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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1977

Addendum

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[13 September 1978]

Introduction

1. This report provides answers to questions which were asked by members of the Human Rights Committee in the disucssion of the United Kingdom's initial report (CCPR/C/1/add.17) on 31 January and 1 February 1978, but were not fully answered at the time. For this purpose the questions have been grouped under the Articles to which they relate. In the following paragraphs the summary records of proceedings on 31 January (CCPR/C/SR.69) and 1 February (CCPR/C/SR.70) are referred to as "SR.69" and "SR.70" respectively.

Articles 2, 23 and 26

2. Mr Lallah asked whether the existence of the hereditary element of the House of Lords was consistent with the Covenant, and in particular the provisions of Article 2, paragraph 1, and Article 25, sub-paragraph (a) (SR.69, paragraph 3). In the United Kingdom all citizens have the right and the opportunity to take part in the conduct

of public affairs, and no one is deprived of that right on grounds of the kind mentioned in Article 2. Those who, as hereditary Peers, are able to take part directly in the work of Parliament have no vote in the election of members of the House of Commons. Because of differences in the powers and constitutional role of the two Houses, hereditary membership of the House of Lords is not seen necessarily as an advantage by those who wish to take a prominent part in public life; and a number of hereditary Peers have exercised the option given them by law of disclaiming the peerage and remaining eligible for membership of the House of Commons.

3. The question which Mr Lallah asked about offences against the Race Relations Acts consisting in the use of insulting words is dealt with under Article 20 in paragraph 52 below.

4. Mr Graefrath and Mr Movchan asked for further information about equality of rights between men and women (SR.69, paragraphs 15 and 69). The Sex Discrimination Act 1975 makes it unlawful to discriminate on the grounds of sex in the fields of employment and training, education, housing and the provision of goods, facilities and services. In employment it is also unlawful to discriminate on grounds of marital status. There is no legal impediment to women participating fully in public life. Matters such as taxation, social security and matrimonial and family law continue to be dealt with in separate legislation.

5. Mr Graefrath also asked for further information about legislation relating to discrimination in Northern Ireland enacted in 1973 and 1976, with particular reference to the reasons for its enactment and the results it had achieved (SR. 69, paragraph 16). The Acts in question are the Northern Ireland Constitution Act 1973 and the Fair Employment Act 1976. The rationale for both these Acts, and for the larger

corpus of law with similar intent of which they are important features, is the determination of successive Governments (including the Northern Ireland Government between 1969 and 1972, when it ceased to exist) to do everything possible to prevent discrimination in Northern Ireland on grounds of religious or political belief. The most common complaints in the late 1960s were about the electoral system (alleged to favour Unionists) and about the actions of public authorities (especially in the housing field).

6. The law concerning elections was reformed by the Electoral Law Act (Northern Ireland) 1969. It provided for universal adult suffrage in local council elections. It also introduced votes for all at the age of 18 in all elections in Northern Ireland. Responsibility for public authority house building and allocation was removed from the control of local authorities by the Housing Executive Act (Northern Ireland) 1971 and put in the hands of an independent Province-wide authority. The Police Act (Northern Ireland) 1970 set up an independent Police Authority, representing all sections of the community. This body is required to maintain an adequate and efficient police force and to monitor the way in which complaints against members of the force are dealt with by the Chief Constable. In 1977, the independent element in the investigation of complaints against the police (introduced in 1972 by the establishment of a Director of Public Presecutions to whom all complaints alleging criminal offences by policemen are automatically referred) was further strengthened. In 1969, two Acts of the Northern Ireland Parliament created the posts of Parliamentary Commissioner for Administration and Commissioner for Complaints to investigate, respectively, complaints of maladministration, including discrimination, against government departments, and to deal with grievances against local councils and public bodies.

7. The Northern Ireland Constitution Act 1973 makes it unlawful for any Government department, local authority or public body to discriminate on political or religious grounds (the relevant section of this Act has recently been used successfully in the Courts). The same Act also created a Standing Advisory Commission on Human Rights. This is another independent body. Its task is to advise the Secretary of State for Northern Ireland on the adequacy and effectiveness of the law in combating discrimination on the ground of religious belief or political opinion, and in providing redress for people discriminated against on either ground. In a Report published in November 1977, after a review of the whole field of human rights law in Northern Ireland, the Commission expressed the view that the existing body of law in Northern Ireland was impressive and that it should not be underrated.

8. The Fair Employment Act 1976 is concerned with the promotion of equality of opportunity in employment and occupations between people of different religious beliefs. The Act makes it unlawful to discriminate on the grounds of religious belief or political opinion in either the public or private sectors of employment. It established an independent body, known as the Fair Employment Agency, whose task is to promote equality of opportunity between persons of different religious belief and to work for the elimination of discrimination. This body has only been in existence for one complete year and it is therefore too early to make any judgment of its effectiveness. It has completed investigations into eight cases of alleged unlawful discrimination and it has made a finding of unlawful discrimination in respect of one of them. The Agency maintains a Register of Employers and vocational organisations who have signed a declaration of commitment to the principle of equality of opportunity according to the letter and spirit of the Fair

Employment Act. Over 1,000 employers in the Province are now included on this register, which thus covers some 80% of the Northern Ireland workforce. The Northern Ireland Department of Manpower Services has also recently published a "Guide to Manpower Policy and Practice" setting out the steps that employers should follow to ensure equality of opportunity in employment between persons of different religious beliefs. It is intended that this should provide further assistance to employers in complying with the spirit of the Act.

9. Mr Hanga asked about the rights of members of the armed forces to take part in public life, by voting and by being elected to public office (SR.69, paragraph 51). The general principle which governs non-military activities by members of the Armed Forces is that they may not undertake responsibilities which might conflict with their official duties. In the sphere of political activities, they have full voting rights in both national and local elections, and no restriction is placed on attendance at political meetings. However they may not take an active part in the affairs of any political organisation or party. Thus if a member of the Armed Forces wishes to stand for election to Parliament he is required to resign or retire voluntarily from the Forces.

Article 4

10. Questions were asked by Mr Graefrath and Mr Tarnopolsky about the geographical extent of the derogations made by the United Kingdom under Article 4 (SR.69, paragraphs 26 and 31) and by Mr Prado Vallejo about when they would be withdrawn (SR.69, paragraph 44). The derogations apply to the whole of the United Kingdom. They would not be withdrawn until the emergencies giving rise to them had come to an end, and the consequent temporary legislation had ceased to have effect in Great Britain and Northern Ireland. The Prevention of Terrorism (Temporary Provisions) Act 1976 was renewed in March for a further 12 months.

Article 6

11. Mr Hanga asked whether private individuals were permitted to take life in order to prevent crime (SR.69, paragraph 52). Section 3 of the Criminal Law Act 1967 - which applies equally to private individuals and to officials and, in Scotland, the common law, provide that a person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected persons or of persons unlawfully at large. In any particular case it would be for a court to determine what degree of force had been reasonable in all the circumstances, taking account of the degree of force used, what force was necessary to prevent the crime, and the degree of harm which would have followed from failure to prevent the crime.

12. Mr Hanga also raised the question of the protection of unborn children (SR.69, paragraph 59). It is a criminal offence to procure the miscarriage of a woman, except where carried out by a registered medical practitioner in the circumstances permitted by the Abortion Act 1967. At civil law, the Congenital Disabilities (Civil Liability) Act 1976 now confers a right of action in England and Wales on a child who is born with a congenital disability as a result of negligent conduct during the period between conception and birth. This may include negligence on the part of the child's father, but not, except in motoring cases, negligent conduct of the child's mother. (The Royal Commission on Civil Liability and Compensation for Personal Injury has recently recommended that, for most cases, the right of action against either parent should be abolished). In Scotland the common law affords a remedy for pre-natal injuries.

Article 7

13. Mr Tarnopolsky asked about the admissibility of evidence obtained in consequence of an inadmissible confession (SR.69, paragraph 32). As indicated in the United Kingdom's initial report, it is an absolute rule that a confession which is found by the judge not to have been made voluntarily is inadmissible as evidence against the person who made the confession. Apart from the rules governing the admissibility of confessions, there are no legal rules prohibiting the reception of illegally obtained evidence, but the courts have a discretion to exclude it. Subject however to the overall exclusionary discretion enjoyed by the judge at a criminal trial, evidence is admissible, though it may have been obtained illegally, provided that it does not involve a reference to an inadmissible confession of guilt. Although obtaining evidence improperly is not in itself a criminal offence, a police officer who acted in this way would be liable to disciplinary action for contravention of the orders of his police force. In addition it would be open to any person to make a complaint against a police officer who had acted in this way. The machinery for taking disciplinary action or making a complaint against a police officer is described in paragraphs 3 and 4 of the section of the United Kingdom's initial report dealing with Article 7.

14. Mr Graefrath asked what specific changes had been introduced in Northern Ireland to ensure that inhuman interrogation techniques were no longer applied (SR. 69, paragraph 18).

15. The Government of the United Kingdom does not accept the view that inhuman treatment is commonly applied in Northern Ireland. We interpret Mr Graefrath's question as referring to the recent judgement of the European Court of Human Rights that two practices in breach of Article 3 of the European Convention occurred in Northern Ireland in 1971.

16. The use of the "five techniques" of interrogation was first investigated at the behest of the British Government by a Committee of Enquiry under Sir Edmund Compton between August and November 1971. That Committee described the techniques, which were applied to a total of 14 men in August and October 1971, and concluded that their use constituted ill-treatment. Then a further Committee under Lord Parker considered whether the techniques should be used in future. In March 1972, following the report of the Parker Committee, the Prime Minister of the United Kingdom announced that the techniques would not be used again as an aid to interrogation. Special instructions were accordingly issued in 1972 to the security forces, specifically prohibiting the use of the five techniques, whether singly or in combination. These instructions remain in force; and the determination of the Government that the five techniques would not in future be used as an aid to interrogation was again expressed, in the form of a formal undertaking on behalf of the United Kingdom, to the European Court of Human Rights in February, 1977. The Government will not encourage, permit or condone the use of the five techniques in future, whether in Northern Ireland or elsewhere.

17. The European Court also found that, in the autumn of 1971, a practice of inhuman treatment existed in connection with the interrogation of prisoners by the Royal Ulster Constabulary at Palace Barracks, Holywood. The ill-treatment in this case was of a more general character than the use of the "five techniques". The measures now in force to ensure the proper treatment of prisoners would act to prevent a recurrence of ill-treatment of the kind found by the Court in this instance. A general description of these measures, in their latest form, has already been given in the United Kingdom's written report

to the Committee in relation to Article 7 of the Covenant. In addition to the general provisions of law described there, however, a number of other measures have been introduced in Northern Ireland since 1971. Detailed procedures for the questioning of suspects have been laid down by the Chief Constable of the Royal Ulster Constabulary, and at the main police centres, a senior police officer is directly responsible for their application. All persons held for questioning by the police are offered a medical examination on arrival at the police centre, or as soon as possible thereafter, and again prior to discharge; they are also advised that they can ask to see a medical officer or their own doctor at any time. Moreover, the procedures for the investigation of complaints against the police are even more rigorous than those in England and Wales; for example, in Northern Ireland the police investigation report into every complaint alleging criminal conduct by a police officer must be referred to the Director of Public Prosecutions, who is independent of the police, even if they are satisfied that such conduct did not occur.

Article 8

18. Mr Hanga asked whether there had been any case where the courts had ordered "specific performance" as mentioned in paragraph 1 of the section of the United Kingdom's initial report dealing with Article 8 (SR.69, paragraph 53). There have been almost no exceptions to the general rule that the courts will not enforce a contract of employment. The basis for the rule is that there is no point in attempting to force employer and employee to work together where confidence has vanished. Accordingly, an exception will be made only in exceptional abnormal cases - e.g. where an employer, despite the fact that trust

and confidence remain between him and the employee, has nevertheless dismissed the employee because of pressure from a third party.

19. Mr Movchan asked about restrictions based on race with regard to employment. (SR.69, paragraph 73). Under the Race Relations Act 1976 it is unlawful to discriminate on the grounds of colour, race, nationality or ethnic or national origin in the field of employment, training and related matters.

Article 9

20. In commenting on the first sentence of the section of the United Kingdom's initial report dealing with Article 9, Mr Tomuschat expressed the view that there should be a right of action not only for material damage but also for moral injury. In fact the right to recover damages for wrongful imprisonment does not depend on proof of injury or of material or financial loss. It is sufficient to show that the individual's liberty has been infringed.

21. The explanation recorded in SR.70, paragraph 29, of the derogations made by the United Kingdom needs to be amended on one point. The concluding words of the last sentence should read "... that habeas corpus or equivalent remedies are available in Northern Ireland as in other parts of the United Kingdom". (The remedy of 'habeas corpus' is not part of Scots law but there are corresponding safeguards in that law for the liberty of the person).

Article 10

22. Mr Lallah asked whether the procedure for the punishment of prisoners by the governor or board of visitors applied also in cases of criminal offences committed in prison (SR.69, paragraph 9). Certain

types of misconduct (for example assault on a prison officer or another prisoner) may constitute both one of the disciplinary offences set out in the Prison Rules and a criminal offence. It is the normal practice to refer serious cases of this kind to the police, who may decide to bring a criminal charge against the prisoner alleged to be responsible; the case is then heard and decided by the courts in the same way as any other criminal charge. Otherwise such misconduct is treated solely as a disciplinary matter and dealt with in the same way as other prison disciplinary offences. Since in these cases the prisoner is not charged with an offence against the criminal law, and is liable only to the disciplinary punishments prescribed in the Prison Rules, the question of conformity with Article 14, paragraph 1, does not arise.

23. Mr Tarnopolsky asked about the meaning of the word "refractory" in paragraph 9 of the section of the United Kingdom's initial report dealing with Article 10 (SR.69, paragraph 33). The primary meaning of the word refractory as it is used in Rule 45 of the Prison Rules is "unmanageable". It is difficult to give a comprehensive interpretation, but a prisoner whose behaviour, although not violent, is so disruptive as to make life intolerable for other prisoners would be described as refractory. The behaviour could, for instance, take the form of uncontrollable outbursts of shouting, screaming or banging. In these circumstances the prisoner might have to be confined temporarily in a special cell until he had calmed down.

24. Mr Graefrath and Mr Tarnopolsky raised questions about solitary confinement. The answer given by the United Kingdom representative, recorded in SR.70, paragraph 40, needs some amplification. The second

sentence should read: "Cellular confinement could be authorised as a disciplinary measure, but that was not what was referred to in the report; what was meant was that a prisoner could request to be removed from association with other prisoners for his own interests, and could also be removed for reasons of good order and discipline, and it was that authority which could be given for one month and could be renewed".

25. Mr Tarnopolsky also asked whether force could lawfully be used against a prisoner, and whether corporal punishment was among the penalties available under the code of discipline. Force can be used against a prisoner only if it is not possible to achieve a lawful object by other means. Moreover, when force is unavoidable, no more than necessary force must be used. An officer who uses force unnecessarily or excessively is liable to disciplinary action under the Code of Discipline for Prison Officers, and to both criminal prosecution and to civil action by the prisoner for damages. The penalties which may be imposed on prisoners do not include corporal punishment.

26. Mr Tarnopolsky also asked about prisoners' rights to counsel in disciplinary hearings (SR.69, paragraph 34). The answer given by the United Kingdom representative, recorded in SR.70, paragraph 24, needs to be amended on one point. The third sentence should read - "If prisoners were given the right to be represented in cases of breach of the disciplinary code, the same right would need to be given to prison officers whose conduct might be called into question in the course of the proceedings, and any decision might then entail the mobilization of an apparatus similar to that of a court, which was not compatible with the overriding need for prompt restoration of order". The case

referred to in the reply was that of Fraser v. Mudge and Others. In this case the Court of Appeal ruled that the broad purpose of the prison rules was to maintain discipline in prison by proper, swift and speedy decisions, and that the requirements of natural justice did not make it necessary that a person against whom disciplinary proceedings were pending should of necessity be represented by solicitors or counsel.

27. With reference to the section of the United Kingdom's initial report dealing with Article 10, paragraph 2(a), Mr Movchan expressed the view that the words "as far as can reasonably be done" in the Prison Rules were not sufficient to comply with the Covenant (SR.69, paragraph 75). It may be helpful to explain at greater length how the principle of segregation is applied. Convicted and unconvicted prisoners never share the same sleeping accommodation and by and large they have separate prison regimes. This means they have formal association and exercise separately. Both groups may however meet at activities in which the whole prison population participates: e.g. attending church, cinema and perhaps at the serving of meals etc. The details will vary according to local conditions and physical layout at different establishments. The construction of most local prisons, many dating back to the nineteenth century, makes some contact between the two groups difficult to avoid altogether; but all reasonable measures are taken to prevent it.

28. Mr Lallah asked why prisoners, particularly in Northern Ireland, are required to wear prison clothes. This question was raised in connection with Article 7 of the Covenant but, in the opinion of the Government of the United Kingdom, Article 10 is more relevant to it.

29. As stated in the United Kingdom's initial report, unconvicted prisoners may wear their own clothing and have changes of it sent in. As a general rule, however, all men convicted of criminal offences are required to wear prison clothing whilst in prison. The reasons for this requirement are, first, that the wearing of prison clothing is more conducive to good order and discipline, including the prevention of escapes; secondly that it is administratively convenient and economical.

30. A number of prisoners in Northern Ireland are refusing to conform to the requirement to wear prison clothes and to other prison rules such as the requirement to work. Their refusal to conform to prison rules is intended as a protest at not being granted special category status. Special category status was originally introduced in 1972 as an administrative classification and was granted on request to prisoners who committed offences connected with the civil disturbances in Northern Ireland. Prisoners to whom such status was granted, although convicted of criminal offences in the normal way, were not required to wear prison clothing or to work and were housed in compounds rather than in cells.

31. The independent Committee under the chairmanship of Lord Gardiner, which reported to the Government in January 1975 on measures to deal with terrorism in Northern Ireland, recommended that special category status should be ended because it resulted in a lack of discipline, encouraged the view that political motivation justified crime and was unfair to those prisoners whose offences might be less serious but who

were subject to normal prison discipline. Accordingly, although those prisoners who were previously allowed special category status are being allowed to retain it, prisoners sentenced for crimes committed after 1 March 1976 are no longer granted special category status. All such prisoners are housed in cellular accommodation and are subject to the normal prison rules including those relating to prison clothing.

Article 11

32. Mr Hanga asked about the possibility of earning money in prison to pay debts (SR.60. paragraph 55). A person committed to prison for default in paying a debt may work while serving his sentence; and any earnings may be used, if the prisoner so wishes, to pay off his debt.

Article 12

33. Mr Lallah, Mr Graefrath and Mr Movchan asked a number of questions about immigration control. Some of the points they raised were covered in the reply given in SR.70, paragraphs 43 and 44, but the following additional information may also be helpful.

34. Immigration controls do not apply to those who have the right of abode in the United Kingdom. These people, described as patrial, may enter the United Kingdom at any time and live and work there without restriction. The following, broadly speaking, are patrial, having a close connection with the United Kingdom by birth, residence or descent:

i. All citizens of the United Kingdom and Colonies who have that citizenship by birth, adoption, registration or naturalisation in the United Kingdom or who have a parent or grandparent who was born here or acquired citizenship by adoption, registration or naturalisation there.

ii. Citizens of the United Kingdom and Colonies who have come from overseas, have resided there for five years and have been accepted for permanent residence.

iii. Commonwealth citizens who have a parent born in the United Kingdom.

In addition, a woman who is a Commonwealth citizen (including a citizen of the United Kingdom and Colonies) has the right of abode if she is, or has been, the wife of a man in any of these categories.

35. With certain exceptions, e.g. people with diplomatic immunity, all others are subject to immigration control. Immigration officers are required to exercise such control in accordance with the Immigration Rules, which have statutory force, without regard to the race, colour or religion of people seeking to enter the United Kingdom, and this requirement is embodied in the Rules. There is a right of appeal against a decision to refuse leave to enter in all cases except where the Secretary of State has personally directed that exclusion is conducive to the public good.

36. Under the Treaty of Rome and its subordinate legislation, nationals of EEC member states are free to work and seek work in other member states and also to set themselves up in business and to provide and receive services. These rights do not mean that there is absolute freedom of movement for all EEC nationals regardless of their reasons for travelling to another member state; but one of the inevitable consequences of membership of the EEC is that nationals of other member states have privileges which cannot be extended to other persons who are subject to immigration control.

Article 14

37. In the context of Articles 13 and 14 Mr Graefrath, Mr Hanga and Mr Movchan asked about the independence of the judiciary, the social origin of judges, the financial resources they needed and the method of their appointment. These questions are dealt with below.

38. The independence of the judiciary is protected in a number of ways. Paragraph 39 below refers to measures intended to ensure their financial independence. Constitutional practice strictly prohibits the executive from intervening directly in individual cases; normally, the only way in which a decision may be overturned is by way of a successful appeal by the aggrieved party to a higher court. (It is, of course, possible for Parliament to change the law as manifested by a particular decision by subsequently passing legislation). Parliament has rules of procedure which prevent debate about proceedings pending before the courts. The judiciary are also protected in that they have an absolute privilege from libel proceedings in respect of anything they may say in their courts. They are also free from suit generally in respect of anything done by them in a judicial capacity.

39. The social background of the judiciary is diverse, and is not relevant to their appointment. Most, if not all, judges will have had a University education. As explained below, judges are appointed from the senior ranks of the Bar.

40. As regards financial resources, the salaries of full-time judges are sufficient to ensure that judges can discharge their office without the need for private or other funds.

41. As to appointment, in England and Wales there are about 90 Judges of the Supreme Court (that is of the High Court and Court of Appeal) and about 300 Circuit Judges, who normally sit in the Crown Court and

county courts. Judges of the Supreme Court are appointed by the Crown, on the advice of the Lord Chancellor, from among senior (and successful) practising members of the Bar. The law requires them to be of at least 10 years standing; in practice it is hardly ever less than 20, and it is usually considerably more. Views as to the suitability of the individual held by other members of the judiciary will be taken into account by the Lord Chancellor in advising the Crown. In Scotland there are 21 judges of the Court of Session. They are also judges of the High Court of Justiciary. They are appointed by the Crown, on the recommendation of the Secretary of State for Scotland following nomination by the Lord Advocate, from senior members of the Scots Bar. There are about 70 sheriffs (whose status and jurisdiction is comparable with but not identical to those of Circuit Judges in England and Wales). Sheriffs are appointed by the Crown on the recommendation of the Secretary of State for Scotland following nomination by the Lord Advocate. The qualifications for appointment as a Court of Session judge are 5 years as an Advocate or 10 years as a Writer to the Signet (a member of one of the societies of solicitors) and as a sheriff are 10 years as an Advocate or a solicitor, and, in the case of the former appointment, are minima which are always in practice substantially exceeded.

42. As to tenure of office, since 1702, Judges of the Superior Courts in England and Wales have held office during good behaviour, subject to a power of removal by the Crown on an address by both Houses of Parliament. No English judge has ever been removed from office under this power. However, there is now a retiring age of 72 (which may be extended to 75). Circuit Judges may be dismissed by the Lord Chancellor for misbehaviour or incapacity. In Scotland, since 1689

judges of the Court of Session have held office during good behaviour. They may be removed from office only by Parliamentary procedure and none has been removed since 1689. Sheriffs may be removed (on grounds of unfitness by reason of inability, neglect of duty or misbehaviour) by order of the Secretary of State for Scotland subject to annulment by either House of Parliament. Judges of the Court of Session must retire at 75, sheriffs at 72.

43. The preceding paragraphs relate to members of the professional judiciary sitting in the Crown Court and higher courts. It is worthwhile emphasising that in England and Wales less serious criminal cases are dealt with by the magistrates' courts which dispose of more than 98% of all criminal cases which include motoring offences. The most serious cases must be tried in the Crown Court but even in these cases a magistrates' court may have to decide whether the case should proceed to trial. When hearing appeals or dealing with committals for sentence and when trying certain classes of offence the Crown Court includes not less than two nor more than 4 Justices of the peace. In a magistrates' court justices of the peace usually sit as a Bench of three. They are lay men and women but are guided by the Clerk to the Justices on the law and procedure. The Clerk is normally a barrister or solicitor. Justices are appointed on behalf of the Sovereign by the Lord Chancellor except in Lancashire where the appointments are made by the Chancellor of the Duchy of Lancaster. Justices are not paid for this voluntary service and on average sit once every ten days but there is provision for them to claim an allowance for any loss of earnings incurred as well as for any travelling expenses. They are

chosen for their personal suitability including the possession of an ability to bring an impartial mind to cases. Benches include men and women of all social classes and are broadly representative of all sections of the community they serve. Since 1966 new justices have been obliged to undertake a course of basic training to enable them to understand their duties.

44. Mr Graefrath asked about payment of witnesses (SR.69, paragraph 24). In all serious cases (i.e. on the trial of all indictable offences) witnesses' expenses are met from public funds.

45. Mr Graefrath also remarked that the arrangements made for interpretation of court proceedings, if limited to interpretation of the evidence, seemed to be much narrower than the right embodied in the Covenant. The United Kingdom Government regrets that the relevant passage in its initial report gave the impression that arrangements for interpretation are limited in that way. In fact section 17 of the Administration of Justice Act 1973 provides for all proceedings before the court to be interpreted, and the cost is met from public funds.

46. Mr Tarnopolsky asked about remedies for any denial of the right to counsel (SR.69, paragraph 36). Under administrative guidance to the police about interrogation and the taking of statements which has been approved by the Judges and promulgated with the Judges' Rules, a person in police custody must be allowed to telephone his solicitor or friends provided that no hindrance is reasonably likely to be caused to the process of investigation or the administration of justice by doing so. The preamble to the Judges' Rules also makes clear that every person at every stage of an investigation should be able to communicate and to consult privately with his solicitor, again provided that no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice. In Scotland, accused

persons have, on arrest, a statutory right to seek the professional assistance of a solicitor. Judges have complete discretion to decide on the admissibility of evidence, and if a defendant had been unreasonably denied the right to consult with a solicitor it is conceivable that the court might take this into account in deciding the admissibility of any statement made by the defendant during interrogation. In addition, a police officer who unreasonably acted in this way may be subject to disciplinary action for contravening his police force orders, while the normal complaints machinery would also apply. A further safeguard for arrested persons will apply in June 1978 when section 62 of the Criminal Law Act 1977 is brought into effect. This provides that where any person has been arrested and is being held in custody in a police station or other premises, he shall be entitled to have intimation of his arrest and of the place where he is being held sent to one person reasonably named by him without delay or, where some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offenders, with no more delay than is so necessary.

47. Mr Hanga asked about trial in camera and the concept of "public security" (SR.69, paragraph 56). Section 8 (4) of the Official Secrets Act 1920 provides that, in addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings, if in the course of proceedings under the Official Secrets Act application is made by prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the

public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

48. In supplementation of what was said about release on bail in SR.70, paragraph 39, it should be mentioned that under Scots law money may have to be deposited, but it has never been suggested that this discriminates between rich and poor.

Article 17

49. Mr Lallah asked a question about prisoners' correspondence (SR.69, paragraph 8) to which a reply was given in SR.70, paragraph 40. The final sentence of the latter paragraph needs to be corrected: it should read: "This issue is, however, at present being considered by the European Commission of Human Rights in a particular case".

50. Mr Tarnopolsky asked about powers to search without warrant. There is no general power permitting the police or an officer of some other public authority to enter private premises without either the consent of the owner or a search warrant. A police officer is empowered to enter premises without a warrant for the purpose of arresting a person whom he is empowered to arrest without warrant. The police also possess some statutory powers of entry without warrant in relation to certain premises licensed for particular activities (e.g. places of entertainment or public houses), and in an emergency, when there is reasonable ground to suspect an offence against such provisions as the Explosives Act 1875 and the Official Secrets Act 1911. In addition, the police possess certain powers of entry at common law in situations which by their nature require urgent action (e.g. to deal with or prevent a breach of the peace, to save life or limb, to prevent serious damage to property, or in fresh pursuit of an escaped prisoner).

Officials of some Government Departments or other public authorities have certain statutory rights of entry to private property. In most cases a magistrate's warrant is required before such officials may enter private property by force; in emergencies however, there may be an unqualified right of entry (e.g. by officials of an electricity authority or gas board, or by a member of a fire brigade where a fire has broken out).

Article 19

51. Mr Prado Vallejo raised the question of access to the broadcasting media (SR.69, paragraph 47). In supplementation of the reply given in SR.70, paragraph 48, the following information may also be of interest to the Committee. Decisions on the content of broadcast programmes, including the individuals and organisations who should have an opportunity to take part, are within the editorial responsibilities of the broadcasting authorities, the BBC and the Independent Broadcasting Authority, in the exercise of their public responsibilities to Parliament to provide, as a public service, television and sound broadcast programmes of information, education and entertainment. It is for those authorities, and not the State, to make their own arrangements for the gathering of journalistic material, the production of broadcast programmes and their clearance for transmission. As to the remedies available to a citizen in the broadcasting context, while no one has an absolute right to require the broadcasting authorities to transmit his views over the air any more than he has a comparable right in relation to the written Press, there are procedures under which an individual or organisation may complain of unfair treatment or misrepresentation in a broadcast programme to the BBC's Programmes Complaints Commission or the IBA's Complaints Review Board.

52. Mr Movchan asked whether the Criminal Libel Act 1819 was still in force (SR.69, paragraph 78). That Act deals with the seizure and disposal of copies of libellous material after conviction of offences of blasphemous libel and seditious libel: it does not itself create the offences of blasphemy and sedition which are common law offences. The Law Commission have recently commenced a study of offences against religion and public worship, which will include the offence of blasphemy. As regards sedition, the Law Commission are also examining the law on treason and related offences, and have published for comment and criticism a working paper on "Treason, sedition, and allied offences".

Article 20

53. Mr Lallah and Mr Ganji asked for further information about the law of the United Kingdom on matters within the scope of Article 20 (SR.69, paragraphs 4 and 99). Section 70 of the Race Relations Act has strengthened the law against incitement to racial hatred by removing the need to prove a subjective intention to stir up hatred. It remains necessary to prove that the material published or the words used in a public place are threatening, abusive or insulting and likely in all the circumstances to stir up hatred against any racial group in Great Britain. The provision does not prohibit racist organisations as such. Derogatory or insulting language may amount to conduct conducive to a breach of the peace. This offence, like the new incitement provision, form part of the Public Order Act. The law aims to strike a balance between the need to provide an effective sanction against inherently objectionable and harmful racialist material and the need to

safeguard free speech. The consent of the Attorney General is necessary for a prosecution on incitement to racial hatred. In the 9 months since the provision came into effect, the Attorney General has given his consent in 3 cases; these have not yet come to trial.

Article 22

54. Mr Tomuschat asked whether a person could be under any obligation to join a given association (SR.69, paragraph 94). Current legislation in the United Kingdom does not require individual workers to join trade unions. There is, however, in general no restriction on employers and trade unions entering into closed shop agreements or arrangements (or union security arrangements, as they are normally described by the International Labour Organisation) which require workers in particular establishments or grades to be members of a particular union or one of a group of unions. The ILO has given an authoritative ruling that, in the context of International Labour Convention No 87, union security arrangements are not to be regarded as infringing the right of freedom of association. Special provision is made by the law in the case of police officers in the rank of chief inspector and below to be represented by statutory Police Federations, but police officers are not required to pay subscriptions to these bodies or assume any other obligation of membership unless they wish to do so.

55. Mr Koulishev asked for further information about the right to form trade unions (SR.70, paragraph 8). There is no legal obstacle in the United Kingdom to the setting up of a trade union in any particular situation by one or more persons. Trade unions may in practice represent workers from several enterprises or from one enterprise only. Taken together the Trade Union and Labour Relations Act

1974 and 1976 and the Employment Protection Act 1975, afford protection to the employee who is dismissed, or who has action short of dismissal taken against him by his employer, because he wishes to join an independent trade union, or having joined wishes to take part in the activities of the union at an appropriate time. He is similarly protected if his employer seeks to compel him to join a trade union which is not independent. If an employee believes he has been dismissed or victimised on these counts he may complain to an industrial tribunal which is empowered to award compensation if it finds the claim justified. In the case of dismissal, a tribunal may order reinstatement of the employee, and may increase the level of compensation if the employer fails to comply. An independent trade union is defined in law as one which is not under the domination or control of an employer or liable to interference by an employer tending towards such control. Unions may apply to an independent Certification Officer for certificates which serve as conclusive proof of independence. These provisions reflect the problems that have arisen in recent years over employer-sponsored or dominated unions. Certain rights and immunities are accorded to all trade unions, others only to independent trade unions. As far as the latter are concerned current legislation provides a procedure under which an independent trade union may pursue a claim for recognition for the purposes of collective bargaining about terms and conditions of employment etc. from an unwilling employer.

Article 23

56. Mr Hanga asked for further information on the marriage laws of the United Kingdom, including the property rights of parties to a marriage (SR.69, paragraph 58). In particular, he asked whether a marriage

concluded because of a mistake by one of the parties or by a third party could be declared void. The provisions concerning consent to marriage are set out in the United Kingdom's initial report (page 25 paragraph 3). If the mistake relates to the condition or capacity of the parties (which would cover marriages within the prohibited degrees of relationship; marriages where either party is under the age of 16; cases where at the time of marriage either party was already lawfully married; cases where the parties are not respectively male and female; and polygamous marriages where either party at the time of the marriage was domiciled in the United Kingdom) then the marriage is void whether the parties are conscious of the mistake or not. If however the mistake relates to the formalities of marriage law (for example, if the marriage takes place in a church which is not authorised for marriages) then the marriage need not be void, although that would be the case if the contravention took place knowingly and wilfully.

57. The basic rule governing property rights is that marriage does not affect the existing rights of either spouse. If it is subsequently necessary to determine the ownership of property acquired during the marriage, the particular facts must be examined: for example, was the item a gift from one to the other, was it paid out of a joint bank account, was it used by both parties, and so on. There is no automatic rule of equal entitlement by virtue of marriage. On the termination of a marriage, there is again no rule of equal entitlement to or division of property owned by the parties. In England and Wales the provisions of the Matrimonial Causes Act 1973 give the courts

extremely wide powers to override the existing property rights, to order the payment of periodic maintenance or lump sums, and to order the outright transfer of property from one spouse to the other. The main underlying criterion is the needs of the parties, giving particular emphasis to provision for children of the marriage. Broadly the same principles in relation to division of property are applied in Scotland by the Succession (Scotland) Act 1964.

Articles 24 and 25

58. Mr Hanga and Mr Movchan asked about the nationality requirements for entry to the Civil Service (SR.69, paragraphs 60 and 80). For permanent posts in the Civil Service, appointees must be either British subjects, British protected persons or citizens of the Irish Republic, though as can be seen from the nationality rule (text annexed) the rules themselves can vary in their detail according to the Department in which vacancies exist. The rules relate only to nationality, and it should be emphasised that they do not in any way discriminate on grounds of race, religion or colour.

59. The requirement for British nationality in those appointed to the permanent Civil Service dates back to the Act of Settlement 1701 and has been restated in subsequent legislation. The requirements are kept under review and modified from time to time in the light of changing circumstances.

60. Section 75(5) of the Race Relations Act 1976 preserves the validity of the Civil Service nationality rules. Most countries, so far as we know, restrict employment in their permanent civil service to their own nationals, and the United Kingdom is no exception. Nationality provides a touchstone of loyalty to the State which it is only reasonable to require of members of the Government Service.

61. It is the policy of the Civil Service that all persons satisfying the nationality rules for appointment shall have equal opportunity for employment and advancement in the Civil Service on the basis of their ability and qualifications and fitness for the work. There must be no discrimination on the grounds of colour, race, nationality or ethnic or national origin against any person eligible under the nationality rules, whether in recruitment, training, promotion or in any other way.

ANNEX

NATIONALITY RULE
(for permanent appointments in the British Civil Service)

The rule in respect of nationality prescribed for candidates for admission to Her Majesty's Civil Service is now as follows:-

1. To be eligible for appointment (other than to a situation to which paragraph 2, 3, or 4b. of this Regulation applies) a candidate must be a British subject, a British protected person or a citizen of the Irish Republic and in addition satisfy one of the following conditions:-

a. if he was at birth a British subject, a British protected person or a citizen of the Irish Republic -

i. at least one of his parents must be, or have been at death, a British subject, a British protected person or a citizen of the Irish Republic, or

ii. the candidate must have resided in a country or territory within the Commonwealth or in the Irish Republic or have been employed elsewhere in the service of the Crown or partly have so resided and partly have been so employed for at least five years out of the last eight years preceding the date of his appointment:

b. if he was not at birth a British subject, a British protected person or a citizen of the Irish Republic, he must have resided in a country or territory within the Commonwealth or in the Irish Republic or have been employed elsewhere in the service of the Crown or partly have so resided and partly have been so employed for at least five years out of the last eight years preceding the date of his appointment:

c. if not qualified under sub-paragraph a. or sub-paragraph b. of this paragraph, he must satisfy the Commissioners that he is so closely connected with a country or territory within the Commonwealth either by ancestry, upbringing or residence, or by reason of national service, that an exception may properly be made in his favour.

2. A candidate will not be eligible for appointment to a situation in the following Departments:

Cabinet Office
Ministry of Defence (other than the Meteorological Office, to which paragraph 1. of this Regulation applies)

unless i. at all times since his birth he has been either a British subject or a citizen of the Irish Republic and ii. he was born in a country or territory which is (or then was) within the Commonwealth or in the Irish Republic and iii. each of his parents was born in a country or territory which is (or then was) within the Commonwealth or in the Irish Republic and is or was at death a British subject or a citizen of the Irish Republic and has or had been one or the other at all times from birth:

Provided that, notwithstanding that the aforesaid conditions are not satisfied, he may, if the conditions specified in paragraph 1. of this Regulation are satisfied, be admitted to appointment by special permission of the Minister responsible for the Department concerned.

3. A candidate will not be eligible for appointment to a situation in the Diplomatic Service unless:

a. at all times since birth he has been either a British subject or a citizen of the Irish Republic, and

b. each of his parents is or was at death a British subject or a citizen of the Irish Republic and has or had been one or the other at all times since birth, and

c. the Secretary of State is satisfied that the candidate is so closely connected with the United Kingdom, taking into account such considerations as ancestry, upbringing, and residence, that he may properly be appointed; and

d. he undertakes to become a citizen of the United Kingdom and Colonies as soon as possible after his appointment if he is not already such a citizen:

Provided that, notwithstanding that condition b. above is not satisfied, he may, by special permission of the Secretary of State, be admitted to appointment if -

i. one of his parents is or was at death a British subject or a citizen of the Irish Republic, and has or had been one or the other at all times since birth (see below), and

ii. his father, if not a British subject or a citizen of the Irish Republic at all times since birth, is or was at death a British subject or a citizen of the Irish Republic.

For the purpose of i. above, any period before 1 January 1949 during which his mother lost British nationality as a result of marriage to an alien may be disregarded.

The foregoing requirements of this paragraph may also be applied to situations under the Secretary of State, other than situations in the Diplomatic Service or in the Foreign and Commonwealth Office (Overseas Development Administration), if the Commissioners, with the approval of the Secretary of State, so prescribe.

4. a. To be eligible for appointment to a situation in the Foreign and Commonwealth Office (Overseas Development Administration) (which does not form part of the Diplomatic Service) a candidate must satisfy the requirements of paragraph 1. of this Regulation.

b. To be eligible for appointment to a situation under the Secretary of State for Foreign and Commonwealth Affairs, other than a situation to which paragraph (3) or paragraph (4) (a) of this Regulation applies, a candidate must satisfy the requirements of paragraphs (3) (a) and (3) (b) of this Regulation. Provided that, notwithstanding that the aforesaid conditions are not satisfied, he may, if the conditions specified in paragraph 1. of this Regulation are satisfied, be admitted to appointment by special permission of the Secretary of State.

5. For the purposes of this Regulation references to citizens of the Irish Republic include references to citizens of the Irish Free State or of Eire.

CIVIL SERVICE DEPARTMENT
CIVIL SERVICE COMMISSION

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