, and build good relations between communities, ensuring that everyone has a fair chance to participate in society. Its remit extends to England and Wales and Scotland. The EHRC brings together the work of Great Britain's three previous equality commissions (for racial equality, gender equality, and the rights of disabled people) and also takes on responsibility for new strands of discrimination law (age, sexual orientation and religion or belief), as well as human rights. It has powers to enforce equality legislation, and has a mandate to encourage compliance with the Human Rights Act.

190. The SHRC was created by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The SHRC's main purpose is to promote human rights and to encourage best practice in relation to human rights (its remit does not extend to equality legislation, as that is outside the Scottish Parliament's remit). It is also able to review and recommend changes to Scots law and to the policies and practices of Scottish public authorities. It has legal powers to obtain information and enter places of detention, and is able to intervene in legal proceedings in human rights cases.

7. Data Protection and Freedom of Information

191. The Freedom of Information Act 2000 (FOIA), which came into force in January 2005, gives anyone the right to access information held by public authorities. The FOIA applies to recorded information held by public authorities in England, Wales and Northern Ireland. Scotland has its own equivalent legislation: the Freedom of Information (Scotland) Act 2002.

192. The public sector outside central government bodies receives at least 87,000 FOI requests per year. In 2007, central government received nearly 33,000 FOI requests. In 2007, 63% of resolvable requests to central government were met in full. A further 13% were withheld in part. If requesters are not content with a public authority's decision on access to information, they can ask the public authority to conduct an internal review. If they are still not satisfied, they may complain to the independent Information Commissioner, and subsequently to the independent Information Tribunal.

193. The Government is committed to ensuring that information sharing is undertaken in a secure and controlled manner, recognising that legal and process controls must be in place to ensure that information is not shared inappropriately or disproportionately.

194. The processing of personal data is regulated by the Data Protection Act 1998 (DPA), which came into force in March 2000 (replacing the Data Protection Act 1984). Under the DPA organisations and individuals must comply with data protection principles. These principles include ensuring that data processing is fair and lawful; that data are processed only for specified and lawful purposes; and that data are accurate.

195. The Information Commissioner is an independent supervisory authority responsible for the enforcement of legislation relating to freedom of information and data protection. The Information Commissioner's Office also promotes good practice on access to official information and the protection of personal information by ruling on eligible complaints, providing information and guidance to individuals and organisations, and taking appropriate action when the law is broken.

8. Complaints against the Executive

196. Members of the public who believe that they have been treated unjustly as a result of maladministration can have their complaints investigated by the office of the Parliamentary Commissioner for Administration (PCA) — often referred to as the “Ombudsman” — established by the Parliamentary Commissioner Act 1967.

197. The PCA can investigate actions taken “in the exercise of administrative functions” by or on behalf of the departments of central Government. A complaint must be taken initially to a Member of Parliament who will decide whether to refer it to the PCA. The PCA is independent of Government, and reports to a committee of the House of Commons. Its reports are published.

198. A number of other “Ombudsmen” have also been established, for local government, for the National Health Service and the Legal Services Ombudsman.

199. There are separate independent ombudsmen for Scotland, for Wales and for Northern Ireland. Under the Scottish Public Services Ombudsman Act 2002, the Scottish Government is legally required to co-operate with investigations by the Ombudsman and to make reports available for scrutiny. The Public Services Ombudsman (Wales) Act 2005 established the Public Services Ombudsman for Wales to provide an independent and impartial investigation into alleged malpractice in the administration of public services in Wales. The Parliamentary Commissioner Act (NI) 1969 (superseded by the Ombudsman (NI) Order 1996) provides for an Ombudsman to oversee the work of Northern Ireland government departments. The Commissioner for Complaints Act (NI) 1969 (superseded by the Commissioner for Complaints (NI) Order 1996) provides for similar oversight of the wider public sector in Northern Ireland.

9. Police complaints

200. In England and Wales, complaints against the police are dealt with by the Independent Police Complaints Commission (IPCC), which came into operation on 1 April 2004, replacing the former Police Complaints Authority.

201. The IPCC has responsibility for ensuring that there are adequate arrangements in place for dealing with complaints or allegations of misconduct by any police officer or member of police staff. It also has authority to carry out independent investigations into complaints in more serious incidents. The IPCC was created to ensure greater confidence in the complaints system, and to promote respect for the human rights of individuals by ensuring that complaints could be independently investigated.

202. In 2006–07 the IPCC received 28,998 complaints (an increase of 10% over 2006–07). These comprised 41,584 allegations, of which 12,683 (30%) were investigated (by the police and by the IPCC combined). Of the completed investigations, 1,389 (11%) were substantiated (this equates to 3.3% of the total allegations).

203. Since becoming operational on 1 April 2004, the IPCC has started 189 independent investigations into the most serious matters (i.e. those investigated by the IPCC’s own trained investigators). Of the 147 independent investigations started between 1 April 2004 and 31 March 2007, 90 were completed in that period.

204. In Scotland, complaints against the police are dealt with in the first instance by the police force concerned. If a complainant is not satisfied with how that complaint has been dealt with he or she can refer the matter to the Police Complaints Commissioner for Scotland (PCCS), whose post was established by the Police, Public Order and Criminal Justice (Scotland) Act 2006. In 2007/80, the Commissioner received 322 enquiries and in 2008/09 378 enquiries were received.

205. The Police (Northern Ireland) Act 1998 established the Police Ombudsman for Northern Ireland, an independent body charged with investigating complaints about the police. The Ombudsman has independent control of the police complaints system and all complaints about the police must be referred to his office. Where the Ombudsman believes a criminal offence has been committed he passes the outcome of his investigations, with recommendations, to the Director of Public Prosecutions for his consideration. Where it is believed a disciplinary offence has been committed the matter is referred with recommendations to the Chief Constable or Policing Board, depending on the seniority of the officer.

C. Framework within which human rights are promoted at a national level

1. The role of national parliament and human rights institutions

206. Nationally, the human rights commissions have a key role to play in the promotion and protection of human rights throughout the UK; this being one of their central responsibilities. The JCHR also makes a key contribution. By scrutinising the work of Government and consequently, holding the executive to account they provide a competent system of checks and balances.

2. Judicial, legal and official training and education in human rights

207. The passage of the Human Rights Act 1998 was a significant event in the legal and constitutional history of the UK. It made rights in the European Convention on Human Rights directly enforceable in UK courts, and this required a major training programme for all those working in the legal system. It was brought into force in October 2000, in order to allow time for legal professionals to be re-trained.

208. Between January and October 2000, the Judicial Studies Board co-ordinated training in the Human Rights Act for all judges. Training was by seminars, consisting of introductory lectures, case studies and plenary sessions. Speakers included Sir Nicholas Bratza, the UK judge on the European Court of Human Rights, and Judge Luzius Wildhaber, President of the Court.

209. From September 1999 onwards, training along similar lines was provided for magistrates' legal advisers — justices' clerks and court clerks — with a refresher day in the early autumn of 2000, immediately ahead of the implementation of the Act. Training for magistrates was then organised and delivered by the legal advisers.

210. The Bar Council of Great Britain provided formal training in human rights for some 6,000 barristers. The Crown Prosecution Service provided three days training for all prosecutors, and issued a manual of guidance to all of its members of staff listing all relevant European cases, with legal updates on new case law every fortnight.

211. Education on human rights was integrated into the curriculum for the Qualifying Law Degree in all UK universities, and also pervades the vocational courses for barristers and solicitors.

212. Nevertheless, in its 2006 Review of the Implementation of the Human Rights Act, the Government recognised that there was widespread misunderstanding of the Act amongst officials working in the public sector, and the review recommended an urgent programme of training and awareness-raising. As a result, the Ministry of Justice has distributed over 100,000 copies of a new handbook, Human Rights: Human Lives, to other Government departments, their sponsored bodies, and other organisations in the wider public sector. The handbooks are intended to improve the understanding of and the operation of domestic human rights policy particularly, but not exclusively, among public

authorities. For the general public and non-experts, there are two main publications available: Human Rights Act – an Introduction and a third edition of the well received, A Guide to the Human Rights Act 1998. Each of these publications is available on-line, as well as in hard-copy format which will be supplied on request.

213. In March 2007 the Department of Health (DoH) launched Human Rights in Healthcare – A Framework for Local Action. The framework provides National Health Service (NHS) organisations with guidance on how to apply human-rights-based approaches to improve service planning and delivery. The DoH also worked with five NHS Trusts to develop a series of practical human rights tools. These and a revised framework were launched nationally in October 2008.⁴²

214. In a broader human rights programme launched as a result of the 2006 review, the Government also established a panel of senior officials to scrutinise the workings of the criminal justice system with regard to human rights, and a new website providing practical advice to officials working within the system. In addition, the Government has devised and delivered more effective training in human rights within Departments.

215. For training public officials in human rights, the Government launched an e-learning package in March 2008. It is an electronic learning programme that aims to raise awareness of human rights and also promote a ‘human rights culture’ throughout the public sector. The package is composed of a number of case studies, on completion of which an individual will have a greater understanding of the application of human rights to their work. The package is available to all public authorities (and the wider public) through the National School of Government’s ‘Virtual School’ and is promoted widely by the Ministry of Justice and National School.

3. Education in human rights among wider society

216. In July 2008, the Government published a new Key Stage 3 (11–14 year olds) resource for teachers in England called Right Here, Right Now: Teaching Citizenship through Human Rights. The resource is part of the Human Rights in Schools project, which is a partnership between the Ministry of Justice and the British Institute of Human Rights, also involving the Department for Children, Schools and Families, Amnesty International and a number of other governmental and non-governmental organisations. Through its 12 lesson plans, the resource aims to link the concepts of universal human rights with everyday experience, focusing on what human rights mean in practice. Its aim is to bring human rights to life within the classroom, to form the basis of fresh discussion and debate, and to ensure everyone within a school understands their rights and the rights of all those around them. The resource is freely available to download.⁴³

(a) *Public awareness and engagement*

217. Since the Human Rights Act came into force in 2000, it has been subject to hostility from certain sections of the media and from opposition parties. Misrepresentation of the facts in high-profile cases and repetition of unfounded myths have taken root in the popular imagination, leading to serious public misunderstanding of the Act. Although research⁴⁴ commissioned by the Government found that, in 2006, 84% of people surveyed believed that there should be a law to protect human rights in the UK, 43% thought that too many

⁴² http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_088970.

⁴³ http://www.teachernet.gov.uk/_doc/12717/Right%20Here,%20Right%20Now%20-%20Final%20Teachernet%20Version%2020-08-2008.pdf.

⁴⁴ *Human Rights Insight Project*, Ministry of Justice Research Series 1/08, January 2008.

people (notably asylum seekers, foreigners, people seeking financial advantage, and lawyers) took advantage of the Act. Since then, Government Departments have sought to provide swift and accurate communications to counter misreporting of the Act whenever it appears, via the creation of a human rights press officers network.

218. The Government have also raised public awareness of human rights through various public events in co-ordination with the National Archives and by better co-ordination with the work of NGOs (through, for example, the Equality and Diversity Forum which includes national human rights bodies and several NGOs).

(b) *Dissemination of human rights instruments nationally*

219. There are various methods through which materials relating to international human rights instruments are disseminated throughout the United Kingdom. Those UN Instruments signed by the UK, are published by Her Majesty's Stationery Office, (on behalf of the Government), presented to Parliament and made available in libraries and for purchase. Reports concerning compliance with international obligations under UN human rights instruments are both prepared and made available to Parliament, interested bodies and members of the public by the Government. Furthermore, the individual government department responsible for oversight of implementation (and compliance with) UN human rights instruments also lead on their dissemination. The same principle applies in the case of domestic human rights legislation where the leading department will also be in charge of disseminating the content of the proposals.

220. As a result of their specific remit in the field of human rights at domestic and international level, both the Ministry of Justice and the Foreign and Commonwealth Office have dedicated human rights pages on their websites:

(a) **Ministry of Justice:**

- (i) International human rights: www.dca.gov.uk/peoples-rights/human-rights/int-human-rights.htm;
- (ii) Human rights guidance: www.justice.gov.uk/guidance/humanrights.htm;

(b) **Foreign and Commonwealth Office:**

- (i) Government international human rights strategy: www.fco.gov.uk/humanrights.

221. The Foreign and Commonwealth Office publishes an "Annual Human Rights Report". This report provides an overview of the FCO's global human rights activity, including its major thematic priorities, and countries of most concern.

4. Partnership with international organisations and organised civil society

Non-governmental organisations

222. Civil society organisations and non-governmental organisations have a key role to play in the protection, promotion and advancement of human rights in the UK. The Government sees benefit in close working relations with these bodies in the formulation of domestic human rights policy and in consulting them prior to Inter-Governmental meetings. These bodies also have a key role to play in the provision of human rights training amongst Government officials and in raising public awareness on key human rights issues.

5. Pledges

223. The United Kingdom is deeply committed to the work of the United Nations to increase respect for human rights throughout the world. Accordingly it has pledged to work

in partnership with the Human Rights Council to reinforce human rights at the heart of the UN; to continue to support UN bodies; to work for progress on human rights internationally; and to uphold the highest standards of human rights at home.

6. International initiatives

224. As well as upholding human rights at home, the UK is committed to their promotion and protection internationally. The UK Government works on human rights around the world through bilateral contacts; membership of international organisations; through development aid and assistance; and in partnership with civil society.

225. Within the United Nations, the UK actively participated in establishing the Human Rights Council and is now focused on making the body as effective as possible. In addition, the UK is committed to seeing the UN General Assembly's Third Committee deliver results in co-ordination with the work done by other parts of the UN human rights framework. An important part of the framework is the valuable work done by the Office of the United Nations High Commissioner for Human Rights (OHCHR). The UK currently gives the OHCHR £2.5 million annually as a voluntary contribution, in addition to our regular budget contribution to the UN.

226. The UK co-operates fully with the UN's human rights mechanisms, and welcomes visits from all Special Procedures. In September 2007, the UK was the main sponsor of an initiative that successfully established a new Special Rapporteur on Contemporary Forms of Slavery.

227. The UK encourages the ratification of UN human rights instruments and, through development and other assistance programmes, works to ensure they are successfully implemented. For example, over the past 5 years the UK has lobbied globally to encourage the ratification of the Convention against Torture and its Optional Protocol and has provided practical technical assistance where this was useful. Furthermore, the UK also actively supports the work of Action 2, a UN Programme to mainstream, strengthen and streamline UN human rights work at country level.

228. In addition to the UN, the UK actively engages on a full range of human rights issues with other international and regional organisations, such as the European Union, G8, Organisation for Security and Cooperation in Europe, the Commonwealth, the Council of Europe, the World Bank and many others. The UK Government aims to promote the better integration of human rights in the international system as a whole and to ensure that human rights are central to the full range of work done by international bodies.

229. The UK recognises that development and human rights are inter-linked and mutually reinforcing and consequently supports country-led development strategies that integrate human rights. The Department for International Development works to support partner governments in fulfilling their human rights obligations, and strengthening the ability of people to claim their rights.

230. The UK is committed to developing effective partnerships with other governments. This is achieved through shared commitment to three objectives: poverty reduction and reaching the Millennium Development Goals; respecting human rights and other international obligations; and strengthening financial management and accountability.

231. The UK puts these policies into practice through a range of programmes. For example, on the right to education, it has committed to spending £8.5 billion in support of education by 2016, mostly in Sub-Saharan Africa and South Asia. On the right to the enjoyment of the highest attainable standard of physical and mental health, the UK is the second largest bilateral donor to work on combating AIDS and has committed £1.5 billion over the period 2005–2008.

232. In implementing its commitment to human rights globally, the UK acts in a spirit of consultation, openness and accountability. Through its membership of a wide number of international bodies, and through its global network of overseas embassies, the UK works to support the desire of everyone to realise the full range of their individual human rights.

D. Reporting process at national level

233. The following table identifies the leading Government Department for the reporting process under the seven main UN instruments ratified by the UK and the Universal Periodic Review (UPR).

<i>UN instrument</i>	<i>Lead Government Department</i>	<i>Co-ordination with the Crown Dependencies</i>	<i>Co-ordination with the Overseas Territories</i>
ICERD	Department for Communities and Local Government	Ministry of Justice	Foreign and Commonwealth Office
ICCPR	Ministry of Justice	Ministry of Justice	Foreign and Commonwealth Office
ICESCR	Ministry of Justice	Ministry of Justice	Foreign and Commonwealth Office
CEDAW	Government Equality Office	Ministry of Justice	Foreign and Commonwealth Office
CAT	Ministry of Justice	Ministry of Justice	Foreign and Commonwealth Office
CRC	Department for Children, Schools and Families	Ministry of Justice	Foreign and Commonwealth Office
CRPD	Department for Work and Pensions	Ministry of Justice	Foreign and Commonwealth Office
UPR	Ministry of Justice	Ministry of Justice	Foreign and Commonwealth Office

III. Information on non-discrimination and equality and effective remedies

Measures taken to eliminate discrimination and guarantee equality

234. The table below summarises the legislation enacted since 1998 to guarantee equality before the law, equal protection under the law and anti-discrimination.

235. One of the main conventions, on which the UK's unwritten constitution operates, is the 'rule of law'. This is the belief that all persons and authorities are equal before the law. Not only does this convention reinforce the concept of checks and balances inherent to any democratic society but also, the idea of legal equality. The operation of this rule, without exception or qualification, indicates that the idea of equality is of great constitutional significance within the UK. Its continuing importance in the UK today is well illustrated by s.1 of the Constitutional Reform Act 2005 which states that:

“This Act does not adversely affect:

- (a) The existing constitutional principle of the rule of law; or
- (b) The Lord Chancellor’s existing constitutional role in relation to that principle.”

236. In Great Britain, several pieces of legislation to prohibit discrimination have been enacted over the past 40 years. The first was the Race Relations Act 1965 (now repealed and replaced by the Race Relations Act 1976), followed by the Equal Pay Act 1970, and the Sex Discrimination Act 1975. The Disability Discrimination Act (DDA) was introduced in 1995. Further legislation was introduced in 2003 and 2006 to prohibit discrimination on grounds of sexual orientation, religion or belief and age in employment and vocational training, in order to implement the European Framework Directive. Discrimination on grounds of religion or belief and sexual orientation outside the workplace was prohibited in 2007.

237. The DDA is the only UK-wide piece of discrimination legislation. Other discrimination law described here applies to Great Britain. Northern Ireland legislation prohibiting discrimination broadly accords with legislation in Great Britain.

238. Legislation generally prohibits direct discrimination, indirect discrimination, victimisation and harassment. It prohibits discrimination in the areas of employment (and employment-related areas), vocational training (including further and higher education), education in schools, the provision of goods, facilities and services, private members’ clubs, the disposal and management of premises, and the exercise of public functions.

239. The legislation also imposes positive obligations on public authorities to promote equality of opportunity on grounds of race, disability and gender. This ‘positive duty’ model requires public authorities proactively to root out discrimination and to promote equality of opportunity in the design and delivery of policies and services, and in their capacity as employers. The duties may require positive action to address disadvantage and to integrate equality into all areas of a public authority’s work.

240. In June 2007 the Government published a consultation paper, A framework for fairness: proposals for a Single Equality Bill for Great Britain. More than 4,000 responses were received, including around 600 from organisations. The consultation was followed in June and July 2008 by two Command Papers setting out the Government’s proposed policy for the new Equality Bill. The Equality Bill itself has been carried over to the 5th session of Parliament (2009–10) and has been introduced in that session.

241. In Northern Ireland, additional protections have been established to promote equality. The Equality Commission for Northern Ireland (ECNI) was created following the 1998 Belfast Agreement. Its functions include the promotion of equality of opportunity; affirmative action; and good relations between people of different racial groups. The Commission also oversees the effectiveness of anti-discrimination and equality legislation; and the statutory equality duty put in place by section 75 of the Northern Ireland Act 1998, including investigatory powers to ensure compliance.

242. The Government of Wales Act 2006 contains provisions designed to promote equality and protect rights. In particular, Welsh Ministers must make arrangements to ensure that the Welsh Assembly Government operates “with due regard to the principle that there should be equality of opportunity for all people”.

Practical measures

243. The Equality Act 2006 introduced a number of practical measures aimed at strengthening equality in the UK. The Act not only provided for the establishment of the Equality and Human Rights Commission, but also empowers this body to act as an independent advocate for equality and human rights in the UK. The Act also imposes the “gender equality duty” upon all public authorities and therefore, public authorities must pro-actively promote equality of opportunity between the sexes. In addition, it extended the law to prohibit discrimination on the grounds of sexual orientation and religion or belief in the provision of goods, facilities and services and the exercise of public functions.

244. The Government Equalities Office (GEO) has responsibility for the Government’s overall strategy and priorities on equality as they lead on equality policy and legislation. Working across government, the GEO ensures that equality policy is firmly integrated into the Government’s approach and oversees that it is delivered and implemented effectively. The Government’s continuing commitment to tackling inequality is exemplified by the inclusion of a dedicated Equality Public Service Agreement (PSA) in its future spending plans for 2008–2011 (the Comprehensive Spending Review 2008–2011). The aim of this PSA is to provide a specific focus on equality and furthermore, to aid in the delivery of the Government’s cross-departmental equality agenda.

245. Measures tackling inequality in society has been a high priority on the Government’s agenda and the focus of Government policy has not only been aimed at those disadvantaged by low income. The Government approach is wider, aimed at tackling the combined linked causes (and consequences) of being socially excluded. The Social Exclusion Task Force (SETF) lead on this area, identifying Government priorities, testing solutions and facilitating policy implementation across Government and consequently, from Government into society. Measures taken include schemes focused on community regeneration; programmes aimed specifically at increasing the health and well-being of children in deprived areas; increasing funding and the performance management of poor service; and schemes and incentives focused on getting the disadvantaged back into employment.

Legislative measures relating to equality and human rights since 1997 (with year of adoption)

Main subject area

Human Rights Act 1998	Making the ECHR directly enforceable in domestic courts. Individuals retain the right to appeal to the ECtHR providing they have exhausted all domestic remedies.
Sex Discrimination (election candidates) Act 2002	Fighting discrimination based on gender in the electoral process.
Race Relations Act 1976 (Amendment) Regulations 2003	Amended race discrimination law to comply with EU Race Directive 2000 (including by introducing statutory definition of harassment and reversing burden of proof).
Employment Equality (Sexual Orientation) Regulations 2003	Prohibition of discrimination on grounds of sexual orientation in employment and vocational training.
Employment Equality (Religion or Belief) Regulations 2003	Prohibition of discrimination on grounds of religion or belief in employment and vocational training.

Legislative measures relating to equality and human rights since 1997 (with year of adoption)

Main subject area

Civil Partnership Act 2004	Civil recognition of same sex partnerships.
Employment Relations Act 2004	Protection of employees from dismissals and procedures for industrial action.
Gender Recognition Act 2004	Civil recognition of transsexual people in their acquired gender.
Children Act 2004	Protection of children from abuse.
Domestic Violence, Crime and Victims Act 2004	Increased penalties in domestic violence cases and support for the victims.
Disability Discrimination Act 2005	Strengthening provisions to fight discrimination of persons with a disability.
Equality Act 2006	Establishment of the EHRC and promotion of human rights. Prohibition of discrimination on grounds of sexual orientation and religion or belief in provision of goods and services and exercise of public functions.
Work and Families Act 2006	Fairer balance of rights and responsibilities for employers and employees, particularly in the case of pregnant workers.
Employment Equality (Age) Regulations 2006	Fighting discrimination based on age at work.
Scottish Commission for Human Rights Act 2006	Establishment of Human Rights Commission in Scotland.
