

**UNITED NATIONS CONVENTION  
AGAINST TORTURE AND OTHER  
CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT**

**4<sup>TH</sup> Report under Article 19 by the United  
Kingdom of Great Britain and Northern Ireland  
Part 1 (Metropolitan Territory)**

# *Contents*

<u>Section</u>	<u>Article</u>	<u>Heading</u>	<u>Paragraph</u>
Section I		General Information	1
		<i>Role of NGOs</i>	11
		<i>Publication and distribution of the report</i>	12
Section II		UK Response to the Observations of the Committee following the last oral examination	13
		Factors and difficulties impeding the application of the provisions of the Convention	13 (a)
		Subjects of Concern	13 (b)
		Recommendations	13 (c)
Section III		Information relating to Articles 2-16	15
	<i>Articles 2 and 4</i>	<i>Measures to prevent torture and offences of torture.</i>	16
		<u>Torture Equipment</u>	23
	<i>Article 3</i>	<i>Return of Individuals to states where they might face torture</i>	24
		<u>Extradition procedures</u>	24
		<u>Asylum procedures</u>	25
		<u>Anti-terrorism procedures</u>	37
	<i>Article 5</i>	<i>Jurisdiction</i>	40
	<i>Article 6</i>	<i>Detention of individuals suspected of torture</i>	42
	<i>Article 7</i>	<i>Prosecution of individuals suspected of torture and not extradited</i>	44
	<i>Article 8</i>	<i>Extraditable offences</i>	47
	<i>Article 9</i>	<i>Mutual legal assistance</i>	48
	<i>Article 10</i>	<i>Education and training of police, military doctors and other personnel to prevent torture and other forms of ill treatment</i>	49
		<u>Police Officers</u>	50
		<i>Great Britain</i>	50
		<i>Northern Ireland</i>	51

<u>Section</u>	<u>Article</u>	<u>Heading</u>	<u>Paragraph</u>
		<u>Prison Officers</u>	61
		<i>England and Wales</i>	61
		<i>Scotland</i>	63
		<i>Northern Ireland</i>	64
		<u>Prison Medical Staff</u>	65
		<i>England and Wales</i>	65
		<i>Scotland</i>	71
		<i>Northern Ireland</i>	72
		<u>Immigration Staff</u>	73
		<i>Medical and Health care in Immigration Service Custody</i>	74
	<b>Article 11</b>	<b><i>Monitoring of procedures to prevent torture and other forms of ill treatment</i></b>	77
		<u>Police Services</u>	77
		<u>Audio and video recording of interviews</u>	78
		<i>England and Wales</i>	78
		<i>Scotland</i>	79
		<i>Northern Ireland</i>	80
		<u>Access to Legal advice</u>	81
		<i>England and Wales</i>	82
		<i>Scotland</i>	86
		<i>Northern Ireland</i>	88
		<u>Right to silence</u>	89
		<i>England, Wales and Northern Ireland</i>	89
		<i>Scotland</i>	90
		<u>Measures to prevent ethnic discrimination</u>	92
		<u>Deaths in Police Custody</u>	95
		<i>United Kingdom</i>	95
		<i>Ethnic origin</i>	96
		<u>Research into deaths in police custody</u>	98
		<i>Crown Prosecution Service</i>	105
		<i>Coroner System</i>	106
		<u>Review of use of sprays and restraints by police</u>	107
		<u>Regulation of the private security industry</u>	109
		<u>Use of baton rounds in Northern Ireland</u>	110
		<i>Police Service</i>	110
		<i>The Army</i>	117
		<u>Prison Services</u>	118
		<u>Visits by Her Majesty's Chief Inspector of Prisons</u>	119
		<i>Norwich</i>	119
		<i>Holloway</i>	123
		<u>Prison population</u>	129
		<i>England and Wales</i>	131
		<i>Scotland</i>	135

<u>Section</u>	<u>Article</u>	<u>Heading</u>	<u>Paragraph</u>
		<i>Northern Ireland</i>	136
		<u>Overcrowding</u>	137
		<u>Deaths in prisons</u>	140
		<i>England and Wales</i>	140
		<i>Scotland</i>	143
		<i>Northern Ireland</i>	145
		<u>Suicide prevention strategy</u>	146
		<i>England and Wales</i>	146
		<i>Scotland</i>	149
		<i>Northern Ireland</i>	152
		<u>Education</u>	153
		<u>Use of unfurnished accommodation</u>	159
		<u>Bullying</u>	160
		<i>England and Wales</i>	160
		<i>Scotland</i>	162
		<i>Northern Ireland</i>	163
		<u>Monitoring the use of restraints</u>	164
		<u>Review of contracting out/ privatisation of prisons and escort services</u>	165
		<i>England and Wales</i>	165
		<i>Scotland</i>	169
		<i>Northern Ireland</i>	171
		<u>Immigration Services</u>	172
		<u>Review of use of detention</u>	172
		<u>Recording of interviews and access to legal advice</u>	174
		<u>Places of detention</u>	176
		<u>Detention under mental health powers</u>	177
		<u>Review of Emergency Provisions legislation</u>	180
		<u>Holding Centres</u>	183
	<b>Article 12</b>	<b><i>Investigation of acts of torture and other forms of ill treatment</i></b>	184
		<u>Investigation of deaths in police custody</u>	184
		<i>England and Wales</i>	184
		<i>Scotland</i>	188
		<i>Northern Ireland</i>	192
		<u>Investigation into deaths in prison</u>	196
		<i>England and Wales</i>	196
		<i>Scotland</i>	198
		<i>Northern Ireland</i>	199

<u>Section</u>	<u>Article</u>	<u>Heading</u>	<u>Paragraph</u>
	<b>Article 13</b>	<b><i>Availability of complaints procedures for those suffering torture or other forms of ill treatment</i></b>	201
			201
		<u><i>Police discipline and complaints</i></u>	
		<i>England and Wales</i>	201
		<i>Scotland</i>	208
		<u><i>Developments in Police Complaints systems</i></u>	216
		<i>England and Wales</i>	216
		<i>Scotland</i>	218
		<i>Northern Ireland</i>	225
		<u><i>Prison Discipline and Complaints</i></u>	230
		<i>England and Wales</i>	230
		<i>Scotland</i>	237
		<i>Northern Ireland</i>	242
		<u><i>Access to legal advice</i></u>	243
		<i>England and Wales</i>	243
		<i>Scotland</i>	249
		<i>Northern Ireland</i>	250
		<u><i>Military discipline and complaints in Northern Ireland</i></u>	251
		<u><i>Immigration Service discipline and complaints</i></u>	252
	<b>Article 14</b>	<b><i>Compensation for and rehabilitation of victims of torture</i></b>	256
	<b>Article 15</b>	<b><i>Admissibility of confession evidence</i></b>	258
		<i>England and Wales</i>	258
		<i>Scotland</i>	259
		<i>Northern Ireland</i>	260
	<b>Article 16</b>	<b><i>Other acts of cruel, inhuman or degrading treatment or punishment not amounting to torture</i></b>	261
		<u><i>Corporal punishment in schools</i></u>	261
		<i>England and Wales</i>	261
		<i>Scotland</i>	262
		<i>Northern Ireland</i>	263
		<u><i>Corporal punishment in the home</i></u>	264
		<i>Great Britain</i>	264
		<i>Northern Ireland</i>	267
		<u><i>Care and Protection of children</i></u>	268
		<i>England and Wales</i>	270
		<i>Northern Ireland</i>	278
	<b>Glossary</b>		Page 88
	<b>Appendices</b>		Page 89

## Section I:

### General information

1. This is the fourth report by the United Kingdom under Article 19 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The United Kingdom's previous reports under the Convention were submitted in March 1991, February 1995, and April 1998, and officials from the United Kingdom Government were examined on those reports by the United Nations Committee against Torture in November 1991, November 1995 and November 1998 respectively.
2. The United Kingdom is a unitary State and comprises England and Wales, Scotland and Northern Ireland (but not the Crown Dependencies: i.e. the Isle of Man and the Channel Islands). References in this report to "Great Britain" mean England, Wales and Scotland taken together. England and Wales, Scotland and Northern Ireland have separate legal systems, but similar principles apply throughout the United Kingdom.
3. Since May 1997, the Government has introduced substantial devolution of powers to Northern Ireland, Scotland and Wales, as part of its wider programme of constitutional reform. The people of Scotland and Wales now have their own democratically elected legislatures - the Scottish Parliament and the National Assembly for Wales - but maintain the close links that have existed for centuries within the United Kingdom. They have a greater say in their day to day affairs, and more open, accessible and accountable government. In exercising their powers, the devolved legislatures and administrations are required by law to comply with the rights in the European Convention on Human Rights. The Westminster Parliament continues to legislate on matters which affect the whole of the United Kingdom - such as foreign affairs, defence and macro-economic policy - responsibility for which has not been transferred to the devolved administrations.
4. On 14 October 2002 the Secretary of State for Northern Ireland suspended the Northern Ireland Assembly. In the absence of devolution, the Government also made the difficult decision to postpone the elections to the Northern Ireland Assembly in Spring 2003 because it believed that the devolved institutions could not

function in the absence of sufficient trust and confidence between the political parties. For that trust and confidence to be restored there needs to be clarity about an end to paramilitary activity and also about the stability of the institutions.

5. The Government is working to achieve the trust between different parts of the community necessary for the institutions there to function, so that fresh elections can be held and devolution can resume in Northern Ireland. It is hoped that this will happen in the Autumn.
6. This report has been compiled with the full co-operation of the devolved administrations. The 4<sup>th</sup> Periodic Reports of the Crown dependencies of the United Kingdom (Guernsey, Jersey and the Isle of Man) are being submitted as Part Two of this report. The 3<sup>rd</sup> Periodic Report of the Overseas Territories has been submitted separately.
7. The United Kingdom already recognises the competence of the Committee, under article 21 of the Convention, to receive communications from other State parties alleging breaches of obligations accepted under this Convention. The Government is reviewing its position regarding the right of individual communication conferred by article 22 of this Convention, as part of a wider review of its position on various international human rights instruments. It expects to announce the outcomes of its comprehensive review in the Autumn of 2003.
8. On 26 June 2003, the UK signed the Optional Protocol to the Convention Against Torture - one of the first countries in the world to do so. The Government believes the new instrument to be the best means available to establish an effective international mechanism to combat torture. It hopes to be able to ratify the Optional Protocol by the end of 2003. Once the UK has ratified the OPCAT, the Government will begin a lobbying campaign urging other countries to sign, ratify and implement both the Convention and the Optional Protocol.
9. Under section 134 of the Criminal Justice Act 1988, torture is already an offence in the United Kingdom. The Human Rights Act 1998, which came into force on 2 October 2000, gives further effect in United Kingdom law to the substantive rights and freedoms contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms. These include article 3 of the

Convention, which provides that no one shall be subjected to torture or inhuman or degrading treatment or punishment. The Human Rights Act places a statutory obligation upon all public authorities to act compatibly with the Convention Rights and strengthens a victim's or potential victim's ability to rely upon the Convention rights in any proceedings.

10. The United Kingdom is also party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in the United Kingdom on 1 February 1989. Since the last report delegations from the Committee established under the Convention have made four visits to the UK: to Northern Ireland in 1999 (the Committee's report and the UK's response were published on 3 May 2001); to England and Wales in February 2001 (the Committee's report and the UK's response were published on 18 April 2002); an *ad hoc* visit to the UK in February 2002, to examine the treatment of persons detained under the Anti-terrorism, Crime and Security Act (ATCS) 2001 (the Committee's report and the UK's response were published on 12 February 2003); and to England, Scotland and the Isle of Man in May 2003.

### **Role of non-governmental organisations**

11. The Government recognises that non-governmental organisations with a close interest in this field have a significant part to play in developing ways of preventing torture and other forms of ill treatment. Contacts with non-governmental organisations are fostered in all areas of relevant Government policies, and a special Ministerial forum has been established to help foster a constructive dialogue. In preparing this report the Government sought the views of the Forum on the United Kingdom's compliance with this Convention. It took the views expressed fully into account and made a number of changes in direct consequence of them.

### **Publication and distribution of the report**

12. Copies of this report have been made available to the United Kingdom Parliament, and have been placed in the legal deposit libraries in the United Kingdom. The report will be sent free of charge to all interested non-governmental organisations and to all human rights contact points in the principal public authorities. It will be advertised on the Human Rights Unit website ([www.humanrights.gov.uk](http://www.humanrights.gov.uk)), and free copies will be available from the



Department of Constitutional Affairs Human Rights Unit, Selborne House, 54 –60 Victoria Street, London SW1E 6QW (tel. 020 7210 8891). The authorities in the Crown Dependencies will be encouraged to take similar appropriate action

## Section II:

### UK Response to the Observations of the Committee following the last oral examination

13. The Government has given careful consideration to the observations and recommendations made by the Committee following the last oral hearing. The Committee noted one factor impeding the application of the provisions of the Convention. It listed eight further causes for concern, and made six related recommendations. The Government's response is set out below:

#### a. Factors and difficulties impeding the application of the provisions of the Convention.

i. With regard to the Committee's opinion that the continuing state of emergency in Northern Ireland was a factor impeding the application of the provisions of the Convention, it is the view of Her Majesty's Government that the security situation still warrants the continued existence of emergency provisions. The provisions are a measured and proportionate response in line with international obligations. The UK has never used the security situation to attempt to step outside its international obligations.

ii. A high level of terrorist activity by paramilitary groups in Northern Ireland has long been a source of local instability. The Northern Ireland (Emergency Provisions) Act 1973 (the EPA) provided special provisions for Ministers, the police, the armed forces and the courts to tackle the problems of terrorism in Northern Ireland. As a safeguard against abuse, this Act had to be renewed, and therefore debated in Parliament, every year, and was limited in time. In addition, an Independent Reviewer was appointed to report on the use and effectiveness of the Act's provisions.

iii. As terrorist activity in Northern Ireland continued, similar Emergency Provisions Acts were enacted from time to time to replace those which lapsed. These amended the original Act to take account of the specific circumstances under which it was operating.

iv. The Terrorism Act 2000, which provides permanent anti-terrorist legislation for the UK, repealed the EPA. Many of the provisions of the EPA are included in Part VII of the Terrorism Act, but only those believed to be temporarily necessary to meet the requirements of the security situation in Northern Ireland. Part VII is not identical to the

EPA – its provisions have been reviewed in light of the UK Government’s human rights commitments and the requirements of the current security situation. Certain provisions have been amended and certain others allowed to lapse entirely. Notably, on 26 February 2001, the UK withdrew its derogation under Article 5 of the European Convention on Human Rights, which related to the affairs of Northern Ireland. It took similar action with regard to its derogation under the UN International Covenant on Civil and Political Rights. The Home Secretary has made a statement under section 19(1)(a) of the Human Rights Act that he believed the Terrorism Act to be compatible with the European Convention on Human Rights

v. Part VII of the Terrorism Act is limited in time to five years and has to be renewed in Parliament every year. The process of debate and renewal allows the Government to review and, where possible, lapse provisions every year in line with the requirements of the security situation. In addition, the Government has appointed an Independent Reviewer of the Terrorism Act who advises on the necessity and effectiveness of the powers in the Act, including Part VII.

vi. The Government is committed to the ultimate removal of these temporary provisions when the security situation allows. This commitment is written into the Belfast Agreement, the centrepiece of the Northern Ireland peace process, which governs the Government’s policy in Northern Ireland. (This Agreement was made with multi-party and cross-community support, and was supported by a majority in referenda in both Northern Ireland and the Republic of Ireland.)

vii. At present these temporary powers are still required to ensure the effective policing of the terrorist threat. They are kept under constant review, both by Lord Carlile, the Independent Reviewer of the Terrorism Act, and the Government.

#### b. Subjects of concern

i. Subject (a): The number of deaths in police custody and the apparent failure of the State party to provide an effective investigative mechanism to deal with allegations of police and prison authorities abuse as required by article 12 of the convention, and to report publicly in a timely manner (This subject is dealt with at paragraphs 95-106 and 184-195 of this report)

ii. Subject (b): The use of prisons to house refugee claimants (This subject is dealt with at paragraph 176 of this report)

- iii. Subject (c): The retention of detention centres in Northern Ireland, particularly Castlereagh Detention Centre. (This subject is dealt with at paragraphs 10 (c) (i) and 183 of this report)
- iv. Subject (d): The rules of evidence in Northern Ireland that admit confessions of suspected terrorists upon a lower test than in ordinary cases and in any event permits the admission of derivative evidence even if the confession is excluded. (This subject is dealt with at paragraph 260 of this report)
- v. Subject (e): Sections 134 (4) and (5) (b) (iii) of the Criminal Justice Act 1988 appear to be in direct conflict with Article 2 of the Convention. (This subject is dealt with at paragraphs 13 (c) (iii) and 17-22 of this report)
- vi. Subject (f): Sections 1 and 14 of the State Immunity act 1978 seem to be in direct conflict with the obligations undertaken by the State party pursuant to articles 4, 5, 6, and 7 of the convention. (This subject is dealt with at paragraphs 13 (c) (ii), 44-46, and Appendix 1 of this report)
- vii. Subject (g): The continued use of plastic baton rounds as a means of riot control ((This subject is dealt with at paragraphs 13 (c) (iv) and 110-117 of this report)
- viii. Subject (h): The dramatic increase in the number of inmates held in prisons in England and Wales over the last three years. (This subject is dealt with at paragraphs 129-134 of this report)

c. Recommendations and subjects of concern.

The following steps have been taken in the light of the Committee's recommendations:

- i. Recommendation (a) (relating to Subject of Concern (c))  
All detention centres in Northern Ireland have been closed (see paragraph 183 of this report)

- ii. Recommendation (b) (relating to Subject of Concern (f))

Regarding the Committee's concerns that Sections 1 and 14 of the State Immunity Act were in conflict with Articles 4, 5, 6 and 7 of the Convention, the Committee will no doubt be

aware of the House of Lords decision in the Pinochet case, in which it was found that the immunities of a former Head of State did not extend to criminal proceedings concerning torture. (see Paragraphs 13(b)(vi), 44-46, and Appendix 1 to this report)

iii. Recommendation (c) (relating to Subject of Concern (e))

In February 1998 the Home Office carried out a review of legislation on offences against the person. Contrary to the findings of the Committee, the review concluded that Sections 134 (4) and (5) (b) (iii) of the Criminal Justice Act 1988 do not conflict with Article 2 of the Convention. Consequently the Government has no plans to reform these sections. (see Paragraphs 17 to 22 of this report)

iv. Recommendation (d) (relating to Subject of Concern (g))

In April 2001 the Secretary of State for Northern Ireland introduced stringent new requirements for the use of baton rounds, and in recent years there has been a notable decrease in their use. Nevertheless, the Chief Constable of the Northern Ireland Police Service continues to be of the opinion that the use of plastic baton rounds must be made available as a means of controlling potentially life-threatening public-order incidents. (See paragraphs 110 to 117 of this report)

v. Recommendation (e)

On 4 November 2001 the Royal Ulster Constabulary was reconstituted as the Police Service of Northern Ireland (PSNI). A strategy for training of police officers in the fundamental principles of human rights and the practical implications for policing is now in operation. (Paragraphs 51 to 60)

vi. Recommendation (f)

On 2 March 2000, the Home Secretary announced that he had discharged Senator Pinochet from extradition proceedings on the grounds that he was unfit to stand trial. Subsequently, Senator Pinochet was allowed to leave the United Kingdom. (See paragraphs 44 to 46 of this report)

14. Further details of these measures and other legislative and administrative developments are set out in detail in the following sections of the report. In this, as in previous reports, the Government

has sought to provide information as fully as possible: but the inclusion of particular points does not necessarily imply that the United Kingdom considers them to fall within the scope of particular articles of the Convention.

## **Section III:**

### **Information relating to Articles 2 – 16 of the Convention.**

#### **Introduction.**

15. This part of the report provides information on developments since the United Kingdom's third Periodic Report of April 1998, and the oral examination on that report in November 1998. It also provides additional information requested by the Committee during that examination, and sets out the steps the United Kingdom has taken in the light of the Committee's observations.

#### **Article 2 (measures to prevent torture) and 4 (offences of torture)**

##### *Protection against Torture*

16. Previous reports have summarised the various provisions of UK law, which hold conduct constituting torture to be a serious criminal offence. As mentioned in paragraph 3 above, the Human Rights Act 1998, which came into force on 2 October 2000, gives further effect in the UK to the European Convention on Human Rights, including Article 3, which prohibits torture and inhuman or degrading treatment or punishment. Under the Human Rights Act it is unlawful for any public authority to act in a way incompatible with the Convention rights; if it does, the Act provides a new cause of legal action and remedy. Therefore there is now further protection in UK law against any act of torture.

17. Following discussion on the UK's Third Report, the Committee recommended that sections 134 (4) and 5(b)(iii) of the Criminal Justice Act 1988 needed to be reformed to bring them into line with Article 2 of the Convention.

18. In the UK's 3<sup>rd</sup> Report (paragraph 15), HM Government indicated plans to issue a consultation paper on a review of legislation on offences against the person, including the offence of torture as set out in the Criminal Justice Act 1988. In February 1998 the Home Office launched a consultation exercise reviewing legislation on offences against the person. As a result of further consideration following the

review it is the Governments' view that sections 134 (4) and 5 (b) (iii) of the Criminal Justice Act 1988 do not conflict with Article 2 of the Convention, for the reasons given in paras 19-22 below. Consequently the Government has no plans to reform these sections

19. It is an offence under the Criminal Justice Act if a public official or person acting in an official capacity “intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties”. Sections 134 (4) and 5(b)(iii) of the Act allow the defence that the pain was inflicted with “lawful authority, justification or excuse.” But this defence needs to be considered in the light of:

- the definition of torture;
- the Convention defence of pain arising from, inherent in, or incidental to, lawful sanction (Article 1); and
- the Human Rights Act 1998.

20. Definition of Torture. The Criminal Justice Act 1988 has a broader definition of torture than the Convention - it includes all severe pain or suffering inflicted in the performance of duties. Without any defence, this law could criminalise:

- mental anguish caused by imprisonment;
- any serious injury inflicted by a police officer in the prevention of a crime, even when the offender was injuring another person or attacking the police officer;
- the arrest of a suspect; and so on.

21. Lawful sanction. There is some overlap between the defence of lawful authority, justification or excuse in the 1988 Act and the exception in Article 1 of the Convention, which concerns lawful sanction. Although the defence in the 1988 Act goes wider than the exception in Article 1, this is because of the broader definition of torture in the 1988 Act (as explained above). Furthermore, the 1988 Act defence only applies where the public official etc is acting lawfully. There is nothing in the current case law which authorises, far less requires, the use of this defence in circumstances that would amount to torture within the terms of the Convention.

22. Human Rights Act. In any event, in the light of the Human Rights Act 1998, the courts are required to interpret the defence so far as possible in a way that is compatible with Article 3 of the ECHR (prohibition on torture). There are no foreseeable circumstances in which a defence under the 1988 Act could be available inconsistently with the Convention.



### *Torture Equipment*

23. Her Majesty's Government remains committed to preventing British companies from manufacturing, selling or procuring equipment designed primarily for torture or other cruel, inhuman or degrading treatment or punishment.

### **Article 3 (return of individuals to states where they might face torture)**

#### *Extradition procedures*

24. Paragraphs 10-14 of the 2<sup>nd</sup> Report outlined the legal and procedural safeguards which would prevent extradition of an individual to another State when there were substantial grounds for believing that he or she might face torture. Where a person's extradition has been requested for an offence carrying the death penalty in the requesting state, the Government's policy is to make extradition conditional upon receipt of an assurance that the death penalty will not be imposed or, if it is, that it will not be carried out. The Human Rights Act 1998, which came into force on 2 October 2000, allows cases citing ECHR caselaw to be brought in domestic courts. This reinforces the position on extradition to a country where there are substantial grounds for believing that the person might face torture.

#### *Asylum procedures*

25. The United Kingdom continues to assess asylum applications against the criteria set out in the 1951 United Nations Convention Relating to the Status of Refugees. The number of asylum applications rose from 32,500 in 1997 to 71,025 in 2001 and 84,130 in 2002. In 2001, 9% of asylum seekers were recognised as refugees and granted asylum; 17% were not recognised as refugees but were granted exceptional leave to remain (ELR); and 74 % were refused both asylum and ELR. In 2002, 10% of asylum seekers were recognised as refugees; 24% were not recognised as refugees but granted ELR and 66% were refused both asylum and ELR.
26. As stated in paragraphs 21 and 22 of the 3<sup>rd</sup> Report, in asylum cases involving allegations of torture, asylum caseworkers are guided by the definition of torture set out in article 1 of the Convention Against Torture. When the available evidence establishes a reasonable likelihood that the applicant has been tortured in the country of nationality (whether or not for a reason set out in the 1951

Convention on Refugees) caseworkers have clear instructions that cases should be very carefully considered and subjected to a fast-track appeals procedure only if the past torture is not relevant to the current claim. When allegations of torture have been made, but the evidence is refuted, the reasons for this should be explained in the letter of refusal sent to the applicant.

27. Credibility remains an important factor in assessing whether an individual qualifies for asylum, as does the likelihood of future persecution. Officials are instructed to give due weight to reports prepared by the Medical Foundation for the Care of Victims of Torture - a registered charity which provides medical treatment, counselling and other forms of assistance to the survivors of torture and organised violence. However, medical reports form only part of the evidence. If an asylum caseworker has concerns about any aspect of a medical report prepared by the Medical Foundation, he or she should discuss those concerns with the Foundation before reaching a final decision on the asylum claim. The letter of refusal sent to the applicant should also explain how the medical report has been considered and why it is not thought to be persuasive.
28. From 1 September 1997, under the Dublin Convention, in certain cases, an individual may be removed to a safe third country without substantive consideration of the merits of the asylum claim. The Convention provided a mechanism for determining which Member State should be responsible for deciding an asylum application. However, the Convention did not work as well as had been hoped when it was agreed in 1990. The replacement Dublin II Regulation entered into force on 1 September 2003. Dublin II provides the agreed framework to determine which Member State is responsible for the consideration of asylum claims made in the EU where applicants have travelled between states.
29. In April 2001, the then Dublin Convention, its proposed successor Dublin II and the Eurodac Regulation were effectively extended to Norway and Iceland by means of a so-called “parallel” Agreement between those two countries and the European Community. The objectives of the Dublin mechanisms are the avoidance of the successive transfer of applicants between states without any single state taking responsibility to determine the claim (“refugees in orbit”) and the prevention of multiple, parallel or successive claims in different states and related secondary movements (“asylum shopping”).

30. The removal of asylum applicants under the Dublin mechanism is covered by Section 11 of the Immigration and Asylum Act 1999 as set out in Section 80 of the Nationality, Immigration and Asylum Act 2002. Under Section 11, nothing shall prevent the removal of an applicant provided that the Secretary of State certifies that certain requirements are met - namely, that the applicant is not a national of the receiving state, and that the receiving state has accepted that it is responsible for considering the asylum claim.
31. Section 12 of the Immigration and Asylum Act 1999 as amended by paragraph 11 of the Nationality, Immigration and Asylum Act 2002 (consequential and incidental provisions) Order 2003 applies to asylum-seekers transferred to safe third countries in other circumstances. In this case the requirements are that the applicant is not a national of the receiving country, the applicant's life and liberty would not be threatened in that country for any of the grounds set out in the 1951 Convention on Refugees, and the government of that country would not send the applicant to another country otherwise than in accordance with the 1951 Convention on Refugees.
32. The Human Rights Act 1998, which came into force on 2 October 2000, places public authorities under a legal duty to act compatibly with rights set forth in the Act, which refers directly to the European Convention on Human Rights (see also paragraphs 16 and 22 above).
33. The Nationality, Immigration and Asylum Act 2002 is designed to improve the asylum system in the United Kingdom. It aims to create a clear and fast asylum system from the initial decision through to appeal, the integration of genuine refugees, and the removal of those whose asylum claims fail and who have no other basis of stay in the UK. The Government has introduced smart cards for asylum seekers (Application Registration Cards), to guarantee identification and tackle fraud. The existing support system is being improved and will eventually be phased out and replaced by accommodation centres. The Government is improving consultation with local authorities and developing co-ordination with voluntary organisations on dispersal.
34. From 1 April 2003, the 2002 Act also introduced a more efficient appeals system, with streamlined rights of appeal – an appeal from a lower to a higher court being limited to a point of law – and increased adjudicator capacity. When an appellant has exhausted all rights of appeal and they have no other basis to stay in this country, they are expected to leave the UK. A person who wishes to re-apply on any grounds may do so, and the application will be considered. However,

if the person has had the opportunity to appeal and has, in the Secretary of State's opinion, claimed again only to delay removal, the Secretary of State may prevent a second round of appeals by issuing a certificate (under section 96). Appellants are not permitted to go through the appeals process twice unless they make a claim that is genuinely new and that they could not reasonably have been expected to have made earlier.

35. Appeals on asylum and/or human rights grounds are suspensive – that is, the appellant cannot be removed while the appeal is pending – except in two types of case:

i. Sections 11 and 12 of the 1999 Act (see paragraphs 28 and 29 above) prevent an asylum-seeker from appealing against removal to a safe third country. However, applicants in this position may also make claims on human rights grounds. Under section 93 of the 2002 Act, such a claim will not prevent removal if the Secretary of State certifies that it is clearly unfounded.

ii. On 7 November 2002, a further category of non-suspensive appeal was introduced. Section 115 (or, from 1 April 2003, section 94) enables the Secretary of State to certify certain types of case as “clearly unfounded” with the result that an appeal on asylum or human rights grounds can be exercised only after removal. The grounds for certification are that the asylum or human rights claim is without substance and accordingly bound to fail. Though any asylum/human rights claim can potentially be certified as clearly unfounded, most cases come from the list of designated countries. A country is designated for such purposes if the Secretary of State is satisfied that, in general, there is no serious risk of persecution in part or all of the country. There are 24 designated countries: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Albania, Bulgaria, Jamaica, Macedonia, Moldova, Romania, Serbia & Montenegro, Bangladesh, Bolivia, Brazil, Ecuador, South Africa, Sri Lanka and Ukraine. A country can be added to the list only following debates in both Houses of Parliament.

36. The number of asylum applications awaiting an initial decision was significantly reduced from 125,100 at the end of 1999 to 41,300 at the end of December 2002. This reflected levels of initial decisions and withdrawals that were higher than levels of applications. Of the 41,300 outstanding cases, nearly half (18,800 cases) were work in progress i.e. the application had been received within the previous six months.

### *Anti-terrorism procedures*

37. In response to the events of September 11<sup>th</sup> 2001, the Anti-Terrorism, Crime and Security (ATCS) Act 2001 was passed to deal with the problem of suspected international terrorists who could not be returned to their home countries because of an international agreement, for example the ECHR, which prohibits removal of a person who would face torture, or because of practical difficulties – for example a war, or a state of serious instability, in their home country.
38. The powers of the ATCS Act provide that anyone subject to immigration control whom the Home Secretary has certified as being a suspected terrorist and a threat to national security, and whom he has decided should be removed from UK, could be detained pending removal, even where removal is not possible in the foreseeable future. The use of these powers has been accompanied by derogations from the European Convention on Human Rights and the UN ICCPR reflecting the emergency facing the UK. Both the detentions and the derogation are reviewed regularly. These powers are designed to be used only in the immigration context, and anyone detained under them can leave the UK at any time. There is a full right of appeal against the certification and against the decision to deport. These powers have so far been used in a limited way. Fifteen people have been detained under the Act. All fifteen are currently appealing their certificates. Ten appeals have been heard to date and the determinations for these are expected at the end of September 2003. The hearings for the remainder of the appeals will start in November 2003. Some of the detainees have also appealed against the United Kingdom's derogation from Article 5 of the ECHR. The Court of Appeal unanimously upheld the United Kingdom's decision to derogate in October 2002. Leave to appeal to the House of Lords has been granted; at the time of writing no date has been set for the hearing.
39. Funding for representation before the Immigration Appellate Authorities has been available since January 2000 through the Legal Services Commission (LSC). Funding for representation before the Special Immigration Appeals Commission (SIAC) was made available under the 2002 Act.

## **Article 5 (jurisdiction)**

40. As indicated in the Third Report, the United Kingdom ratified Protocols I and II to the Geneva Convention on 28 January 1998. The International Criminal Court (ICC) Act 2001 makes minor amendments to the Geneva Conventions Act 1957. These ensure that the provisions for consent to prosecutions for grave breaches of the Geneva Conventions under the 1957 Act are consistent with those for the prosecutions under the ICC Act. In the case of such offences, proceedings will not begin without the consent of the Attorney General or, in Scotland, the Lord Advocate.
  
41. The United Kingdom Government's consistent position has been that the UN Convention Against Torture has no bearing on the issue of civil jurisdiction in relation to acts committed abroad but only relates to criminal jurisdiction. Consistent with this position, the United Kingdom gave effect to the relevant provisions of the Convention by enacting sections 134 and 135 of the Criminal Justice Act 1988 which makes torture a crime punishable in the United Kingdom.

## **Article 6 (detention of individuals suspected of torture)**

42. Procedures for the detention of individuals alleged to have committed torture remain as set out in paragraphs 40-46 of the Initial Report. The Police and Criminal Evidence Act (PACE) Codes B-E referred to were updated in 1995, but contain identical provisions on these procedures. A revised version of Code A (on the exercise by police officers of statutory powers of stop and search) came into effect on 1 March 1999. A revised PACE Act Code A was laid before Parliament in November 2002 (See Appendix 2 to this report). The Order to bring this revised Code into force was approved following debate in both Houses in December 2002. The revised Code is clearer and simpler for officers and the public to understand. It reflects the work done in response to the Stephen Lawrence Inquiry Report, and includes important new provisions for searches and ethnic monitoring.
43. In Scotland procedures for detention are contained in Sections 14 and 15 of the Criminal Procedure (Scotland) Act 1995.

## **Article 7 (prosecution of individuals suspected of torture and not extradited)**

44. The Committee recommended the case of Senator Pinochet should be referred to the office of the public prosecutor, with a view to examining the feasibility of initiating criminal proceedings against him in England, in the event that a decision was made not to extradite him.
45. Having decided, in November 1999, not to order Senator Pinochet's extradition to Spain, the Home Secretary referred the case to the Director of Public Prosecutions for consideration of a domestic prosecution in accordance with Article 7 of the Convention. Papers were supplied in advance to the Solicitor General and the Director of Public Prosecutions for that purpose.
46. On 2 March 2000, the Solicitor General explained to the House of Commons why the Crown Prosecution Service (CPS) could not prosecute Senator Pinochet: firstly, the material in possession of the CPS would not be admissible in English courts, because the evidence was submitted in a form which did not satisfy the law of evidence used in the legal system of the United Kingdom; secondly, a police investigation would be necessary to gather admissible evidence; and finally, whatever the state of the evidence, no court in England and Wales would be likely to allow Senator Pinochet to be tried by reason of his health. The Solicitor General agreed with these reasons. Subsequently, Senator Pinochet was allowed to leave the United Kingdom (see Appendix 1 to this report).

## **Article 8 (extraditable offences)**

47. Since the 3<sup>rd</sup> Report, the only extradition request received by the UK for an individual suspected of torture was the request for the extradition of Senator Pinochet. In a landmark ruling, the House of Lords established that torture was an international crime over which the parties to the United Nations Convention against Torture had universal jurisdiction, and that a former Head of State did not have immunity for such crimes. On 2 March 2000, the Home Secretary announced that he had discharged Senator Pinochet from extradition proceedings on the grounds that he was unfit to stand trial and that no significant improvement in his condition could be expected (see Appendix 1 to this report).



## **Article 9 (mutual legal assistance)**

48. As described in previous reports, the United Kingdom gives full legal assistance under the Criminal Justice (International Co-operation) Act 1990 to foreign courts or prosecuting authorities. The United Kingdom Central Authority for mutual legal assistance has not, to its knowledge, received any requests for assistance from overseas authorities in connection with offences involving torture.

## **Article 10 (education and training of police, military, doctors, and other personnel to prevent torture and other forms of ill treatment)**

49. Previous reports have outlined the general principles which underlie all training programmes for law enforcement personnel and medical personnel - respect for the individual, humanity, the need to act within the law and to uphold the law at all times. Recent developments are set out below.

### **Police officers**

#### ***Great Britain***

50. Training for police officers in Great Britain continues to address the various statutory and common law provisions governing the rights of the individual, including restrictions on the use of force and firearms in the exercise of police duties, and the humane treatment of detainees. Specific training in investigative interviewing, based on ethical principles and emphasising the rights of the individual, continues to be given to all police officers in England and Wales, including supervisors. In addition, all police forces in England and Wales have delivered training to their officers on the provisions of the Human Rights Act 1998.

#### ***Northern Ireland***

51. The Police (Northern Ireland) Act 2000, Part VI, lays down special arrangements for recruitment to police officer and civilian staff posts. These recognise the importance of a more balanced service and include the Patten Commission's recommendation for selection of 50% Catholic and 50% non-Catholic candidates from a pool of qualified applicants.

52. On 12 September 2001, the Chief Constable announced that 35% of applicants for the first recruitment campaign to the new PSNI were from the Catholic community. In a second campaign, launched in October 2001, over 4,500 applications were received, with 38.6% from the Catholic community - the highest proportion in any such recruitment exercise. Since then the proportion of applications from Catholics has stayed about the same - at 36%. Her Majesty's Government remains confident that 50:50 recruitment is working.

53. The percentage of Catholic representation among the regular officers of the PSNI has increased from 8.23% in September 2001 to 12.99% in August 2003.
54. The 50:50 recruitment arrangements are temporary. Under the law, the provisions are due to expire on the third anniversary of their commencement date (30 March 2004), unless the Secretary of State decides to renew them. In deciding whether the provisions should be renewed, the Secretary of State is required by statute to have regard to progress made towards securing that membership of the police and police support staff is representative of the Northern Ireland community. Before making such a decision, the Secretary of State will review progress in consultation with the Policing Board and other key consultees. A consultation exercise on the effectiveness of the provisions will commence in Autumn 2003.
55. Recommendation 1 of the Patten Report was for a comprehensive training, education and development strategy. The Police (Northern Ireland) Act 2000 requires the Board, as part of the policing process, to assess the training and education needs of the police service, including its support staff. In addition, the Board has a statutory responsibility to monitor the performance of the police in carrying out the training and education strategy. Recommendation 4 of the Patten Report - that all police officers and police civilians should be trained in the fundamental principles and standards of human rights and their practical implications for policing - was also accepted.
56. All recruits to the PSNI are now required to undertake training leading to the Certificate in Police Studies which is accredited by the University of Ulster. The course is made up of five modules, which include "Police and Community Relationships" and "Human Rights and Diversity".
57. There was wide consultation on the content of this training. A consultation evening was held at the University of Ulster and contributions in writing were invited from around 50 bodies. These included Northern Ireland political parties, churches, the Northern Ireland Human Rights Commission, the Equality Commission of Northern Ireland, commercial bodies such as the Confederation of British Industry, the Law Society, the Northern Ireland Council for Ethnic Minorities, and other groups representing minorities.
58. All officers have been trained on the implications of the Human Rights Act 1998. The views of the Northern Ireland Human Rights

Commission were sought on the training material and representatives attended two training sessions as observers. In November 2002, the Commission published an evaluation of human rights training for student police officers. It contained recommendations for improvement, but was generally positive. The PSNI has now formed a committee to take forward the report's recommendations.

59. The police service is guided in its work by a statutory code of ethics, which lays down standards of conduct and practice for police officers, as well as making them aware of rights set out in the Human Rights Act. All officers and police support staff undertake the "Course for All", which is based on the code.
60. The Policing Board published the Code of Ethics for PSNI in February 2003 (see Appendix 3 to this report). Since March 2003 it has been incorporated into police discipline regulations. The Code draws widely on international human rights documents, including the United Nations Code of Conduct for Law Enforcement Officials. It can be obtained at the Policing Board's website at [www.nipolicingboard.org.uk](http://www.nipolicingboard.org.uk).

## **Prison officers**

### *England and Wales*

61. Training for prison officers in the United Kingdom remains substantially as set out in paragraph 39 of the Third Report. The principles of respect for human dignity and recognition of the rights of individuals underpin the Prison Officer initial training course in England and Wales. The course also includes a half day mandatory session on inclusiveness and diversity, which addresses issues of unacceptable treatment and respect for the individual. Furthermore, senior managers in the Service have training courses specific to their role, including appropriate treatment of prisoners. For example, a course on "Adjudication" covers what constitutes a legitimate punishment and how prisoners should be treated during punishment. And a "Command of Serious Incidents" course covers the proper treatment of prisoners at the conclusion of an incident, including the prevention of retaliation against them. In 2000, Senior Management Teams in prisons and headquarters staff in the Prison Service and the Home Office received half day training sessions on the implications of the Human Rights Act 1998, with follow-up sessions in 2001.

62. Control and restraint techniques used by the three UK prison services are designed to meet the principle of minimum necessary force and to enable staff to restrain a violent or refractory prisoner with minimal risk of injury to all involved. All prison officers involved in the control of prisoners in the United Kingdom are required to have attended a basic training course to be instructed on the correct procedures for restraint. In England and Wales, standards such as the Prison Service Order on the training of prison dogs and their use by officers are also currently being reviewed and developed. Training is in place to ensure that dogs and their handlers use the minimum force necessary to apprehend escapees and prevent violence.

### *Scotland*

63. In Scotland, all prison staff undertake human rights awareness training. This has been developed by the Scottish Prison Service College and delivered by trained officers. It aims to give staff an understanding of the underlying principles of human rights, the practical relevance of those principles to the treatment of prisoners, and the place of human rights within the Scottish legal system. The training is undertaken by existing prison staff and new recruits to the Scottish Prison Service.

### *Northern Ireland*

64. In Northern Ireland induction training is designed to equip prison officers with a range of control and inter-personal skills to help them perform their duties and meet their responsibilities to prisoners. Staff also receive training on equality, human rights and equal opportunities. This is supplemented by literature that sets out the responsibility of staff in relation to conduct and discipline, e. g. The Prisons and Young Offenders Centre Rules (Northern Ireland) 1995, The Principles of Conduct, and The Code of Conduct and Discipline (see Appendices 4, 5 and 6 to this report).

## **Prison medical staff**

### *England and Wales*

65. A working group on prison doctors has considered issues such as the recruitment and retention of doctors, their training and qualifications, and their continuing professional development and revalidation. In December 2001, their Report made a specific recommendation on the difficult ethical issues that doctors working within prisons may face.

To support this and to provide prison doctors with practical guidance “Good Medical Practice for Doctors Providing Primary Care Services in Prisons” was published in January 2003 (see Appendix 7 to this report). This develops existing good practice guidance for doctors and general practitioners by providing additional text relevant to the prison environment.

66. The Report also made recommendations on training and continuing professional development. These included the replacement of the Diploma in Prison Medicine with a refresher course for doctors who have already completed the diploma; and the development of prison specific modules (possibly including medical ethics and the protection of prisoners’ human rights) that could be offered widely across the service.
67. To address future needs, training providers have been invited to tender for delivery of a training needs analysis (TNA) for prison doctors. This will identify: particular skills needed by doctors providing primary care in prisons; skills they may not have an opportunity to practice (for example in treating children); and skills in which they are more practised than doctors in the wider community (for instance in dealing with drug misuse). The TNA will inform Continuous Professional Development (CPD) planning for doctors working in prisons.
68. Clinical appraisal (mirroring that introduced in the National Health Service (NHS)) is used to identify training needs for individual doctors, including those new to the Prison Service.
69. This programme of work is one of a series of fourteen that the Prison Health Directorate is taking forward to help to ensure that prisoners receive health treatment similar to that received by the general population under the NHS. The Prison Health Directorate is a joint Prison Service/ Department of Health body set up after the 1999 report by the Joint Prison Service and NHS Executive Working Group - *The Future Organisation of Prison Health Care*, which included a substantial programme of change (see Appendix 8 to this report). It provides the direction to ensure that the treatment of prisoners is ethical and humane. It is supported by Regional Teams.
70. The objectives of the Prison Health Directorate include a commitment to develop, support and implement a strategy of Clinical Governance - a model that aims to assure the quality of all health care delivered in prisons. Clinical Governance is the responsibility of all

health care staff. A Prison Service Order will be issued early in 2003 to formalise much of the work already under way, help maintain progress, and set a minimum standard for all prisons. It will require a baseline assessment, a Clinical Governance lead officer (a doctor or a nurse), and annual reporting.

### ***Scotland***

71. Medical services for the Scottish Prison Service are provided under a contract that includes a requirement for induction training and continuing professional development for all doctors. The content is agreed between the Scottish Prison Service and the contractor. It includes relevant ethical and moral issues, and these are also included in the education and training strategy for practitioner nurses.

### ***Northern Ireland***

72. In Northern Ireland, all Prison Service Medical Officers appointed since January 1996 have received induction training, including ethical training, provided through the Prison Service in England and Wales. Healthcare staff are encouraged to pursue relevant diplomas and degrees at the University of Ulster, initiated by the Northern Ireland Prison Service (NIPS) and the Royal College of Nursing. Courses include consideration of ethical and moral issues relating to human rights, and race and ethnicity within the field of forensic healthcare.

### **Immigration staff**

73. National training for new entrants to the Immigration Service focuses on interviewing skills underpinning issues relating to asylum, suicide awareness, equality and diversity, and safe and professional working practices.

### ***Medical and health care in Immigration Service custody***

74. Medical and health care in removal centres are governed by the Detention Centre Rules, which came into force on 2 April 2001 (see Appendix 9 to this report).

75. Medical practitioners in removal centres must, as a minimum, be vocationally trained as general practitioners and be fully registered persons within the meaning of the Medical Act 1983. The contracts for the management of removal centres require that medical practitioners shall have sufficient competence to exercise their responsibilities under the Detention Centre Rules and shall refer for

special advice where necessary. The Rules provide that members of the healthcare team shall observe all applicable professional guidelines relating to medical confidentiality. There are specific provisions on the reporting of special illnesses and conditions, including any case where there are concerns that the detainees may have been the victim of torture, but these are designed to work in the best interests of the detained person and would not infringe the normal conditions of confidentiality.

76. Although the level of healthcare in removal centres equates to the level of NHS care in the community, there may be circumstances where a detainee would prefer to be seen by a medical practitioner other than the one at the removal centre. The Rules entitle the detainee to request attendance by an external medical practitioner where the detainee will pay expenses and there are reasonable grounds for the request.



## **Article 11 (monitoring of procedures to prevent torture or other forms of ill treatment)**

### **Police Services**

77. The use of police powers and procedures continues to be monitored by various means. Paragraphs 64-72 of the Initial Report, paragraphs 33 to 40 of the Second Report, and paragraphs 45 to 69 of the Third Report describe the existing framework of legal and other safeguards which govern the use of police powers in the United Kingdom. All police services are also subject to regular inspection by Her Majesty's Inspectorate of Constabulary (HMIC), which has a statutory duty under the Police Act 1996 to report to the Home Secretary on the efficiency and effectiveness of the forty-three police forces in England and Wales. In Scotland, a separate HMIC, reporting to the Scottish Ministers, carries out a similar function under the Police (Scotland) Act 1967.

### ***Audio- and video-recording of interviews.***

#### ***England and Wales***

78. In its conclusions following the 2<sup>nd</sup> Report, the Committee recommended that audio recording should be extended to all police interviews. At police stations in England and Wales, audiotape recordings are now made of all interviews with people suspected of indictable offences. Under the Terrorism Act 2000, in accordance with a UK-wide code of practice, the audio recording of interviews of those detained in a police station under the Act was made mandatory. A limited number of forces make videotape recordings of interviews in serious and complex cases. A smaller number of forces also make use of video recording of interviews on a wider range of offences, although this is not currently widespread practice. Ministers agreed to an evaluation of video recording to assess its benefits to the criminal justice process in comparison to audio recording. In May 2002, under the Criminal Justice and Police Act 2001, a pilot study commenced in five police areas to enable evaluation of the benefits of the video recording of police interviews with suspects. Any future rollout to other police areas in England and Wales will be subject to the findings of the evaluation report.

### ***Scotland***

79. In Scotland, all interviews conducted by Criminal Investigation Department officers are audio-recorded as a matter of routine, and police forces are working towards the audio recording of all interviews. Individual police forces may introduce video recording of interviews if they have the resources to do so, and video cameras are increasingly being installed in custody suites and at charge bars.

### ***Northern Ireland***

80. In Northern Ireland, the Terrorism Act 2000, which came into effect on 19 February 2001, makes provision for police interviews with terrorist suspects to be both audio-recorded and video-recorded with sound. The audio-recording and video-recording-with-sound of interviews with terrorist suspects are governed by separate Codes of Practice. These codes replace a previous Code of Practice governing audio-recording made under the Emergency Provisions Act 1998 and a Code of Practice governing silent video recording which had been mandatory since 10 March 1998. In accordance with a code of practice elsewhere in the UK the Terrorism Act 2000 also makes provision for the video recording of terrorist interviews. The Code of Practice governing video recording with sound of police interviews with terrorist suspects is Northern Ireland specific (See Appendix 10 to this report).

### ***Access to legal advice***

81. In all parts of the United Kingdom, anyone subject to questioning by the police or attending the police station voluntarily has the right to consult a legal adviser and, as a general rule, to have a legal adviser present during interview. These rights are set out in the Code of Practice for the detention, treatment and questioning of persons by police officers (Code C) issued under the PACE Act 1984 in England and Wales, in parallel Codes in Northern Ireland, and under the Criminal Procedure (Scotland) Act 1995. Under exceptional circumstances access to legal advice may be delayed, but powers to do this are only available under strict criteria (see paragraphs 74 and 75 below).

### ***England and Wales***

82. In England and Wales, the PACE Act Code C provides that when a person is brought to a police station under arrest, or is arrested at the police station having attended there voluntarily, the custody officer

must tell him that he has the right to speak to a solicitor and that he is entitled to independent legal advice free of charge. A suspect must be notified at the commencement or recommencement of any audio-recorded interview of his right to legal advice. Should he choose not to exercise this right, the interviewing officer should ask the reasons for refusal. These exchanges must form part of the audio recording of the interview.

83. Under Annex B to the PACE Act Code C, in specified circumstances access to legal advice may be delayed if a person is being detained in connection with a serious arrestable offence (such as murder, manslaughter or rape) but has not yet been charged. The circumstances are where an officer of the rank of superintendent or above has reasonable grounds for believing that such contact might:
- lead to interference with or harm to evidence;
  - lead to interference with or physical injury to other people;
  - alert others suspected of having committed such an offence but not yet under arrest, or hinder the recovery of property.
84. Access may be delayed only while these conditions exist and in no case for longer than 36 hours from the time of that person's arrival at the police station.
85. The Terrorism Act 2000 also allows for access to a solicitor to be delayed for up to 48 hours from the time of detention in defined circumstances that apply throughout the UK. However, the power to delay access is used very rarely: the Government is not aware that it has been used at all in any part of the United Kingdom in recent years.

### ***Scotland***

86. In Scotland, access to solicitors for detained persons is now provided for under section 15 of the Criminal Procedure (Scotland) Act 1995 (as mentioned in paragraph 58 of the 3<sup>rd</sup> Report). Persons detained under section 14 of the 1995 Act, and taken to a police station or other premises or place, are entitled to have details of their detention sent to a solicitor and to one other person without delay. Those detained by the police will be told of this right immediately on arrival at the police station or other premises. Where they are arrested on any criminal charge, section 17 of the 1995 Act entitles them to have a solicitor notified that professional assistance is needed. The solicitor must be informed where they are being detained, whether they are to be freed and, if not, the court to which they are to be taken and when

they are due to appear there. The accused and solicitor are entitled to have a private interview before any judicial examination or appearance in court. Under the Terrorism Act 2000, where a person has been permitted to consult a solicitor, the solicitor is allowed to be present during any interview carried out in connection with the terrorist investigation.

87. In Scotland a suspect has no right to have a solicitor present during police questioning. However a suspect is entitled to decline any questions in the absence of his solicitor and no adverse inference can be drawn from such a silence.

### ***Northern Ireland***

88. In Northern Ireland, under the Terrorism Act 2000 (section 99, Northern Ireland Specific Code of Practice) - effective from 19 February 2001 - terrorist suspects have the right to have a solicitor present during police interviews. The Chief Constable of the Royal Ulster Constabulary (now the Police Service of Northern Ireland - PSNI) introduced this measure administratively in September 2000 - ahead of the Code of Practice.

### ***Right to silence***

#### ***England, Wales and Northern Ireland***

89. In response to the judgement of the European Court of Human Rights in *John Murray v UK*<sup>1</sup>, the Government introduced provisions prohibiting the drawing of inferences from silence where no prior access to legal advice has been granted. These were contained in the Youth Justice and Criminal Evidence Act 1999, and replicated for Northern Ireland at Article 36 of the Criminal Evidence (Northern Ireland) Order 1999. Commencement of the provisions in England and Wales and in Northern Ireland will follow necessary revision of the PACE Codes. However, in both jurisdictions administrative arrangements have been in place for some time to ensure compliance with the judgment.

#### ***Scotland***

90. In Scotland, regardless of whether a legal adviser is present, no inferences can be drawn as to the credibility of the suspect's evidence

---

<sup>1</sup> John Murray v UK (1996) 22 EHRR 29

on any matter about which he declined to say anything while being interviewed, cautioned, or charged by the police.

91. A programme of research was undertaken to monitor the effects of the right to silence provisions in the 1994 legislation. The full report of the research was published in 2000. It pointed to a significant reduction in the extent to which suspects rely on their right to silence during police questioning.

### ***Measures to prevent ethnic discrimination***

92. During the 2nd oral hearing, the Committee expressed concern about allegations of ethnic discrimination by the criminal justice agencies. All criminal justice agencies in England and Wales, including the police, are bound by section 95 of the Criminal Justice Act 1991. This requires the Secretary of State to publish annually information he considers expedient to enable those engaged in the administration of criminal justice to avoid discriminating against any persons on the ground of race, sex, or any other improper ground.
93. Ethnic monitoring of police use of "stop and search" powers was among a number of core performance indicators introduced in April 1993. From 1 April 1999 all police forces in England and Wales were asked to provide information on notifiable arrests by ethnic appearance, gender, age and offence group. Two police forces have not been able to meet this request, largely due to the limitations of existing police IT systems. These forces are being actively encouraged to put such mechanisms in place as soon as practicable.
94. On 30 September 1998, the Crime and Disorder Act 1998 introduced new racially aggravated offences covering assault/wounding, criminal damage and harassment. The Stephen Lawrence Inquiry made a number of recommendations to improve the reporting and recording of racist incidents and crimes. In May 2000, the Home Office issued a Code of Practice on reporting and recording racist incidents specifically in response to Recommendation 15 of the Inquiry's report (see Appendix 11 to this report). This Code of Practice is currently being evaluated by the Home Office Research Development and Statistics Directorate. In September 2000, the Association of Chief Police Officers (ACPO) issued a guide to identifying and combating hate crime (*Breaking the Power of Fear and Hate*) (See Appendix 12 to this report). This Guide will be reviewed by ACPO later this year. Both of these documents set out the minimum information to be collected on racist incidents and crimes. From 1 April 2000, new

statistical returns were introduced as the first stage in the national collection of this data. The ATCS Act amended the provisions of the Crime and Disorder Act 1998 to widen the definition to 'racially aggravated or religiously motivated' crimes. National statistics on 'religiously motivated' attacks are collected centrally only by the CPS, but the Home Office will be looking to encourage all forces to record instances of religiously motivated incidents. ACPO, working with the Government, have developed guidance for police forces on dealing with so-called 'hate' crimes (including racially and religiously motivated crime). This guidance "Identifying and Combating Hate Crime" was last updated in April 2002. The method of monitoring ethnicity was changed from 1 April 2002 to include self-classification based on the 2001 UK Census classification. This was in line with a recommendation from the Stephen Lawrence Inquiry.

### ***Deaths in police custody***

95. Figures for deaths and suicides in police custody in the United Kingdom since 1997 are set out in the tables below.

#### ***England and Wales***

Year	total number of deaths	Deaths by suicide
1997-1998	71	8
1998-1999	67	7
1999-2000	70	7
2000-2001*	52	3
2001-2002 **	70	0

\* 8 Inquest Verdicts awaited.

\*\*54 Inquest Verdicts awaited]

(Recently, inquest juries in England and Wales have tended not to return verdicts of suicide. In 2001/2002, one verdict was that person had killed himself, one that the person took his own life, and one that the person killed himself while the balance of his mind was disturbed.)

### *Scotland*

Year	total number of deaths	Deaths by suicide
1997-1998	10	0
1998-1999	7	0
1999-2000	6	0
2000-2001	4	1
2001-2002	4	1
2002-2003	8	0

### *Northern Ireland*

Year	total number of deaths	Deaths by suicide
1997-1998	1	0
1998-1999	0	0
1999-2000	0	0
2000-2001	0	0
2001-2002	3	1
2002-3 (to March 003)	0	0

### *Ethnic origin*

96. Since 1 April 1996, the police have recorded the ethnic origin of those who die in police custody. Statistics from each force, including the circumstances of the death, the cause of death, the ethnic origin of the deceased, and the inquest verdict, are published annually. Figures from 1999 are set out in the table below.

Year	Total	White	Black	Asian	Other
1999/2000	70	61	3	3	3
2000/2001	53	42	7	4	0
2001/2002	70	64	2	3	1

97. Between 1 April 1996 and 31 March 2002 in England and Wales, 55 (14%) of those who died in police custody were Black, Asian or from other ethnic minority groups. Black and Asian people constitute approximately 5% of the population of England and Wales. However, they form 11% of those arrested. Deaths of people from ethnic minorities have occurred in a wide range of circumstances, and no

obvious common factor appears to link them. The number of Black and Asian people who died was higher than might have been expected from their numbers in the general population. This was partly due to their over representation in arrests. However the numbers are too small to draw any definite conclusions.

### ***Research into deaths in police custody***

98. Since 1998 the Police Complaints Authority (PCA) has run three conferences and issued three influential reports on preventing deaths in care and custody. It has an active research programme working to reduce the risks of death in custody.

99. The Home Office Police Research Group, which is independent of the police, has made a study into the causes of death in police custody. Its report, published in July 1998 (see Appendix 13 to this report), found:

- there were on average 3 (3.2) deaths per 100, 000 arrests, and many were not obviously preventable
- the police have to deal with people who have a higher than normal risk of sudden death (8 out of 10 of those who died had taken drugs or alcohol), and
- more than 90% of deaths were related to the actions of detainees or to their medical condition.

100. The main causes of death were:

- deliberate self-harm (for example, suicide by hanging) 34%
- medical condition (for example, heart attack) 29%, and
- substance abuse (for example, alcohol poisoning) 25%

101. Deaths associated with officers' actions were very rare (16 in 11. 8 million arrests) and in most cases other factors were also involved (e. g. the detainee's physical or medical condition and actions).

102. The main recommendations were:

- more frequent health and behavioural checks, especially at the start of custody, and in cases of apparent drunkenness, or where suicide is threatened, or where detainees have medication on them (guidance on dealing with medical or psychiatric conditions of detainees was issued in January 1999)
- more training for police in the use of restraint
- better communication between police and medical personnel
- improved maintenance of official records.



103. The report also raises these issues for future consideration:
- medical training and development of guidance to help custody staff decide when to request medical aid
  - viability of detoxification centres, and
  - effectiveness of CCTV and cell design.
104. In response to the report, police forces across England and Wales have taken a range of actions to reduce the number of deaths in police custody. These include safer custody facilities, improved training, CCTV monitoring and an emphasis on better care, assessment and monitoring of detainees.

### ***Crown Prosecution Service***

105. Concerns about the handling of cases against police officers arising from a number of deaths in police custody, led in 1998 to an independent inquiry into the investigative processes of the CPS and the quality of its decision-making in death-in-custody cases in England and Wales. The inquiry was led by a senior judge – His Honour Gerald Butler QC. The inquiry looked specifically at the handling of three cases arising from the deaths of Shiji Lapite, Richard O’Brien, and Graham Treadaway. The report, “Inquiry into CPS decision-making in relation to deaths in custody and related matters”, published in 1999 (See Appendix 14 to this report), was critical of the systems used to arrive at a decision, and of confusion about the identification of the decision-maker. It recommended that the advice of counsel should be sought more often than it had been in the past. It concluded that there was no dishonest or deceitful conduct, or unfair bias, in the way the CPS had handled the cases, but that the judicial review proceedings had been dealt with in an ‘unsatisfactory manner’. The inquiry made six recommendations into the approach taken by the CPS, all of which were accepted by the CPS and have been implemented.

### ***Coroner System***

106. In March 2001 the Home Office announced a fundamental review of the coroner system in England, Wales and Northern Ireland to be chaired by Mr. Tom Luce, former Head of Social Care Policy at the Department of Health. The review reported to the Home Secretary on 4 June 2003, and its report was published as a command paper (CM 5831) (see Appendix 15 to this report). A second, linked report, entitled Death Certification and the Investigation of Deaths

by Coroners, was published on 14 July (CM 5854) (see Appendix 16 to this report). Ministers are considering both reports and will decide on changes to the coronial and death certification systems in light of these and further work, which should be completed in autumn 2003.

### ***Review of use of sprays and restraints by the police***

107. Given the nature of the police role it may be inevitable that, as noted in the 3<sup>rd</sup> report, some concerns are expressed about the use of restraint procedures by the police. ACPO oversees the production and ongoing review of guidance on self-defence and restraint. Human rights principles have been integrated into the current edition of the Association's *Manual of Guidance on Personal Safety*. In addition, this document provides advice on a wide range of relevant topics including issues critical to detainees' health such as the management of prisoners exhibiting signs of 'excited delirium' and the avoidance of 'positional asphyxia' among persons subject to restraint. The manual promotes defensive techniques designed to minimise injury and discomfort to their subject while also providing sufficient protection to officers and members of the public. The manual provides operational guidance for police officers and is not therefore publicly available at present.

108. NGOs and others had also expressed concerns about the use of CS spray by police officers. Following the inquest into the 1997 death in police custody of Ibrahima Sey, the health effects of CS spray were thoroughly researched to a level similar to that which would be required for a pharmaceutical drug. This established that CS spray presents no significant risk to human health. In September 1998, the Department of Health referred CS spray to the independent expert committees on Toxicity, Mutagenicity and Carcinogenicity – a move welcomed by Home Office Ministers. In September 1999, the Committees published their reports, which concluded that "the available data did not, in general, raise concerns regarding the health effects of CS spray itself" (see Appendix 17 to this report). ACPO have given very careful consideration to how CS spray should be used, and the aftercare of people who are sprayed within it, and have issued detailed guidelines to all police forces in England and Wales.

### ***Regulation of the Private Security Industry***

109. In the 3<sup>rd</sup> Report, it was said that the Government intended to introduce statutory regulation of the private security industry in England and Wales, to ensure that suitable individuals work within

the industry. Following widespread consultation, the Government introduced the Private Security Industry Act 2001. Implementation of the Act will be phased in from 2003. It will be a criminal offence to work in designated sectors of the private security industry without a licence from the newly created independent body, the Security Industry Authority. Licence applications will be judged on the basis of the applicant's criminal record (if any) and on compliance with such quality standards as will be prescribed. The Act applies to England and Wales only. Scotland is currently considering whether to introduce its own regulatory regime.

### ***The use of baton rounds in Northern Ireland***

#### ***Police Service***

110. The PSNI needs to have equipment available to assist in responding to potentially life-threatening public order situations. Lethal weapons such as blast bombs are consistently used against the police in riot situations in Northern Ireland. The Patten Report recognised that the police could not be left with no alternative to live rounds in such situations.
111. Strict published guidelines exist to govern the police use of baton rounds. Each officer using a baton round is accompanied by another who is responsible for keeping a record of the circumstances in which any rounds are fired. The Police Ombudsman receives a report from the Chief Constable on every incident when police use baton rounds, and she carries out an investigation (the Policing Board also receives a report).
112. The current baton round, the LA21A1 was introduced in June 2001. An internal review of the use of the L21A1 baton round after one year in operation concluded that it was safer than its predecessor. A second year review is currently under way. The conclusion of the Independent Advisory Medical Panel was also published. It should be noted that no baton round has been fired in Northern Ireland since September 2002.
113. However, the Government is fully committed to finding an effective and acceptable alternative to baton rounds in line with the Patten Report recommendations.

114. To that end, a multi-agency Steering Group, led by the Northern Ireland Office, which includes members of the Police, ACPO, the Police Scientific Development Branch, the Home Office, and the Ministry of Defence, is conducting a substantial research programme. The programme is unprecedented in its approach and in its scope, considering technical, medical, human rights and acceptability issues. It has contacted a wide range of interested parties in Northern Ireland, Great Britain and overseas. Three Reports have now been published, the latest issued in December 2002 (See Appendix 18 to this report). All are available on the NIO website at [www.nio.gov.uk](http://www.nio.gov.uk).
115. On 9 April 2003 the NIO Minister of State, Jane Kennedy issued a statement that: “On the basis that an acceptable and effective and less lethal alternative is available, the baton round would no longer be used after the end of 2003. In the event that that has not been achieved, the Government would report on the progress of the fourth phase of the research programme and review the options for less lethal alternatives consulting widely with a range of interested parties including the Chief Constable and the Policing Board.”
116. On 18 July 2003, following discussion with the Northern Ireland Policing Board and ACPO, the PSNI placed an order for six new vehicle-mounted water cannon. The first two water cannon were delivered in September 2003 and the remainder are due by the Spring of 2004. The deployment of water cannon is dependent on the outcome of the final evaluation of the water cannons by the Independent Advisory Medical Panel. Water cannon are not a replacement for the baton round. However, their deployment will give the police an option that, in some circumstances, could delay the need to use baton rounds, or remove it altogether.

### *The Army*

117. The Army is accountable through its chain of command and under the law. The PSNI will investigate any cases where army use of baton rounds gives rise to concern. In December 2002, the Independent Assessor of Military Complaints Procedures published a review of military use of baton rounds in Northern Ireland in 2001 and 2002. The Independent Assessor is a statutory post, established under the Terrorism Act 2000, and the Emergency Powers Acts before that, to provide an additional safeguard.

## **Prison Services**

118. As noted in previous reports, regimes in the three Prison Services -England and Wales, Scotland, and Northern Ireland - are kept under scrutiny through a variety of means. These include scrutiny by Parliament, detailed external audit by the Chief Inspector of Prisons and regular visits by the local community watchdog body, the Board of Visitors (or in Scotland, Prison Visiting Committee). Prison Rules continue to provide a statutory framework for procedures and safeguards for prisoners. The Prisons and Probation Ombudsman (formerly the Prisons Ombudsman) provides an independent point of complaint for prisoners in England and Wales who have failed to obtain satisfaction from the internal complaints system, and for individuals who wish to complain about the National Probation Service. The Scottish Prisons Complaints Commissioner has a similar independent role in respect of complaints by prisoners in Scotland.

### ***Visits by Her Majesty's Chief Inspector of Prisons***

#### ***Norwich***

119. Her Majesty's Chief Inspector of Prisons carried out an inspection at Norwich in September 2002 and published her report on 7 January (See Appendix 19 to this report). The report identified some areas where the prison was functioning well, such as the resettlement and young adult wings, but was critical in some areas such as general cleanliness and provision of educational facilities.

120. Norwich is a multi-functional prison which has been operating close to its capacity due to the rise in the prison population. This has increased the pressure on the prison and has affected its performance, particularly in the adult part of the prison, which has experienced the most throughput of prisoners. The inspection took place at a time where population pressures and staff shortages combined to lower standards. However, relationships between staff and prisoners have previously been seen as strengths at Norwich, and overall this remains the case. This view is supported by the independent Board of Visitors.

121. The prison aims to provide as much work and education facilities as possible but there are reasons why this is not possible for all prisoners. There is insufficient space in which to operate and the

sheer throughput of discharges and receptions in a local prison also militates against this. Despite these pressures 784 prisoners have obtained qualifications or accredited courses at Norwich during the past 12 months including 358 prisoners who have achieved Basic Skills qualifications in literacy and numeracy and 103 prisoners who have completed based offending behaviour programmes.

122. A comprehensive Prison Service audit at the prison during November demonstrated much improved compliance in standards of safety and anti bullying, drug strategy and suicide and self-harm prevention. There has also been an improvement in the use of activity places and this remains a key priority for management. The Prison has finalised an action plan, based on the Chief Inspector's recommendations, which will be closely monitored by the Governor and Area Manager as well as by Prison Service Headquarters.

### *Holloway*

123. Her Majesty's Chief Inspector of Prisons carried out a visit at Holloway from 8-12 July 2002 followed by a short updating visit in January 2003, and published her report on 18 February 2003 (See Appendix 20 to this report). The report identified problems with provisions for girls under 18, lack of shower facilities, and general standards of cleanliness.
124. At present Holloway holds between 12 and 20 girls aged 15 to 17 at any one time, all of whom have been placed there by the courts within the prison's catchment area - the majority being unsentenced. Unless girls are pregnant, unfit to travel, undergoing detoxification, on the Mother and Baby Unit, or mentally ill, all sentenced girls are transferred out to more suitable accommodation within three days of reception.
125. Girls are removed from Holloway as soon as is practicable. However, those who are undergoing detoxification, mentally ill, or in need of Mother and Baby Unit facilities have to remain, as Holloway can provide better medical treatment than any alternative.
126. At the time of the HMCIP inspection acute staff shortages affected the establishment's ability to provide access to showers without a detrimental effect on the security and safety of the establishment.

127. The situation is now better than at the time of inspection. With a full complement of staff Holloway would aim to offer all women access to showers daily. This is already now the case for the Mother and Baby Unit. Pregnant women currently have access to showers four times per week. But immediate access for all prisoners to daily showers at Holloway simply cannot be delivered in the current circumstances. There are insufficient staff, insufficient facilities, and a serious risk of disorder, given that showers clearly provide one of the most obvious opportunities for assaults and bullying and are the area where prisoners feel most vulnerable. The same difficulties apply to many other establishments.

128. An Action Plan has been drawn up between the Operational Manager and the Governor to take forward the recommendations in the report.

### ***Prison population***

129. The Prison population in England and Wales at the end of June 2003 was 73,657. This is an increase of 1025 prisoners from 72,632 at the end of May. The average daily prison population in England and Wales in October 2002 was 71,435, compared with 63,788 in 1998.

130. Scotland has seen a proportionately smaller increase, from 6059 in 1998 to 6665 in August 2002. The Prison population in Northern Ireland decreased from 1533 prisoners in April 1998 to 1001 prisoners in April 2002. (Since July 1998, 443 prisoners have been released on licence under the Northern Ireland Sentences Act 1998, giving effect to the “Prisoners” section of the Good Friday Agreement.). However since April 2002 there has been a steady increase in the prison population. In January 2003 there were 1108 prisoners in Northern Ireland.

### ***England and Wales***

131. Despite current pressures on prison accommodation, the Government remains committed to providing decent conditions for prisoners. To this end, the capacity of the prison estate in England and Wales has been increased substantially in recent years. 21 new prisons were opened between 1990 and 2000, and two more - providing a further 1,400 places - were opened in 2001.

132. The percentage of prisoners held in overcrowded conditions in 2001-2002 was 18.5%. From April 2002-November 2002 the figure was 23.2%. These figures are for all overcrowding: i.e. doubling (two prisoners held in cells designed for one) and other overcrowding (three prisoners held in cells designed for two). In 2001-2002 the figure for doubling was 17%; for April–November 2002 it was 19.9%. Since March 1994 there has been no occasion when three prisoners have been held in a cell designed for one. This has been achieved at the same time as an unprecedented rise in the prison population. Over the same period, refurbishment and modernisation of existing establishments have also improved conditions for prisoners by providing upgraded facilities. With very few exceptions, all prisoners now have access to sanitation 24 hours a day.
133. When the prison estate is at full capacity, prisoners are held in police cells under a formal arrangement known as Operation Safeguard. No prisoners were held in police cells under this arrangement between 1995 and July 2002. Police cells were last used to hold prisoners under Operation Safeguard between 12 July and 19 December 2002. No prisoners have been held in police cells under this arrangement since then.
134. Prisoners are also held, briefly, but routinely in police custody under the “lock-out” system. This is a short, temporary stay (i.e. overnight) when a prisoner under escort cannot be located at the appropriate prison.

### *Scotland*

135. In Scotland with the opening of HMP Kilmarnock in 1999 and the population remaining stable, overcrowding was not significant in national terms until 2001 when the prison population began to increase. It is currently around 7% over available capacity. Latest available figures show that 79% of prisoner places have access to night sanitation (Source: Scottish Prison Service Annual Report 2002-3) (see Appendix 21 to this report). A Review of the prison estate, with the principal aims of providing 100% access to 24 hours sanitation and ensuring that there is sufficient suitable accommodation to meet projected future needs, was completed in 2002. Decisions arising from that Review, including the construction of 2 new prisons, were announced in September 2002 and are now being implemented.



### ***Northern Ireland***

136. In Northern Ireland, the prison estate is small - consisting of two prisons and one Young Offenders' Centre. Following a decrease in the prison population, Belfast prison was closed in March 1996, and prisoners were transferred to other prisons. The Maze prison was closed as an operational establishment in September 2000 following the release of prisoners under the Good Friday Agreement. Part of the prison continues to be retained as emergency accommodation. A major refurbishment programme is being carried out at the Young Offenders' Centre (see paragraph 280 to this report) and at Magilligan prison.

### ***Overcrowding***

137. Prison overcrowding is a serious problem that the Government is tackling by providing additional prison capacity and reform to the Criminal Justice System. As part of a long-term strategy being developed to manage prison population pressures, the Government has announced that £60 million will be made available to provide 740 prison places by March 2004. Plans for two new prisons at Ashford in Middlesex and Peterborough have also been approved.

138. Also, as part of a review of correctional services, the Government is looking at what measures can be taken in the short term to reduce numbers in prison, including developing a communications strategy to ensure that messages to sentencers are consistent.

139. The Home Detention Curfew scheme is an important factor in managing the prison population. It enables prisoners to be released from prison early with some restrictions on their liberty, and facilitates a smoother and more effective integration back into the community. In view of the success of the scheme the Government has increased the maximum curfew period to 135 days.

### ***Deaths in prisons***

#### ***England and Wales***

140. The following table shows the number of deaths in prisons in England and Wales since the 3<sup>rd</sup> Report in 1998.

Calendar year	Average daily population	Self-inflicted deaths	Deaths by natural/other causes	Total	Number of self-inflicted deaths per 100,000
1998	65,300	83	55	138	127
1999	64,800	91	58	149	140
2000	64,600	81	63	144	125
2001	66,312	73	68	141	110
2002	70,900	94	72	166	133
2003 <sup>A</sup>	73,300 <sup>B</sup>	65	59	124	89 <sup>C</sup>

<sup>A</sup> Up to 11 September 2003

<sup>B</sup> Average daily population not available for 2003; figure provided is actual prison population on 12/09/2003

<sup>C</sup> Clearly it is not meaningful to compare the proportion of deaths in 2003 with the previous end of year rates.

141. The Prison Service takes any death in custody very seriously and is committed to reducing the number of deaths. It is determined to learn the lessons of every death in custody. As can be seen, a sizeable proportion of deaths were self-inflicted. Prisons hold a large number of people most at risk of self-harm and suicidal behaviour (because of the connections between self-harm and drug and alcohol abuse, family background and relationship problems, social disadvantage or isolation, previous sexual or physical abuse, and mental health problems).

142. The majority of other deaths were from natural causes. There have been no deaths as a result of the use of restraints (including body belts) since 1995. Between 1 January 1998 and 10 September 2003 seven of the 375 individuals who died of natural or other causes were initially reported to have died as a result of homicide. At inquest a verdict of 'homicide' was recorded for four of these deaths. The murder of Zahid Mubarek, a young offender from an ethnic minority, by his racist cellmate, prompted a wide-ranging investigation into the death and into racism in the Prison Service. As a result of this murder, the Prison Service developed a national cell sharing risk assessment procedure that enables early identification of racist, homophobic or violent prisoners, and establishes a record of decisions relating to management and review of risk. It has been in place since July 2002.

### *Scotland*

143. The following table shows the number of deaths in Scottish prisons since the Third Report in 1998.

Year	Average daily population	Self-inflicted deaths	Other deaths	total	Number of self-inflicted deaths per 10,000
1997-98	6,059	13	6	19	21.4
1998-99	6,029	14	7	21	23.2
1999-00	5,974	17*	9	26	28.5
2000-01	5,883	11	5	16	18.7
2001-2	6,185	11~	7	18	17.8
2002-3	6,475	8+	8	16	12.4

\*includes one apparent suicide; ~ includes three apparent suicides; + includes six apparent suicides - Fatal Accident Inquiries are still to be held/concluded into all these deaths

144. A steady and significant increase in the rate of suicide amongst the general population in Scotland over the past 30 years has been reflected in the increasing suicide rate in Scottish prisons. Particularly significant has been the increasing risk in the male 15-34 age group, which is also the group most represented in prison. Over the same period the female suicide rate in the general population has dropped, although there has been a slight increase in the 15-34 age group.

### *Northern Ireland*

145. The following table shows the number of deaths in prisons in Northern Ireland since 1998:

Year	average daily population	self-inflicted deaths	other deaths	total	number of self-inflicted deaths per 10,000
1998-1999	1,402	1	1	2	7.13
1999-2000	1,179	5	1	6	42.4
2000-2001	1,010	2	1	3	19.8
2001 – 2002	900	0	0	0	0.00
2002-2003 (to Jan 2003)	1,015	2	0	2	19.7
Jan 2003-date	1131	1	0	1	

Clearly it is not meaningful to compare the proportion of deaths in 2003 with the previous end of year rates.

## *Suicide Prevention Strategy*

### *England and Wales*

146. The Suicide Awareness Strategy, outlined in paragraphs 82-84 of the 2<sup>nd</sup> Report and 90 of the 3<sup>rd</sup> Report, was reviewed in 2000. The review recommended a three-year Safer Custody strategy to develop policies and practices to reduce prisoner suicide and manage self-harm in prisons (see Appendix 22 to this report), and this was launched in Spring 2001. The current strategy is holistic in approach, preventative, risk-based, and strongly dependent on other approaches. Within prisons it relies on a supportive culture based on good staff/prisoner relationships and constructive regimes; and beyond prisons on the co-operation of other agencies. Over the next few months the outcome of the Safer Custody strategy will be reviewed, taking into account evaluations of pilot projects and emerging research findings. The next steps and approaches will be determined in consultation with partner agencies and organisations. It is likely that future approaches will concentrate more on better care for people rather than on processes.

147. Projects are under way to improve pre-reception, reception and induction arrangements, to improve exchange of information with other agencies, and to develop safer prison design, including 'safer cells.' New evidence-based healthcare reception screening arrangements are being implemented and include measures to improve identification of vulnerable prisoners. Thirty full-time suicide prevention co-ordinators (SPCs) have been appointed in high-risk establishments, and a further 102, mostly part-time, SPCs are now operating across the estate. Staff are increasingly supported in their work by mental health in-reach teams. Samaritans are working with the Prison Service to select prisoner peer supporters ('Listeners'), who are trained to listen to all prisoners who need somebody to talk to, and are often available 24 hours a day, 7 days a week. A programme of physical improvements at six pilot sites: Feltham, Leeds, Wandsworth, Winchester, Eastwood Park and Birmingham, funded by an investment of over £21 million, is 75% complete. The money is being spent on improvements to detoxification centres, reception and induction areas, the installation of First Night Centres and the creation of crisis suites and gated cells that enable staff to watch at-risk prisoners closely.

148. Each Prison Service establishment has a Suicide Awareness Team that meets regularly to consider any suicide or attempted suicide, and to explore appropriate preventative measures. The groups are multi-disciplinary including healthcare professionals, psychologists, chaplains, probation and education staff, representatives of voluntary organisations (such as the Samaritans), and officers from the Establishment.

### *Scotland*

149. The Scottish Prison Service is committed to reducing suicide in prison and to improving care for those at risk. Its suicide risk management strategy, introduced in 1992 and revised in 1998, accepts the need to change the culture and environment in prison to make it desirable and safe to seek help in times of crisis. The strategy involves multi-disciplinary teamworking, care planning and case conferencing, identification of risk, and the delivery of care-focussed support and intervention. All staff working in prisons are trained in the working of the strategy and in recognising the risk indicators. They receive annual refresher training.

150. In July 2000, the Scottish Prison Service commissioned the University of Stirling Anxiety and Stress Centre to carry out a review of all aspects of the suicide risk management strategy “ACT to Care”. Its report was published by the Scottish Prison Service in February 2003 and, together with a formal audit of the suicide risk management strategy, it embodies a comprehensive review of policy and processes. SPS is now revising its Strategy, taking into account the findings of the research and its own experiences in operating the Strategy, and aims to conclude the revision by April 2004.

151. On 2 December 2002, the Scottish Executive launched “Choose Life” - its National Strategy and Action Plan to Prevent Suicide in Scotland (see Appendix 23 to this report). The strategy aims to reduce the suicide rate in Scotland by 20 % by 2013. It co-ordinates and focuses action by national and local agencies, local community based initiatives, voluntary organisations and self-help groups. It is supported by a national implementation support team and a 3-year funding commitment. It identifies the following priority groups: children, young people (in particular young men), people involved in substance abuse, and people in prison. It is separate from the Scottish Prison Service strategy, though their arms are aligned.

## *Northern Ireland*

152. A review of NIPS policy and procedures for dealing with prisoners at risk has recently been completed and was adopted by the Prison Management Board in April 2003. This takes a holistic approach to providing the necessary support and care to prevent the individual harming himself or herself. It includes an initial assessment on reception to prison, Samaritan services, listener schemes, an anti-bullying policy and improved structures, systems and procedures. This policy is due to be implemented by December 2003.

## *Education*

153. The Offenders' Learning and Skills Unit (OLSU), based in the Department for Education and Skills, advises the Prison Service on learning and skills for prisoners. From April 2004 the Unit will also have responsibility for policy and funding of learning and skills for offenders under supervision in the community.

154. Funding for education and training in prisons is ring-fenced. It will rise from £97 million in 2003-04 to £137 million in 2005-06. These funds will help deliver a tailored, coherent programme of learning for prisoners from arrival in prison through to resettlement in the community on release, with a particular focus on provision for 18-21 year olds.

155. The Unit's vision is that offenders, according to need, should have access to education and training both in prisons and in the community. That education and training should enable them to gain the skills and qualifications they need to hold down a job and have a positive role in society. The content and quality of learning programmes in prisons, and the qualifications to which these lead, should be the same as comparable provision in the community.

156. The Unit's approach to achieving this vision is based on:

- securing and allocating resources to support a larger volume of learning and skills in prisons;
- ensuring that education and training contracts in prisons are of the best possible specification;
- expanding OLSU's role to encompass learning and skills for those on probation;
- increasing and developing opportunities for offenders to learn – and gain qualifications in – marketable basic and

work-related skills, and increasing participation in other learning opportunities;

- building capacity so that infrastructures are in place to support significant improvements in learning and skills for offenders; and

- working with organisations within and outside Government and strengthening partnerships with them to take forward the agenda for change and improvement.

157. Prisons are included in the national Skills for Life Strategy. In 2002-03 prisoners achieved over 41,000 qualifications in literacy and numeracy at all levels, making a significant contribution to the number of adults nationally who improved their basic skills. A range of other learning opportunities, including distance learning, is also available to prisoners. In 2002-03 560 prisoners registered with the Open University on undergraduate courses.

158. The Government is investing an additional £14.5 million a year from April 2003 in the Prison Service “Custody to Work” initiative to increase the number of prisoners getting jobs, education or training places after release. 18-20 year olds are already benefiting from additional money invested in the programmes funded from previous spending reviews, for example on drug treatment and offending behaviour programmes.

### ***Use of unfurnished accommodation***

159. Paragraph 92 of the 3<sup>rd</sup> Report referred to the use of unfurnished accommodation in the care of those at risk of self-harm. Instructions were issued in April 2000 which abolished the use of such accommodation or any other arrangements that deprive prisoners of normal amenities such as clothing, furniture or bedding. The Instructions suggested alternative measures to accommodate prisoners at risk. The use of special accommodation may be authorised exceptionally for a prisoner who is identified as being at risk of suicide/self-harm, and who is also violent and a danger to others. This is a last resort, and only for the period that the prisoner is violent and considered dangerous. These instructions were consolidated in Prison Service Order 2700 (Suicide and self-harm prevention) with effect from 1 January 2003, and will be reviewed again as part of a continuing safer custody programme (see Appendix 24 to this report).

## ***Bullying***

### ***England and Wales***

160. The Government recognises that bullying takes place in many prisons and that work is needed to ensure that prison is a safe place in which people can concentrate on building their futures. The Prison Service's national anti-bullying strategy has been shown to be effective when applied rigorously at establishments. Every establishment is required to have a local strategy to address the issues of bullying and victimisation, as it is their duty to ensure the safety and care of prisoners. There is special emphasis on vulnerable groups, such as young prisoners in young offenders prisons. Each prison is expected to take into account the type of prisoners in their care and adopt an anti-bullying strategy.

161. Establishments continue to implement measures to deal with the perpetrators of anti-social behaviour and also recognise the need for victims to be protected and supported. The principal aims of the newly developed Prison Service Violence Reduction Unit are to develop a violence reduction strategy and to review the existing anti-bullying strategy. This includes the development of key performance indicators and key performance targets on assaults. The Prison Service has launched a national risk assessment form for cell sharing to help reduce the risk of prisoner-on-prisoner assaults. The Prison Service is also exploring strategies and methods used elsewhere that have been effective in reducing bullying.

### ***Scotland***

162. In 2000 the Scottish Prison Service introduced a new strategy to combat bullying by prisoners of fellow inmates. It requires both staff and prisoners to be made aware of the issues surrounding bullying and how these can be addressed, and includes training for staff to identify and control bullying.

### ***Northern Ireland***

163. In Northern Ireland, prisons have adopted anti-bullying strategies involving removal of bullies to where there is increased staff supervision, and encouraging them to confront their anti-social behaviour before they are returned to their normal location. Professional staff (e. g. psychologists) discuss the issue in one-to-one sessions. This may result in prisoners being encouraged to attend



specific programmes to deal with their behaviour, e. g. enhanced thinking skills. If the prisoners do not wish to change their anti-social behaviour, their association with other prisoners may need to be restricted. Risk assessments are conducted on bullies to ensure safe re-integration into the mainstream population. Risk assessments are also conducted on the victims of bullying to provide support and safe accommodation.

### ***Monitoring the use of restraints***

164. As stated in the 3<sup>rd</sup> Report, there are concerns about the use of body belts by the Prison Service in England and Wales. Body belts may be used as an exceptional measure when all other reasonable means of restraint have failed. They may only be used with the authority of the governor in charge and the medical officer, provided that there are no clinical reasons not to do so. Their use must be in accordance with the relevant provisions of the Prison Rules and of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Prisoners will not normally be held longer than 24 hours in a body belt. If the prisoner's behaviour means a further period of restraint is considered necessary, this must be expressly authorised by the Board of Visitors to the prison. The use of body belts is monitored at Prison Service Headquarters. In 2002 40 prisoners (38 male and 2 female) were placed in body belts. In 2001, 54 male prisoners (and no female prisoners) were placed in body belts on 57 occasions. In 2000, male prisoners were placed in body belts on 47 occasions and two female prisoners were similarly restrained.

### ***Review of contracting out/privatisation of prisons and escort services***

#### ***England and Wales***

165. The policy of private sector involvement in prison management has been under review since 1998. In February 2002 the Prison Service commissioned the Carter Report, which considered the contribution of the private sector in achieving the objectives of the Prison Service under the Private Finance Initiative (see Appendix 25 to this report). Its recommendations envisage a continuing role for private sector management.

166. No prison is wholly privatised. Management of nine prisons is contracted out to private sector companies with a further two due to open on 2004-05. This will account for some 10% of the total prison

population. Each privately run prison is headed by a director who is an employee of the contractor and approved by the Home Secretary. All members of staff working with prisoners in privately run establishments and on escort contracts have to be certificated by the Secretary of State as prisoner custody officers. They are subject to the same standard of vetting as Prison Officers and must complete an initial training course of about eight weeks' duration. A prisoner custody officers' certificate may be suspended by the controller/escort monitor and revoked by the Secretary of State if he or she is no longer considered a fit and proper person to carry out custodial duties.

167. Private sector contracts are subject to a framework of safeguards, controls and accountabilities. Contracts require compliance with all relevant legislation including Prison Rules and Young Offender Institution Rules. Like public-sector prisons, each privately managed prison has a Board of Visitors and every prisoner has access to the Prisons Ombudsman. The contractor is subject to scrutiny by Parliament and its Select Committees. At each private sector prison the Prison Service is represented by the Controller who, supported by a Deputy Controller, is on site daily to monitor contract compliance and to carry out those functions reserved to state servants (adjudicating disciplinary charges, investigating allegations against members of staff and authorising control and restraint).

168. Escorts of prisoners to and from courts and between prisons have been contracted out to private companies. The Criminal Justice Act 1991, as amended by the Criminal Justice and Public Order Act 1994, requires that all escort contracts are monitored by the Prison Service. This is to protect prisoners and ensure that standards of care are maintained, as well as to monitor value for money and contract compliance. The escort monitor will investigate allegations by prisoners about any action by a contractor or member of their staff. In addition, volunteer members of the public (lay observers) are appointed under the terms of the Act to inspect and report on the conditions under which prisoners are transported and held. A panel of lay observers monitors each escort area and reports annually to the Secretary of State. A survey on the care of prisoners under transport and at court was undertaken at the end of 1999. It showed that, overall, prisoners felt the escort contractors were delivering services well.

### *Scotland*

169. It was announced in Jan 2002 that the escorting of prisoners from police cells and prisons to court in Scotland is to be contracted out following a review of current escort practices conducted by the Police, the Scottish Court Service and the Scottish Prison Service. Subject to the Prisoner Escorts Project Team successfully concluding negotiations with the preferred bidder, it is anticipated that the service provider will take on escort duties in a phased process during 2003-04.
170. A legal power for court proceedings to be conducted by way of a closed circuit television link between prisons and courts has been created under section 80 of the Criminal Justice (Scotland) Act 2003, which came into force in June 2003. A pilot live television link between HM Prison Barlinnie and Glasgow Sheriff Court, where the daily volume of prisoners in transit for full committal proceedings is the greatest in Scotland, has begun operating for committal hearings and for interviews between prisoners and legal advisers.

### *Northern Ireland*

171. In Northern Ireland, the Prisoner Escort Group is an integral part of the Prison Service, providing both an escorting service and a reserve of staff for handling emergencies. There are no immediate plans for contracting out this part of the business. In a video link project, 17 Magistrates' Courts have now been linked to three prison establishments for the purposes of conducting pre-trial hearings. In addition video links have been provided at NIPS Headquarters and to a number of criminal justice agencies with plans to add others to the net.

## **Immigration Service**

### *Review of use of detention*

172. The decision on whether or not someone should be detained is made by an Immigration Officer under powers contained in the Immigration Act 1971. Individuals may be detained pending enquiries as to identity or the basis of claim; to prevent absconding; or to effect removal.
173. A review of detention is carried out at 28 days, when responsibility for both detention and casework passes to a central unit

within the Immigration and Nationality Department (IND). The detainee is notified on a monthly basis of the reasons for detention. After two months, detention reviews are carried out by increasingly senior members within the Immigration Service. After 12 months detention is reviewed at Director level.

### ***Recording of interviews and access to legal advice***

174. Under the PACE Act, all interviews with suspected immigration offenders conducted under caution at police stations must be tape-recorded unless the custody officer authorises otherwise because the equipment has failed, or because there is no suitable interview room, or because no offence has been committed. In these cases, interviews must be recorded in writing. Interviews conducted in prisons, immigration detention centres and enforcement offices are recorded on forms unless tape-recording facilities exist. In places of residence and employment interviews may be recorded in official notebooks. Where interviews are not tape recorded (see above) the offender is offered the opportunity, at the end of the interview, to have their answers read back, and they are invited to sign the record to agree that it is fair and accurate. Under the PACE Act, suspected immigration offenders have a right to legal representation, whether interviewed at an enforcement office, police station or place of detention.

175. Asylum interviews are not conducted under caution and are not tape-recorded. However, a verbatim record is kept of the interview and a copy provided to the interviewee. In certain circumstances prior to the interview, asylum-seekers are asked to complete a “Statement of Evidence” form setting out the basis of their claim. These forms must be returned to IND within a specified time. The Government’s 1998 White Paper, *Firmer, Faster and Fairer – a modern approach to immigration and asylum*, explains that, because the asylum interview is essentially a fact-finding exercise to enable applicants to say why they fear persecution in their own country, legal representation is not necessary (see Appendix 26 to this report). The Government neither encourages nor discourages the presence of a legal adviser at the asylum interview, but (under paragraph 84 of the Immigration and Asylum Act 1999) no person may provide immigration advice or services unless qualified to do so.

### ***Places of detention***

176. In January 2002 the Government met its commitment to remove detainees from the 500 remand spaces in local prisons. This was made possible by the opening of three new removal centres at Dungavel, Harmondsworth and Yarl's Wood in late 2001. The current detention estate comprises 9 removal centres (8 in England and 1 in Scotland). Due to the events at Yarl's Wood in early 2002, which led to its closure, the Prison Service agreed to accept up to 90 detainees in local prisons to ease the burden in Immigration Removal Centres (IRCs). Current estimates are that up to 300 detainees are held in local prisons in England and Wales. These are people held after the expiry of their prison sentence, in most cases because the nature of their offences are too serious for the Immigration Service to accept them in IRC's, or because of security and control reasons. There are 15 places for immigration detainees at Maghaberry prison in Northern Ireland. Some immigration detainees are housed there because the numbers are too few to warrant a removal centre there. However, such individuals are given the choice of moving to a removal centre in Great Britain. Details relating to immigration detention can be obtained from the IND Website: [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).

### **Detention under Mental Health Powers**

177. Arrangements for monitoring the Mental Health Act 1983 in England and Wales, and comparable provisions in Scotland and Northern Ireland, were set out in paragraphs 83-95, 103, and 137-139 of the initial report, paragraph 70 of the Second Report, and paragraph 109 of the Third Report. The current Code of Practice provided under the Act (See Appendix 27 to this report) provides guidance to registered medical practitioners, nurses, hospital staff and others in the field, on how to proceed when carrying out duties under the Act. In 1997, the Government consulted a wide range of organisations for views on how this guidance might be improved, and a revised Code was published in March 1999.

178. The Government has invited consultation on a new Mental Health Bill published in June 2002, which it intends to introduce to Parliament as soon as possible. The Bill envisages that all decisions on compulsory treatment of mentally disordered persons would be made in the context of a care plan endorsed by an independent judicial order, by the Court, or by a tribunal.

179. In Scotland after extensive consultation the Scottish Parliament passed the Mental Health (Care and Treatment (Scotland) Act 2003 which is likely to be implemented with appropriate supporting guidance by 2005.

### **Review of Emergency Provisions Legislation**

180. The UK's 3<sup>rd</sup> Report referred to an independent review of counter-terrorist legislation in 1996, conducted by Lord Lloyd of Berwick, which made a number of recommendations for the future of the existing counter-terrorist legislation. A consultation paper setting out the Government's proposals was published in 1998 (see Appendix 28 to this report).

181. On completion of the consultation process, the Terrorism Act received Royal Assent in July 2000. This Act contains permanent UK-wide counter-terrorism powers and procedures to replace the temporary Prevention of Terrorism Act and the Northern Ireland (Emergency Provisions) Act. The Terrorism Act contains a new definition of terrorism replacing the previous distinction between Irish and international terrorism. A key feature of the Act is that it introduces judicial extensions of the detention of terrorist suspects. This replaces the previous system of Ministerial extensions and has enabled the UK's derogations from the ECHR and ICCPR, entered after the *Brogan* judgment<sup>2</sup>, to be withdrawn.

182. The Government remains committed to ensuring that the security forces in Northern Ireland have available the powers they need to counter the terrorist threat. The Terrorism Act therefore contains a temporary part for Northern Ireland. The Northern Ireland part of the Act is time-limited to five years and requires annual renewal; and each provision can be switched off by Order at any time. Setting these temporary powers within a UK-wide framework of permanent counter-terrorism measures underlines the Government's commitment to repealing the Northern Ireland-specific powers as soon as it is safe to do so.

### **Holding Centres**

183. Following examination on the 3<sup>rd</sup> Report, the Committee said that it wished to see the three holding centres closed. The Report of

---

<sup>2</sup> *Brogan and Others v United Kingdom* (1989) 11 EHRR 117

the Independent Commission on Policing for Northern Ireland (“The Patten Report”) also called for this. The recommendation has been accepted. The Castlereagh Holding Centre closed on 31 December 1999, Strand Road on 1 October 2000, and Gough Barracks on 30 September 2001. Terrorist suspects are now detained with PACE detainees in the new dual custody suite at Antrim Police Station. This reflects recommendation 62 of the Patten Report.

## **Article 12 (investigation of acts of torture or other forms of ill treatment)**

### **Investigation of deaths in police custody**

#### *England and Wales*

184. All deaths in police custody are a matter of serious concern to the Government, particularly if there are allegations of maltreatment or failure of duty by police officers. All deaths in police custody are referred to the PCA and are subject to a public inquest (or, in Scotland, a Fatal Accident Inquiry) to see what lessons can be learned. If an allegation is made against a police officer there is an internal investigation supervised by the PCA. All inquests are subject to section 8(3)(b) of the Coroners Act 1988, which requires that a Coroner shall hold the inquest before a jury “ where the death occurred while the deceased was in police custody, or resulted from an injury caused by a police officer in the purported execution of his duty”.

185. In England and Wales, every death in police custody must be reported to the Coroner immediately by telephone, and to the Home Office within 48 hours. Police forces are also expected to notify the PCA immediately by telephone. The PCA examines all deaths in police custody, even if no formal complaint has been made. If a complaint is made, then the PCA has the power to approve the investigating officer and direct the course of the enquiry. Once the PCA is satisfied that there has been a full and proper investigation, a report is submitted to the CPS to determine whether or not any officer should face criminal charges. The PCA and the chief officer must also decide whether or not to bring internal disciplinary charges. The PCA has the right to require this action to be taken. Whether internal disciplinary charges or criminal charges are initiated, or not, the circumstances of a death will be aired publicly, either at trial or at an inquest.

186. In April 1999, the Home Office issued guidance advising chief officers to make arrangements for the pre-inquest disclosure of documentary evidence to interested parties when there has been a death in custody. This was in response to a recommendation from the Stephen Lawrence Inquiry that there should be advance disclosure of evidence and documents as of right to parties who have leave from a coroner to appear at an inquest. The application and effectiveness of



that guidance has been reviewed. It was found to be working well, and slightly amended guidance was issued in June 2002.

187. During 2000/01, in England and Wales, the PCA supervised 52 investigations into deaths in police care or custody, compared with 70 in 1999/2000. The PCA also carried out 38 investigations into road traffic incidents classified as deaths in care or custody, and began 9 investigations into police use of firearms involving death or injury.

### *Scotland*

188. Scotland's eight chief constables are responsible for reporting all deaths in police custody to the Procurator Fiscal, and also to the Scottish Executive. Her Majesty's Chief Inspector of Constabulary is also required to include details in his annual report.

189. The Procurator Fiscal will carry out an independent investigation into the circumstances of any death in custody. On conclusion of the investigation, an inquiry under the provisions of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 is held to look into the circumstances surrounding the death. The Sheriff will determine the cause of death and record whether or not there was anything that could have been done to prevent the death.

190. In Scotland, the definition of deaths in custody is not limited to deaths in formal custody following arrest; it includes the deaths of those being taken to police stations to be detained, and those of arrested persons taken to hospital for treatment before detention. When such deaths occur, the procedures adopted by the police are scrutinised publicly to ensure that lessons are learned and that the police remain accountable. In 2002, eight such deaths were reported in Scotland.

191. In 2000, a Group with members drawn from the Scottish Executive, the Crown Office and Procurator Fiscal Service, the Association of Chief Police Officers in Scotland (ACPOS), and HMIC discussed roles and responsibilities in dealing with such deaths. As a result, it is envisaged that HMIC will be notified of Sheriff judgements from the Fatal Accident Inquiry, and that HMIC will refer the outcomes from these enquiries into the force inspection programme. This will include issues identified by the Sheriff which affect the levels of service provided by the force concerned. Where appropriate, HMIC will also notify progress to Ministers and the public through the recognised reporting procedures.

### *Northern Ireland*

192. All deaths in police custody in Northern Ireland are investigated by in the independent civilian office of the Police Ombudsman for Northern Ireland. Under an agreed protocol with the Chief Constable of the PSNI any death in police custody is automatically referred to the Police Ombudsman who will then carry out a thorough investigation into the incident.
193. The Ombudsman's formal investigation will include securing the various scenes, liaising with the family, identifying witnesses and obtaining statements, securing any forensic evidence, identifying all police officers who came into contact with deceased and taking witness statements where relevant, liaison with the State Pathologist, contact with the Coroner and the completion of a report to the Coroner.
194. The Police Ombudsman will also consider whether any police officers may have committed criminal or police misconduct offences. If the Police Ombudsman believes that a criminal offence may have been committed by a police officer a report, together with recommendations, is made to the independent office of the Director of Public Prosecutions. If the Police Ombudsman recommends any disciplinary proceedings against a police officer a report is made to the Chief Constable.
195. Whatever the outcome of an investigation into a death in police custody the Police Ombudsman provides a report to the Secretary of State for Northern Ireland, the Northern Ireland Policing Board (which holds the Chief Constable to account for policing functions in Northern Ireland), and the Chief Constable of the PSNI.

### **Investigations into deaths in prison**

#### *England and Wales*

196. In England and Wales, all deaths in prison custody are the subject of an internal investigation conducted by a Senior Investigating Officer (SIO) - a senior governor from another prison specially trained for the task who acts on behalf of senior Prison Service managers. The current investigation format, which was introduced in April 1998, is far more detailed and wide-ranging in examining the causes of a death than previously. The SIO has the power to make criticisms and, where appropriate, recommend

disciplinary action against staff. Recommendations arising from the SIO's report are implemented by senior managers. Since 1 April 1999, it has also been Prison Service policy to disclose, before the Coroner's inquest, copies of the investigation reports to the families of those prisoners who die in custody. The Prison Service Safer Custody Programme includes a project taking a fresh look at strengthening investigation procedures, involving an independent element and better learning and dissemination of lessons arising from particular cases.

197. Any death in custody is also the subject of a police investigation to establish what has happened and to ensure that no criminal activity has taken place. All deaths in custody are also reported to a Coroner. The Coroner, who is an independent judicial authority, will hold an inquest before a jury to establish the facts of the case. The Coroner's Inquest has been held to be an independent investigation under domestic and European law.

#### ***Scotland***

198. In Scotland, the Procurator Fiscal carries out an independent investigation into the circumstances of any death in prison. On conclusion of the Procurator Fiscal's investigation, an inquiry under the provisions of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 is held to look into the circumstances surrounding the death. The Sheriff determines the cause of death and records whether or not there was anything that could have been done to prevent it. Any death that appears to have been self-inflicted is investigated by two members of the Prison Service's National Suicide Risk Management Group.

#### ***Northern Ireland***

199. In June and July 2003 an independent review group presented to the Home Secretary its reports on a fundamental review of the coroner services and death certification in England and Wales and Northern Ireland (see paragraph 104, above).

200. A protocol has been agreed between the NIPS, the PSNI and the Director of Public Prosecutions for Northern Ireland on the investigation and prosecution of crimes committed in prisons. Under the Protocol all deaths in custody are immediately reported to the police who carry out an independent investigation and report their findings to the DPP or the coroner as appropriate.

## Article 13 (availability of complaints procedures for those suffering torture or other forms of ill treatment)

### Police discipline and complaints

201. The UN Special Rapporteur on the Independence of Judges and Lawyers has made two reports about complaints. The Government has responded separately to each.

#### *England and Wales*

202. Anyone can make a complaint if they consider that they have been dealt with improperly by the police. Complaints and discipline procedures laid down under Part IV of the Police Act 1996 ensure that police officers are fully answerable for their actions. Under the terms of the Act, chief officers of police are responsible for determining whether a complaint should be recorded.

203. The police discipline procedures are laid down in the Police Act 1996 (which replaces those under Part IX of the PACE Act), and are set out in the Police (Conduct) Regulations 1999 and the Police (Conduct) (Senior Officers) Regulations 1999 (see Appendices 29 and 30 to this report). A force may accelerate discipline procedures if the offence is of a serious nature.

204. Annual figures on complaints against the police in England and Wales are set out below.

	1997-8	1998-9	1999-2000	2000 -1
Cases*	22, 057	20, 338	20, 973	18,911
% change on previous year	-2	-8	+ 3	-10
% substantiated	2	2	2	3
%unsubstantiated	25	27	24	29
% withdrawn	38	36	38	12
% informally resolved	34	35	36	34

\*Each complaint 'case' may contain a number of complaints.

205. The PCA supervises investigation of the most serious complaints against the police, including those involving death, serious injury or serious arrestable offences. It also reviews the report of every complaint investigation and may recommend or direct that officers face disciplinary proceedings if none have already been taken.

Where the alleged conduct would constitute a criminal offence, the CPS determines whether criminal charges should be brought.

206. Police misconduct regulations issued on 1 April 1999 under the Police Act 1996 mean that:

- disciplinary hearings now operate the civil standard of proof ('balance of probabilities' rather than the criminal standard of 'beyond reasonable doubt')
- there is a fast track procedure to deal with officers against whom there is overwhelming evidence of serious criminal misconduct
- there are greater powers for proceedings in the absence of accused officers who report sick when facing disciplinary action, and
- there is a means for dealing with unsatisfactory performance by police officers, with the possibility of removing officers when their efficiency cannot be brought up to standard.

207. The chief officer may suspend a member of his force where a complaint indicates a disciplinary offence, whether or not the matter has been investigated. An officer under suspension is unable to retire from the force without the leave of the chief constable.

### *Scotland*

208. In Scotland complaints against the police are investigated either by the Area Procurator Fiscal, or by the police, depending on whether the conduct complained of amounts to a criminal offence. Only non-criminal misconduct complaints are investigated by the police. In 2002 the Lord Advocate gave the police revised guidance on how complaints against them were to be investigated.

209. The Area Procurator Fiscal investigates all complaints in which the complainant alleges that a crime may have been committed by a police officer or officers in the course of their duty. Such investigations are entirely independent of the police, and the Area Procurator Fiscal must be seen to provide a completely impartial and thorough system of investigation.

210. The Area Procurator Fiscal will also investigate complaints alleging criminal conduct by special constables and by civilian support staff in the course of their employment.

211. Although complaints against the police are usually first reported to the police, they can be reported directly to the Area Procurator Fiscal. All allegations of criminal conduct are investigated, whether or not they arise from a complaint by a member of the public.

212. During 2001/2002 there were 1,198 complaints of criminal conduct against police officers in Scotland. As a result 27 police officers were prosecuted.

213. In non-criminal cases, the Deputy Chief Constable of the force decides whether a misconduct hearing or a warning from a senior officer is appropriate. The police authorities and HM Inspectorate of Constabulary provide independent oversight of the system. Under section 40 of the Police (Scotland) Act 1967, police authorities and Inspectors of Constabulary are required to oversee the manner in which a Chief Constable deals with complaints made against constables by members of the public. HMIC will review the handling of a non-criminal complaint if asked to do so by a dissatisfied complainer.

214. Schedule 1 to the Police (Conduct) (Scotland) Regulations 1996 details behaviour that constitutes misconduct. Scotland's eight forces have power to impose sanctions against officers found guilty of misconduct. Under the 1996 Regulations, misconduct hearings may be delegated to superintendents. A thematic report by HMIC entitled *A Fair Cop* (ISBN 07480 93478) suggested that it would be good practice for only trained senior officers to chair these hearings (see Appendix 31 to this report). HMIC continue to monitor these procedures during inspections.

215. Outcomes of disciplinary hearings from April 1999 to March 2002 are set out in the table below.

	1999/2000	2000/2001	2001/2002	2002/3
Allegation withdrawn at hearing	2	0	0	0
No finding of guilt or misconduct proved	6	1	3	2
Dismissed	0	0	1	5
Required to resign	11	3	3	8
Reduced in rank	1	0	5	3
Reduced in pay	11	7	9	8
Fines	24	34	10	23
Reprimanded	18	13	13	14

Cautioned	5	3	1	1
<b>Total</b>	78	61*	45	64

## **Developments in police complaints systems**

### *England and Wales*

216. The Police Reform Act 2002 became law on 24 July 2002. It contains provisions for a new complaints system for England and Wales. The main objectives of the new complaints system are:

- increased public confidence and trust
- increased accessibility, openness and independence
- quicker resolution of complaints
- improved communication, and
- improved use of information.

217. The Government has established a new independent body to replace the PCA, known as the Independent Police Complaints Commission (IPCC). Complainants can appeal to the IPCC if, for example, the police refuse to record a complaint, if they are unhappy with the way the complaints process has been used or if they are dissatisfied with the information the police provide to them after an investigation. It is intended that all serious misconduct cases that fall into specified categories (such as those relating to deaths in custody, a serious injury in custody, serious corruption, etc.) will be referred to the IPCC, whether or not they arise from a complaint. The IPCC can then decide whether to supervise an investigation by a police force or to undertake its own investigation, independent of the police. The IPCC has the power to present or observe disciplinary cases to ensure that evidence to a disciplinary hearing is presented fully and robustly. The IPCC can submit cases to the CPS who decide whether criminal proceedings should be brought.

### *Scotland*

218. In Scotland the Crown Office and Procurator Fiscal Service carried out an internal review of how it investigated complaints of criminal conduct by police officers. This review reported in 2000 making a series of recommendations. As a result the Lord Advocate issued guidelines to the police and fresh internal guidance to Area Procurators Fiscal.

219. In 1999 HMIC carried out a thematic inspection of the handling of complaints by the police in Scotland. Its report, *A Fair*

*Cop?*, was published on 6 April 2000 (see Appendix 31 to this report). The report's main conclusion was that the overwhelming majority of complaints were investigated with thoroughness, impartiality and integrity. However, it made several criticisms of the way the system was operated by different forces, particularly on recording and response to complaints. HMIC made 18 recommendations to improve the current system.

220. Although *A Fair Cop?* had already provided a large amount of data on many aspects of the police complaints system in Scotland, further evidence and discussion was needed on the introduction of greater independence into the supervision and investigation of complaints. Consequently, a consultation exercise was launched to:

- Address the recommendations in *A Fair Cop?*;
- Identify the extent of independent involvement required;
- Consider the features of an effective complaints system including speed, simplicity, and cost effectiveness.

221. On 5th July 2001 a consultation paper was circulated to around 315 organisations (private, statutory and voluntary) and individuals (including Members of the Scottish Parliament) (see Appendix 32 to this report). It outlined the key issues, provided information on the current legislative framework, and posed a number of specific questions. The paper was also made available on the Internet.

222. Respondents were asked for their views on :

- the adequacy of the current definition of a complaint in the Police Conduct Regulations
- whether there should be a single system for all police staff or separate arrangements for Special Constables and civilian staff
- the need for national guidance on record keeping and public accessibility procedures
- whether quality of service should be subject to formal investigation
- the type of body best suited to deal with police complaints e.g. an Independent Police Complaints body or Ombudsman.

223. Thirty-three responses were received.

224. Scottish Ministers are currently considering the outcome of the consultation exercise. Whatever the outcome, the introduction of any new independent element into the supervision and investigation of complaints will require primary legislation.



### *Northern Ireland*

225. In Northern Ireland, the Police Complaints System has gone through radical reforms since the Third Report was published. These aim to ensure the new complaints system is fair, easily understood, widely accessible and transparent; and to instil police and public confidence in the system.

226. Responsibility for handling Police Complaints in Northern Ireland passed to the Police Ombudsman on 6 November 2000. The Ombudsman has been given full control of the Complaints System. She is completely independent and can investigate any complaint where it is alleged that the conduct of a police officer did not meet the standard set out in the Code of Ethics. The Secretary of State, the Northern Ireland Policing Board, and the Chief Constable can refer other matters, which are not the subject of the complaint, to the Ombudsman for investigation. Under certain circumstances the Ombudsman has powers to initiate investigations at her own discretion. The Chief Constable must refer any matter to the Ombudsman where it appears that the conduct of a police officer may have resulted in the death of some other person.

227. If the Ombudsman determines that a criminal offence may have been committed by a Police Officer, she will send a report to the Director of Public Prosecutions (Northern Ireland) with recommendations. If the Ombudsman or the Director of Public Prosecutions decides that an officer has not committed a criminal offence, the Ombudsman may nevertheless recommend disciplinary charges. If the Chief Constable is unwilling to bring such charges, the Ombudsman may direct him to do so. The matter will be heard by an independent tribunal.

228. Figures on police complaints from 6 November 2000 are set out below:

<b><u>Dates</u></b>	<b><u>No of complaints</u></b>
6 November 2000 – 1 March 2001	1,531
1 April 2001 – 31 March 2002	3,598
1 April 2002 – 31 March 2003	3193

229. The Police Ombudsman has also acquired powers under the Police (NI) 2003 Act to investigate current practices and policies of the police.

## **Prison discipline and complaints**

### *England and Wales*

230. The Request and Complaints system, introduced in its current form in 1990, was reviewed in 1999/2000 (see Appendix 33 to this report). The Review found much to commend in the way existing procedures worked, but it also identified a number of weaknesses. New procedures, designed to overcome defects in the current system, were piloted in selected establishments in 2000/01. Following assessment of the pilots, the new procedures were implemented throughout the Prison Service in April 2002.

231. The new procedures set out clear criteria for the conduct of investigations, the production of reports, and disclosure of reports. They also set out guidance on the treatment of prisoners involved in investigations and of their families. The new system is supported by a central unit that holds and monitors information on all formal investigations commissioned across the Prison Service. This information includes the source, location and type of investigation, its causes, and its outcome, enabling the Service to monitor trends and identify areas of concern.

232. The Prisons and Probation Ombudsman (formerly the Prisons Ombudsman) is appointed by and reports to the Home Secretary. He provides an independent point of complaint for prisoners who have failed to obtain satisfaction from the internal complaints system, and for individuals who wish to complain about the National Probation Service.

233. From September 2001, the Ombudsman's role was extended to cover the new National Probation Service. His remit, as far as the Prison Service is concerned, remains unaltered. He continues to investigate any complaints made against the Prison Service by prisoners, provided they have exhausted the internal Prison Service complaints procedures.

234. In 2002-2003 the Ombudsman completed 1462 investigations, an increase of 34% on the previous year and the highest number in the office's history. Of the complaints investigated, 34% were upheld

either wholly or in part or resolved locally. Recommendations were made in 208 cases. One recommendation was rejected.

235. The following table provides figures and analysis to March 2003:

Prisoner Complaints: Analysis of Complaints Received, Outcome and Recommendations		
	1/4/01 - 31/3/02	1/4/02 - 31/03/03
Complaints received	2728	3132
Complaints deemed eligible	1194	1317
Investigations completed	1107	1462
Upheld/ Partially Upheld	226	233
Local Resolution	157	250
Positive Outcome	383	483
Recommendations to DG	324	208
Recommendations to Home Secretary	0	1
Recommendations rejected	7	1

236. The Human Rights Act came into force on 2 October 2000. It gives further effect to the protections of the European Convention on Human Rights (ECHR) in UK law. As cases citing ECHR principles can now be brought in domestic courts, this provides prisoners who allege they have been subjected to torture or inhuman or degrading treatment with another method of making complaints to an impartial body.

### *Scotland*

237. Arrangements for complaints against prison officers and disciplinary proceedings in Scotland were set out in paragraphs 97-101 of the initial report.

238. Independently of the Scottish Prison Service, the Procurator Fiscal investigates allegations that a prison officer has committed a crime. As part of the investigation, the Procurator Fiscal will see in private the prisoner making the complaint.

239. In 1998 the internal system for dealing with prisoners' complaints was revised. Complaints forms are available throughout establishments and training is given to staff in how to investigate and respond to complaints. In the 12 months to June 2003 the Scottish

Prison Service received 6672 complaints, covering all aspects of prison life.

240. Most complaints are resolved within establishments but prisoners who are unhappy with how a complaint has been dealt with have a right of confidential access to the Scottish Prisons Complaints Commissioner - who is independent of the Scottish Prison Service. The Commissioner has the right of unfettered access to prisons, prisoners, files, records, and other sources of evidence. Many of the complainants will be interviewed personally by the Commissioner. He is able to resolve complaints at local level but where he remains concerned he can make a formal recommendation to the Chief Executive of the Scottish Prison Service.

241. The following table provides figures on numbers of complaints received and recommendations made by the Complaints Commissioner in the last 4 calendar years:

Period	Complaints received	Recommendations made
1999	433	6
2000	287	4
2001	419	7
2002	534	14

#### ***Northern Ireland***

242. In June 2001, the NIPS introduced revised arrangements for dealing with prisoners' complaints, requests and grievances. These included instructions for prompt and rigorous investigation. At the same time a booklet was published to prisoners and staff giving details of the new procedures (see Appendix 34 to this report). A new system to collate information on prisoners' complaints is being introduced in each prison establishment.

#### ***Access to legal advice***

##### ***England and Wales***

243. As stated in the 3<sup>rd</sup> Report, in all parts of the United Kingdom, the rules governing prisoners' contacts with their legal advisers are set out in Prison Rules and other internal Instructions to Governors. The rules governing legal privilege apply both to convicted prisoners and prisoners on remand and are designed to safeguard their rights when

contacting their legal representatives. All visits by legal advisers take place in the sight, but out of hearing, of a prison officer.

244. The Access to Justice Act 1999 brought in significant changes to the old Legal Aid Scheme. The Legal Aid Board was replaced by the Legal Services Commission (LSC), which administers the provision of publicly funded legal services. The LSC has issued new guidance on funding which is intended to make sure that cases which serve the public interest (especially those against public bodies) and those which serve the interests of justice, are funded, and frivolous actions are not. In addition, only legal firms with a contract with the LSC are able to undertake publicly funded work. The contracted firms are audited to ensure that they provide a quality service and can provide the level of professional skills and knowledge required.
245. The implications of the Act have been explained in the updated Prison Service Order 2605, issued on 5 June 2001, which also explains the role of the Legal Services Officer (a mandatory post in prisons), who is responsible for ensuring that all prisoners are given access to legal advice and the facilities to pursue legal actions, (this includes actions against the Prison Service or Police).
246. In February 2001, in response to several judicial review applications, the Prison Service introduced an instruction that allowed the provision of a laptop computer to certain prisoners engaged in legal work. Prisoners have to demonstrate to the governor that lack of access to a computer would risk prejudice to their legal proceedings. To satisfy IT security concerns, only computers owned by the Prison Service are issued.
247. Some organisations outside Government have expressed concerns about the conditions in which legal visits take place in Special Secure Units in England and Wales. At present, closed visits (in booths) are still a necessary security measure as they are the only means of ensuring that unauthorised items are not passed from visitors to prisoners. In accordance with the 1997 court hearing in the case of *Ó Dhuibhir*<sup>3</sup> the policy of closed visits is kept under review. The review considers the level of risk posed by exceptional risk prisoners and whether other security improvements have reduced the need for closed visits.

---

<sup>3</sup> R v SSHD ex parte O'Dhuibhir (1997)

248. Open visits in Special Secure Units may be granted in exceptional circumstances. Since the 3rd Report, a remand prisoner has been granted open legal visits while at court. He was also granted an open visit with his wife and young son as they live abroad and are unable to visit regularly. Each request is considered on its own merits.

### *Scotland*

249. In Scotland, the rules governing visits by legal advisers are similar to those in England and Wales. There are no Special Secure Units in Scotland.

### *Northern Ireland*

250. Legal/Professional visits in Northern Ireland Prisons normally take place between Mondays and Saturdays (Saturday is a half-day). Appointments can be made by telephone, email, fax or in person. Additionally, NIPS has video conferencing facilities for use in legal/professional consultations. NIPS is connected to 17 courts and to a number of legal practices that have their own video conferencing equipment for legal/professional consultations. The system is fully computerised. Other facilities offered by NIPS include television and video equipment, playback equipment and fax and telephone equipment.

### **Military discipline and complaints in Northern Ireland**

251. The Independent Assessor of Military Complaints Procedures keeps under review procedures for the investigation of complaints about the Army and investigates any representations made to him about these procedures. The Assessor reports to the Secretary of State annually. During 2000 there were 19 formal non-criminal complaints made against the Army, of which three were substantiated. During 2001, 20 formal non-criminal complaints were made, none of which were substantiated. In 2002, 25 formal non-criminal complaints were made, none of which were substantiated. No criminal complaints were made.

### **Immigration Service discipline and complaints**

252. The formal complaint procedures are set out in paragraphs 125-127 of the 3<sup>rd</sup> Report. Complaints of mistreatment, e. g. withholding food, are dealt with under these procedures, but

allegations of physical violence are referred to the police to consider whether to undertake a criminal investigation. Detainees in immigration detention centres may in addition complain to the local visiting committee.

253. Information on how to make a formal complaint is available in leaflets and on posters, and is also contained on the IND Website. Members of the independent Complaints Audit Committee monitor the complaint investigation process, and meet senior IND managers quarterly to discuss any concerns and raise quality of service issues. Complaints of maladministration may additionally be made via a Member of Parliament to the Parliamentary Commissioner for Administration (The Ombudsman).

254. The Human Rights Act 1998 provides an avenue to pursue complaints through the courts. Under the Act it is unlawful for any public authority to act in a way incompatible with the Convention rights; if it does, the Act provides a new cause of legal action and remedy.

255. The table below updates the figures to 2002.

	<b>Complaints cases (misconduct or inefficiency)</b>	<b>Allegations substantiated</b>
1997	397	119
1998	369	115
1999	335	125
2000	273	121
2001	348	118
2002	272	138

A complaint case may include one or more allegations.

## **Article 14 (compensation for and rehabilitation of victims of torture)**

256. Arrangements for compensating victims of crime were set out in paragraphs 107-118 of the initial report and 122-125 of the 2<sup>nd</sup> Report. New statutory arrangements, under the Criminal Injuries Compensation Scheme, were introduced in Great Britain on 1 April 1996. The main difference between the new and old arrangements is the basis for assessing levels of compensation. This changed from assessment on the basis of common law damages to a tariff-based system under which compensation is assessed on a scale of payments for injuries of comparable severity.

257. Paragraph 119 of the initial report, paragraph 126 of the 2<sup>nd</sup> Report and paragraph 129 of the 3<sup>rd</sup> Report described the help available to victims of crime through Victim Support, a voluntary organisation operating in England and Wales, and comparable schemes in Scotland and Northern Ireland. The Government continues to provide substantial levels of funding for these organisations, contributing over £28 million to Victim Support, £2.8 million to Victim Support Scotland (in 2002-03), and £1.4 million in 2001/02 to Victim Support Northern Ireland (with £1.5 million allocated for 2002/03). The Government also contributes to the work of other organisations in this field, such as the United Nations Voluntary Fund for Victims of Torture.



## **Article 15 (admissibility of confession evidence)**

### ***England and Wales***

258. As explained in paragraphs 121-123 of the initial report, under both statutory and common law, a confession that may have been obtained by oppression is inadmissible in the United Kingdom as evidence against the person who made that confession. When considering the admissibility of a confession the court must have in mind the provisions of sections 76 and 78 of the Police & Criminal Evidence Act 1984. Under section 76, the court must exclude a confession if it was or may have been obtained by oppression or in consequence of anything said or done which was likely to render a confession unreliable. Under section 78, the court may exclude a confession if, having regard to all the circumstances, its admission as evidence would have an unfair effect on the proceedings. Human Rights legislation (ECHR Article 3 as incorporated through the Human Rights Act 1998) also provides that the court may exclude a confession if it was obtained in violation of convention rights.

### ***Scotland***

259. Although the PACE Act 1984 does not extend to Scotland, the same principle, that evidence of a confession obtained by oppression is inadmissible, also applies in Scotland.

### ***Northern Ireland***

260. Section 76 of the Terrorism Act provided for the admissibility of confession evidence in scheduled offences going before a Diplock court in Northern Ireland. The first annual report by Lord Carlile, the Independent Reviewer of the Terrorism Act, suggested that consideration be given to the need for section 76 to continue to exist. Following a consultation exercise, Ministers were satisfied that practice had developed to the point similar to the PACE standard for confession evidence and, in July 2002, section 76 was repealed. The United Kingdom is not satisfied that section 76 was of itself a breach of the Convention. Nor does the UK accept that a provision in Northern Ireland different from the rest of the United Kingdom is an inherent breach of the Convention. Within the United Kingdom, different bodies of law apply in England and Wales, Scotland, and Northern Ireland.

## **Article 16 (other acts of cruel, inhuman or degrading treatment or punishment not amounting to torture)**

### **Corporal punishment in schools**

#### *England and Wales*

261. Since September 1999, Section 131 of the School Standards and Framework Act 1998 has outlawed corporal punishment for all pupils in maintained and independent schools, and for children receiving nursery education. A member of staff at a maintained or independent school or at a nursery education institution can no longer rely, in any type of criminal proceedings (e. g. a prosecution for assault), on the common law defence of 'reasonable chastisement' to justify the use of corporal punishment.

#### *Scotland*

262. Under Section 16 of the Standards in Schools etc Act 2000, corporal (physical) punishment is now unlawful in all state schools and independent schools, and may result in criminal charges of assault if used. The Scottish Executive has no plans to re-introduce corporal punishment.

#### *Northern Ireland*

263. Corporal punishment of pupils in grant-aided schools became unlawful on 15 August 1987 under the Education (Corporal Punishment) (Northern Ireland) Order 1987. Since 1 April 2003 corporal punishment has been unlawful in all schools as a result of Article 36 of the Education and Libraries (Northern Ireland) Order 2003.

### **Corporal punishment in the home**

#### *Great Britain*

264. The Government's policy is to balance the freedom of parents to bring up their children as they think best, with its own duty to protect children from abuse, including physical harm. In September 1997, the European Court of Human Rights heard the application of *Child A v UK*. The child complained that injuries he sustained from his stepfather, who beat him with a stick, were in breach of Article 3 of the European Convention on Human Rights. The stepfather had

been acquitted of assault occasioning actual bodily harm, relying on the defence of 'reasonable chastisement'. The Court ruled that UK law, on the particular facts of this case, had failed to protect Child A from 'inhuman or degrading treatment or punishment', in contravention of Article 3.

265. The coming into force of the Human Rights Act 1998 (on 2 October 2000) ensured that the case of *A v UK* (including the factors from the ECtHR judgement) is taken into consideration by domestic courts dealing with cases that involve the defence of reasonable chastisement. Further changes in UK law are not considered appropriate. The Government will keep the use of the defence of "reasonable chastisement" under review

266. In *Protecting Children, Supporting Parents* - a consultation document published by the department of Health on the physical punishment of children - the Government invited comment on proposals to modernise the law relating to the physical punishment of children (see Appendix 35 to this report). Over 700 responses to the consultation were received; the vast majority of which were from individuals. The Government's response to the consultation "Protecting Children, Supporting Parents" was published in November 2001. The Government's view was that it would be unacceptable to outlaw all physical punishment of a child by a parent, and that the majority of parents would not support such a measure.

### ***Northern Ireland***

267. Following a wide-ranging public consultation process, officials are considering more than one thousand responses to the consultation document "Physical Punishment in the Home -Thinking about the Issues - Looking at the Evidence". An analysis of the responses will be published in due course.

### **Care and protection of children**

268. The legislative framework established for the care and protection of children, and other measures to prevent abuse, were set out in paragraphs 133-139 of the 2<sup>nd</sup> Report. The Government continues to work to prevent abuse through a variety of programmes and projects. Particular emphasis is placed upon the training of doctors, nurses, social workers, and other health professionals likely to come into contact with children in child protection, and the recognition and handling of child abuse.

269. In October 1992, following its examination of the UK under the Convention on the Rights of the Child, the UN Committee on the Rights of the Child expressed concerns about the treatment of young offenders in the UK. And in 2002 the Family Division of the High Court decided that the policy guidance issued by the Secretary of State for the Home Department was wrong insofar as it stated that the Children Act 1989 did not apply to persons under 18 years in prison establishments. In the light of the Committee's concerns and the court judgment, the Prison Service continues to work with the Youth Justice Board (YJB) and the Department of Health to develop a strategic overview for the juvenile estate, Area Child Protection Committees (ACPCs), and other relevant youth justice agencies.

### *England and Wales*

270. The YJB was established under the Crime and Disorder Act 1998 and has the responsibility for managing the youth justice system in England and Wales, with the primary aim of preventing offending behaviour. The preliminary report on the operation of the new Youth Justice System was published by the YJB in November 2001. It reports on an innovative approach to youth justice that is tackling offending behaviour on several fronts. Since April 2000 new intervention programmes have been developed across England and Wales, new sentencing options have been rolled out, and new co-operative working relationships have been developed, particularly demonstrated in information sharing between Youth Offending Teams and courts.

271. The YJB's 2001/2 Review outlined a number of key initiatives in reducing crime by young people.

- Targeted prevention work with youngsters most at risk in high-crime housing estates. This helped cut crime, improve school attendance and raised the quality of life in those communities.
- Police Final Warnings to youngsters and their families nipped crime in the bud and stopped many youngsters drifting into further crime.
- Systematic risk assessment enables the Youth Offending Teams to tackle the critical factors that cause youngsters to offend. This also helps to reduce the risk of future offending.
- Short Parenting Programmes - often linked to Parenting Orders - can cut offending by half amongst youngsters entrenched in offending.

- Bail supervision and support schemes that ensure that youngsters attend court and reduce delays can reduce re-offending on bail. These schemes will be more effective with the increased availability of tagging.
- Education, employment and training projects can reduce re-offending significantly even among those who have serious offending careers and considerable drug habits.
- The time from arrest to sentence in the Youth Justice System has been cut from 142 days to 65 days for persistent offenders.
- Use of community orders by the courts has resulted in lower re-offending than initially expected by the Home Office. These orders have cut predicted re-conviction rates by 14.6% in 2000 against a 5% target reduction by 2004.

272. These figures do not take into account the potential impact of the new Intensive Surveillance and Supervision Programme (ISSP) introduced by the YJB in 2001/2. This programme has been used by the courts for nearly 1,500 young people as an alternative to custody. It will be available for 3,500 youngsters by the end of 2003, at any one time.

273. In relation to secure accommodation, the Board has established a discrete secure estate for juveniles. This estate is made up of Young Offender Institutions (YOIs), Local Authority Secure Units (LASUs), and Secure Training Centres (STCs). The Board took over responsibility for commissioning and purchasing secure places in April 2000 and has set up contracts with the prison service, local authorities and private providers to purchase secure services. The contracts specify standards of provision and allow services to be monitored.

274. A four-year strategy was issued in March 2001 outlining the YJB's plan for reconfiguring the juvenile secure estate to facilitate the delivery of the Detention and Training Order (DTO). The DTO was introduced to replace detention in a Young Offenders Institution and the Secure Training Order, the last of which was issued in March 2000. The DTO is made up of two halves: the first half of the sentence is carried out in custody, the second served in the community. The focus in custody is on providing education and training and addressing offending behaviour. Contact with the home community is strongly encouraged through regular involvement of family members/carers and a youth-offending team worker who oversees the young person through the length of the sentence.

275. To encourage links to be maintained with the home community, the YJB has an objective to place 90% of young people held in detention within 50 miles of home by 2003. The reconfiguration of the juvenile secure estate will greatly assist this by achieving a more even geographical spread of places. The three main priorities of the four-year plan are:

- the provision of more appropriate accommodation for young women outside the prison service so that none are placed with adult offenders
- more appropriate provision outside the Prison service for vulnerable 15 and 16 year-old youngsters, especially those with challenging behaviour, and
- better matching of places to geographical demand in order to reduce distance from families and young offending teams.

276. The independent sector is expanding to enable a reduction in usage of prison service places and to accommodate young people, particularly young women and vulnerable 15 and 16 year old boys, in establishments that can better meet their diverse needs. The YJB has a programme over the next four years to provide 400 secure places for juveniles in the independent sector under the Private Finance Initiative. These places will be provided in newly built STCs in the geographical areas of greatest need. The development programme is under way, with the first project - an 80 bed STC in Milton Keynes - due to become operational at the end of 2003/early 2004.

277. Three privately operated STCs are operational. Their regimes are based on a child care approach. They focus on education and training, and addressing offending behaviour. The service contracts are based on standards set by Government and contained in the Children's Homes regulations (which adhere to the principles of the Children Act 1989), and are monitored closely.

### ***Northern Ireland***

278. In Northern Ireland, the youth justice system deals with 10-16 year olds. In recent years a greater emphasis has been placed on diverting young people from crime and reducing the need to place them in custody. Inter-agency schemes and partnerships have been developed to maintain and support young people in the community. Custody is now only used for the most serious and persistent young offenders and limitations have been placed on the use of custodial remands.

279. Custodial arrangements have also been reformed with the introduction of determinate sentences ranging from six months to two years - half of which is served under supervision in the community. As a consequence, the numbers in custody have declined to the extent that the population of around 30 can now be located within a single juvenile justice centre.
280. In November 2000 the government announced plans to establish a state-of-the-art secure facility at Rathgael within which education and offending programmes can be delivered more effectively and family contact maintained and strengthened. Phase 1 of this project - the refurbishment of the existing juvenile justice centre – will be completed by the end of September 2003. The centre at Lisnevin will close shortly after that. Phase 2 of the project – the building of a new state-of-the-art centre - will be completed within 3 years.
281. Legislation arising from the Review of the Criminal Justice System in Northern Ireland will continue the process of reform by bringing 17 year olds within the scope of the youth justice system, by placing younger children who require custody in social services accommodation rather than in a juvenile justice centre, and by providing for additional community-based sentencing options for courts.

## **GLOSSARY**

<b>ACPCs</b>	Area Child Protection Committees
<b>ACPO</b>	Association of Chief Police Officers
<b>ACPOS</b>	Association of Chief Police Officers in Scotland
<b>ATCS</b>	Anti Terrorism, Crime and Security Act
<b>CPD</b>	Continuous Professional Development
<b>CPS</b>	Crown Prosecution Service
<b>DTO</b>	Detention and Training Order
<b>HMIC</b>	Her Majesty's Inspectorate of Constabulary
<b>ICC</b>	International Criminal Court
<b>IND</b>	Immigration & Nationality Department
<b>IPCC</b>	Independent Police Complaints Commission
<b>ISSP</b>	Intensive Surveillance & Supervision Programme
<b>LASUs</b>	Local Authority Secure Units
<b>LSC</b>	Legal Services Commission
<b>NHS</b>	National Health Service
<b>NIPS</b>	Northern Ireland Prison Service
<b>PACE</b>	Police & Criminal Evidence Act
<b>PCA</b>	Police Complaints Authority
<b>PSNI</b>	Police Service Of Northern Ireland
<b>SIAC</b>	Special Immigration Appeals Commission
<b>SIO</b>	Senior Investigating Officer
<b>STCs</b>	Secure Training Centres
<b>TNA</b>	Training Needs Analysis
<b>YJB</b>	Youth Justice Board



**APPENDICES TO THE 4<sup>TH</sup> REPORT TO THE UN ON THE CONVENTION  
AGAINST TORTURE**

1. House of Lords Decision (Pinochet Case)  
[www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990324/pino1.htm](http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990324/pino1.htm)
2. PACE codes  
[www.icva.org.uk/site/downloads/PACE\\_A.pdf](http://www.icva.org.uk/site/downloads/PACE_A.pdf)
3. Police Service of Northern Ireland- Code of Ethics  
[www.psni.police.uk/nipbcodeofethics.pdf](http://www.psni.police.uk/nipbcodeofethics.pdf)
4. Prisons and Young Offenders Centre Rules(Northern Ireland)1995  
[www.niprisonservice.gov.uk/pdfs/PubUploads/NI\\_Prison\\_Rules.pdf](http://www.niprisonservice.gov.uk/pdfs/PubUploads/NI_Prison_Rules.pdf)
5. NI Prison Service Principles of Conduct  
[www.niprisonservice.gov.uk/pdfs/pubuploads/prin\\_conduct.pdf](http://www.niprisonservice.gov.uk/pdfs/pubuploads/prin_conduct.pdf)
6. NI Prison Service Code of Conduct and Discipline  
(no internet link-code currently under review)
7. Good Medical Practice for Doctors Providing Primary Care Services in Prisons.  
[www.doh.gov.uk/prisonhealth/publications/pricarejan03.pdf](http://www.doh.gov.uk/prisonhealth/publications/pricarejan03.pdf)
8. The Future Organisation of Prison Health Care  
[www.doh.gov.uk/pub/docs/doh/prison.pdf](http://www.doh.gov.uk/pub/docs/doh/prison.pdf)
9. Detention Centre Rules 2001  
[www.hms0.gov.uk/si/si2001/20010238.htm](http://www.hms0.gov.uk/si/si2001/20010238.htm)
10. Rules of practice for video recording with sound (Northern Ireland)  
[www.nio.gov.uk/pdf/tso.pdf](http://www.nio.gov.uk/pdf/tso.pdf)
11. Code of Practice on reporting and recording Racist Incidents in response to Recommendation 15 of the Stephen Lawrence Inquiry Report.  
[www.homeoffice.gov.uk/docs/coderi.html](http://www.homeoffice.gov.uk/docs/coderi.html)
12. A guide to identifying and combating hate crime (Breaking the Power of Fear and Hate)  
[www.acpo.police.uk/policies/race\\_hate\\_crime\\_manual.doc](http://www.acpo.police.uk/policies/race_hate_crime_manual.doc)
13. Home Office Police Research Group-Death in Police Custody(summary)- July 1998  
[www.homeoffice.gov.uk/rds/prgpdfs/prg26bf.pdf](http://www.homeoffice.gov.uk/rds/prgpdfs/prg26bf.pdf)(summary-enclosed)  
[www.homeoffice.gov.uk/rds/prgpdfs/fprs26.pdf](http://www.homeoffice.gov.uk/rds/prgpdfs/fprs26.pdf) (full report)

14. Inquiry into Crown Prosecution Service decision making in relation to deaths in custody and related matters  
[www.archive.official-documents.co.uk/document/cps/custody/custody.htm](http://www.archive.official-documents.co.uk/document/cps/custody/custody.htm)
15. Death Certification and Investigation in England, Wales and Northern Ireland - The Report of a Fundamental Review 2003(CM 5831)  
[www.official-documents.co.uk/document/cm58/5831/5831.pdf](http://www.official-documents.co.uk/document/cm58/5831/5831.pdf)
16. Death Certification and the Investigation of Deaths by Coroners(The Shipman Inquiry 3<sup>rd</sup> Report)  
[www.the-shipman-inquiry.org.uk/thirdreport.asp](http://www.the-shipman-inquiry.org.uk/thirdreport.asp)
17. CS SPRAY-Committees On Toxicity, Mutagenicity and Carcinogenicity Statement of CS Spray  
[www.doh.gov.uk/pub/docs/doh/csgas.pdf](http://www.doh.gov.uk/pub/docs/doh/csgas.pdf)
18. Reports on Use of Public Order Equipment (Northern Ireland)  
[www.nio.gov.uk/pdf/phase1report.pdf](http://www.nio.gov.uk/pdf/phase1report.pdf) ; [www.nio.gov.uk/pdf/phase2rep.pdf](http://www.nio.gov.uk/pdf/phase2rep.pdf) ;  
[www.nio.gov.uk/pdf/p3rep1202.pdf](http://www.nio.gov.uk/pdf/p3rep1202.pdf)
19. HMCIP report Norwich  
[www.homeoffice.gov.uk/docs/norwich\\_unann.pdf](http://www.homeoffice.gov.uk/docs/norwich_unann.pdf)
20. HMCIP report Holloway – July 2002 visit  
[www.homeoffice.gov.uk/docs/holloway\\_full.pdf](http://www.homeoffice.gov.uk/docs/holloway_full.pdf)
21. Scottish Prison Service Annual Report 2001-2  
[www.sps.gov.uk/keydocs/2001-2002/default.asp](http://www.sps.gov.uk/keydocs/2001-2002/default.asp)
22. Internal Review of HM Prisons Suicide Awareness Strategy (2000) (Prevention of Suicide and Self Harm in the Prison Service)  
[www.hmprisons.gov.uk/filestore/321\\_408.pdf](http://www.hmprisons.gov.uk/filestore/321_408.pdf)
23. Choose Life- A National Strategy and Action Plan to Prevent Suicide in Scotland.  
[www.scotland.gov.uk/library5/health/clss.pdf](http://www.scotland.gov.uk/library5/health/clss.pdf)
24. PS 2700 Suicide and Self –Harm Prevention  
[www.hmprisons.gov.uk/filestore/786\\_983.pdf](http://www.hmprisons.gov.uk/filestore/786_983.pdf)
25. Review of PFI and Market Testing in the Prison Service (Carter Report) (e-copy unavailable. Hard copy available via Human Rights Division, Department of Constitutional Affairs)
26. Firmer, Faster and Fairer-A Modern Approach to Immigration and Asylum-A Government White Paper(1998)  
[www.archive.official-documents.co.uk/document/cm40/4018/4018.htm](http://www.archive.official-documents.co.uk/document/cm40/4018/4018.htm)

27. Code of practice under the Mental Health Act 1983  
[www.doh.gov.uk/pub/docs/doh/mhcop.pdf](http://www.doh.gov.uk/pub/docs/doh/mhcop.pdf)
28. Legislation against Terrorism–A consultation paper  
[www.archive.official-documents.co.uk/document/cm41/4178/4178.htm](http://www.archive.official-documents.co.uk/document/cm41/4178/4178.htm)
29. Police(Conduct)Regulations 1999  
[www.hms0.gov.uk/si/si1999/19990730.htm](http://www.hms0.gov.uk/si/si1999/19990730.htm)
30. Police(Conduct)(Senior Officers)Regulations 1999  
[www.legislation.hms0.gov.uk/si/si1999/19990731.htm](http://www.legislation.hms0.gov.uk/si/si1999/19990731.htm)
31. A Fair Cop- A thematic report by the Scottish Inspectorate of Constabulary  
[www.scotland.gov.uk/hmic/docs/afcp-00.asp](http://www.scotland.gov.uk/hmic/docs/afcp-00.asp)
32. Complaints Against the Police in Scotland - A Consultation Paper  
[www.scotland.gov.uk/consultations/justice/caps-00.asp](http://www.scotland.gov.uk/consultations/justice/caps-00.asp)
33. HM Prison Service Review of Prisoners' Complaints Procedures  
(e-copy unavailable. Hard copy available via Human Rights Division,  
Department of Constitutional Affairs)
34. Northern Ireland Prison Service-Prisoner's Complaints, Requests and  
Grievance Procedures.  
[www.niprisonservice.gov.uk/pdfs/PubUploads/Complaints%20Booklet.pdf](http://www.niprisonservice.gov.uk/pdfs/PubUploads/Complaints%20Booklet.pdf)
35. Protecting Children, Supporting Parents  
[www.doh.gov.uk/pub/docs/doh/childpro.pdf](http://www.doh.gov.uk/pub/docs/doh/childpro.pdf)