



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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**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**

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**Eighteenth Report of Session  
2007–08**

*Report, together with formal minutes, and  
appendix*

*Ordered by The House of Commons to be printed*

*29 April 2008*

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## 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 Stern

#### HOUSE OF COMMONS

John Austin MP (Labour, *Erith & Thamesmead*)  
Mr Douglas Carswell MP (Conservative, *Harwich*)  
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*)

### Powers

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), Bill Sinton (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Committee Specialists), James Clarke (Committee Assistant), and Karen Barrett (Committee Secretary).

### Contacts

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# Contents

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	<i>Page</i>
<b>Report</b>	
<b>1 Report</b>	<b>3</b>
Response from Michael Wills MP, Minister of State, Ministry of Justice, dated 8 April 2008	5
<b>Formal Minutes</b>	<b>4</b>
<b>Appendix</b>	<b>5</b>
<b>Reports from the Joint Committee on Human Rights in this Parliament</b>	<b>18</b>



# 1 Report

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We received the Government's Response to our Sixth Report of Session 2007-08, *The Work of the Committee in 2007 and the State of Human Rights in the UK* (HL Paper 38, HC 270) in the form of a memorandum from Michael Wills MP, Minister of State at the Ministry of Justice, dated 8 April. We publish the memorandum as an Appendix to this Report and will comment as appropriate on its contents in future Reports.

# Formal Minutes

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**Tuesday 29 April 2008**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Mr Richard Shepherd MP
Lord Lester of Herne Hill	
The Earl of Onslow	
Lord Morris of Handsworth	
Baroness Stern	

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Draft 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*), proposed by the Chairman, brought up and read the first and second time, and agreed to.

A Paper was ordered to be appended to the Report.

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

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

[Adjourned till Tuesday 6 May at 1.30pm.]

## Appendix

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### Response from Michael Wills MP, Minister of State, Ministry of Justice, dated 8 April 2008

I am writing to respond to the Committee's conclusions and recommendations in the above report. In general, I and my colleagues at the Ministry of Justice are grateful for the work done by the Committee and for the way your work will inform how we continue to develop human rights in this country and build upon the HRA. In responding in detail, I have adopted the Committee's numbering as in the summary at page 36 of the report.

**1. We are disappointed that the Government should have decided to scale down its efforts at 'myth-busting' in relation to the Human Rights Act, especially when Government Ministers are themselves often responsible for creating misconceptions about the Act. All politicians have a duty to act responsibly in relation to the protection of human rights and should not use the Human Rights Act as a convenient scapegoat for unpopular decisions, when they are usually nothing to do with human rights or the Human Rights Act. It is 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. (*paragraph 4*)**

The Human Rights Programme at the Ministry of Justice was established to implement the findings of the Review of the Implementation of the Human Rights Act 1998<sup>1</sup> published in July 2006. The Review found, amongst other things, that a number of damaging myths such as those cited by the Committee had grown up around the Human Rights Act.

As part of the Programme, a network of press officers in ministerial departments was established. Its members liaise regularly with the Ministry of Justice press office on human rights issues, identifying and correcting inaccurate or misleading media coverage of human rights issues, thereby seeking to prevent the repetition of old myths and the creation of new ones. A collection of the most commonly-repeated myths about the Human Rights Act, together with information to facilitate their rebuttal, has been circulated to the network and is regularly updated.

The Human Rights Programme was successfully completed in October 2007. An internal evaluation of the Programme, undertaken in accordance with Office of Government Commence guidelines, found that the Programme's establishment of cross-Government networks, including that of press officers, was a model for engagement with other departments. The Head of the Ministry's Human Rights Division, sent the JCHR a copy of this evaluation in October 2007.

Furthermore, the successful conclusion of the Programme does not mean that we have decided to "scale down" our "myth-busting" efforts, as you claim. Indeed, in the very section of oral evidence that you cite in your report<sup>2</sup>, I said:

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<sup>1</sup> [http://www.justice.gov.uk/docs/full\\_review.pdf](http://www.justice.gov.uk/docs/full_review.pdf)

<sup>2</sup> Oral Evidence, 26 November 2007, HC132-I, Q.57

“...as I understand it the idea was more to set up a process which would continue, that we would set up networks of human rights champions, we would have a rebuttal unit, which is still very effective and works very well, that every time you got one of these frankly wrong stories in the press about someone having human rights for Kentucky Fried Chicken (actually profoundly wrong stories in the press), they would be rebutted quickly... I think the idea was primarily to set up a process which would continue and is continuing to start having that sort of effect.”

The network of press officers is thus still in operation and continues to rebut inaccurate assertions in the media about the Human Rights Act.

I am afraid I also disagree with you that ministers are misleading the public about the affect of the Human Rights Act. Since I became human rights minister, I have seen no evidence of this.

**2. In our judgment, the Government has done nowhere near enough over the past decade to use the Human Rights Act as a tool to improve the delivery of public services. This failure has contributed to the poor public image of the Act and ‘human rights’ in general. We challenge the Government to improve this situation. A good start would be for the Government to implement fully the recommendations we made in our report into older people in healthcare. (paragraph 8)**

I do not accept this criticism. Before the Human Rights Act even came into force, the Government undertook a major programme of training and information provision about the new duties that it created, and the new opportunities for improving public service delivery that it offered. Officials in the Human Rights Division<sup>3</sup> have overseen and contributed to events and publications in many different parts of the public sector since the Act came into force; you will already be familiar with some of these, including a guide to the Act for public servants – *Human Rights: Human Lives* – and the conferences held for public sector managers in October 2006.

There is of course only so much that can be achieved from within a Government department, which is one of the reasons why the Government established the Equality and Human Rights Commission (EHRC) with wide statutory responsibilities in this area. You will be aware, of course, that in addition simply to promoting compliance with section 6 of the Human Rights Act, the Commission has duties to “promote understanding of the importance of human rights”, to “encourage good practice in relation to human rights”, and to “promote awareness, understanding and protection of human rights”<sup>4</sup>. This Government’s determination to set up the Commission in this way contradicts your claim of Government failure to promote human rights.

The Department of Health responded in November 2007 to the Committee’s report on the human rights of older people in healthcare. I know that much excellent work in relation to human rights was being undertaken in the health sector well before the Committee’s report and I shall not seek to summarise my colleagues’ response to your report.

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<sup>3</sup> Initially the Human Rights Unit in the Home Office; the Unit transferred to the Lord Chancellor’s Department in 2001, which in turn became the Department for Constitutional Affairs and part of the current Ministry of Justice.

<sup>4</sup> section 9(1) Equality Act 2006



**3. Human rights apply to everyone, from the elderly in the healthcare system, adults with learning disabilities and the victims of trafficking, to groups which attract less public support. Prisoners and asylum seekers also have rights which, though sometimes limited, must be respected. We repeat, human rights are universal. They help protect us all from abuses of state power as well as violent crime, such as terrorism; they provide a powerful vehicle to improve public services; and they ensure that the most vulnerable people in society are not overlooked. Police suspects, prisoners and migrants are highly vulnerable and their human rights – the rights to a fair trial, or not to be subjected to inhuman treatment, for example – assume a greater importance as a result. A democratic society must respect the human rights of all, if it is to be worthy of the description. (paragraph 10)**

I agree with the Committee's conclusion, which reflects much of what the Secretary of State for Justice and I have said in speeches since our appointment to our current roles.

**4. Looking back over our reports it is possible to identify a number of recurring human rights compatibility issues which have arisen in relation to a number of bills:**

- The adequacy of the safeguards contained on the face of bills conferring powers to disclose, share or match personal information;
- Lack of clarity about whether private bodies are “public authorities” for the purposes of the Human Rights Act where bills confer powers and functions on them;
- The adequacy of judicial and procedural safeguards to protect liberty;
- The danger of discrimination in the operation of certain provisions;
- The right of access to a fair hearing before a court;
- The adequacy of safeguards against powers to search the person or property;
- The adequacy of procedural safeguards on preventative orders;
- The adequacy of the powers and independence of human rights institutions;
- The adequacy of protection for children and young persons. (paragraph 22)

The Government notes the Committee's conclusion; many of these are issues on which the Government has regularly rehearsed its views to the Committee. We don't always agree but we are grateful for the vigorous way in which the Committee continues to express its views. This is an important part of its function.

**5. The Government's renewed efforts on the Explanatory Notes to bills has led to an overall improvement in the quality of the Explanatory Notes and has produced much more detailed explanations in the case of some bills. For example, the Notes accompanying the Criminal Justice and Immigration Bill, currently before Parliament, include 36 pages of detailed assessment of ECHR compatibility. The Pensions Bill was also accompanied by a detailed letter analysing the human rights issues raised by the Bill, and subsequent Government amendments to the Bill were also accompanied by detailed human rights analyses, for which we were grateful. The more detailed the**

analysis provided alongside the bill, the fewer questions we are likely to need to ask the relevant department about possible human rights concerns. (*paragraph 25*)

However, the record remains extremely variable... the Notes accompanying the Legal Services Bill, the Offender Management Bill, the Welfare Reform Bill and the Local Government and Public Involvement in Health Bill all attracted adverse comment for failure to provide the sort of analysis and information which we expect. We have continued to report fairly frequently that Explanatory Notes contain assertions of compatibility rather than reasoned explanations. (*paragraph 26*)

We therefore remain of the view that a dedicated human rights memorandum should accompany every Government bill. (*paragraph 28*)

6. We have decided in principle to follow the example of the House of Lords Delegated Powers and Regulatory Reform Committee and, when our other work permits, to draw up our own Guidance for Departments, setting out what we expect from Departments in the explanatory material dealing with the human rights issues raised by a bill. (*paragraph 29*)

I am pleased that the Committee has acknowledged the considerable improvement in the human rights section of Explanatory Notes. While there remain occasional difficulties, there have also been excellent examples such as those cited by the Committee.

However, I do not see, in general, what further purpose could be served by creating a separate human rights memorandum. The information that would be included would be substantially the same as that included in the Explanatory Notes at present, but under a different title.

It seems to me, given the very good performance that has been achieved in the majority of cases, that the Committee might wish to reconsider the sort of further information that might be reasonably be provided. In deciding which statement to make under section 19 of the Human Rights Act, departments will consider issues that have a real effect on the overall compatibility of the Bill with the Convention rights; departments will also consider major issues arising in relation to other international obligations where there is a genuine risk of our not fulfilling those obligations. In some cases, the issues that the Committee has raised have been ones that the department in question did not consider even to be areas of risk. Given that human rights compatibility is not merely a "tick box" exercise undertaken by the production of one document, but is integral to the whole policy-making process, it is practically impossible to provide one continuous account covering every issue that the Committee might raise.

In this respect, the work of your Committee is substantially different to that of the Delegated Powers and Regulatory Reform Committee. In the memorandum for that Committee, it is possible to account in a comprehensive manner for the decision taken in respect of the nature of each order-making and delegated power contained in a Bill. It is never possible to analyse even a moderately substantial Bill in the same way in respect of any argument that could possibly be made as to its impact on human rights. It is therefore necessary for departments to focus on the key issues as it sees them. I doubt whether a greater volume of information (with the additional workload that it would create for

departments) would offer the Committee any greater enlightenment on the issues that it chooses to raise.

Nevertheless, I (and my officials) are always prepared to engage constructively with the Committee about how we might work together more effectively; I would therefore be interested in seeing the Committee's suggestions for guidance on this topic. I should observe, however, in the interests of preventing duplication, that guidance on this topic is already provided to departments in the *Guide to Legislative Procedure*<sup>5</sup> prepared by the Cabinet Office, a new version of which is currently in preparation.

**7. We propose that in future our decisions about what issues to prioritise in our legislative scrutiny work will be more closely informed by the latest reports of international monitoring bodies and human rights NGOs as well as significant court judgments. (paragraph 32)**

The Government notes this conclusion and looks forward to seeing the fruits of this new approach.

**8. In the second half of 2007 we have been concerned at the number of times Government departments have claimed not to have received our letters, or to have mislaid them, where they have actually already acknowledged receipt. (paragraph 34)**

It is of course never acceptable for a Government department to mislay a letter, or to delay responding without good reason, and I apologise on behalf of the Government for any occasions where this has occurred.

The Committee will however appreciate that departments, and particularly Bill teams, receive a considerable volume of correspondence, and that from time to time errors in the correct allocation of correspondence within departments may occur. In this respect, the Committee may wish to consider whether its secretariat could contact directly the relevant officials to draw to their attention a letter in transit, particularly where the letter asks many questions with a particularly short deadline. My officials may be able to assist the Committee in facilitating its correspondence with Government departments, and I would invite the Committee secretariat to discuss that with my officials.

**9. We wish to ensure in future that our scrutiny of Government bills extends to significant Government amendments, at least in relation to bills which we have decided to scrutinise further. To facilitate this, we will require full explanatory material on human rights issues to accompany Government amendments to bills. (paragraph 38)**

The provision of such information is already something that my officials encourage where appropriate. So long as this requirement is limited only to Government amendments that significantly alter or augment the policy or implementation of a Bill, or a Bill's human rights compatibility, I am content for this requirement to be reflected in our guidance; this is perhaps a further matter that could usefully be discussed between officials and the secretariat.

**10. In principle we would like to scrutinise more statutory instruments raising significant human rights issues in future. (paragraph 41)**

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<sup>5</sup> [http://www.cabinetoffice.gov.uk/secretariats/economic\\_and\\_domestic/legislative\\_programme/guide.aspx](http://www.cabinetoffice.gov.uk/secretariats/economic_and_domestic/legislative_programme/guide.aspx)

Although this is once again a matter for the Committee, I support the Committee's intention in principle, so long as it does not duplicate the work of the Joint Committee on Statutory Instruments. I note that the Delegated Powers and Regulatory Reform Committee also scrutinises the powers under which statutory instruments are made.

I would further observe, of course, that unlike for primary legislation, in respect of which Parliament retains the power to proceed with a Bill even if it may not be compatible with the Convention rights<sup>6</sup>, it is almost always *ultra vires* for a Minister<sup>7</sup> to seek to make secondary legislation that is incompatible with the Convention rights.

**11. In future we will suggest amendments to give effect to our recommendations where possible, with a view to Members of our Committee tabling and speaking to them in debate in both Houses. (paragraph 42)**

In principle I can see the merit in creating an opportunity, particularly during the Committee stage of a Bill in either House, for Members to discuss major issues raised by the Joint Committee in its report on that Bill.

It is of course for members of the Committee, like all other Members of both Houses, to decide which amendments they wish to table, and when. However, I suggest the Committee considers carefully the implications of tabling large numbers of amendments, particular at Report stage in the House of Commons, that give effect to all of the Committee's recommendations of a Bill, or which relate predominantly to the Committee's conclusions in a thematic report<sup>8</sup>. In practice, this would lead to the Government responding twice to the Committee's recommendations – once in writing and again in debate – and taking up valuable time on the floor of the House without giving any opportunity for a focussed debate on a point of significant human rights interest.

I would again note at this point that the Committee's recommendations are significantly different to those of the Delegated Powers Committee. While the amendments proposed on behalf of the Delegated Powers Committee almost always relate to points of technical detail in a Bill, the recommendations made by your Committee can sometimes imply the substantial amendment or abandonment of an entire Government policy objective, as embodied in a Bill before Parliament. It is therefore also not reasonable to expect, as I understand is the common practice for the Delegated Powers Committee, that amendments proposed on your Committee's behalf would as a rule be accepted without demur by the Government.

This proposal is something that we will need to consider carefully as it is put into practice, and I hope the Committee will be receptive to further representations should we find later that it is creating substantial difficulties or delays during the passage of Bills.

**12. We propose, on an experimental basis, to identify the main stakeholder organisations in relation to the relevant bill and send e-mail alerts to those**

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<sup>6</sup> section 6(3) Human Rights Act 1998

<sup>7</sup> as a public authority for the purposes of section 6(1) of the Human Rights Act; the exception is where section 6(2) of the Act applies.

<sup>8</sup> Debates in Westminster Hall already provide an excellent opportunity for debates on the Committee's thematic reports.

**organisations notifying them of the human rights issues which we have decided to scrutinise and inviting representations. (paragraph 44)**

I share the Committee's disappointment that interested parties have not engaged more extensively with the Committee's legislative scrutiny work, and I applaud the Committee's efforts to widen the range of people and organisations making representations. However, given the short time that the Committee can allow to receive such representations on a Bill, I can understand that individuals and smaller (particularly exclusively voluntary) organisations may find it difficult to prepare a submission of the necessary quality for the Committee's consideration.

I would particularly welcome greater engagement with human rights issues by specialist persons or groups on a given topic who would not ordinarily address their concerns in terms of human rights. Indeed, it would be particularly pleasing were those people and organisations who *support* the objectives of a particular Bill to be encouraged to use the language of human rights to articulate its benefits; in this way, human rights would not in the legislative context be solely associated with problems and objections.

**13. We are not satisfied with the Government's reply to our Report on highly skilled migrants and changes to the Immigration Rules and intend to return to this issue, and to the interaction between immigration issues and human rights more generally, in the near future. (paragraph 46)**

I note that, subsequent to the publication of this report, the Committee followed up this issue at the oral evidence session on 19 February 2008 with the Minister for Border and Immigration, Liam Byrne MP.

**14. Pre-charge detention was the main theme of our July report in our counter-terrorism inquiry and we were disappointed that the Government's apparent willingness to consult widely on whether, and, if so, what, further changes were needed did not extend as far as even warning us that an announcement was imminent... We concluded that the Government had failed to make the case for further extending the maximum permissible period of pre-charge detention and that a combination of alternative measures, including post-charge questioning with appropriate safeguards, would be both a more proportionate and effective way forward. We intend to carry on with our work in this area in 2008 and look forward to scrutinising the Counter-Terrorism Bill when it is published. (paragraph 48)**

The Counter-Terrorism Bill had already been published (on 24 January) by the time of the publication of the Committee's report. It contains a measure which would allow an extension to the pre-charge detention limit in terrorist cases from the current 28 days to 42 days. The new proposal will not extend the pre-charge detention limit beyond 28 days now, but will enable the limit to be extended in future – and only then if there is a clear and exceptional need to do so.

Given the scale and trend for increasingly complex cases, we believe there may be a need to go beyond 28 days in future. Information on the scale and complexity of recent terrorist cases was set out in a letter from the Home Secretary to the Rt Hon Keith Vaz MP on 6 December 2007. However, we have listened to the concerns of community groups and others and have come up with a proposal which will ensure the higher limit is exceptional,

temporary and subject to a Parliamentary debate and stringent judicial safeguards. The higher limit could only be made available if there was a joint report from the police and prosecutors saying that there was a compelling operational need for it and the detention of individual suspects would remain a matter for judges not Parliament.

We accept that alternatives, such as post-charge questioning, may improve the police's ability to deal with terrorism cases and therefore reduce the risk that investigation teams will come up against the limit of pre-charge detention. But they will only reduce the risk and cannot eliminate it entirely.

It is right and proper to legislate now to ensure that we have the ability to activate the necessary powers when there is a clear operational need for them. It is the responsibility of Government to ensure that the police have the tools they need to tackle terrorism - we would be failing in our responsibility to protect national security if we waited until we needed more than 28 days before legislating. We believe that this proposal balances the need to protect individual human rights against providing the police with the powers they need, when they need them, to deal with terrorism.

**15. In our inquiry into the treatment of asylum seekers we concluded that the Government was following a policy of deliberate destitution towards failed asylum seekers aimed at encouraging them to leave the UK and deterring others from coming, which was leading to the widespread abuse of the human rights of an extremely vulnerable group. (paragraph 50)**

The Government's formal response, describing our policy and practice in each area covered by the Committee, was published by the Committee in July 2007 in its Seventeenth Report of Session 2006-07.

We do not accept the Committee's conclusion that Government policy leads to the abuse of human rights. Our asylum system, including the availability of support and healthcare, is fair and properly balanced incorporating appropriate regard to human rights.

We are proud to maintain the UK's long tradition of providing protection to those who need it in accordance with our international obligations. It is also right that we take steps to ensure the integrity of our asylum system by denying the full benefits of the UK to those who have been found not to be in need of protection and by seeking to enforce the removal of those who choose to ignore the opportunities for voluntary return and reintegration assistance to a home country that has been found safe for them to live in.

**16. Although we found examples of good practice, where the principles enshrined by the Human Rights Act had been used as the foundation for the provision of healthcare, our general conclusion in our inquiry into older people in healthcare was that the protection and promotion of human rights were too often tangential to the planning and delivery of services. (paragraph 51)**

As already stated in the Government's response to the Committee's report on the human rights of older people in care, the Department of Health is committed to excellence in policy making; it has produced a guide, sponsored by the Permanent Secretary, entitled

*Better Policy Making*<sup>9</sup> which policy makers across all areas of the Department of Health's work should follow. This emphasises the importance of policy making as a series of inter-related activities, where thinking through issues as a policy is being shaped is critical to future success. This includes addressing equality issues during the development and implementation of new policy. The Department of Health believes that human rights considerations should be reflected in all policy making, and will review its policy making processes to ensure that this is the case.

The Department of Health has, as part of its drive to achieve excellence in policy making, designed a series of workshops for policy officials with the aim of promulgating good practice in all aspects of the policy making process. The Human Rights Act is one of a number of over-arching considerations which impinge on all policy making, and consideration of human rights is a key part of the legal section of this Policy Process course, due to be rolled out from Spring 2008.

**17. One consequence of this messy situation [accountability for equalities policy within Government] is that it is unclear where parliamentary oversight for equalities properly rests. Since that letter was written we have heard nothing more about this proposal: we will be seeking the Liaison Committee's assistance in clarifying this matter during 2008. (paragraph 61)**

The Government notes the Committee's conclusion, which is a matter for the Liaison Committee and Parliament.

**18. During 2008, we intend to scrutinise the apparent use of illegal conditioning techniques by British troops in Iraq and the implications of the applicability of the Human Rights Act to people detained by the military overseas. We expect the Secretary of State for Defence to assist us fully in this process. (paragraph 64)**

The Government notes the Committee's intention, and will seek to assist the Committee as appropriate.

**19. We call on the Ministry of Justice to respond urgently to the systemic recommendations in our Report into Monitoring the Government's Response to Court Judgments Finding Breaches of Human Rights. The Report was published in June and the department's response to these recommendations is now five months late. (paragraph 66)**

My main response to the substantive issues raised in this report was sent to the Committee on 14 August last year, well within the two-month target for responding to such reports.

As I noted in that response and later in oral evidence, and as my officials have explained in some detail to the Committee secretariat, the Committee in that report made some exceptionally wide-ranging suggestions as to the organisation of Government business. I would very much like to respond substantively to the Committee's recommendations, rather than simply noting the Committee's views and I would hope the Committee would welcome this desire to respond more substantively than is sometimes the case. However, it is taking quite some time to investigate the possibilities in this area, and the extent to which

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<sup>9</sup> A copy was forwarded to the Committee at your request in November 2007.

the Committee's recommendations would be possible and effective. In particular, in relation to the judgments of the European Court of Human Rights, we are bound to respect the timescales and requirements of the Committee of Ministers, which supervises the implementation of such judgments. While we will obviously consider your suggestions, our obligations in this respect must be our primary consideration.

Therefore, while I could send to the Committee for the sake of form a further response covering these remaining recommendations, doing so without substantively engaging with the Committee's opinions would satisfy neither me nor, I suspect, you.

**We have decided to experiment with a novel initiative for following up past reports by organising a mini-conference in Portcullis House, jointly with the British Institute of Human Rights, on the meaning of 'public authority' under the Human Rights Act and the implications of the YL judgment on 23 January 2008... We will assess the success of the conference before deciding whether to organise further events on other issues. (paragraph 79 – conclusion not numbered)**

This event was an interesting experiment. However, it was, in our view, unbalanced by the fact that only one side of the issue (the groups interested in human rights or the interests of older people, as opposed to the commercial care providers) was represented. It was not conducive to an open debate that Ivan Lewis MP and I had to defend the interests of others not present. Should this format be tried again, whether for this or another subject, in our view, it would be likely to be more productive if all interested parties are brought around the same table.

**20. In common with all Committees, we have often been disappointed with Government replies to our reports which have not accepted our recommendations. The reply to the treatment of asylum seekers' report was particularly uninspiring. We had pointed to a number of areas where Government policy was not being put into practice on the ground, where human rights abuses had been the result. The Home Office reply ducked this issue entirely. We are dealing with problems of this sort in our strategy for following up reports. (paragraph 81)**

As I noted in response to recommendation 11, the nature of the Committee's recommendations is sometimes such that it cannot expect the Government routinely to abandon or substantially amend an entire policy objective in response to its recommendations. The Government takes the views of the Committee into account, as it does the views of other relevant Parliamentary committees, other Parliamentarians, and indeed other interested parties beyond Westminster. Wherever possible, we seek to respond positively and constructively but, as I hope the Committee will recognise, in many cases, there are wider considerations than those on which the Committee has focussed, not the least of which is for the Government to give effect to undertakings it has made.

**21. Our January counter-terrorism report, which focused on the definition of terrorism, has not received a reply from the Home Office: the reply is now some ten months late. In addition, we have so far been unsuccessful in persuading the Ministry of Justice to reply to our report on the Meaning of Public Authority under the Human Rights Act: that reply is now eight months late. We call on the Government to reply to these reports as a matter of urgency. (paragraph 83)**



I understand that Tony McNulty MP, Minister of State in the Home Office, has now responded to the Committee's report on the Council of Europe Convention on the Prevention of Terrorism.

The Committee's report on the Meaning of Public Authority under the Human Rights Act was published while the *YL* case was being considered by the House of Lords. My predecessor as Minister for Human Rights, Cathy Ashton, wrote to you at the time of the report's publication to indicate that the Government would not respond to it until the judgment in *YL* had been delivered and its implications considered. That judgment and related developments mean that many of the Committee's conclusions were overtaken by events. However, I do intend to write to the Committee soon on this general subject in the context of the continuing consideration in relation to the Health and Social Care Bill; I shall take that opportunity to address the Committee's conclusions insofar as they remain relevant.

The Committee will be aware, not least from my own appearances in front of it, of the complexity of the issue and also of the importance the Government attaches to securing an enduring resolution of it.

**22. We feel strongly that if the Director General of MI5 is able to make a public speech to journalists about the level of threat posed by terrorism, he should be prepared to appear formally before a parliamentary committee to answer questions about the comments he has made. Clearly, there will be some paths down which the Director General would be unwilling to tread and some matters which ought not to be exposed to public scrutiny at this stage, but this should not preclude any effective parliamentary scrutiny from taking place. (paragraph 89)**

The Government notes the Committee's comments. Parliament has determined through legislation that the Intelligence and Security Committee (ISC) should undertake formal Parliamentary committee oversight of the intelligence and security agencies. The Intelligence Services Act 1994 sets out arrangements for the ISC including those for reporting to Parliament through the Prime Minister and, as recognised, the necessary safeguards to ensure that sensitive matters, the public disclosure of which would damage national security, are kept secret. Under the *Governance of Britain* programme, consideration is being given to reforming the way in which the ISC is appointed, operates and reports. The approach of successive Directors General of the Security Service, and other agency heads, to giving formal evidence to other Parliamentary committees is entirely consistent with the statutory framework that governs the agencies.

**23. In her speech on the Bill, Vera Baird MP, then Parliamentary Under-Secretary of State at the Ministry of Justice, assured the House that action would be taken to deal with the problem, in the light of the *YL* judgment, by the end of the year. Unfortunately, her commitment that action would be taken has not been fulfilled, something we will be pursuing in our mini-conference on this issue shortly. (paragraph 91)**

The debate on your Private Members Bill on 15 June last year took place the week before the *YL* judgment was delivered. At that time, it was therefore not possible to say what

action, if any, would be required in response to it. In her speech<sup>10</sup>, Vera Baird reflected upon the various difficulties inherent in a legislative approach to this issue, and the many different suggestions that had been made by and to your Committee as to how this could be achieved. She then concluded<sup>11</sup>:

“So many potential solutions to the problem from so many sources, added to a body of judicial opinion that has yet to emerge, cannot be tacked on to a one-clause Bill and sent to Committee. We are committed to taking action this year and I hope that my hon. Friend the Member for Hendon will take comfort from the fact that we will work hard to ensure that the necessary consultation is undertaken with appropriate dispatch...”

When I appeared before your Committee on 26 November<sup>12</sup>, I laid out at some length the Government's proposed response to the judgment. In particular, I noted that the Health and Social Care Bill, which was being debated at Second Reading as I spoke, would strengthen the regulatory framework to allow the new Care Quality Commission to enforce the regulatory requirements in line with the Convention rights in respect of the care of all older and vulnerable people. Furthermore, we undertook to consult on how to address the core issue in section 6 of the Human Rights Act itself.

In addition to this action – all taken before the end of last year, as Vera Baird promised – we are as you know currently considering whether interim provision in respect of the specific circumstances affected by the *YL* judgment could be made in the Health and Social Care Bill, pending a comprehensive approach to the issue.

I therefore do not accept the Committee's suggestion that the Government has broken any of its promises in this area.

**24. The *sub judice* rule, by which parliamentarians are bound not to raise issues currently before the courts in civil or criminal cases, except in certain limited circumstances, has sometimes affected the work of the Committee during the year. (paragraph 95)**

The Government notes the Committee's conclusion. However, the *sub judice* rule is important for the proper functioning of the legal system, particularly where sensitive issues are currently the subject of judicial deliberation.

I have also noted the document annexed to the Committee's report, titled “The State of Human Rights in the UK: Key Human Rights Concerns”. I should like to observe that this is only a list of concerns, and cannot therefore be a comprehensive analysis of the state of human rights in this country at this time; there are many positives on which the Committee has not touched at all. I do not however propose to address this in detail in this response, not least because the United Kingdom will be accounting for its overall human rights record to its peers at the United Nations next month as part of the new and important process of Universal Periodic Review (UPR). For the Government's view of the

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<sup>10</sup> HC Deb, 15 June 2007, Col 1044 *et seq*

<sup>11</sup> *Ibid.* at Col 1047

<sup>12</sup> *Supra* note 3 at Q.40

current state of human rights in this country, I would therefore commend to you the United Kingdom's submission to the UPR process<sup>13</sup>.

Finally, I must register some disappointment that your report makes no reference to the programme of work on rights announced by the Prime Minister on 3 July last year, and confirmed and enlarged upon both by the Prime Minister and Jack Straw on 25 October. Of course, I understand that you are currently carrying out an Inquiry into the development of a Bill of Rights in the UK context, to which both the Secretary of State and I will be happy to give evidence, and so you cannot arrive at any settled conclusions. But to omit any mention of the programme whatever in the section on the state of human rights seems to me to be a missed opportunity. The Government's oft repeated undertakings not to resile from any part at all of the mechanisms to protect human rights introduced in the Human Rights Act form the basis for this work and I would have hoped you might have felt able to recognise this commitment, as it bears so fundamentally upon the work of your Committee.

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<sup>13</sup> [http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/GBR\\_GBR\\_UPR\\_S1\\_2008\\_UnitedKingdomofGreatBritainandNorthernIreland\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/GB/GBR_GBR_UPR_S1_2008_UnitedKingdomofGreatBritainandNorthernIreland_uprsubmission.pdf)

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

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## The following reports have been produced

### 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
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#### Session 2006–07

First Report	The Council of Europe Convention on the Prevention of Terrorism	HL Paper 26/HC 247
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

#### Session 2005–06

First Report	Legislative Scrutiny: First Progress Report	HL Paper 48/HC 560
Second Report	Deaths in Custody: Further Government Response to the Third Report from the Committee, Session 2004-05	HL Paper 60/HC 651
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume I Report and Formal Minutes	HL Paper 75-I/HC 561-I
Third Report	Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters Volume II Oral and Written Evidence	HL Paper 75-II/HC 561-II
Fourth Report	Legislative Scrutiny: Equality Bill	HL Paper 89/HC 766
Fifth Report	Legislative Scrutiny: Second Progress Report	HL Paper 90/HC 767
Sixth Report	Legislative Scrutiny: Third Progress Report	HL Paper 96/HC 787
Seventh Report	Legislative Scrutiny: Fourth Progress Report	HL Paper 98/HC 829
Eighth Report	Government Responses to Reports from the Committee in the last Parliament	HL Paper 104/HC 850
Ninth Report	Schools White Paper	HL Paper 113/HC 887
Tenth Report	Government Response to the Committee's Third Report of this Session: Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters	HL Paper 114/HC 888
Eleventh Report	Legislative Scrutiny: Fifth Progress Report	HL Paper 115/HC 899
Twelfth Report	Counter-Terrorism Policy and Human Rights: Draft Prevention of Terrorism Act 2005 (Continuance in force of sections 1 to 9) Order 2006	HL Paper 122/HC 915
Thirteenth Report	Implementation of Strasbourg Judgments: First Progress Report	HL Paper 133/HC 954
Fourteenth Report	Legislative Scrutiny: Sixth Progress Report	HL Paper 134/HC 955
Fifteenth Report	Legislative Scrutiny: Seventh Progress Report	HL Paper 144/HC 989
Sixteenth Report	Proposal for a Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 154/HC 1022
Seventeenth Report	Legislative Scrutiny: Eighth Progress Report	HL Paper 164/HC 1062
Eighteenth Report	Legislative Scrutiny: Ninth Progress Report	HL Paper 177/HC 1098
Nineteenth Report	The UN Convention Against Torture (UNCAT) Volume I Report and Formal Minutes	HL Paper 185-I/HC 701-I
Twentieth Report	Legislative Scrutiny: Tenth Progress Report	HL Paper 186/HC 1138
Twenty-first Report	Legislative Scrutiny: Eleventh Progress Report	HL Paper 201/HC 1216
Twenty-second Report	Legislative Scrutiny: Twelfth Progress Report	HL Paper 233/HC 1547
Twenty-third Report	The Committee's Future Working Practices	HL Paper 239/HC 1575
Twenty-fourth Report	Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention	HL Paper 240/HC 1576
Twenty-fifth Report	Legislative Scrutiny: Thirteenth Progress Report	HL Paper 241/HC 1577
Twenty-sixth Report	Human trafficking	HL Paper 245-I/HC 1127-I
Twenty-seventh Report	Legislative Scrutiny: Corporate Manslaughter and Corporate Homicide Bill	HL Paper 246/HC 1625
Twenty-eighth Report	Legislative Scrutiny: Fourteenth Progress Report	HL Paper 247/HC 1626
Twenty-ninth Report	Draft Marriage Act 1949 (Remedial) Order 2006	HL Paper 248/HC 1627

Thirtieth Report	Government Response to the Committee's Nineteenth Report of this Session: The UN Convention Against Torture (UNCAT)	HL Paper 276/HC 1714
Thirty-first Report	Legislative Scrutiny: Final Progress Report	HL Paper 277/HC 1715
Thirty-second Report	The Human Rights Act: the DCA and Home Office Reviews	HL Paper 278/HC 1716