



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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**A Bill of Rights for the  
UK? Government  
Response to the  
Committee's Twenty-  
ninth Report of Session  
2007-08**

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**Third Report of Session 2008-09**





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Joint Committee on  
Human Rights

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# **A Bill of Rights for the UK? Government Response to the Committee's Twenty- ninth Report of Session 2007-08**

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**Third Report of Session 2008-09**

*Report, together with formal minutes and  
written evidence*

*Ordered by The House of Lords to be printed 13 January 2009  
Ordered by The House of Commons to be printed 13 January  
2009*

**HL Paper 15  
HC 145**

Published 19 January 2009  
by authority of the House of Lords and  
the House of Commons London:  
The Stationery Office Limited  
£0.00

## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

### Current membership

#### HOUSE OF LORDS

Lord Bowness  
Lord Dubs  
Lord Lester of Herne Hill  
Lord Morris of Handsworth OJ  
The Earl of Onslow  
Baroness Prashar

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Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)  
Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)  
Mr Virendra Sharma MP (Labour, *Ealing, Southall*)  
Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)  
Mr Edward Timpson MP (Conservative, *Crewe & Nantwich*)

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The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

### Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/commons/selcom/hrhome.htm](http://www.parliament.uk/commons/selcom/hrhome.htm).

### Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Rebecca Neal (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), and Emily Gregory and John Porter (Committee Assistants).

### Contacts

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

# Contents

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<b>Report</b>	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>1. A Bill of Rights for the UK? The Government's Response</b>	<b>5</b>
Introduction	5
ECHR-plus	5
Social and economic rights	5
Environmental rights	6
"Britishness" and universality	6
Bills of Rights and devolution	6
The parliamentary model of rights protection	7
HRA-plus	7
Responsibilities	8
Process	8
Green Paper	9
<b>Formal Minutes</b>	<b>10</b>
<b>Papers and Written Evidence</b>	<b>11</b>
Memorandum from Michael Wills MP, Minister of State, Ministry of Justice, (18 December 2008)	11
Letter from Richard Baron, Head of Taxation, Institute of Directors to the Chairman (15 October 2008)	30
Letter from the Chairman to the Rt Hon Jack Straw MP, Secretary of State for Justice (17 December 2008)	31
Letter from the Rt Hon Jack Straw MP, Secretary of State for Justice to the Chairman (11 January 2009)	32
Transcript of Dame Nuala O'Loan's lecture commemorating the 60th anniversary of the Universal Declaration on Human Rights, hosted by the Committee on 10 December 2008	33
<b>Reports from the Joint Committee on Human Rights in this Parliament</b>	<b>44</b>



## Summary

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The Government is considering whether to introduce a Bill of Rights for the UK and we published a substantial Report on this issue in August 2008. We are publishing the Government's response to our work with this Report. We welcome various aspects of the Government response but also have some substantive comments, including those summarised below. We also note that publication of the Government's Green Paper has been repeatedly delayed and recommend that it be published as soon as possible.

We welcome the Government's reiteration of its commitment not to detract or resile from the rights in the European Convention on Human Rights (ECHR); and its acknowledgement that there would be scope for including in a new constitutional document a range of rights and responsibilities which go beyond those in the ECHR. In our August Report we advocated the inclusion of economic and social rights in a new Bill of Rights. We welcome the Government's decision not to rule this out but note its concerns about the impact of increased judicial involvement in this area. We may return to this issue in the future.

The Government has agreed with us that devolution in the UK does not present an insuperable obstacle to the adoption of a UK Bill of Rights. A Bill of Rights for Northern Ireland is already being considered, under the terms of the Good Friday Agreement. The Northern Ireland Human Rights Commission has advised the Government on the form such a bill might take and we recommend that the Government should move swiftly to consult on its response so that legislation can be introduced in Westminster during the current parliamentary session.

We are concerned to detect some equivocation in the Government's view about the Human Rights Act, particularly following the interview given by the Secretary of State for Justice in the Daily Mail on 10 December 2008. We also remain unclear about the relationship between rights and responsibilities envisaged by the Government in a Bill of Rights. Finally, we recommend that the Government should follow Australia's example and appoint an independent committee to conduct a national consultation on the whole range of options for a Bill of Rights for the UK, ahead of parliamentary consideration of the bill itself.





# 1. A Bill of Rights for the UK? The Government's Response

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## Introduction

1. We received the Government's Response to our Twenty-ninth Report of Session 2007-08, *A Bill of Rights for the UK?* (HL Paper 165-I, HC 150-I) in the form of a memorandum from Michael Wills MP, Minister of State at the Ministry of Justice, dated 18 December 2008.

2. We publish the memorandum with this Report. We are pleased to see that the Government agrees with a number of our observations. We comment briefly on some of the more significant points of agreement and disagreement. We will be taking evidence from the Secretary of State for Justice and the Human Rights Minister on 20 January 2009, when we intend to pursue some of these issues and we intend to return to this subject in the near future.

3. We also publish with this Report:

- i. A letter dated 15 October 2008 from the Institute of Directors responding to our Report *A Bill of Rights for the UK?*
- ii. Dame Nuala O'Loan's lecture commemorating the 60<sup>th</sup> anniversary of the Universal Declaration on Human Rights, which we hosted on 10 December 2008.

## ECHR-plus

4. We welcome the Government's reiteration of its commitment not to detract or resile from the rights in the European Convention on Human Rights (ECHR). We also welcome the Government's acknowledgment that there would be scope for including in a new constitutional document a range of rights which go beyond those in the ECHR.

5. We agree with the Government that the Human Rights Act (HRA) only paints part of the picture of the rights we enjoy and the values we share. The rights and values protected by the Human Rights Act are a very important part of the picture, but, as we noted in our Report, there are other important rights and values which are clearly considered fundamental in this country, which means there is considerable scope to supplement those already protected by the HRA.

## Social and economic rights

6. We welcome the Government's acknowledgment that the case for developing domestic formulations of economic and social rights should not be excluded from any future process of consulting on a new constitutional document concerning rights, responsibilities and shared values. We are also pleased to see that the Government would expect to learn from overseas experience in this respect. We welcome the Government's acknowledgment that there may be ways of recognising rights, including social and economic rights, which already exist but are not enunciated as rights in UK law.

7. We also welcome the positive tone of the Prime Minister's speech on human rights to the Equality and Human Rights Commission on the occasion of the 60<sup>th</sup> anniversary of the Universal Declaration on Human Rights. We were particularly pleased to hear his acknowledgment of the indivisibility of civil and political rights and social and economic rights.

8. We note, however, that the Government remains concerned about the possibility of any new constitutional document resulting in increased judicial intervention in areas involving resource allocation in the socio-economic sphere. In our Report, we made clear that we agree that resource allocation decisions should remain primarily for democratically elected decision-makers. We do not agree that *any* judicial role in these areas inevitably means that decisions about the allocation of scarce resources become less democratically accountable, and we sought to spell out a very tightly circumscribed judicial role that would not give rise to this risk. This is a question to which we may return.

### **Environmental rights**

9. We welcome the Government's recognition that sustainable development should feature in the debate about how best to frame our rights and responsibilities, particularly in relation to future generations. The Government accepts that the inclusion of sustainable development principles in some form in an enduring constitutional document might help to foster collective responsibility for our environment.

### **"Britishness" and universality**

10. We welcome the Government's express recognition, echoed in the Prime Minister's speech, that human rights are universal. We also welcome the Government's acknowledgment that the articulation of the common values and principles that bind us together is separate from the fact that certain more specific rights and entitlements within the UK may depend on nationality and immigration status. We look forward to the debate about the rights and duties of citizens being separated from the debate about what should be contained in any UK Bill of Rights.

### **Bills of Rights and devolution**

11. We welcome the Government's agreement with our observations that the UK's devolved governance arrangements do not present any insuperable obstacle to the adoption of a UK Bill of Rights and that it is desirable to have bills of rights at both the national and the devolved levels, provided the level of protection at the devolved level does not fall below the minimum floor at the national level.

12. We note that on 10 December 2008 the Northern Ireland Human Rights Commission delivered its advice to the Government concerning the scope for a Bill of Rights for Northern Ireland, more than ten years after that process was set up by the Good Friday Agreement.<sup>1</sup> We welcome the fact that a number of the Commission's recommendations, including the basic legislative model of human rights protection, correspond quite closely

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<sup>1</sup>[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A\\_Bill\\_of\\_Rights\\_for\\_Northern\\_Ireland\\_%28December\\_2008%29.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf)

to the recommendations in our Report, and that there is no incompatibility between the Bill of Rights for Northern Ireland recommended by the Commission and the Bill of Rights for the UK that we have recommended. **We recommend that, in view of the amount of time that has elapsed, the Government should now move swiftly to consult on its response to the Commission's advice, with a view to introducing in the current parliamentary session a Bill of Rights for Northern Ireland in Westminster legislation, as envisaged in the Good Friday Agreement in 1998.**

## The parliamentary model of rights protection

13. We welcome the Government's agreement that any enforcement mechanism in a UK Bill of Rights ought to complement our system of parliamentary democracy. We suggested a number of specific ways in which the role of Parliament could be enhanced under any future Bill of Rights and we welcome the Government's commitment to give "careful consideration" to these ways of enhancing democratic scrutiny in any future debate about a Bill of Rights.

## HRA-plus

14. In our report we went further than recommending that there be no resiling from the rights contained in the ECHR. We also recommended that there be no weakening of the mechanisms for protecting those rights in the HRA. In its response to our Report the Government indicates that it has no intention of diluting the strength of the interpretive obligation in the HRA and we welcome that commitment.

15. However, we note that elsewhere in its response the Government is rather more equivocal. For example, it says that consideration could be given "to the degree to which it would be possible to underline to the courts, in more explicit language, the fullest extent of their discretion to factor in the fulfilment of the parties' duties and responsibilities." It also appears to disagree with our conclusion that the Government's interest in "responsibilities" is misconceived to the extent that it is an attempt to "rebalance" human rights law by increasing the weight to be given to considerations such as safety and security.

16. We consistently criticise the Government when ministers send equivocal messages about the Human Rights Act, including in our Report on a Bill of Rights.<sup>2</sup> The same equivocation was shown by the Secretary of State for Justice in his interview with the *Daily Mail* on 10 December 2008 in which he is reported as being "frustrated" by some of the judgments which have caused voters to consider the Act a 'villain's charter'. The Secretary of State defended his stance in a letter dated 11 January.<sup>3</sup> He said he remained "firmly supportive of the Human Rights Act 1998 and the way in which it has improved protection for human rights in the UK." He attributed negative public perceptions of the Act to "public unease about the limits placed by the European Court of Human Rights on the Government's ability to return terrorist suspects to their country of origin". We will return to this issue in oral evidence.

<sup>2</sup> Twenty-Ninth Report, Session 2007-08, A Bill of Rights for the UK?, HL Paper 174, HC 1079

<sup>3</sup> See Letter from the Justice Secretary to the Chairman (11 January 2009), p 32

## Responsibilities

17. The Government believes that there is a worthwhile debate to be had about giving certain responsibilities that we owe each other, and to our community, greater prominence in any new constitutional document. It regards responsibilities as a cornerstone of our democratic society and as such they merit a prominent place in any future Bill of Rights. It appears to have in mind “a wide range of responsibilities in the legal, social and moral spheres.” We acknowledged in our Report that responsibilities have some role to play in bills of rights, but we pointed out that they fall far short of being directly enforceable duties. We remain unclear as to which precise responsibilities the Government has in mind for inclusion in any Bill of Rights and as to the form which such inclusion might take and this is one of the issues that we will be taking up with the Ministers in oral evidence.

## Process

18. We recommended in our Report that an independent body, whether an ad hoc committee or an existing body with specialist expertise, be appointed to conduct a consultation exercise and to make recommendations to the Government within six months to a year.

19. We welcome the fact that the Government has studied the consultations which took place in both Northern Ireland and the State of Victoria in Australia, and the Government's recognition that many aspects of each process would usefully inform any such process in the UK. However, the Government says that it “would be cautious about referral to an independent body, and would ultimately wish to refer the decision and enactment of any Bill of Rights and Responsibilities to Parliament.”

20. We agree that the ultimate decision whether or not to adopt a new UK Bill of Rights and Freedoms should be for Parliament. We also agree that any new Bill of Rights should be in the form of an Act of Parliament. However, we do not see any inconsistency between this and setting up an independent committee to conduct a national consultation about a UK Bill of Rights and to make recommendations to the Government. As we said in our Report, it would then be for the Government to decide what to do in the light of the recommendations of the independent committee. In our view, however, the consultation process must be conducted by a truly independent committee in order for there to be public confidence in both the process and the committee's recommendations.

21. We note with interest that, since we reported, the Australian Government has set up an independent national process of exactly the kind we recommended in our Report.<sup>4</sup> On 10 December 2008 it launched a National Human Rights Consultation, “to seek the views of the Australian community on how human rights and responsibilities should be protected in the future.” The national consultation is to be carried out by an independent committee which will conduct a six month consultation and make recommendations to the Government by 31 July 2009.

22. The Australian Attorney General, announcing the consultation, said “In this, the year of the 60<sup>th</sup> anniversary of the Universal Declaration on Human Rights, it is appropriate to

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<sup>4</sup> Our recommendation was strongly influenced by the process which had been followed in the Australian state of Victoria.

reflect on the effectiveness of our current system of human rights protections, to see if gaps exist, and to explore a range of ways in which human rights protections could be enhanced.” He expected there to be robust discussion about whether or not Australia should adopt a national charter of rights and encouraged community consideration of a broad range of options for future human rights protection – not only a national charter.

**23. We recommend that the Government follow the recent Australian example of appointing an independent committee to conduct a national consultation on the whole range of options for a Bill of Rights for the UK.**

## **Green Paper**

24. The publication of the Government's long awaited Green Paper on a Bill of Rights has now been postponed a number of times. Further postponement will severely undermine confidence in the seriousness of the Government's intent or the clarity of its thinking. It is now 18 months since the possibility of a consultation on a UK Bill of Rights was first suggested in the Prime Minister's statement to Parliament on constitutional reform. Although the issues are complex, it should not be beyond the wit of a well-resourced Government to produce an intelligent discussion paper if it knows its own mind. The recently elected Australian Government has shown that where there is a clear political will there is a way. **We call on the Government to publish its Green Paper without further delay.**

# Formal Minutes

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**Tuesday 13 January 2009**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	John Austin MP
Lord Dubs	Dr Evan Harris MP
The Earl of Onslow	Mr Virendra Sharma MP
Baroness Prashar	

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Draft Report (*A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 24 read and agreed to.

Summary read and agreed to.

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

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

The Government's response to the Twenty-ninth Report from the Committee in Session 2007-08 and several papers were appended to the Report.

*Ordered*, That embargoed copies of the Report be made in available, in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Tuesday 20 January at 1.45pm.]

# Papers and Written Evidence

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## Memorandum from Michael Wills MP, Minister of State, Ministry of Justice, dated 18 December 2008

### Introduction

The issue of rights and responsibilities and their role in the United Kingdom's 21<sup>st</sup> century democracy continues to be a source of lively debate, particularly since the launch of the Governance of Britain Green Paper in July 2007. In the context of its broader programme of constitutional reform, the Government has considered with great interest the Joint Committee's Report on a Bill of Rights for the UK. The Government is grateful to the Committee for its detailed examination of the subject and welcomes this valuable input into the ongoing public debate. The Government's response to the Committee's Conclusions and Recommendations is set out below.

### JCHR Conclusions and recommendations

#### *Does the UK need a Bill of Rights?*

**1. We agree with those who say that a high degree of consensus for a Bill of Rights is desirable. We do not, however, think that there need be unanimity about every aspect of a Bill of Rights. There needs to be sufficient consensus across party lines to make the process of adopting a Bill of Rights a truly constitutional event, rather than a party political one. (Paragraph 25)**

In considering any new constitutional document, the Government would welcome the participation of all those interested in the debate. Drawing up a future Bill of Rights would be a complex exercise, the results of which would be expected to last well into the future. Adequate deliberation would be needed to ensure the broadest possible degree of support for a constitutional measure which would only be worth embarking upon if it endured.

**2. We regret that there is not greater clarity in the Government's reasons for embarking on this potentially ambitious course of drawing up a Bill of Rights. A number of the Government's reasons appear to be concerned with correcting public misperceptions about the current regime of human rights protection, under the HRA. We do not think that this is in itself a good reason for adopting a Bill of Rights. As we have consistently said in previous Reports, the Government should seek proactively to counter public misperceptions about human rights rather than encourage them by treating them as if they were true. (Paragraph 33)**

The Government has carried out considerable work to correct public misperceptions about the Human Rights Act. The Implementation Review of the Human Rights Act (2006) found that the Act had had no adverse effect on the Government's ability to fight crime and had brought about a positive and beneficial impact upon the relationship between the citizen and the State. It had achieved this by providing a framework for policy formulation which led to better outcomes, and ensuring that the needs of all members of the UK's



increasingly diverse population were appropriately considered both by those formulating policy and by those putting it into effect.

As part of the Government's Human Rights Programme, the Ministry of Justice has led an initiative to improve the capability of Government Departments to respond to inaccurate or misleading media coverage of human rights issues. A Press Officers' Network has been established and principal departments have nominated Press Officers to liaise regularly with the Ministry of Justice over human rights issues, including identifying incorrect human rights stories in the various media channels.

More generally, it is worth observing that the Human Rights Act is only part of the picture in terms of the rights we enjoy, the responsibilities we owe and the values we share as members of UK society. The Government considers that there is still considerable scope for discussion on how the broader framework of our rights, responsibilities and values could better be articulated in a form which would be accessible and appropriate for our 21<sup>st</sup> century democracy.

**3. A great deal of our work in this Parliament has concerned the vulnerable and the marginalised: older people in healthcare, asylum seekers, adults with learning disabilities, and children in secure training centres for example. We have often pointed out serious shortcomings in the protection of the human rights of these vulnerable and marginalised people. Whilst not diminishing the obligation on Parliament to legislate effectively and in compliance with human rights principles, strengthening the legal protection for the rights of such people should in our view be one of the principal purposes of any new Bill of Rights. (Paragraph 34)**

The Government remains fully committed to the fundamental human rights which are set out in the European Convention and incorporated in the Human Rights Act. The Government has responded formally to the Committee's reports on each of the above mentioned areas. However, it notes the Committee's view that these are areas of priority for inclusion in any process leading to a future Bill of Rights and Responsibilities for the UK.

**4. We believe it is important that any UK Bill of Rights includes strong legal protections for freedoms such as freedom of assembly, freedom of expression, freedom from unreasonable search and seizure, and freedom from unwarranted intrusions on privacy, all of which are essentially negative liberties from state interference. For this reason, we believe any bill of rights should be called a UK Bill of Rights and Freedoms. (Paragraph 38)**

The Government believes that there is a strong case for including 'responsibilities' in any title. This would emphasise that responsibilities and rights are twin foundations of a peaceful, well-ordered and flourishing democracy. Responsibilities play an essential role both in our relationship with the State and with each other as members of a modern UK society. In terms of content, the above mentioned areas already find significant and sufficient protection in existing law, including through the European Convention on Human Rights as given effect in UK law by the Human Rights Act and through the common law as it has developed over centuries. However, the Government recognises that an open debate on the subject of any future Bill of Rights and Responsibilities would



involve discussion on all areas of rights and responsibilities which go to the heart of the relationship between the individual and the State.

**5. Although a Bill of Rights may have many merits, it is both legally and empirically incorrect to suggest that a Bill of Rights would lead the European Court of Human Rights to give a greater margin of appreciation to the UK than is currently the case. This argument is not, in our view, a good argument for the adoption of a UK Bill of Rights. (Paragraph 42)**

The Government agrees that plainly the existence of domestic legislation by any State Party to the ECHR cannot of itself directly affect the way in which the European Court of Human Rights will make judgments about the degree to which it should allow a margin of appreciation in any particular case. Rather it is the level of protection afforded in the domestic legislation relative to that provided by the Convention itself which may impact on the margin of appreciation. However, since one of the arguments for the adoption of a Bill of Rights and Responsibilities might be to draw together and emphasise existing rights and responsibilities, consideration could also be given to the degree to which it would be possible to underline to the courts, in more explicit language, the fullest extent of their discretion to factor in the fulfilment of the parties' duties and responsibilities, in so far as to do so is consistent with the Convention and its jurisprudence.

**6. We agree that any UK Bill of Rights has to be "ECHR plus". It cannot detract in any way from the rights guaranteed by the ECHR. (Paragraph 50)**

**7. The issue is not whether the Bill of Rights is going to be compliant with the ECHR, which is a fairly low threshold, but whether it is going to be "I-IRA-plus", that is, add to and build on the HRA as the UK's scheme of human rights protection. (Paragraph 51)**

**8. In our view it is imperative that the HRA not be diluted in any way in the process of adopting a Bill of Rights. Not only must there be no attempt to redefine the rights themselves, for example by attempting to make public safety or security the foundational value which trumps all others, but there must be no question of weakening the existing machinery in the HRA for the protection of Convention rights. (Paragraph 53) We therefore welcome the unequivocal assurance given to us by the Justice Secretary that there is nothing in the Bill of Rights project, as far as the Government is concerned, that is going to weaken the HRA. We recommend that that this unequivocal assurance is made the starting point of any future consultation on a Bill of Rights. (Paragraph 54)**

The Government has repeatedly made it clear that it has no intention of detracting or resiling from any of the rights guaranteed by the ECHR in the Human Rights Act.

**9. There is scope for a Bill of Rights to go beyond the "floor" of the Convention rights as interpreted in Strasbourg, and to supplement those rights with more generously defined indigenous rights. (Paragraph 56)**

**10. Notwithstanding various arguments against a Bill of Rights, discussed in this Report, we consider that there is considerable scope for a Bill of Rights to add to what is already provided in the HRA and we are therefore satisfied that the case for a Bill of Rights is made out. (Paragraph 62)**

The Government acknowledges that there would be scope for including in a new constitutional document a range of rights and responsibilities which went beyond those in the European Convention. The Government regards the Human Rights Act as painting only part of the picture of the rights we enjoy, the responsibilities we owe to each other and the values we share as members of UK society.

**11. We agree that there must be no question of repealing the Human Rights Act unless and until a Bill of Rights, protecting human rights to at least the same extent as the Human Rights Act, is enacted (Paragraph 63)**

If any future Bill of Rights and Responsibilities were drawn up in the form of an Act of Parliament, there would be a range of options for dealing with the Human Rights Act. These might include simultaneously repealing and re-enacting the Human Rights Act as part of a new constitutional document, cross-referencing the Act in any new document, or simply preserving it as a separate Act.

**12. We recommend that any new Bill of Rights should be both declaratory and aspirational. It should state and make fully enforceable all those fundamental rights which currently exist. But it should also look to the future by setting out a clear vision of the sort of society to which the country aspires. A preamble and an appropriate interpretive provision referring back to the preamble could provide the aspirational dimension which is missing from the HRA. (Paragraph 69)**

The Government notes the Committee's view.

**13. Bills of Rights are capable of emerging from deliberative processes conducted in settled democracies in normal times. (Paragraph 73)**

The Government agrees.

### ***A "British" Bill of Rights on the Devolution Dimension***

**14. The rights enshrined in the HRA apply to everyone in the UK, irrespective of their citizenship or immigration status. Bills of Rights protect rights which people have by virtue of being human, not according to their legal status as citizen or non-citizen. It is regrettable that the loose language of the Governance of Britain Green Paper appeared to suggest that some of those rights – such as equality before the law – are associated with citizenship. We welcome the Justice Secretary's acknowledgement that fundamental human rights cannot be restricted to apply solely to citizens. We also note that there are rights – such as the right to vote – which are legitimately linked to citizenship. Nevertheless, we are concerned that by making an explicit link between human rights and citizenship, the Government may foster the perception that non-citizens are not entitled to fundamental human rights. It risks turning the important debate about a Bill of Rights into a surrogate for anti-outsider sentiments, rather than an opportunity to define and celebrate the values regarded as particularly fundamental in the UK as a nation state. We call on the Government to decouple the debate about a Bill of Rights from the debate about citizenship and the rights and duties of the citizen, and to ensure that in future the universality of fundamental human rights is explicitly recognised in documents and speeches relating to a Bill of Rights. (Paragraph 84)**

The Government has never sought to assert that human rights are anything but universal. Clearly many of our more specific rights and entitlements within the UK may depend on nationality and immigration status. However, this is a separate issue from that of the values and principles which bind us together in a modern UK society. It is also separate from the task of seeking, through any future constitutional reform exercise, to give expression and effect to these common values as part of a new constitutional settlement.

**15. Whilst we have serious concerns about the link being made by the Government between human rights on the one hand and the duties of citizenship on the other, we acknowledge that there is an inevitable and entirely appropriate link with the question of national identity. A national Bill of Rights is an expression of national identity and the process of drawing one up deliberately invites reflection about what it is that “binds us together as a nation,” what we regard as being of fundamental importance, and which values we consider to guide us. It is potentially a moment of national definition. (Paragraph 88)**

**16. Unlike the Justice Secretary, however, we also see an issue which needs to be addressed, in that there would appear to be difficulties associated with establishing a Bill of Rights on the basis of a statement of ‘British’ values which may or may not be accepted by the people who consider themselves to be, for example, ‘English’, ‘Scottish’, ‘Irish’ or ‘Welsh’, but not ‘British’. (Paragraph 93)**

**17. We accept that a Bill of Rights for this country should include indigenous rights, not in the sense of rights which can only be claimed by British citizens, but in the sense of rights and freedoms which have attained a status of fundamental importance in this country’s traditions and which therefore merit inclusion in any catalogue of the rights, freedoms and values which are considered to be constitutive of this country’s identity. However, we are not persuaded that the term “British” Bill of Rights is a helpful description of the Government’s proposal. It suggests a link with citizenship which, for many rights, would be inappropriate; it excludes Northern Ireland; and it is not necessarily inclusive of people in the UK who consider themselves to be English, Scottish, Irish or Welsh, for example, but not British. The term “UK” Bill of Rights would be more accurate and appropriate and would also serve to demonstrate that the rights it contained are “owned” by the people of the UK. (Paragraph 99)**

The Government notes the Committee’s view but observes that constitutional instruments can take many different forms and reflect many different purposes. The rights enshrined in any future Bill of Rights and Responsibilities would seek to give expression to the values on which they were based. The Government agrees that any future debate on rights and responsibilities should — in both form and nature — be inclusive of people from across the United Kingdom.

**18. A UK Bill of Rights must be based on a detailed dialogue between central government and the devolved administrations. We note that this dialogue does not yet seem to have begun. (Paragraph 104)**

The Government is alert to the need to engage with the devolved administrations and the devolved legislatures.

**19. The devolution settlement creates certain difficulties for a UK Bill of Rights, but we do not accept that it creates an insuperable obstacle to such a Bill. Ever since the Universal Declaration of Human Rights, human rights norms have gradually become embedded at global, regional and national level. Provided the hierarchy between these levels is clear, there is a positive virtue in the broadly defined rights in the international standards being fleshed out into more concrete norms and standards at the regional, national and sub-national level. Each Bill of Rights, from the global through the regional to the national and sub-national levels, becomes more specific and detailed in its provisions, and is free to be more generous but must not fall below the minimum floor of the higher level of protection. In our view, the devolution settlement creates fewer difficulties than face federated states in this respect, because constitutional matters, including human rights, are not devolved matters. (Paragraph 107)**

**20. We agree with the Government that the UK's devolved governance arrangements do not preclude a UK Bill of Rights from being drawn up. We also agree with Professor Dickson that having Bills of Rights at both the national and the devolved levels is desirable. Early engagement with the devolved administrations is necessary, however, to deal with areas in a UK Bill of Rights which relate to devolved matters and to address differences between the UK's three legal jurisdictions. (Paragraph 110)**

The Government notes and is in agreement with the Committee's observations.

### ***What should be included in a UK Bill of Rights?***

**21. We agree in principle that, if there is to be a UK Bill of Rights, as we believe there should be, it ought to have a Preamble which sets out, in a simple and accessible form, first, the purpose of adopting a UK Bill of Rights and, second, the values which are considered to be fundamental in UK society. (Paragraph 114)**

Any statement of rights and responsibilities, historically and as a matter of principle, derives in the end from the values of the society to which these rights and responsibilities apply.

**22. In our outline Bill of Rights and Freedoms we suggest that the Preamble to a UK Bill of Rights could simply state that it is adopted to give lasting effect to the values which are considered fundamental by the people of the United Kingdom, followed by a short list of those values. (Paragraph 115)**

The Government notes the Committee's observation.

**23. The list of values above [in paragraph 115] is intended to cover some of the aspects of the principal human rights traditions referred to in chapter 1 above, embracing liberty in both its negative and positive senses, and fairness in both a procedural and substantive sense. Civic duty is intended to reiterate the idea of responsibilities, which is already implicit in the very concept of rights. We also suggest including two**

**fundamental values which define our institutional arrangements: democracy, and the rule of law. (Paragraph 116)**

The Government notes the Committee's recommendation and recognises the centrality of democracy and the rule of law in the context of the debate.

**24. We consider that the Bill of Rights should also have a strong interpretive clause requiring any body interpreting the Bill of Rights to strive to achieve the purpose of the Bill of Rights and to give practical effect to the fundamental values underpinning it, as set out in the Preamble. (Paragraph 117)**

There a number of different approaches to enforcing the provisions of any proposed Bill of Rights and Responsibilities and to giving effect to its underpinning values. The Government recognises that one possibility would be to set out general interpretative principles as the Committee suggests.

**25. We consider the Government's consultation on a Statement of Values to be premature and we recommend that it be conducted at the same time, and using the same process, as the forthcoming consultation on a Bill of Rights. We suggest what that process should be in chapter 9 below. (Paragraph 118)**

The Government notes the Committee's view,

**26. On this basis, we agree with those who say that a UK Bill of Rights should include the right to trial by jury in serious cases in England, Wales and Northern Ireland (there being no tradition of jury trial in Scotland's separate criminal justice system). In the parliamentary model of human rights protection which we favour, as explained in chapter 7 below, this does not mean, as Kenneth Clarke MP feared, that limitations and restrictions on the right will be "ruled out of court" on human rights grounds. Limitations on rights included in any UK Bill of Rights will be possible, provided they can be shown to be justified. Parliament will therefore continue to be able to look at the question of limitations on the right, and entitled to restrict it where that can be shown to be necessary to meet another important objective. Inclusion of the right in a UK Bill of Rights should, however, ensure that only such demonstrably justifiable restrictions are imposed. (Paragraph 127)**

Article 6 of the European Convention, to which all major political parties are committed, protects the rights of those accused of crime to a fair trial. Much domestic legislation complements those basic rights and the Human Rights Act gives them further effect within the UK's legal systems.

**27. We agree that [the right to administrative justice] is a strong candidate for inclusion in a UK Bill of Rights as a nationally distinctive right. (Paragraph 128)**

The Government is always concerned to ensure fair, rational and lawful decision making and to uphold principles of good governance. It notes the Committee's recommendation for the inclusion of a right to administrative justice in any future Bill of Rights and Responsibilities.



**28. Any Bill of Rights should include a saving provision making clear that nothing in the Bill of Rights denies the existence or restricts the scope of rights or freedoms recognised at common law. (Paragraph 132)**

The Government notes the Committee's recommendation.

**29. We recommend that the Government consults on whether there are rights in human rights treaties to which the UK is a party which are candidates for incorporating into a Bill of Rights. There may be rights contained in those treaties which do not yet find their articulation in domestic law and which could be included in any Bill of Rights if it were considered appropriate. (Paragraph 136)**

The Government will continue to make a judgement on a case by case basis whether international treaties to which it is party should be incorporated into domestic law. This depends inevitably on the precise text of the legal instrument, its scope and above all the obligations placed on the UK. The Government has signed and ratified many international instruments but has also made deliberate decisions not to incorporate them into our law. It has instead sought to ensure that the rights in these instruments are reflected within UK law. This, it firmly believes, continues to be the appropriate course of action.

**30. We recommend that a Bill of Rights include a provision requiring courts to pay due regard to international law, including international human rights law to which the UK is a party, when interpreting the Bill of Rights. (Paragraph 137)**

The Government recognises that such a provision exists in other constitutions, such as the Constitution of the Republic of South Africa. It notes the Committee's recommendation and acknowledges that proposals for such a provision could form part of a wider debate around the enforcement mechanisms of any new constitutional instrument. In certain circumstances, courts in the UK may take account of the UK's treaty obligations for example as an aid to interpretation of ambiguous provisions of legislation. There is no plan to alter this approach.

**31. We have often made reference in our Reports to the need to give better effect to provisions in the UN Convention on the Rights of the Child and have also called for the incorporation into UK law of some of the rights, principles and provisions in the Convention. We have also urged the Government to ratify the UN Convention on the Rights of Persons with Disabilities. There is a strong case for any Bill of Rights to include detailed rights for certain vulnerable groups such as children; and there should be consultation as to whether to include specific rights for other groups such as disabled people, religious, linguistic and ethnic minorities, workers (including migrant workers) and victims of crime. (Paragraph 145)**

The UK Government continues to give effect to the key principles and articles of the UN Convention on the Rights of the Child, through a mixture of legislation and policy schemes. The Government is also working towards ratification of the UN Convention on the Rights of Persons with Disabilities. The UK Government is always mindful of the need to protect vulnerable groups in society, including children and victims of crime. It acknowledges that any future Bill of Rights and Responsibilities could make special provision for such groups.

32. In our view the case is clearly made out for the inclusion of a number of additional rights in any UK Bill of Rights, particularly in relation to rights which can be distilled from the UK's distinctive traditions. However, it is important that both this question and the precise definition of any additional rights, be the subject of proper public consultation. (Paragraph 146)

The Government agrees that the scope and definition of provisions in any future Bill of Rights and Responsibilities should be the subject of public consultation.

### *Economic and Social Rights*

33. We agree with the reasoning and conclusion of our predecessor Committee that the case for developing domestic formulations of economic and social rights as part of a UK Bill of Rights merits further attention and our Report now picks up where its Report left off. (Paragraph 157)

34. We welcome the Prime Minister's acknowledgment that rights such as the right to health are considered of fundamental importance to people and his indication that the forthcoming consultation and debate about a Bill of Rights would not seek to preclude discussion of whether economic and social rights should be included in any such Bill of Rights. (Paragraph 161)

35. We welcome the Government's preparedness to reconsider its position in relation to the inclusion of economic and social rights in any UK Bill of Rights and its recent acknowledgement that there is a continuum of possible positions. (Paragraph 164)

36. We agree with the Government that including fully justiciable and legally enforceable economic and social rights in any Bill of Rights carries too great a risk that the courts will interfere with legislative judgments about priority setting. Like our predecessor Committee, we recognise that the democratic branches (Government and Parliament) must retain the responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority. It would not be constitutionally appropriate, in our view, for example, for the courts to decide whether a particular standard of living was "adequate", or whether a particular patient should be given priority over another to receive life saving treatment. Such questions are quite literally non-justiciable: there are no legal standards which make them capable of resolution by a court. (Paragraph 167)

37. This model [social and economic guarantees as goals] avoids the pitfalls of the first model [legally enforceable rights] because it keeps the courts out altogether. In our view, however, it risks the constitutional commitments being meaningless in practice. When some possibility of judicial enforcement exists, it is more likely that the relevant rights will in practice receive respect. (Paragraph 169)

As stated above, Bills of Rights and Responsibilities can serve a variety of purposes, including declaratory, symbolic and aspirational purposes. The Government notes the Committee's recommendation but re-iterates its concern over any new constitutional document which could result in increased judicial intervention in areas involving resource

allocation in the socio-economic sphere which should, in its view, remain a matter for democratically accountable institutions of government.

**38. These cases show that the South African Constitutional Court has steered a middle path between the two models described above. It has expressly rejected an approach which would require the State to provide certain minimum standards of economic and social rights to all, because it recognizes that the courts are ill-equipped to adjudicate on issues where court orders could have multiple social and economic consequences for the community. But at the same time it has recognized that there is some, albeit restrained, role for the courts, namely to require the state to take measures to meet its constitutional obligations and to subject the reasonableness of those measures to evaluation. In our view, the South African courts have shown that the courts can be given a limited role in relation to social and economic rights without becoming the primary decision makers. (Paragraph 181)**

**39. In our view the main objections to the inclusion of social and economic rights in a Bill of Rights are not, in the end, objections of principle, but matters which are capable of being addressed by careful drafting. Having given the matter further attention, as recommended by our predecessor Committee, we are persuaded that the case for including economic and social rights in a UK Bill of Rights is made out. We agree with Justice Albie Sachs who told us during our visit to South Africa that a country which does not include social and economic rights in some form in its Bill of Rights is a country which has “given up on aspiration”. We consider that rights to health, education and housing are part of this country's defining commitments, and including them in a UK Bill of Rights is therefore appropriate, if it can be achieved in a way which overcomes the traditional objections to such inclusion. (Paragraph 191)**

**40. We therefore put forward for consideration an approach which draws inspiration from the South African approach to economic and social rights, but which contains additional wording designed to ensure that the role of the courts in relation to social and economic rights is appropriately limited. The broad scheme of these provisions is to impose a duty on the Government to achieve the progressive realisation of the relevant rights, by legislative or other measures, within available resources, and to report to Parliament on the progress made; and to provide that the rights are not enforceable by individuals, but rather that the courts have a very closely circumscribed role in reviewing the measures taken by the Government. (Paragraph 192)**

The Government acknowledges that the case for developing domestic formulations of economic and social rights should not be excluded from any future process of consulting on a new constitutional document concerning rights, responsibilities and shared values.

The Government is reassured by the Committee's view that questions of the allocation of public resources and decisions about priorities are primarily for democratically elected bodies, including Parliament and those accountable to Parliament. It would not favour any new constitutional document which sought to increase judicial intervention in these areas. There are some rights, particularly social and economic rights, which are already promoted through a wide range of UK legislation. They may not currently be expressed as legal rights, but many of the associated entitlements are enforceable, either because mechanisms to test their delivery are explicitly provided in legislation or because they are susceptible to



judicial review. The Government acknowledges that there may be ways of recognising rights which exist but which are not enunciated or expressed as rights in UK law. As the Prime Minister stated in his evidence to the Liaison Committee on 13 December 2007:

I do not think [social and economic rights] can ever be off-limits in a debate and I think when people look at what does hold Britain together some of the social changes that happened in the 20th century are seen by people to be of such importance that they accord them the status of rights in the way they talk about them, as you have rightly said about the National Health Service. The question however is whether if you are setting down in legislation rights, are you setting them down so that people can take legal action on the basis of enforcing them or not?

The Government would expect to learn from overseas constitutional models in any exercise leading to a new constitutional document for the UK. It notes the Committee's examination of the South African approach in this area, which would be considered as one of a range of possibilities in discussions on any proposed UK approach.

**41 We recommend that any Bill of Rights should in the first place include only rights to health, education, housing, and an adequate standard of living, with a view to reviewing the experience after a period and considering whether to add other social and economic rights not currently included. (Paragraph 196)**

The Government notes the Committee's recommendation.

**42. We also agree with the view of our predecessor Committee that rights such as the right to adequate healthcare, to education and to protection against the worst extremes of poverty touch the substance of people's everyday lives, and would help to correct the popular misconception that human rights are a charter for criminals and terrorists. In our view, the inclusion of such rights in a UK Bill of Rights would be far more effective in countering that misperception than the Government's attempt to link rights with responsibilities in the popular imagination. (Paragraph 197)**

The content of any future Bill of Rights and Responsibilities would be a matter for debate but the Government notes the Committee's areas of priority and the underlying rationale.

### ***"Third generation rights"***

**43. In our view there is a strong case to be made for including the right to a healthy and sustainable environment in a UK Bill of Rights. The briefest consideration of the status of the right in international instruments and national constitutions shows that the right has evolved into one which is clearly capable of legal expression. We believe that a UK Bill of Rights should treat it as one of the social rights for which a particular legal regime can be devised. We recommend that the forthcoming consultation on a Bill of Rights should expressly include the right to a healthy and sustainable environment amongst the rights treated as candidates for inclusion in a UK Bill of Rights. (Paragraph 210)**

The Government recognises the area of sustainable development as one which should feature in the debate over how best to frame our rights and responsibilities, particularly in relation to future generations. It notes the principles of sustainable development agreed

between all administrations across the UK in 2005 as part of Securing the Future: A Sustainable Development Strategy, which include the principle of living within our environmental limits. The principles recognise the importance that UK society attaches to sustainability and the value of the environment as our common inheritance and for which all are responsible. Allowing sustainable development principles to feature in some form on an enduring basis in a new constitutional document might help to foster awareness of and collective responsibility for our environment. Importantly, this would need to be considered alongside the desire to preserve the balance between the executive, legislative and judicial branches of the constitution, and to ensure decisions about resource allocation remain the business of democratically elected and accountable representatives.

### ***Relationship between Parliament, Executive and the Courts***

**44. We are not in favour of a Bill of Rights which confers a power on the courts to strike down legislation. We consider this to be fundamentally at odds with this country's tradition of parliamentary democracy. In our view the innovative and widely admired parliamentary model of human rights protection contained in the HRA is the appropriate model of rights protection for our democracy. Within that model, we consider that there is scope to enhance Parliament's role further, at the same time as strengthening the protection provided for human rights, as discussed below. (Paragraph 218)**

The Government welcomes the Committee's recognition that the Parliamentary model of rights protection contained in the Human Rights Act is "innovative and widely admired" and is appropriate in our system of Parliamentary democracy. The Government would not wish to depart from the model whereby Parliament retains the final say as to the protection of rights and freedoms under either the Human Rights Act or any future Bill of Rights. The Government welcomes the discussion as to the possible variations within that model in the context of any future Bill of Rights.

**45. A UK Bill of Rights could make explicit (in a way that the HRA does not) that Parliament continues to have the power of "legislative override", by expressly declaring in an Act of Parliament that the Act or any provision in it shall operate notwithstanding anything contained in the Bill of Rights. (Paragraph 223)**

**46. To enhance democratic scrutiny of the compatibility of a Government measure with any Bill of Rights, the Bill could require Ministers to provide full statements of compatibility, containing the reasons for the Minister's view that a measure is compatible with the Bill of Rights. It could also extend its application to Government amendments to Bills and to other legislative measures such as statutory instruments and Orders in Council. (Paragraph 226)**

**47. In our view, suspended orders of invalidity would be at odds with our constitutional traditions. However, the Bill of Rights could seek to enhance Parliament's role following a declaration of incompatibility by requiring the Government to bring forward a formal response to Parliament within a defined timetable and to initiate a debate on its response, to guarantee Parliament the opportunity to express its view. (Paragraph 228)**

**48. The Bill of Rights could also require the Government to come back to court to account for what it has done to implement the court's judgment where it has declared legislation incompatible. The outline Bill provides for this. (Paragraph 229)**

**49. We recommend that any UK Bill of Rights should provide for a five yearly review and report to Parliament by an independent panel of reviewers on the operation of the Bill. (Paragraph 232)**

**50. We are not in favour of entrenching a UK Bill of Rights against future amendment or repeal by requiring that any such amendments or repeal must satisfy a special procedure, such as approval by a special parliamentary majority or by the people in a referendum. In our view such forms of entrenchment are not compatible with our tradition of parliamentary democracy which has carefully preserved the freedom of each Parliament to legislate according to its view of the public interest (Paragraph 235)**

**51. We therefore recommend that any UK Bill of Rights should follow the HRA model of a strong interpretive obligation, applying to legislation whenever enacted, entrenching the rights and freedoms against implied repeal, but leaving Parliament free to pass incompatible legislation if it makes it clear that that is its intention. We also regard it as very important that the strength of the interpretive obligation in the HRA is not diluted in any way in any UK Bill of Rights. (Paragraph 238)**

The Government has no intention of diluting the strength of the interpretive obligation in the HRA. The Government agrees with the Committee's conclusions that any enforcement mechanisms in a Bill of Rights ought to complement our existing system of Parliamentary democracy. The Government would not envisage giving additional powers of scrutiny to the courts in relation to any Bill of Rights and Responsibilities, for example through suspended orders of invalidity or being held accountable to the courts for actions taken by Ministers after litigation has concluded (for example by returning to court in respect of implementation). Similarly, the Government is opposed to any Bill of Rights and Responsibilities being entrenched against repeal or amendment, through Parliamentary procedures or a referendum, as to do so would attenuate the fundamental principle of Parliamentary sovereignty.

Taking a Parliamentary model of protection as a starting point, the exact division of responsibilities between Parliament, the executive and the courts in relation to any future of Bill of Rights would depend to a large extent on its content, and therefore could only be settled following debate on all the issues in the round. In the context of any debate, the Government would give careful consideration to the ways of enhancing democratic scrutiny and the role of Parliament suggested by the Committee.

**52. Derogation from human rights in times of emergency is currently an essentially executive function, performed under the executive's prerogative powers and accompanied by no formal requirement that Parliament be involved in any way, or any guaranteed opportunity of challenging it in court. We recommend that in any UK Bill of Rights the opportunity is taken to introduce parliamentary and judicial safeguards against wrongful derogation from rights and freedoms and to spell out clearly the conditions that would be required to be met in order to justify a derogation. (Paragraph 242) We suggest a formulation of such a clause in our outline Bill of Rights**

**and Freedoms. The clause would prescribe the conditions that have to be satisfied for a state of emergency to be declared (e.g. a serious threat to the life of the nation), and the criteria for any derogation to be valid (e.g. derogation may only be to the extent strictly required by the emergency and consistent with international obligations). The clause could also enhance the role of Parliament in the process by requiring that a state of emergency must be confirmed by Parliament before any derogation from rights and freedoms in the Bill can be made. It could also enhance Parliament's role by stipulating a strict time limit on the duration of such a declaration of a state of emergency and of any emergency legislation. (Paragraph 243)**

The Government notes the Committee's recommendation. Its approach has always been to strike the right balance between protecting national security and safeguarding the liberty of the individual. It continues to believe that any future derogation from the European Convention on Human Rights, or indeed the International Covenant on Civil and Political Rights, would be a question for the Executive, who would be best placed to make an assessment of a state of emergency and the need for any exceptional measures. The Executive in the UK is fully answerable to Parliament for all its actions.

In relation to derogation, the Committee's Report uses as an example its own recommendations in relation to proposals in the Counter Terrorism Bill to extend the maximum period of pre-charge detention. The Government believes the proposals to be consistent with the UK's human rights obligations. The Counter Terrorism (Temporary Provisions) Bill now stands ready to be introduced if and when the need arises. This would enable the Director of Public Prosecutions to apply to the courts to detain and question a Terrorist suspect for up to a maximum of 42 days. The Government firmly believes that we are reaching the point where the police will need more than the 28 days that are currently available to investigate and bring charges in a serious terrorist case and will not leave people without the protection they need.

The Government has always said that its pre-charge detention proposals are fully compatible with Convention rights including Article 5 (deprivation of liberty). The Government notes that to derogate from the ECHR, there needs to be both a public emergency threatening the life of the nation and measures that the State strictly requires to put in place to deal with that emergency that are otherwise inconsistent with the Convention right. Given that the Government's pre-charge detention proposal, containing as it does substantive safeguards and judicial oversight, is fully compatible with Article 5, a derogation is not strictly required or indeed required at all. Accordingly, it would be wholly inappropriate to seek to derogate when pre-charge detention measures can be put in place entirely compatibly with the ECHR.

**53. We welcome the Government's express recognition that a more diverse judiciary with increased understanding of the communities it serves will contribute to increased public confidence in the justice system, which will be especially important in the context of a UK Bill of Rights. We look forward to the Judicial Appointments Commission giving practical effect to the widely shared view that the pool of people from whom judicial appointments are currently made is significantly widened as a matter of urgency. (Paragraph 249)**

All measures that could help to improve diversity in the judiciary are being considered. This will ensure that the Government maintains the highest possible standards of those appointed. In relation to the eligible pool, the Ministry of Justice is currently implementing Sections 50-52 of the Tribunals, Courts and Enforcement Act 2007, which will widen the range of those eligible to apply for judicial office to include Fellows of the Institute of Legal Executives, registered Patent Attorneys and Trade Mark Attorneys.

### ***Responsibilities and duties***

**54. To the extent that the Government's interest in "responsibilities" balanced against rights is an attempt to reopen that argument about public safety, it is misconceived, for the reasons we have given in previous Reports. (Paragraph 262)**

The Government disagrees. Most rights must be exercised responsibly, bearing in mind the rights of others. Indeed, Article 17 of the ECHR specifies that: 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention'.

In addition, we owe each other, and the community in general, certain responsibilities which are key to the healthy functioning of civic society and a flourishing modern democracy. There is a worthwhile debate to be had over giving these more prominence in any new constitutional document.

**55. We welcome the Government's apparently unequivocal acceptance that, in the words of Michael Wills MP, "rights are not contingent on discharge of responsibilities." We agree and regard this as being of fundamental importance in this debate. Human rights are rights which people enjoy by virtue of being human: they cannot be made contingent on the prior fulfilment of responsibilities. (Paragraph 264)**

This is indeed the Government's view. Of course, most of the rights in the European Convention are themselves qualified or subject to the limitations which are necessary in a democratic society. The fact that we all have rights is no reason for people not to exercise them responsibly or for the Government not to encourage responsible behaviour so that the rights of all can be respected.

**56. In our view, by insisting on the importance of "responsibilities" in any new Bill of Rights, Ministers tread a fine line between educating the public on the one hand and giving sustenance to the myths about the HRA which have been so damaging to that legislation. As we have observed before, in our Reports on the DCA Review of the HRA and our Annual Report for 2007, and in this Report in relation to the Government's emphasis on "Britishness", misperceptions about human rights should be countered by exposing them as misperceptions. (Paragraph 266).**

As stated above, the Government has taken significant steps to counter myths and misperceptions over human rights, This does not detract from its view that responsibilities



are a cornerstone of our democratic society and as such would merit a prominent place in any future Bill of Rights and Responsibilities.

**57. We cannot see what purpose is served by articulating a responsibility as general as the responsibility to obey the law, nor do we believe that a Bill of Rights is the place to set out legal responsibilities which are already legally binding on the individual. We do not accept that educating people about their legal responsibilities is an appropriate function of a Bill of Rights. (Paragraph 267)**

The Government sees no difficulty in an approach to a future constitutional document which would serve to re-state already existing rights, responsibilities and duties. A Bill of Rights and Responsibilities could serve to clarify and gather together in one convenient place a broad range of rights and responsibilities, many of which might reflect existing entitlements and obligations.

**58. It seems to us that the Government is saying no more, than that rights are capable of being limited by competing interests. That is already provided for in the text of the ECHR and to the extent that it is not appreciated, it is surely a matter for education of the public rather than any attempt to amend the text or to redefine in the text of any new Bill of Rights. (Paragraph 273)**

While most rights are indeed capable of being limited by competing interests, it is worth observing that our membership of a modern democratic society entails a broad range of responsibilities in the legal, social and moral spheres.

**59. We are therefore strongly opposed to any UK Bill of Rights being called either a Bill of Rights and Duties or a Bill of Rights and Responsibilities. Rights should not be contingent on performing responsibilities, nor should a Bill of Rights impose enforceable duties on individuals or responsibilities which they are already required by the general law to discharge. (Paragraph 274)**

The Government believes that it is important to express the way in which rights and responsibilities are related. The constitutional instruments of other countries contain both rights and responsibilities. One recent Australian example is the Victoria Charter of Rights and Responsibilities (2006).

**60. Responsibilities often have some role to play in modern Bills of Rights, albeit falling far short of directly enforceable duties. (Paragraph 279)**

The Government notes the Committee's observation.

**61. The resolution of the YL problem in the HRA itself is relatively straightforward and need not await the outcome of the Bill of Rights process. (Paragraph 283)**

The immediate issues created by this case have been addressed in s145 of the Health and Social Care Act 2008. The Government has committed to consulting on the wider issue of who should be subject to the Human Rights Act, and how this should be achieved.

**62. Any UK Bill of Rights should find a way of achieving what was originally intended in the HRA, that is, binding private persons or bodies performing a public function. (Paragraph 285)**

The Government notes the Committee's view, and will consider the scope of any Bill of Rights and Responsibilities in light of the aforementioned consultation.

**63. We recommend that any UK Bill of Rights should make clear the responsibility, when performing a public function, to subordinate the manifestation of a personal belief which would discriminate against, or undermine the rights and freedoms of, others to the interests of those seeking to access public services. (Paragraph 287)**

The Convention rights provide in Article 9 for a balance to be struck between the right to manifest one's religion or beliefs, and the protection of the rights and freedoms of others.

**64. We recommend that any UK Bill of Rights should not include express provision along the lines of the equivalent South African provision giving full horizontal effect to the rights and freedoms in certain circumstances. (Paragraph 292)**

The Government agrees with the Committee's recommendation.

**65. We suggest two provisions which should ensure the indirect horizontal effect of the rights and freedoms in the Bill. (Paragraph 293) The first requires any court or tribunal interpreting any legislation or applying the common law, so far as it is possible to do so, to read and give effect to it in a way which is compatible with the rights and freedoms in the Bill and which promotes the purpose of the Bill. (Paragraph 294) The second includes the courts amongst the bodies under a duty to act compatibly with the rights and freedoms contained in the statement and to take active steps to promote and fulfil those rights and freedoms (Paragraph 295)**

The Government notes the Committee's recommendation but would defer any decisions on the enforcement mechanisms of a future Bill of Rights and Responsibilities until it had considered views expressed in consultation over the rights and responsibilities to be included.

## **Process**

**66. We recognise that the UK is in a comparatively unusual position in embarking on a debate about a Bill of Rights at the present time. It is for this reason that it is vitally important that the Government gets the process for discussing a Bill of Rights right. (Paragraph 301)**

**67. Members of the public need to feel that any Bill of Rights is not a remote document, imposed on them by Government, but something they have helped create and which reflects their values. But discussion and agreement about a Bill of Rights should also include politicians, civil society organisations, private bodies, academics, and commentators. The key issue for the Government is how to create a process which is legitimate and accountable, facilitates full and effective engagement and participation and which answers three essential questions: (1) is a Bill of Rights necessary and desirable; (2) what should it contain; and (3) how should it work in practice? (Paragraph 303)**

**68. Discussions about a Bill of Rights in Northern Ireland have taken place against a very particular political background, which is not present throughout the UK. It would**

**therefore not be appropriate for the UK Government to follow this model wholesale. However, there are positive aspects of the Northern Ireland approach which should be taken into account in designing the UK process, particularly its engagement with the public and its referral to an independent body for recommendations. (Paragraph 316)**

The Government draws lessons from the consultation on a potential Bill of Rights for Northern Ireland, including from the processes leading to the Reports of the Bill of Rights Forum (published March 2008) and Northern Ireland Human Rights Commission (published 10 December 2008). However, the Government would be cautious about referral to an independent body, and would ultimately wish to refer the final decision and enactment of any Bill of Rights and Responsibilities to Parliament.

**69. We are impressed by the innovative approach to consulting on the Victorian Bill of Rights, and in particular its focus on public engagement. (Paragraph 324) Whilst we accept that every country is different, we urge the Government to take into account the processes which were run in the state of Victoria and in Northern Ireland, which in our view had many merits, including the effective engagement of the public. (Paragraph 325)**

The Government has studied with interest both of the above mentioned consultations and recognises that many aspects of each would usefully inform any such process in the UK.

**70. We recommend that children and young people should be included in the consultation on a Bill of Rights. (Paragraph 335)**

**71. A number of different processes may need to be run in tandem, with particular methods being used to target specifically harder to reach groups. (Paragraph 335)**

**72. In our view, the process for consulting the public should be deliberative. It is not sufficient for people to be asked for their views once, without any prior opportunity for thought and reflection. (Paragraph 341)**

**73. Designing such a process is not easy and requires some sophisticated thinking and advice from organisations with expertise in effectively engaging the public. This is not, in our view, a role for Government. We recommend that an existing specialist body (with expertise in engaging the public in meaningful discussions about important constitutional issues) be employed or an ad hoc committee be appointed to conduct an effective and innovative consultation process and make recommendations to the Government. In order to command public and political confidence in the outcome, the body must be independent of Government. (Paragraph 344)**

A key aim of any consultation exercise on a future Bill of Rights and Responsibilities would be to ensure public involvement in shaping what could be a document of great significance. Of course opinions would differ markedly in some cases, but rights, responsibilities and their underpinning values must not be left exclusively for debates between politicians and lawyers. The Government notes the Committee's recommendations in relation to the form any public engagement might take.



**74. The period for public engagement should be time limited, but long enough to permit a proper engagement by the public with the key issues. We suggest that a period of six months to one year would be appropriate. (Paragraph 346)**

The Government notes the Committee's recommendation on length of consultation period.

**75. Whilst we do not consider that the situation in the UK requires such an intense public consultation process as was carried out in Northern Ireland, nevertheless in our view, for the Bill of Rights process to be effective and have any legitimacy, it needs to be adequately resourced, in particular to ensure that harder to reach and less financially able or established groups or communities are able to contribute to the discussions in a meaningful way. (Paragraph 349)**

The Government refers the Committee to its responses to Recommendations 66—68 and 70—73.

**76. We recommend that the Government lead the overall process for drafting a Bill of Rights, but not for engaging with the public. (Paragraph 351)**

The Government notes the Committee's view.

**77. We consider that there are certain non-negotiables, such as no weakening of existing human rights protection, which the Government should set out at the start of the process. We recommend that a set of guiding principles be drawn up to provide a basis for the work of the body conducting the consultation, and we suggest that they could say something along the following lines (all considerations canvassed in this Report). The guiding principles are that any modern UK Bill of Rights must:**

- **Build on the HRA without weakening its mechanisms in any way**
- **Supplement the protections in the ECHR**
- **Be in accordance with universal human rights standards**
- **Protect the weak and vulnerable against the strong and powerful**
- **Be aspirational and forward-looking**
- **Apply to the whole of the UK geographically**
- **Apply to all people within the UK**
- **Provide strong legal protection for human rights**
- **Enhance the role of Parliament in the protection of human rights.**

**(Paragraph 353)**

The Government notes the Committee's view.

**78. Similarly, before the process for public engagement starts, the Government should set out its position on a range of key issues, as the state Government did in Victoria, in**

**order to be clear about what is realistically achievable. Following the report of the independent body, it would be a matter for the Government as to the next steps. (Paragraph 354)**

The Government would be mindful of this recommendation in embarking on any process towards a future Bill of Rights and Responsibilities. It would be particularly alert to the need to work towards an achievable model for the UK, bearing in mind its constitutional history, its existing broad framework of rights and responsibilities, and the importance of any new Bill of Rights and Responsibilities having regard to future generations, reflecting the aspirations of a modern democratic UK society.

### **Letter from Richard Baron, Head of Taxation, Institute of Directors to the Chairman (15 October 2008)**

I am writing to you, and to all other members of the Committee, to express our considerable interest in the Committee's work on a possible Bill of Rights for the UK, and in any further work that may take place on this topic.

It may seem odd for the Institute of Directors, a business organisation, to take such an interest, but there are aspects of the work to date which we believe could have significant implications for business and for the economy.

The civil and political rights and freedoms, the fair process rights, the democratic rights and the rights of particular groups listed in the outline Bill of Rights and Freedoms, on pages 109, 110, 112 and 113 of the Report, are mostly not specifically business concerns, although business people will have views on them just like everyone else, and some of the rights, such as property rights and the right to fair and just administrative action, would have direct relevance to the conduct of business.

Our main concern is with the economic and social rights listed on page 112. We agree that health, education, housing, an adequate standard of living and the environment are important concerns. We also accept that taxes are necessary to help to meet these needs. We are however very concerned at the idea of covering such matters in a Bill of Rights and Freedoms. Such a bill, even if not legally entrenched in any way, would be perceived as having a special status, and its contents would come to be regarded as sacrosanct. The inclusion of economic and social rights would tend to entrench the "big state" model, creating a permanent expectation that it was the job of the Crown to satisfy economic and social expectations at taxpayers' expense. The placing of duties on the Government to take appropriate measures and to report to Parliament, as proposed in the Report, would only re-inforce that impression.

We have no doubt that substantial state provision, at taxpayers' expense, will continue for the foreseeable future. But we see no reason to entrench an expectation that future improvements will be achieved by the same route, or to create a presumption against changing the form of some existing provision. It may be feasible to give alternative methods of provision a significant role. We cannot predict such developments, and the Government and Parliament will have to take appropriate decisions at the time. It is in our view essential that they should not be constrained by any sense that the "big state" model is

entrenched, nor should those who wish to argue for that model be able to rely on such an entrenchment to supplement their other arguments.

There are other reasons for not including economic and social rights. Some of these are discussed on pages 51 to 53 of the Report. There is also the distinction between negative and positive liberty. While the Report contains a few references to this distinction, we think that this distinction is a very significant one which will need to be given much more prominence in future discussions. Specifically, there is the argument that positive liberty is in fact nothing to do with liberty, an argument most famously articulated by Sir Isaiah Berlin in his lecture "Two Concepts of Liberty". To the extent that this argument should be accepted, the inclusion of economic and social rights in a new Bill of Rights would only muddy the waters, detracting from the Bill's status as a safeguard of the rights which really are a part of liberty. Furthermore, this would be an argument of principle against the inclusion of economic and social rights, unlike the objections considered in the Report (see paragraph 191).

Regrettably, we did not submit evidence to the Committee in connection with the Report. We appreciate that it is now up to the Government to decide whether, and how, to take forward the idea of a new Bill of Rights. However, we would hope that either the Committee as a body, or its members individually, would have a significant role in the process. This is why we would like to raise these points now, and register our interest in any future discussions. We will of course also register our interest with the Government.

## **Letter from the Chairman to the Rt Hon Jack Straw MP, Secretary of State for Justice (17 December 2008)**

### **Human Rights Act 1998**

As you are aware, my Committee has had a longstanding interest in the promotion of the Human Rights Act 1998 (HRA). In its last annual report, we drew attention to the fact that the HRA was often wrongly blamed for unpopular judicial or administrative decisions and said that it was "essential that Ministers refrain in future from misleading the public by continuing the practice of blaming the Human Rights Act for judicial or other decisions with which they disagree or which embarrass them."<sup>5</sup> In response, Michael Wills MP said he had seen no evidence of ministers misleading the public about the effect of the HRA.<sup>6</sup>

We have continued to pay attention to this issue since our last annual report and note that during most of 2008, Ministers generally refrained from making critical or misleading remarks to the press or Parliament about human rights or the HRA. However, we note your recent comments in your interview with the Daily Mail (7 December 2008) that "there is a sense that [the HRA] is a villain's charter or that it stops terrorists being deported or criminals being properly given publicity. I am greatly frustrated by this, not by the concerns, but by some very few judgments that have thrown up these problems." According to the Daily Mail, you also blamed "nervous" judges for refusing to deport

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<sup>5</sup> Sixth Report of Session 2007-08, The Work of the Committee in 2007 and the State of Human Rights in the UK, HC 270, HL Paper 38, para. 4.

<sup>6</sup> Eighteenth Report of Session 2007-08, Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK, HC 526, HL Paper 103, p. 6.

extremists and terrorist suspects despite assurances by ministers that their removal is in the national interest. You outlined your wish to “rebalance” the rights set out in the HRA by adding explicit “responsibilities” to obey the law and be loyal to the country.

I am writing to express my concerns at these reported comments, in the light of our recommendations in our last annual report and the Government's response to it. In particular, I am concerned by the public effect of the reporting of these comments, at a time when the Human Rights Act and the concept of human rights are vulnerable.

We would be grateful if you could clarify your comments, preferably by sending us a transcript of your interview with the *Daily Mail* so we can appreciate the full context of your remarks. In particular, it would be helpful if you could provide a full explanation of the specific judgments which it is reported have caused you frustration.

### **Letter from the Rt Hon Jack Straw MP, Secretary of State for Justice to the Chairman (11 January 2009)**

I am writing in response to your letter of 17 December 2008, in which you express your concerns about my position in relation to the Human Rights Act (HRA) 1998 and ask me to clarify remarks I made in an interview with the *Daily Mail* (8 December 2008).

As I made clear in the interview, I remain firmly supportive of the Human Rights Act 1998 and the way in which it has improved protection for human rights in the UK. Indeed, I regard it as one of the landmark achievements of this Government. I also observed during the interview, as was recorded in the published article, that the HRA tends to go unnoticed when it does help to defend individuals from unacceptable abuse. Moreover, the *Mail* noted that I was “quick to defend” the Act.

I acknowledged in the interview the fact that the Act is unfortunately perceived by sections of the public and the media as a ‘villains charter.’ I have drawn attention to that problem on many occasions and indeed I talked about this in my evidence to the Joint Committee on 21 May 2008.

I believe such a negative perception arises in part because of public unease about the limits placed by the European Court of Human Rights on the Government's ability to return terrorist suspects to their country of origin.

In addition, I have often said that although rights are clearly identifiable in the HRA, the responsibilities which go with them are less visible. The rights enshrined in the HRA already encompass responsibilities – but implicitly. I believe that now we should seek to articulate them explicitly. Hence we want to build on the benefits of the HRA.

The Government is therefore seeking to generate debate about whether there should be some new way of framing our responsibilities and rights in order to reflect the values which bind us as a UK society. Which particular responsibilities should be incorporated in any such document should ultimately be a matter of public debate.

## **Transcript of Dame Nuala O'Loan's lecture commemorating the 60th anniversary of the Universal Declaration on Human Rights, hosted by the Committee on 10 December 2008**

Good evening Ladies and Gentlemen. I am very honoured to have been invited to deliver this lecture on the occasion of the commemoration of the 60<sup>th</sup> Anniversary of the Universal Declaration of Human Rights. I would like to express my thanks to Mr Andrew Dismore and his colleagues on the Joint Committee of the House of Commons and the House of Lords for their kind invitation to be here today. It is my intention to reflect on what was done in 1948, what has been achieved since, where we are now and what challenges remain for us.

Knowing that this occasion was approaching I have watched with interest the debate on Human Rights both globally and nationally as this anniversary approached. They have been quite different. I spoke at the United Nations in Geneva a couple of weeks ago, where the debate was about how to ensure maximum compliance with Human Rights standards and how to handle the complex problems of peace-keeping. In Delhi last week at an Asia Europe Foundation meeting, countries as widely dispersed as Outer Mongolia, Cambodia, Spain, India and Latvia pondered how to give real effect to Human Rights in policing across Asia and Europe. There was whole hearted commitment to the principles of Human Rights and Fundamental Freedoms.

The debate here in the UK seems to be reaching a crescendo with commitments to repeal the Human Rights Act and a discourse which can be, on the one side, both dismissive and contemptuous of Human Rights, whilst on the other there continues to be a passionate commitment to the basic principles of Human Rights. It has been interesting to reflect on this situation as I have contemplated the events of 60 years ago. I was particularly encouraged today to hear both Prime Minister Gordon Brown and Rt Hon Michael Wills MP, Minister of State for Justice articulate their clear support for Human Rights today. A Liberty poll published today shows that 96% of those polls think rights and freedoms are important.

Few of us here today will have personal memories of the two World Wars. Yet every November we remember all those who gave their lives in all the wars and we seek, too, to support those lives that have been irreparably damaged because of their service to their country. We remember too, all those who died, and we can see in the stark statistics of the nature of the deaths in the two wars the changing face of modern warfare. In 1914-1918 approximately 95% of those who died were military, only 5% were civilian casualties, but in 1939-1945 only 33% of those who died were in military service – 65% were civilians. Over 45 million people died.

Such was the scale of death and the physical, economic, social and spiritual devastation of the war that the peoples of the world came together in the United Nations in San Francisco in June 1945 to try and enter into agreements to try to prevent this ever happening again. The first and greatest level of activity was aimed at creating and agreeing, between as many nations as possible, a Universal Bill of Rights. The work was hard and the United Kingdom played its part from the beginning – the first draft of a Bill of Rights was presented to the UN by Lord Dukeston, the UK member on the United Nations Commission on Human Rights. He also presented a draft resolution which might be passed by the General

Assembly when adopting the Bill. As events played out the Commission decided that its first instrument would be the Universal Declaration of Human Rights. The Yearbook of the United Nations 1948-1949 records the UK's contributions to the debate, including the articulation of the need for a Convention and implementing measures to give effect to the declaration. On 10 December 1948, after over two years work the Declaration was adopted in Paris by 48 votes with 8 abstentions.<sup>7</sup>

I think much has been forgotten, or indeed never known, about the Universal Declaration and the various instruments which followed it. There has been much talk of the need to legislate for responsibilities as well as rights, but this recognition of the responsibilities of citizens is not new. The General Assembly of the UN, in 1948 proclaimed in the first paragraph of the Declaration that it was:

“a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.”

The International Covenant on Civil and Political Rights which was adopted on 16 December 1966, pursuant to the Universal Declaration, had in the final paragraph of its preamble the following words:

“Realizing that the individual, having duties to other individual and to the community to which it belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present covenant.”

What seems to have been missing recently is the spirit of the Universal Declaration which stated:

“All human beings should act towards one another in the spirit of brotherhood<sup>8</sup> and everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”<sup>9</sup>

And finally:

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<sup>7</sup> General Assembly Resolution 217 A (III) of 10 December 1948, which proclaimed the Universal Declaration of Human Rights was adopted as follows: In favour: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam (Thailand), Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela. Abstaining: Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, Yugoslavia.

<sup>8</sup> Article 1, Universal Declaration of Human Rights

<sup>9</sup> Article 29, Ibid



“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”<sup>10</sup>

This may be slightly archaic language but the intention and the commitment is clear. Human rights were always about responsibilities too. We have just forgotten that.

So what was it that we pledged ourselves to promote and respect sixty years ago? I am going to articulate some of the fundamental rights briefly, and as I do so, I ask you to consider whether you would wish to expunge any one of these rights or whether you believe, as our forefathers did that they are universal and fundamental. The United Kingdom has a long tradition dating from the Magna Carta in 1215 of providing legal protection for rights. I could have chosen any of the rights, but I will simply refer to a few because I have limited time. As I articulate them I would ask you to bear in mind the exhortations as to responsibility to which I have just referred.

- The fact that we are all born free and equal in dignity and rights without distinction of any kind;
- That we all have the right to life, liberty and security of person;
- That there shall be no slavery; and that everyone is a person before the law;
- That no-one shall be subjected to torture or cruel, inhuman or degrading treatment;
- That we are all equal before the law and entitled to equal protection before the law;
- That we have the rights to an effective remedy for acts violating our fundamental legal or constitutional rights;
- That no-one shall be subjected to arbitrary arrest, detention or exile;
- That we are entitled to fair trial, and have the right to be presumed innocent of any criminal charge until proved guilty under the law;
- That we have a right to privacy, marriage, family, home or correspondence and to our honour and our reputation;
- That we have the right to own property, and the freedom of thought, conscience and religion, of opinion and expression and peaceful assembly and association.

I think that you will agree that the rights articulated in the Declaration are not subversive, but they are fundamental to our status as human beings. Their declaration, after all, was the product of the fact that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want, has been proclaimed as the highest aspiration of the common people.”<sup>11</sup>

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<sup>10</sup> Article 30, *Ibid*

<sup>11</sup> Paragraph 2 *Ibid*

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Eleanor Roosevelt, who was the Chairman of the Human Rights Commission at the time, said "Where, after all, do universal human rights begin? In small places, close to home -- so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerned citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

Those days of 1948 were hard days, as the world rebuilt itself after seven years of conflict and we know that the aspirations of 1948 clearly have not been met in all countries. Nonetheless significant progress has resulted from the lengthy and difficult arguments which led ultimately to the adoption of the UN Declaration. The international covenants which followed address a huge variety of issues from civil and political rights, economic and social rights, the elimination of discrimination against women, the rights of a child, the involvement of children in armed conflict, the elimination of racial discrimination, the convention against torture, and the conventions on the status of refugees and stateless persons, the status on the rights of immigrant workers and the Statute on the International Criminal Court. There are now Inter-American Conventions, African Conventions and a European Convention as each seeks to fulfil its obligations under the Universal Declaration. It is not easy for states across the world to agree minimum standards on all these issues and yet it has been done.

European states moved very early to adopt the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950. It was a creature of the Council of Europe, predating the European Union. The European Convention has formed the basis of our Human Rights Law since then. Those rights are more limited than the range of rights contained in the Universal Declaration. They are the rights which Parliament incorporated into law when it passed the Human Rights Act 1998, which came into effect in October 2000. Whilst previously our rights under the European Convention were only actionable against the State in the European Court of Human Rights, now they are actionable in our own courts. Where previously a Human Rights case involved a long journey to Strasbourg and litigation which might last ten years or more, the Human Rights Act gave us all the right to pursue our Human Rights in our own local courts. Those who are calling for the repeal of the Human Rights Act will deprive us of the right to bring cases in our own courts, sending us back on the long journey to Strasbourg, unless they enact a replacement act which gives us the same rights to bring action in our own courts.

So where are we now in terms of our Convention rights? The Universal Declaration was very clear



“Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.”

The ideal of the Universal Declaration of a world in which Human Rights would be respected has not been achieved. There are major problems in Iraq, Afghanistan, Darfur, Sri Lanka, the Democratic Republic of the Congo, Israel and Palestine to name but a few. There have been 63 UN peacekeeping operations since 1948. There are currently 16 peacekeeping operations involving 110,000 troops.<sup>12</sup> UN statistics indicate that, as at October 2008, the United Kingdom had 336 personnel engaged on such operations. In addition to this, of course, we have our military operations in Iraq and Afghanistan. For almost forty years the UK has had its own counter-terrorist operations.

What happened during the Northern Ireland conflict is widely talked about, but not necessarily widely understood. Whilst the various paramilitary factions were engaged in a campaign of murder and maiming and destruction of our property and infrastructure, the United Kingdom sought to contain the conflict. Some of the methods used by some agents of the State were undoubtedly counter-productive and inconsistent with the Human Rights obligations to which the United Kingdom had subscribed, and indeed, on occasion, with the law, others were underpinned by derogations from the Conventions.

There are particular strategies which, in retrospect, can be seen to have had a very significant impact not just on people's human rights but also on the fight against terror. On 09 August 1972 security forces entered Republican areas of Northern Ireland, taking indiscriminately, it seems, men aged from 17 years old. 1981 individuals were interned – 107 Protestant, 1874 Catholic. Some of them were subject to what was at the very least cruel, inhuman and degrading treatment to try and get information out of them, and they were held, imprisoned but neither awaiting trial nor convicted, for up to three years. The sheer injustice of internment, and its economic and social consequences caused massive resentment, generated huge resistance to the law and are widely thought to have strengthened the position of the IRA across Northern Ireland. Detention without trial is a very dangerous process. The decision of Parliament, in October last, not to extend the period within which people can be held for questioning under the Counter-Terrorism Bill clearly reflected what we have learned over the years.

The Government of the United States is now operating a process of internment without any proper legal process or safeguards in Guantanamo Bay and other locations.

Barry McCaffrey, a retired four-star US general who is a professor of international security studies at the West Point military academy, said in May 2004, "We're probably holding around 3,000 people, you know, Bagram Airfield, Diego Garcia, Guantánamo, 16 camps throughout Iraq."

In December 2007 he repeated the claim. Amnesty International stated in its 2008 Report that, as at December 2007, there were 275 detainees still in Guantanamo.<sup>13</sup> Allegations were

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<sup>12</sup> <http://www.un.org/Depts/dpko/dpko/factsfigs.html>

<sup>13</sup> Amnesty International Report 2008: The State of the World's Human Rights

made that prisoners were being transported on rendition flights through UK airports. For a long time this was denied, but in February 2008 the Government announced that they had been misinformed by the United States and that two US flights which had stopped over at British airports had been rendition flights. The CIA had told the government that each plane contained a single suspect and that neither of the men had been tortured.

During the early years of the Troubles a number of techniques were used by state interrogators to secure information from detainees – five of those techniques, wall standing, hooding, noise, sleep deprivation, food and drink deprivation, were routinely used. I have read the interview notes of some of the people who were interviewed by the police during this period. They are interesting. During lengthy interviews there is only half a page of notes. It is recorded that the detainee said nothing. Some of them may well have been trained so to do. This goes on for several interviews. Suddenly during the third or fourth interview, which is relatively short, fifty or sixty names are given by the detainee, who also provided details of the extensive involvement of those named individuals in proscribed organizations, so that you would wonder whether so much specific information could have been recorded in the time available.

Until 1975 officials denied that these techniques, described by detainees, were used, referring to the allegations of torture as IRA propaganda. They were not propaganda. The European Commission for Human Rights announced that these five techniques were used and amounted to torture. In a case was brought against the United Kingdom by Ireland<sup>14</sup> the European Court, whilst not finding torture, announced that the techniques “undoubtedly amounted to inhuman or degrading treatment” in breach of Article 3. On 8 February 1977 the Attorney General on behalf of the UK announced in the European Court that:

“The Government of the UK have considered the question of the use of the five techniques with very great care and with particular regard to Article 3 of the Convention. They now give this unqualified undertaking that the five techniques will not in any circumstances be re-introduced as an aid to interrogation.”

However, In March 2007 the judge presiding over the court martial of seven UK military personnel charged in connection with the torture and death in September 2003 of a man called Baha Mousa, and the treatment of a eight Iraqi civilians arrested and detained in A UK military base in Basra stated that hooding detainees, keeping them in stress positions and depriving them of sleep had become standard operating procedures within the battalion responsible for detaining the men. Following a number of court hearings including in the House of Lords, in March 2008 the then Defence Secretary, Des Browne, admitted substantive breaches of the European Convention and Bob Ainsworth, Armed Forces Minister apologised to the family of Baha Mousa and the eight other detainees. On 10 July it was reported that the Government had agreed to pay £2.83m to the family of Baha Mousa and to the other detainees.

The process of fighting terrorism demands a great deal of governments. An honest and robust appraisal of the strategies and failings of campaigns is however necessary. The United Kingdom is proud of its commitment to Human Rights but lessons must be learned

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<sup>14</sup> CASE OF IRELAND v. THE UNITED KINGDOM (Application no. 5310/71)

from the past. That the findings of 2008 should be similar to the findings of 1977 is a cause for concern.

As Justice William Brennan said of the United States in 1987,<sup>15</sup>

“There is considerably less to be proud of and a good deal to be embarrassed about, when one reflects on the shabby treatment civil liberties have received in the United States during times of war and perceived threats to national security... After each perceived crisis ended the United States has remorsefully realized that the abrogation of civil liberties was unnecessary. But it has proven unable to prevent itself from repeating the error when the next crisis came along.”

One of the principles of law is that the State is responsible for the actions of its agents. My own McCord Report published in January 2007<sup>16</sup> articulated extensive failures by some police officers in Northern Ireland to deal properly with a series of almost 100 very serious crimes allegedly committed by terrorists who were also allegedly informants. Despite extensive interviews officers were unable to explain satisfactorily what had happened. The activities which we investigated were numerous but included

- Failing to arrest informants for crimes to which those informants had allegedly confessed or to treat such informants as suspects of crime;
- Arresting informants suspected of murder, subjecting them to a series of lengthy sham interviews by their own intelligence handlers, and then releasing them without charge; and
- Withholding from police colleagues information about the location to which suspects had fled after a murder, the consequence of which was that the alleged murderers could not be detained immediately and opportunities for evidence gathering were lost.

In the absence of satisfactory explanation, using the definitions of collusion created by Lord Stevens in his 3rd Report on the Finucane Investigation and Judge Cory in his four Reports, I came to the conclusion that the activities of some members of the RUC in protecting specific terrorist informants from investigation and in failing to deal, as required by the law, with a large number of situations, constituted collusion. The police kept their informants, but the level of crime in which those informants were involved rose as they realised that they would in all probability not be dealt with for such serious crime. People stopped trying to assist the police, and confidence in the police dropped as people saw the apparent impunity with which some individuals were allowed to act.

The challenge to governments fighting the war against terror is to remain within the law themselves. As a State we have international interests and obligations. It is acknowledged that the fight against terrorism, and engagement in war is an extraordinarily complex process. Nevertheless it must be a lawful process. The risk is that the processes used by governments have the effect of growing that very terrorism which they seek to destroy. It is

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<sup>15</sup> Wm J Brennan Jr “The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crises” *Israel Yearbook of Human Rights* 1988

<sup>16</sup> Statement by the Police Ombudsman for Northern Ireland on her investigation into the circumstances surrounding the death of Raymond McCord Jnr. and related matters.

consistent with all our obligations under law and indeed with the Universal Declaration, that our strategies and policies must be risk-assessed in many contexts including an examination of the Human Rights implications for any proposed action. The credibility of Government rests, inter alia, on its compliance with the Rule of Law.

Perhaps the most contentious area in England and Wales relates to the operation of the law relating to the return of people who have no right to remain in the UK to their countries of origin. The application of the law in this field is enormously difficult. No one state is capable of absorbing immigrants indefinitely and there have to be processes to control immigration. Such processes must not result in people being sent back to countries where they will be tortured or killed. Today in the House of Commons a meeting was held on the dossier "Outsourcing Abuse," alleging ill-treatment of people being deported from the UK, which has been presented to the Home Secretary. It is now the subject of an independent review which I am conducting, so I will make no further comment.

The United Kingdom has in many ways led the world in legislation giving effect to the general principles of the Universal Declaration. We abolished the death penalty in 1957. Our Police and Criminal Evidence Acts give some significant protections to those arrested on suspicion of having committed an offence, consistent with Article 6. Similarly our laws, designed to ensure proper disclosure of material which may assist a defence or undermine a prosecution are reflective of Article 6. Our Regulation of Investigatory Powers Act makes provision for control over the use of powers of surveillance and interception – an important control over the invasion of privacy involved in such investigative processes.

One of the things which has happened however, has been an increasingly repressive regime of legislation following the attacks in the United States on September 11 2001. One example of this is the legislation amending the Police and Criminal Evidence Act which gave the Police the power to retain fingerprints, cellular samples and DNA profiles of persons who were suspected, but not convicted of offences. Previously such samples were disposed of. This has caused significant concern among people who objected to the fact that their records were retained together with those of criminals who had been convicted, simply because they were a suspect, whether or not such suspicion was ultimately justified. In addition to this there have been concerns about the future sharing of the data bases with other countries and the lack of accountability for the handling of the data.

The concern of the populace about how the state treats its personal data is not new. As Police Ombudsman I was twice asked by the Police Service of Northern Ireland to guarantee to members of the public that I would supervise and ensure the destruction of all DNA samples and records collected during two separate police investigations, so that the public would co-operate with investigations in which the police were trying to encourage mass donation of DNA samples. In both cases the public were not responding to the police request to give samples, despite police assurances that all non-relevant samples would be destroyed. One case involved a murdered baby, who became known as Baby Carrie, because she was found in Carryduff. The second case involved the murder of an old woman. In both cases I agreed to assist and, following the requisite action, we provided the necessary assurances that all samples and all records relating to them had been destroyed. Once the assurance was provided the people responded to the police request.

On 4 December this year, the European Court of Human Rights found in the case of S and Michael Marper v UK that :

“the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests and that the respondent State has overstepped any acceptable margin of appreciation in this regard. Accordingly, the retention at issue constitutes a disproportionate interference with the applicants' right to respect for private life and cannot be regarded as necessary in a democratic society.

126 Accordingly, there has been a violation of Article 8 of the Convention in the present case.”<sup>17</sup>

The European Court in reaching this judgment took account of the standards in other signatory states. Now the United Kingdom will have to consider how it intends to comply with the judgment.

Much of the Convention focuses on discrimination issues, and our anti-discrimination and equality legislation is wide-ranging and has forced change where change was very necessary, giving remedies to those deprived of rights of access by reason of disability and subjected to discrimination on grounds of disability, gender, race etc. One could articulate multiple examples of legislation, now part of our framework of government, which reflect the principles of the Universal Declaration.

But much remains to be done. I am currently chairing a statutory enquiry for the Equality and Human Rights Commission, established in October 2007. That enquiry seeks to establish the extent to which there is a human rights culture in England and Wales (Scotland has, for some purposes its own Human Rights Commission), the nature of barriers to the creation of such a culture and evidence of good practice which might provide models for future development. It is very clear that we are far from having a human rights culture – it has long seemed to me that this failure to understand the nature of human rights is caused by our lack of knowledge. The enquiries conducted by the JCHR have identified failure to understand and give effect to human rights as a major challenge.

One of the interesting things which one can observe following the public debate is that whilst there is wide-scale ignorance of human rights, nevertheless there are those who have used the principles of Human Rights to secure proper treatment in their everyday life.

The Human Rights Act provides protection where other sector specific legislation does not provide a remedy. There are many such situations – we can point for example, to a 12 year old sick little boy, the subject of a “Do Not Resuscitate” order in hospital, whose parents successfully challenged the order, and to an old couple who had reached the stage at which they could no longer care for themselves. They were going to be placed in separate homes but an assertion of their right to their home under Article 8, and this finally resulted in them being placed together. Similarly there are many examples of people living in

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<sup>17</sup> CASE OF S. AND MARPER v. THE UNITED KINGDOM (Application nos. 30562/04 and 30566/04)



inadequate housing conditions, receiving inadequate medical or social care who have been able to point to the Human Rights Act and gain proper provision and care.

It has seemed to me that there is a lack of understanding in the UK, not only of what we are talking about when we refer to Human Rights, but also of the fact that Human Rights belong to each of us. They are not the property of the other – particularly when that other is “criminal” a “terrorist” or indeed a “member of a particular ethnic minority”. People say that criminals, particularly murderers should not have human rights. What they fail to appreciate is that those who go to prison experience the balancing of their rights against the rights of society and so they lose the right of liberty, the right of living in their own home, the right to privacy etc. What they do not lose is the right to be treated and punished in accordance with the law. And Parliament makes the law. It is Parliament which determines maximum penalties for offences committed not judges. It is Parliament which identifies in legislation the component parts of a criminal offence. It has been Parliament which has legislated extensively to provide for a fair trial. Judges only intervene where Parliament has not legislated or there is an inconsistency in the legislation which makes it incapable of application. Where there is a gap judges can develop the law. Where Parliament disagrees with a judgment it can change the law.

Human Rights can be asserted through the courts of course. I was once challenged by way of judicial review by police officers who were suspected of having committed a particular crime. We wanted to interview them simultaneously so that there would be no possibility of them conferring. They claimed the right to use one particular solicitor, which would have had the effect of forcing sequential interviews. They claimed that the refusal to allow them to use the same solicitor would deprive them of their right to a fair trial under Article 6 of the European Convention. In the event the Judge declared that my decision that it was necessary to interview them simultaneously was reasonable in the circumstances, and that the Article 6 right to a fair trial was not engaged prior to charge.

Even Article 2 which deals with the right to life is subject to an exception which permits the use of force which is no more than absolutely necessary

- defence of any person from unlawful violence,
- to effect a lawful arrest or to prevent the escape of a person lawfully detained
- or in action lawfully taken to quell a riot or insurrection.

One case which I dealt with involved the death of a young man shot by police who were trying to stop a car which police believed contained two men and a firearm which was going to be used in a planned murder. When the car was brought to a hard stop by police the driver refused to stop and despite repeated warnings by police he continued to try and escape. In so doing he knocked down a police officer who then lay in the path of the car driven by the man who wanted to get away. He revved the car repeatedly and tried to move forward despite police warnings, heard by people in their homes, that if he did not stop they would fire. A police officer shot him, to stop him driving over the officer who was lying on the ground in the path of his car. He died of his wounds. I found no breach of Article 2.

It is of course the case that there are occasions when Human Rights Law is abused – there are also many cases when its application is mis-reported. I think of the case of Denis Nilson who was reported to have been given hardcore pornographic material in his prison cell because it would be a breach of his Human Rights to refuse his request for pornography. This is nonsense. The request for a gay art book was refused, a decision of the Prison Governor which he sought unsuccessfully to challenge in court. Similarly there are will continue to be cases in which a lack of proper understanding of Human Rights Law will lead people to make the wrong decisions. The HM Inspectorate of Probation Report on the case of Antony Rice who was released from prison, and who murdered Naomi Bryant in 2005 stated that Rice was released because the Parole Board did not have full knowledge of all the facts relating to him, received over-optimistic reports of his progress, had placed him in an open prison giving rise to expectations of release, and allowed their public protection considerations to be undermined by human rights considerations. In cases such as this training and development is necessary to address the deficit in those who must make these critical decisions, and leadership is needed to articulate the facts of the case, not empty, inaccurate rhetoric.

As the debate on the United Kingdom's law on Human Rights and its attitude to its various Conventions obligations continues, it seems to me that there is a need for a new dialogue which uses the language of the Universal Declaration and the UN Covenant on Civil and Political Rights. That will be a language which acknowledges that the recognition and assumption of responsibilities are fundamental to citizenship; that Human Rights are not all absolute: some are limited and some may be qualified; which accurately reflects the extent and nature of our human rights. We have had and will continue to have as a society to balance competing rights – in Northern Ireland the conflict between the right to march on the one hand and the right to protest against those marches led to massive civil unrest and cost millions of pounds. The debate was conducted more in terms of the assertion of individual rights than the recognition of the rights of the other, or any attempt to balance those rights. We have now got to the stage where we recognise these as conflicting rights which must be balanced.

The delicate process of balancing rights will challenge us all in the days to come. As a state we must consider the rights of asylum seekers, prisoners, the elderly, the disabled, the sick, those who need access to appropriate education etc. We must also develop our strategies in the war against global crime and terror.

We must firstly ensure that we do not lose those rights which were fought for so bravely and with such determination after the Second World War. We must also initiate a debate about what it means to belong to society and what obligations and responsibilities attach to our citizenship. They are two separate debates. The important thing is that we do not confuse them, but that we create the necessary space for local and national debate, and that clear leadership emerges to focus and enable our discussions about how we ensure compliance with our obligation to ensure the “promotion of universal respect for and observance of human rights and fundamental freedoms” whilst growing the realisation that rights and responsibilities are both critical to fair and effective governance.



# Reports from the Joint Committee on Human Rights in this Parliament

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## The following reports have been produced

### Session 2008-09

First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145

### Session 2007-08

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378
Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380

Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440
Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455
Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635
Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper 172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079

#### Session 2006-07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
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Second Report	Legislative Scrutiny: First Progress Report	HL Paper 34/HC 263
Third Report	Legislative Scrutiny: Second Progress Report	HL Paper 39/HC 287
Fourth Report	Legislative Scrutiny: Mental Health Bill	HL Paper 40/HC 288
Fifth Report	Legislative Scrutiny: Third Progress Report	HL Paper 46/HC 303
Sixth Report	Legislative Scrutiny: Sexual Orientation Regulations	HL Paper 58/HC 350
Seventh Report	Deaths in Custody: Further Developments	HL Paper 59/HC 364
Eighth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005	HL Paper 60/HC 365
Ninth Report	The Meaning of Public Authority Under the Human Rights Act	HL Paper 77/HC 410
Tenth Report	The Treatment of Asylum Seekers: Volume I Report and Formal Minutes	HL Paper 81-I/HC 60-I
Tenth Report	The Treatment of Asylum Seekers: Volume II Oral and Written Evidence	HL Paper 81-II/HC 60-II
Eleventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 83/HC 424
Twelfth Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 91/HC 490
Thirteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 105/HC 538
Fourteenth Report	Government Response to the Committee's Eighth Report of this Session: Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9 order 2007)	HL Paper 106/HC 539
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 112/HC 555
Sixteenth Report	Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights	HL Paper 128/HC 728
Seventeenth Report	Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers	HL Paper 134/HC 790
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume I- Report and Formal Minutes	HL Paper 156-I/HC 378-I
Eighteenth Report	The Human Rights of Older People in Healthcare: Volume II- Oral and Written Evidence	HL Paper 156-II/HC 378-II
Nineteenth Report	Counter-Terrorism Policy and Human Rights: 28 days, intercept and post-charge questioning	HL Paper 157/HC 394
Twentieth Report	Highly Skilled Migrants: Changes to the Immigration Rules	HL Paper 173/HC 993
Twenty-first Report	Human Trafficking: Update	HL Paper 179/HC 1056