



The Human Rights Act: the DCA and Home Office Reviews

**Government Response to the Joint Committee
on Human Rights' Thirty-second Report of
Session 2005-06**

**Presented to Parliament by the Secretary of State
for Constitutional Affairs and Lord Chancellor
By Command of Her Majesty
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Contents

Summary	3
Events giving rise to the reviews	4
The DCA Review	7
The Home Office Review	13
Rebalancing the Criminal Justice System	15
Reforming the IND	19
Building a human rights culture	20

Summary

1. The Government is grateful to the Joint Committee on Human Rights (JCHR) for their positive response to the DCA and Home Office Reviews.
2. The Select Committee's Report, *The Human Rights Act: the DCA and Home Office Reviews*, reached a number of conclusions and recommendations.
3. The Government is pleased that the Committee agrees with the findings of the Home Office and DCA Reviews that the Human Rights Act has not significantly impeded the Government's objectives on crime, terrorism or immigration.
4. Following the findings of both the DCA and Home Office Reviews, the Government is continuing to work to equip public authorities to build a human rights culture within their organisations. The DCA has already updated the Guide to the Human Rights Act 1998 and has published a handbook for public authorities, which has been welcomed by the Committee. The Government agrees with the Committee that it is critical that the work continues to ensure that the Human Rights Act is understood and appreciated both by practitioners and by the public.
5. The Government response to the Report is below.

Events giving rise to the reviews

We welcome the Lord Chancellor's unequivocal acceptance of the correctness of the original decision in the Afghani hijackers case as a clear application of the requirement of human rights law that prevents deportation where the person faces death or torture or "something similar". In our view high level ministerial criticisms of court judgments in human rights cases as an abuse of common sense, or bizarre or inexplicable, only serves to fuel public misperceptions of the Human Rights Act and of human rights law generally (paragraph 21).

6. Lord Falconer stated in his evidence to the Committee on 30 October that he agreed with the wide proposition that hijackers should remain in the UK if deportation would result in the "death or torture" of those individuals.

7. However, the issue in this case was not whether people who hijack planes should be granted leave to remain in the UK, but about whether they should be granted 'temporary admission' to the UK. The Court of Appeal concluded that, in this case, granting 'temporary admission' would not be appropriate.

8. The Asylum and Immigration Tribunal had found that there was a risk that the applicants, if returned to Afghanistan, might face inhuman or degrading treatment. That was not to say that the UK would never be able to return the hijackers; this would depend on the situation in Afghanistan.

We do not accept that the Human Rights Act, or its interpretation by UK courts, present any greater obstacle to the deportation of foreign nationals than the limitations on such deportations which already exist under the ECHR itself (paragraph 25).

9. It has long been established under the European Convention on Human Rights that Article 3 implies an obligation on a state not to expel someone from its territory where substantial grounds are shown for believing that upon such expulsion he will face a real risk of being subjected to treatment contrary to Article 3. The Government agrees that the Human Rights Act does not create any additional barriers to the deportation of foreign nationals beyond those already provided by the European Convention on Human Rights.

We welcome the unequivocal acceptance of the Lord Chancellor and Baroness Scotland that neither the Human Rights Act itself nor any misinterpretation or misunderstanding of it by officials was in any way responsible for the failure to consider foreign nationals for deportation. However, we regret that the opposite impression was earlier given by both the Prime Minister and the Home Secretary. We repeat our view that unfounded criticism of the Act from a high level within Government only serves to perpetuate the misunderstandings and misperceptions about the Act amongst the wider public (paragraph 27).

10. Baroness Scotland stated in her evidence to the Committee that “the failure to consider just over 1,000 cases for deportation was really caused by a range of factors being addressed through the Home Secretary’s priority areas of action and the Human Rights Act was not one of them”.

11. The Government’s position on the Human Rights Act was made clear in the DCA Review: the Act “has not seriously impeded the achievement of the Government’s objectives on crime, terrorism or immigration and has not led to the public being exposed to additional or unnecessary risks”.

In our view, while we agree with the Lord Chancellor’s view that it would have been completely wrong for the Government simply to ignore what was said in the Report of the Chief Inspector of Probation, we strongly disagree that the Chief Inspector’s Report contains any real evidence that public safety is being prejudiced by officials’ misinterpretations or misapplications of the HRA (paragraph 39).

12. In his Report, HM Chief Inspector of Probation stated that “the human rights aspect is posing increasing levels of challenge to those charged with delivering effective public protection”. Given the Chief Inspector’s standing it was right for the Government to review the implementation of the Human Rights Act. The Review found that there were a number of areas in which deficiencies in training and guidance had led to Convention rights being misapplied or misinterpreted. As a result of this finding the DCA has published a new handbook for public authorities. Work is continuing to ensure that officials have sufficient access to advice or guidance to enable them to balance the rights of individuals against the interests of the wider public where safety is at issue.

In our view, whatever other arguments there may be about whether the Human Rights Act should be amended, repealed, or replaced by a UK Bill of Rights, none of the three cases we have discussed so far - the Afghani hijackers judgment, the failure to consider foreign prisoners for deportation, and the Anthony Rice case - demonstrates a clear need to consider amending the Act. In each case, the Human Rights Act has been used as a convenient scapegoat for unrelated administrative failings within Government. The Lord Chancellor expressed his complete agreement that not one of them justifies amendment or repeal of the HRA, which, he says, is the conclusion of the review published in July. Moreover, that review, according to the Lord Chancellor, is not the view merely of one department, but expresses the views of the Government (paragraph 40).

13. As the DCA Review makes clear, the Government remains firmly committed to the European Convention on Human Rights and to the way in which it is given effect in UK law by the Human Rights Act.

14. On the basis of evidence available to the Government in the aftermath of the Inquiry Report by HM Chief Inspector of Probation into the release of Anthony Rice, it was judged that a review looking specifically at the issue of the implementation of the Human Rights Act would be prudent. This Review

investigated the impact of the Human Rights Act on policy formulation and decision making. Rather than using the Human Rights Act as a “convenient scapegoat” the Review sought to elucidate evidence to investigate some of the widespread popular concerns which had arisen since the Act came into force.

15. The Review found that that none of the three cases cited demonstrated a need to amend the Human Rights Act; however, given the concern and comment arising from the Inquiry Report, it was right that the Government did conduct a review before reaffirming its commitment to the Convention.

We must draw to Parliament’s attention the extent to which the Government itself was responsible for creating the public impression that in relation to each of the three highly contentious issues under consideration it was either the Human Rights Act itself or misinterpretations of that Act by officials which caused the problems.... We very much welcome the Lord Chancellor’s assurance that there is now an unequivocal commitment to the Human Rights Act right across the Government but, in our view, public misunderstandings of the effect of the Act will continue so long as very senior ministers fail to retract unfortunate comments already made and continue to make unfounded assertions about the Act and to use it as a scapegoat for administrative failings in their departments (paragraph 41).

16. Lord Falconer, in his evidence to the Committee, made clear that the Government remains fully committed to the European Convention on Human Rights and to the way in which it is given effect in domestic law by the Human Rights Act. Robust debate should not be taken to mean lack of commitment either to the Act or to the rule of law upon which our democracy is founded.

The DCA Review

We welcome the Home Office's unequivocal acceptance that the HRA has not impeded in any way the Government's ability to protect the public against crime (paragraph 44).

17. The Government agrees with the statement expressed in the DCA Review that decisions of the UK courts under the Human Rights Act have had no *significant* impact on criminal law or on the Government's ability to fight crime.

We welcome the Lord Chancellor's unequivocal conclusion that the HRA has not significantly inhibited the state's ability to fight terrorism and his acknowledgement that human rights law permits proportionate measures to be taken in order to counter terrorism. In our view human rights law does constrain to some extent the range of policy choices available to the Government to counter terrorism, but at the same time it not only permits but requires proportionate measures to be taken to protect life against the threat from terrorism. In our most recent report on Counter-Terrorism Policy and Human Rights we have attempted to address the problems identified by the Review and to demonstrate that other policy options are available to the Government which will enable it to counter the threat from terrorism in a way which we believe to be compatible with the UK's human rights obligations (paragraph 46).

18. The Government stated in the DCA Review that the Human Rights Act has had some impact on the Government's counter terrorism legislation. However, the Government believes that the main difficulties in this area arise not from the Human Rights Act, but from the European Court of Human Rights 1996 judgment in *Chahal v United Kingdom*, which preceded the Act. As a result of that judgment the Government is not currently able to balance the threat posed by an individual to national security against the risk of Article 3 mistreatment if the individual concerned is returned to their own country. Some of those eligible for deportation or removal have not, therefore, been removed as there is some degree of risk of their being tortured or subjected to inhuman or degrading treatment.

19. The *Chahal* judgment was an interpretation of the European Convention on Human Rights, which the Government believes should be reconsidered in the light of the changed circumstances following attacks by international terrorists since 11th September 2001. The Government is intervening in a Dutch case to advance the argument that the Government should be able to take into account the threat to national security when deciding issues of deportation or removal.

We welcome the Lord Chancellor's unequivocal acceptance that the HRA has not had any adverse impact on the Government's policy in relation to immigration and asylum (paragraph 47).

20. The DCA Review found that *in general* the Human Rights Act has not seriously impeded the achievement of the Government's objectives on crime, terrorism or immigration. The Review did, however, note that under the European Convention on Human Rights, it has long since been established that Article 3 implies an obligation on a state not to expel someone from its territory where substantial grounds are shown for believing that upon expulsion he will face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. As discussed above, the Government is intervening in a Dutch case before the European Court of Human Rights to argue that the Government should be able to take into account the threat to national security.

We welcome the Review's acknowledgement that important questions concerning compatibility with human rights standards arise in the course of policy formulation, prior to the drafting of legislation. We agree. In our recent Report on our Future Working Practices we explained that in future we will be reconfiguring our mixture of work in order to enable us to report on any significant human rights compatibility issues which arise at a much earlier stage in the policy development process (paragraph 51).

21. The Government welcomes the Committee's intention to engage with proposals earlier in the policy development process and looks forward to receiving its views on Green and White Papers as well as on draft Bills.

We also welcome the Review's acknowledgement of the importance of detailed and accurate guidance to ensure that questions of human rights compatibility are embedded in the policy development process at an early stage. In our view, however, the Review rather overstates the extent to which current guidance and practice have succeeded in achieving this objective (paragraph 52).

22. The Review concluded that officials in public authorities need better and more consistent guidance and training on human rights. The DCA has recently revised and strengthened its guidance on human rights for public sector staff and managers, placing particular emphasis on public safety.

We welcome the DCA's embrace of an explicitly championing role in relation to human rights, a role which both we and our predecessor Committee have been concerned is not adequately performed in the absence of a human rights commission (paragraph 54).

23. The new Commission for Equality and Human Rights, which is due to begin operation in October 2007, will for the first time provide institutional support for human rights. The Commission is required under section 9(4) of the Equality Act 2006 to take an integrated approach to equality and human rights. The Government believes that this combined approach, rather than separate approaches to equality and human rights, will be found to be most powerful by the public sector and the voluntary and community sector.

We very much welcome the publication of this guidance. We wholeheartedly endorse the DCA's intention to improve the guidance and training on human rights which is available to both the public and public officials. However, given the nature of our work and expertise, we were disappointed not to have been given an opportunity to comment on such guidance when it was still in draft form ... We welcome [the Lord Chancellor's] commitment to consult us on draft human rights guidance in future and his indication that there is still scope to consider the content of the current guidance which he described as “but one stage on what is quite a long journey” (paragraph 57).

24. The publication of the DCA's new guidance on human rights has been a key step in implementing the recommendations of the Review. The Government welcomes the Joint Committee's offer to contribute to any future DCA guidance on human rights.

We welcome the Lord Chancellor's acknowledgment that it should be possible to provide fuller reasons explaining the Government's view on compatibility without infringing any claim the Government has to legal professional privilege ... Provided we obtain the information which we seek we are not concerned about the precise form in which these explanations are provided. However, we favour a free-standing Human Rights Memorandum over an expansion of the existing section in a Bill's Explanatory Notes because of the restriction that Explanatory Notes cannot contain argumentative material, a restriction which would inhibit the inclusion of the Government's full reasons for its view that any interference with a Convention right was justified in the sense of being necessary to meet a pressing social need and proportionate. We cannot see any reasons in principle why the existing ECHR Memoranda already compiled for the Legislative Programme Committee should not be made available to us ... We look forward to the Lord Chancellor following up our concern about this issue as a matter of some urgency (paragraph 66).

25. The Government shares the view previously expressed by the Committee that the system of providing information about human rights considerations in Explanatory Notes can work effectively. The Government does, however, acknowledge that in previous Sessions the information in Explanatory Notes has not always been fully adequate. In the current Session, the Government has been particularly watchful to ensure that better human rights information accompanies its Bills upon introduction; this has included in some cases the sending of a separate letter to the Committee where the human rights information is unsuitable for publication in full in Explanatory Notes. For the future, the Government is revising the guidance it provides to officials working on Government Bills to reinforce the need to provide such information.

We are also of the view that Ministers must themselves take responsibility for ensuring that they do not create public misperceptions or reinforce them by the way in which they respond to newspaper headlines or campaigns which are themselves clearly founded on misunderstandings about the Act (paragraph 69).

26. Ministers have a duty in the democratic process to make clear to the people what their policies are and the views upon which those policies are based. The Human Rights Act and issues arising in relation to it cannot and should not be an exception.

We welcome the fact that the Lord Chancellor does not, on current evidence, see the need to amend the HRA in the way contemplated in the DCA Review. However, we do not agree that it would be an appropriate use of legislative power to introduce a duty to have regard to public safety solely in order to “send a signal” to officials about the law which already applies. In our view, legislation should be used to change the law, not to send messages about it. If there is evidence that officials are getting the balance wrong and giving too little weight to public safety considerations when making human rights decisions, the proper way to deal with such a problem would in our view be by way of improved guidance and training to ensure that the misunderstanding of the law is rectified (paragraph 83).

27. The Government has undertaken work to determine whether a legislative option is needed to clarify the duty to protect and has decided that immediate legislative change is not necessary. The Government does not believe that, in practice, enshrining a duty to protect would add anything to the current requirement of the European Convention on Human Rights to protect the right to life.

28. The Government agrees with the Committee that in this instance improving guidance and training is the right course to take to correct any misunderstandings among officials in relation to the weight to be given to public safety considerations when making human rights decisions. Work is in progress to improve guidance and access to advice for staff across the criminal justice system, through the Human Rights Scrutiny Panel and the development of a web-based advice service for practitioners. The new guidance recently published by DCA is helping to identify and meet the need of public sector staff for additional guidance on human rights in relation to public safety. The Ministerial Group and Departmental networks will be continuing this work.

We are extremely disappointed by the Government’s new concern about driving private providers out of the market by widening the definition of “public authority”.... In our view it represents a serious dilution of the Government’s consistent position since the enactment of the Human Rights Act, that private providers of services which a public authority would otherwise provide are performing a public function and should therefore be bound by the obligation to act compatibly with Convention

rights in s. 6 of the HRA. The more the trend to outsourcing the provision of public services increases, the greater the importance of private providers of such services being bound by the obligation to act compatibly with Convention rights. We find the Government's position on this question to be seriously at odds with its avowed intention elsewhere in the DCA Review and in the Lord Chancellor's evidence to make a positive case for the Human Rights Act: the more public services are outsourced, the less will people be able to enforce their human rights directly against those providing care or other services for them (paragraph 90).

29. The Government's position on this issue has not changed. The Government believes that the duty under section 6 of the Human Rights Act should apply to anyone performing a function of a public nature. The current interpretation of this test in case law is, in the Government's opinion, narrower than that which Parliament originally intended.

In our view, although we do not seek to discourage the Government from pursuing its strategy of intervening in an appropriate case, the failure of that strategy to date and the growing urgency of the problem mean that it is now time to give serious consideration to whether or not to introduce legislation to reverse the effect of the Leonard Cheshire decision and to seek to give proper effect to Parliament's intention at the time of the passage of the HRA. We do not think it would be advisable to try to prescribe a comprehensive list of persons or bodies who are public authorities for the purposes of the Human Rights Act, and we recognise that seeking to define "public authority" generally would not be desirable because of the knock-on effect on other areas of law. However, we think there may not be insuperable obstacles to drafting a simple statutory formula which makes clear that any person or body providing goods, services or facilities to the public, pursuant to a contract with a public authority, is itself a public authority for the specific purposes of the HRA. This is an issue to which we expect to return before long (paragraph 92).

30. The Government shares the view expressed by the earlier Committee in its Seventh Report of Session 2003-04 that "formulating a comprehensive test of public authority status, of general and wide application, would be a very difficult task, and such a test would remain subject to judicial interpretation." In that Report, the Committee, having analysed the evidence, concluded that "We are not convinced that any amendment to the wording of section 6(3)(b) [of the Human Rights Act 1998] could be devised which would be certain of achieving a more satisfactory application of Convention rights and duties than the current wording." Nevertheless the Government is not ruling out any approach to this issue.

31. The Government remains committed to clarifying the meaning of public authority through intervention in a suitable case, as suggested by the Committee in their Report. Permission to appeal has now been granted in *Johnson v Havering*; the Government will be arguing this point in the Court of Appeal this month.

We were very surprised to learn that the 2004 review will not be published. We have been chasing the DCA for a very long time for the outcome of this review and we have never before been told that it was conducted on a confidential basis and that the outcome will not be published. We welcome the Lord Chancellor's promise to "think about" making a copy confidentially available to this Committee and we urge him to do so to inform the work we do in monitoring the Government's implementation of the HRA (paragraph 96).

32. The 2004 Strategic Review has been superseded by the Review of the Implementation of the Human Rights Act. No useful purpose would now be served by its publication.

The Home Office Review

We welcome the Review's proposals to take a series of very practical steps (new guidelines, a Scrutiny Panel, a website and a helpline) to help practitioners on the ground better understand how they should implement the Act. On the evidence we have seen to date, however, we doubt whether it can credibly be said that there is "a culture of risk aversion" across the agencies dealing with criminal justice, immigration and asylum. The lack of evidence of actual examples of such cautious interpretations and the fact that the Review itself describes them as at most "occasional" suggests that the incidence of such overcautious approaches falls far short of being sufficient to amount to a culture of risk aversion (paragraph 105).

33. The Home Office Review found some evidence that, in relation to the criminal justice system, practitioners could be either over-cautious in applying the Human Rights Act when making decisions or they could use the Human Rights Act as a justification for an over-cautious approach. The Home Office needs to address this issue to ensure that frontline practitioners better understand how to interpret and administer human rights. As the Committee has noted, the Home Office is taking forward a number of workstreams aimed at improving the interpretation and administration of the Human Rights Act as part of the 'Rebalancing the CJS' programme of work. These include: issuing robust, practical, myth-busting advice to practitioners on how rights should be balanced; instituting a routine process of monitoring the way that rights are applied by the Criminal Justice System; ensuring that the approach to administration is robust and fair; and setting up an advice service for front-line staff to access clear advice on the application of competing rights. The first of these two workstreams are now in operation.

The Home Office Review also found that media reporting of human rights issues, particularly by the tabloid press, is not always accurate or complete, and the recommendation that the Home Office should, working with the DCA, develop a proactive and reactive approach to myth-busting, involving immediate rebuttals of future news stories that misrepresent the Act coupled with efforts to disseminate positive messages around the Act to the wider public. We welcome this conclusion (paragraph 106).

34. Both the Home Office and the DCA take steps wherever possible and appropriate to rebut misreporting and will continue to do so. The Government believes that it is especially important to combat misreported human rights cases to prevent them gaining credence and becoming urban myths both in the eyes of the public and CJS practitioners.

In our view there are strong reasons for publishing the Review itself: first, to put into the public domain the evidential basis for its conclusion that there is a culture of risk aversion throughout the criminal justice, immigration and asylum systems, to allow that claim to be tested; and second, to rebut the BBC reports in July suggesting that the Home Office's internal review of decision-making had identified some twenty-five examples of the HRA impeding decision-making. We regard this as a good example of just the sort of rebuttal envisaged by the Review itself (paragraph 108).

35. The Home Office has carefully considered the Committee's request for the full publication of its review of decision making in the criminal justice, immigration and asylum systems. As Baroness Scotland explained at the hearing and in her letter to the Committee of 6 November 2006, the conclusions and recommendations generated by the Review were published as part of 'Rebalancing the CJS' in July this year. This, along with the DCA Review, fully encapsulates the findings the Home Office made and properly represents the Government's position. The Government has provided a summary of the Review to the Committee as part of the written evidence and this has been made publicly available.

36. The examples referred to by the BBC reports in July came from a leaked discussion document, which formed part of the work on the Review. The document was drafted to inform the initial discussions about legislation and regulations or their interpretation and administration, which might have been impeding decision-making; it was merely a starting point for discussions. The purpose of the document was not to identify conclusive examples of where the Human Rights Act had impeded decision-making.

Rebalancing the Criminal Justice System

We welcome the fact that the Government does not appear to be asserting in this paper that there is an actual imbalance in the criminal justice system in the sense that public safety is in fact being prejudiced because the rights of offenders are being prioritised over the rights of victims (paragraph 116).

37. The Home Office have carried out a thorough review of the impact of the Human Rights Act on decision making in the criminal justice system and found no evidence that the Act itself has interfered with the processes by which public safety is assured. The Home Office have identified occasions where officials may have acted over-cautiously in applying the Act, which has subsequently resulted in misinterpretation. The Government does not, however, believe that this alone has led to public safety being prejudiced. Action is being taken to ensure that key decision takers have access to the ‘myth-busting’ guidance to achieve the appropriate balance.

While the administration of justice should command public confidence, justice should be above placating the media and public opinion. We therefore welcome the acceptance by Baroness Scotland that rebalancing must be not in a way that is unfair or unjust to the offender but better represents and supports victims (paragraph 116).

38. The Government believes that it is essential that the UK has a criminal justice system which treats all individuals fairly. That includes ensuring that the interests of victims are fully and effectively recognised. The measures set out in the CJS Rebalancing Review do not, however, seek to undermine individuals’ rights, or the obligations imposed on the Government and public authorities to protect them. It is clearly important that those suspected or convicted of crimes have the benefit of appropriate checks and safeguards. The approach outlined by the Review will ensure that where there are competing rights, full consideration is given to the importance of public protection when making decisions about balancing those rights.

The Committee has expressed its concerns in the past about the Government’s attempt to overturn the *Chahal* case in the European Court of Human Rights.... In our view, attempting to distinguish between inhuman and degrading treatment on the one hand and torture on the other is unlikely to find favour with the European Court of Human Rights. Given that ill-treatment has to reach a certain minimum level of severity in order to qualify even as inhuman or degrading treatment within the scope of Article 3, and that inhuman or degrading treatment may easily cross the line into torture in the sorts of places where it is practised, we also think that the Government’s argument is a deeply unattractive one which can only damage the UK’s standing amongst countries which pride themselves on their respect for human rights. In any event, we find it difficult to see how the Government’s argument can help resolve its central problem of how to deal with those individuals whom it suspects of involvement in international terrorism but who cannot be returned to their country of origin because of the ill-treatment they will suffer there. (paragraph 121).

39. The Government notes the Committee's concerns, but remains of the view that when expulsions on grounds of national security are being considered, national security considerations cannot be dismissed as irrelevant; it should be possible for those considerations to be taken into account.

40. It is not just that the severity of treatment has to reach a certain minimum level for Article 3 to apply. The degree of likelihood of ill-treatment is also a factor which could, and in the Government's view should, be seen in the context of the national security threat which the individual poses. Removing the risk to national security posed by an individual from the consideration of allegations of ill-treatment, which may be no more than a bald assertion of a risk, is not a sensible course. The observations submitted by the UK, Lithuania, Portugal and Slovenia in the Dutch case aim to develop the jurisprudence so that national security is considered when assessing the risk faced by a particular individual in a particular country; they seek to permit the Secretary of State, and the courts, who ensure the legality of any removal, to take into account all the relevant factors.

We welcome the Government's recognition that certain ethnic groups are disproportionately represented amongst those being stopped and searched, arrested, convicted of a serious crime, and imprisoned, and that this raises a question as to whether the criminal justice system contains any built-in discrimination on racial grounds. We look forward to receiving more details about the "fundamental reform" in data collection which is envisaged, and hope that consideration will also be given to whether current training and guidance for front-line officers is adequate in this respect (paragraph 123).

41. The Government's full proposals for fundamental reform of the race and criminal justice system statistics were published on 1st September 2006 and can be accessed at: http://www.cjsonline.gov.uk/the_cjs/whats_new/news-3435.html.

42. The Government's proposals are based upon the externally conducted Root and Branch Review of the Race and the Criminal Justice System Statistics. The Review examined the collection, dissemination and use of statistics in the light of policy and legislative developments and identified gaps and inconsistency in the collection and dissemination of the data and a lack of ownership at the local-level. To address this, the Government will be undertaking a major national programme of work the two key elements of which are to:

- develop a minimum dataset and accompanying guidance clearly defining the data that needs to be collected to performance manage the CJS in relation to race issues; and
- develop alternative means of disseminating the statistics.

44. The Race Unit and the Research and Statistics Unit at the Office for Criminal Justice Reform will work together to implement the programme. Following an extensive consultation on our proposals, the Government aim to have the minimum dataset and accompanying guidance in place by summer 2007. Once the dataset is in place it will be piloted within a selection of Local Criminal Justice Boards and any final developmental work required will be undertaken to ensure it is finalised for the beginning of financial year 2008/09.

45. With regard to training and guidance required for front-line officers, the Government recognises the need to equip officers with guidance on data collection. The minimum dataset will be accompanied by guidance on data collection and use and the training needs of frontline officers will be an ongoing consideration in the implementation of the programme. Where areas of concern emerge in terms of training and guidance relating to practice and policy on race and criminal justice issues, the Government will seek to address these issues, incorporating training and guidance where necessary. An example of work to date in this area is the development of practice guidelines by the National Centre for Policing Excellence on the use of stop and search.

We welcome the Government's recognition that too many non-dangerous people with mental health problems continue to be imprisoned and await receipt at an early date of the Government's estimate of the numbers involved (paragraph 125).

46. Evidence from the 1997 study of psychiatric morbidity amongst prisoners found a high prevalence of wide ranging mental health disorders amongst prisoners (78% males on remand; 64% sentenced males; and 50% females suffer from personality disorders). That study further found that 28% of those in custody suffered from an identified mental health disorder.¹ The prevalence of these disorders is therefore higher in the offending than in the general population. However, clearly not all of the 28% in custody suffer from a sufficient severity of disorder to require transfer out of custody to the NHS. The Department of Health stated that 896 prisoners were identified as having a mental health disorder and transferred to hospital in 2005. That is a 24% increase since 2002 when only 722 prisoners were transferred. The Mental Health Unit of the Home Office have confirmed that for the period January-July 2006 a total of 543 prisoners were transferred to hospital. The Department of Health have said that in the quarter ending September 2006, 43 prisoners were still awaiting transfer (and have been waiting longer than 12 weeks).

47. There have been significant improvements in the mainstreaming of prison mental health services with the NHS. The Government has:

- set up 102 NHS mental health in-reach teams in prisons;
- made nearly £20 million a year available for mental health in-reach services;

¹ Singleton, N., Meltzer, R., Gatward, R. with Coid, J. and Deasy, D (1997) Psychiatric morbidity among Prisoners: Summary Report

- employed 360 more whole time equivalent staff on mental health in-reach provision - exceeding the NHS Plan commitment for 300 in post by end 2004.
48. The Government fully recognises that people who are mentally too ill to remain in prison should be transferred to hospital. Tighter monitoring has been introduced to identify prisoners waiting an unacceptably long period for transfer to hospital. A protocol, setting out action to be taken when a prisoner has been waiting for a hospital place for more than three months following acceptance by the NHS, has been agreed. A revised reception screening tool has also been introduced for those first received into custody to identify quickly all those who have health concerns, including mental health problems, so that their needs can be assessed.

Reforming the IND

In our recent report on UNCAT, we ... expressed concern that any dilution of the absolute prohibition on torture in cases involving national security considerations will have an impact beyond that category of cases, and lead to a further erosion of the absolute nature of the right to freedom from torture, in cases where other pressing policy considerations apply. In our view the Prime Minister's statement demonstrates this danger, because it raises the prospect of deportation of a convicted criminal to a country where there is a real risk of treatment contrary to Article 3 ECHR on grounds of public safety rather than national security (paragraph 131).

49. As the Committee notes, our intervention in the Dutch case is focused on national security cases. The Government believes that there should be a balancing of risks when expulsions are considered on grounds of national security and that all the circumstances of a particular case should be taken into account in deciding whether or not a removal is compatible with the European Convention on Human Rights. As Baroness Scotland confirmed to the Committee, the Government's legislative proposals on foreign national prisoners will be fully compliant with the European Convention on Human Rights, including Article 3.

Building a human rights culture

We see the DCA Review as an important milestone in this bringing about of a human rights culture. We emphasise the importance of consistent positive leadership by Ministers towards this objective (paragraph 141).

50. The DCA will continue to work to equip public authorities to build a human rights culture within their organisations. The Committee's recognition that the DCA Review of July is 'an important milestone' towards this goal is welcomed. The Ministerial Group, to be chaired by the Lord Chancellor, will provide senior oversight and leadership to the wider implementation of the Review's recommendations.



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