



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States parties under  
article 40 of the Convention**

**Seventh periodic reports of States parties due in July 2012**

**United Kingdom, the British Overseas Territories, the Crown  
Dependencies\***

[29 December 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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## **List of abbreviations**

BME = Black and Minority Ethnic

CDs = Crown Dependencies (comprising the Isle of Man, the Bailiwick of Jersey, the Bailiwick of Guernsey and its dependencies)

CRE = Commission for Racial Equality

DRC = Disability Rights Commission

ECHR = Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

ECtHR = European Court of Human Rights

EHRC = Equality and Human Rights Commission

EOC = Equal Opportunities Commission

HRA = Human Rights Act 1998

HRC = United Nations Human Rights Committee

ICCPR = International Covenant on Civil and Political Rights

IPCC = Independent Police Complaints Commission

OTs = British Overseas Territories covered by the ICCPR (comprising Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha), and the Turks and Caicos Islands).

UK = United Kingdom (comprising England, Wales, Scotland and Northern Ireland)

## Foreword

1. The rights debate in the UK since 2001 has been about where to draw the line and how to set the balance between public security and individual rights. This debate has been invigorated by the new coalition government in the UK, which has committed itself to promoting a greater understanding of rights, as well as a progressive re-examination of many areas of its own rights policy.

2. Since the publication of the UK Government's sixth report on the International Covenant on Civil and Political Rights, the coalition government's reappraisal of rights has enabled it to address areas where it has felt the balance had shifted too far in a particular direction, or where recent events had revealed a gap in the protections offered or how the protections are given effect. The controversial control orders regime has thus been repealed and replaced with Terrorism Investigation and Prevention Measures, pre-trial detention has been reduced to 14 days from 28 days, identity cards were scrapped and the National Identity register was destroyed in February 2011, and a series of initiatives by a number of government departments, such as the anti-Muslim hatred work of the Department of Communities and Local Government, address discrimination against religious minorities, and in particular against Islam.

3. Other consequences to the response to terrorism continue to progress towards their respective resolutions. For instance, the police investigations against allegations of UK complicity in mistreatment of foreign nationals in third countries continue and are expected to be subject to a judge-led review once they have been completed.

4. In the time since the previous periodic report, the UK has also faced a number of challenging domestic incidents that have tested areas of its rights regime. In the summer of 2011 the civil disturbances in a number of cities across metropolitan UK marked a temporary rise in the numbers of young people being tried and sentenced in UK courts, but were also handled without invoking extraordinary measures or derogating rights. The protests related to the financial crisis that have characterised recent years were mostly handled without incident, though they have required reconsideration of certain police crowd management methods.

5. Building on the universal periodic report process, the UK government has engaged widely with non-governmental organisations, including the UK's national human rights institutions, to enrich and balance the report. Their input confirmed our belief that monitoring the protection of civil and political rights is not merely about cataloguing restrictions to liberties and developments that only impact on small sections of the population and foreign groups. It is about explaining a much broader story, one which contains a great deal that the UK can be proud of.

6. For instance, the adoption and implementation of the Equalities Act 2010 is a significant extension and rationalisation of our equalities rights, placing as it does all protected characteristics under a common legislative framework for the first time in the UK.

7. Of great impact to the character of this report has been the increase in devolution of powers in areas of relevance to human rights in the devolved nations of Wales, Scotland and Northern Ireland. Working within the framework of the new Equalities Act, Wales has taken the step to legislate for equalities duties, an innovation that the rest of the UK will follow with interest. Similarly, Scotland has made a firm commitment to tackling violence against women in Scotland. The UK can rightfully regard itself as a leader in this field, having made substantial efforts to support prevention and victims services, as well as bringing into force strong legislation prohibiting forced marriage.

8. Reporting to the United Nations Human Rights Committee is to contribute to our dialogue with the global community and the multilateral organisations that do so much to make this community possible, to learn from others and to promote what we have learned. In this context we commend this report to you. The complex, diverse picture that it presents reflects the four Nations, three Crown Dependencies, fourteen Overseas Territories and countless ethnicities, religions and other groups that we include, and the work of the coalition government that has prepared this report on their behalf. We welcome this scrutiny and will not shirk from taking action where we need to.

## I General information

### A. Introduction

9. The UK government has sought to engage widely to guide the production of this report. It was commissioned across government following a consultation with a group of interested non-governmental organisations, including the UK's national human rights institutions, who were asked about the themes they would like to be covered. Following compilation, the report was also circulated as a draft to this group for additional comments.

10. New constitutional legislation has modernised the arrangements in a number of the UK's overseas territories as well, as a part of the government's drive to establish a mature relationship between the UK and the territories that encourages development and self-determination where this can be achieved.

11. Full submissions have accordingly been received from each of the territories for the first time, and to support this development, we have prepared supplemental background information for each Crown Dependency and Overseas Territory at the head of this report, to complement the information previously included in the UK's core document. With respect to information for the metropolitan UK, reference is made to the core document, as updated by additional information on the UK in support of the UK initial report on the Convention on the Rights of Persons with Disabilities (HRI/CORE/GBR/2011). The structure of this sixth periodic report reflects the current United Nations reporting guidance.<sup>1</sup>

12. Despite requests from the UK Government, the devolved administration in Northern Ireland has been unable to agree a contribution to this Report reflecting the views and actions of the Northern Ireland Executive relating to those Articles for which they have policy responsibility under the devolution settlement. The UK government expresses its concern at this outcome and sincerely hopes that this can be remedied in time for the next periodic report. The report does reflect the UK Government's responses in relation to those articles where it retains policy responsibility.

#### **Note on the general information**

13. With respect to the territory of the United Kingdom represented by England, Scotland, Wales and Northern Ireland, the UK government refers to its Common Core Document HRI/CORE/GBR/2010, as updated by Additional information on the UK in support of the UK Initial Report on the United Nations Convention on the Rights of Persons with Disabilities HRI/CORE/GBR/2011 (2011.), to provide the Human Rights Committee with the relevant information to support this report.

14. However, since this report provides a uniquely complete insight into developments in rights protection in the Crown Dependencies and Overseas Territories of the United Kingdom, we will present a consolidation of background material on these areas in the

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<sup>1</sup> Office of the High Commissioner for Human Rights et al., *Manual on human rights reporting under six major international human rights instruments*, Geneva, 1997. ([http://www.unhchr.ch/pdf/manual\\_hrr.pdf](http://www.unhchr.ch/pdf/manual_hrr.pdf)). Office of the High Commissioner for Human Rights, *Compilation of guidelines on the form and content of reports submitted by States Parties to the international human rights treaties*, HRI/GEN/2/Rev.3, 8 May 2006. ([http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/975dd3fb10e75b83c12571850050edda/\\$FILE/G0641857.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/975dd3fb10e75b83c12571850050edda/$FILE/G0641857.pdf)).

following two sections, to assist the Committee in its understanding of these unique and fascinating territories.

15. An additional statement on the information and publicity activities the UK government engages in to raise awareness of Human Rights is provided in section D of this chapter.

## **B. Overseas Territories<sup>2</sup>**

16. By its act of ratification of 20 May 1976, the UK extended the ICCPR to Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha), and the Turks and Caicos Islands.

### **Bermuda**

#### **General**

17. Bermuda, a group of over 130 islands and islets, lies 1,046 km east of the coast of North Carolina. The total land area is 54 sq km. The warming effect of the Gulf Stream makes Bermuda the most northerly group of coral islands in the world. Small surviving areas of natural habitat support 14 endemic plants and the Bermuda Cahow, the only endemic bird in Bermuda.

18. Approximately 65 per cent of the population are of African descent and the remainder of European extraction (including expatriates). Portuguese settlers from the Azores have been coming to Bermuda for about 150 years.

#### **Government**

19. Bermuda is Britain's oldest territory and its Parliament, which first met in 1620, is the oldest legislature in the Commonwealth outside the British Isles. It is a largely self-governing territory with a high degree of control over its own affairs. The Governor retains responsibility for external affairs, defence, including the armed forces, internal security and the police. Bermuda has two legislative chambers, the House of Assembly and the Senate. The last General Election was held in December 2007.

#### **Economy**

20. Offshore finance (especially reinsurance) and tourism are the main pillars of the economy. There are more than 15,300 Bermuda-based international companies, 2650 local companies, 430 overseas partnerships and 940 other non-resident companies, many with a global business empire. They include subsidiaries of 75 per cent of the Fortune 100 and their European equivalents. In insurance and reinsurance, Bermuda has an industry capital base exceeding US\$35 billion and gross premiums of US\$24 billion. It ranks with Lloyds of London and New York as a global leader. Tourism accounts for 15 per cent of Bermuda's overseas earnings. There are few natural resources and little manufacturing activity.

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<sup>2</sup> Reproduced from the UK Government's White Paper on 'The Overseas Territories: Security, Success and Sustainability' <http://www.fco.gov.uk/resources/en/pdf/publications/overseas-territories-white-paper-0612/ot-wp-0612>.

**Key facts**

Currency Bermuda Dollar (parity with US\$)

Population 64,722 (June 2011 estimate)

Capital Hamilton

Government Website <http://www.gov.bm>

**British Virgin Islands (BVI)****General**

21. The British Virgin Islands comprise over 40 islands, islets and cays with a total area of only 153 sq km scattered over some 3,445 sq km of sea. Sixteen of the islands are inhabited, the largest being Tortola (54 sq km), Anegada, Virgin Gorda and Jost van Dyke. Discovered by Columbus in 1493, the islands came into British possession in 1666 when planters took control from the original Dutch settlers, and have been a British colony since 1672.

22. The BVI population is predominantly of African descent. The remainder are of European, American and Asian extraction. Approximately half the population are immigrants from St Kitts and Nevis, the Dominican Republic, St Vincent and other Caribbean islands. Several thousand native BV Islanders live outside the territory, mostly in the United States Virgin Islands (USVI) and mainland USA. The majority of the population are Christian. English is the main language and Spanish is the second most widely used language.

**Constitutional status**

23. The BVI enjoys a large measure of internal self-government. The Governor has direct responsibility for external affairs, defence and internal security (including the police), the public service and the administration of the courts. The Constitution provides for a ministerial system of government headed by the Governor, who chairs the Cabinet which includes the Premier and four other Ministers. The House of Assembly comprises 13 elected Members, nine representing individual districts and four elected by a territory-wide vote. The Attorney General, an appointed official, is an ex officio member of both Cabinet and the House of Assembly. Elections are held at least every four years and the last election took place in November 2011.

**Legal and judiciary**

24. The law of the BVI is the common law of England and locally enacted legislation. It is administered by Magistrates' Courts and the Eastern Caribbean Supreme Court. Although violent crime does occasionally spill over from the USVI, which has one of the highest per capita murder rates in the US, the level of violent crime remains low and is among the lowest in the region.

**Current issues – drugs**

25. Problems associated with serious organised crime and drug trafficking are the most serious threat to stability in the BVI. The territory is a major transit route for traffickers because of its numerous small uninhabited islands and close proximity to the USVI and Puerto Rico, which serve as gateways to the US mainland.

26. Drugs also move through the BVI to the UK and continental Europe. The BVI has achieved considerable success in drug interdiction with substantial seizures over the past 3 years of cocaine and drug related cash.

27. The BVI has a full Mutual Legal Assistance Treaty with the US and enjoys close cooperation with US and UK law enforcement agencies.

#### **Economy (tourism and offshore finance)**

28. BVI's main pillars of the economy are financial services and tourism. A rich vegetation, unspoilt beaches, yachting marinas and fine coral reefs make the islands a natural tourist destination. The financial services sector has grown rapidly in recent years and now generates over 60 per cent of total government revenue. The BVI specialises in international business companies and has a dominant share of around 45 per cent of the global market for this product. By the end of 2011 there were in excess of 450,000 registrations. The BVI also offers financial services in the areas of banking, insurance, trusts, mutual funds, etc. Agriculture and manufacturing each account for less than 5 per cent of GDP. Fruit, vegetables and sugar cane (for rum) are produced.

#### **UK development assistance**

29. The BVI receive no direct financial aid from the UK.

#### **Key facts**

Currency	US Dollar
GDP per capita	US\$30,282 (2010 estimate)
GDP growth	2.05 per cent (2010 estimate)
Government revenue	US\$273 million (2010 estimate - only recurrent revenue)
Government expenditure	US\$276 million (2010 estimate - only recurrent expenditure)
UK exports	(Figures not available locally).
UK imports	US\$4.3 million (2006 estimate)
Population	29,537 (2010 estimate)
Unemployment rate	3.10 per cent (2001 census value)
Capital	Road Town (Tortola)

### **Cayman Islands**

#### **General**

30. Discovered by Christopher Columbus in 1503 the three Cayman Islands (Grand Cayman, Cayman Brac and Little Cayman) are situated some 260 km north-west of Jamaica in the Caribbean Sea. The islands have an area of about 260 sq km. 'Cayman' comes from a Carib word for the marine crocodiles, once found on their shores. The vast majority of the population live on the largest of the three islands, Grand Cayman. English is the principal language.

#### **Government**

31. The present Constitution came into force on 6 November 2009 and provides for a Ministerial system of Government. The Governor retains responsibility for aspects of the public service, defence, external affairs and internal security including the police.

32. The Legislative Assembly comprises the Speaker, fifteen elected members and two ex-officio members (the Deputy Governor and the Attorney General). Elections are held every four years, most recently in May 2009. The Constitution also provides for a Cabinet consisting of the Premier, four other Ministers (rising to six when the number of Members of the Legislative Assembly increases from fifteen to eighteen) and the two ex-officio members of the Legislative Assembly. The Governor presides at meetings of Cabinet. Cabinet has responsibility for the formulation of policy, except in the areas reserved to the Governor.

### **Economy**

33. International offshore finance and tourism are the major economic activities. In 2010, there were circa 300,000 stay-over visitors and some 1.5 million cruise ship visitors. At the end of that year there were 371 bank and trust companies, 739 captive insurance companies, 9,003 licensed or registered mutual funds and 91,206 registered companies in the Cayman Islands.

34. The principal sources of government revenue are import duties, company, bank and trust licence fees, work permit fees and stamp duties. There is no national insurance, no income or payroll tax, no company or corporation tax, no inheritance tax, no capital gains or gift taxes and no VAT. Although imports outstrip exports by about 100:1, the visible trade gap is more than offset by invisible earnings from the financial services and tourism sectors.

35. The Cayman Islands have done much over the years to protect their flora and fauna. The Islands have 25 endemic species of plants and reptiles, and over 200 species of birds. A botanical park and bird sanctuary on Grand Cayman provide safe environments for endangered species of birds and lizards. The National Trust is engaged in long-term projects to preserve the unique wildlife and flora indigenous to Cayman Brac.

### **Key facts**

Currency:	Cayman Islands Dollar (fixed at 1 CI\$ = US \$1.25).
Population:	55,456 (2010).
Capital George Town:	(on Grand Cayman)
Government Website:	<a href="http://www.gov.ky">www.gov.ky</a>

## **Falkland Islands**

### **General**

36. The Falkland Islands are an archipelago of around 700 islands in the South Atlantic, the largest being East Falkland and West Falkland. They are situated about 770km (480 miles) north-east of Cape Horn and 480km (300 miles) from the nearest point on the South American mainland. The Islands have a total land area of 12,173 sq km (4,700 sq miles) – about the size of Northern Ireland – and a permanent population of 2,995 (2006 census). The capital is Stanley, which is the only town on the Islands, though it qualifies as a city by virtue of its cathedral. Elsewhere in Camp (the local term for the countryside), there are a number of smaller settlements.

37. Navigators of several countries have been credited with first sighting the Falklands but the earliest sighting that has been conclusively authenticated was by the Dutch sailor Sebald van Weert in 1600. The first known landing was made in 1690 by a British naval captain, John Strong. He named the Islands after Viscount Falkland, First Lord of the Admiralty at the time. A British expedition reached West Falkland in 1765, and anchored in

a harbour which it named Port Egmont. It took formal possession of it and of 'all the neighbouring islands' for King George III. The following year, another British expedition established a settlement of about 100 people at Port Egmont. This settlement was withdrawn on economic grounds in 1774, but British sovereignty was never relinquished or abandoned. There was no indigenous or settled population of the Islands before 1833, when British occupation of the Islands was resumed and this has continued until the present day.

38. The majority of the population of the Falkland Islands are British by birth or descent and many can trace their family origins in the Islands back to the early nineteenth century. English is the national language and 99 per cent of the population speak English as their mother tongue. There are Anglican, Roman Catholic and non-conformist churches on the Falklands.

39. The Falklands were invaded and illegally occupied by Argentine military forces on 2 April 1982. A British task force was dispatched immediately and, following a conflict in which over 900 British and Argentine lives were lost, the Argentine forces surrendered on 14 June 1982.

40. Argentina asserts a claim to sovereignty over the Falkland Islands. The United Kingdom has no doubt about its sovereignty over the Islands. The principle of self-determination, enshrined in the United Nations Charter underlies our position. There can be no negotiation on the sovereignty of the Islands unless and until the Islanders so wish. The Islanders regularly make it clear that they wish to remain British.

### **Constitutional Issues**

41. The Falkland Islands are a United Kingdom Overseas Territory by choice. Supreme authority is vested in HM The Queen and exercised by a Governor on her behalf, with the advice and assistance of the Executive Council and Legislative Assembly, and in accordance with the Falkland Islands Constitution.

42. The present Constitution dates from January 2009. The Constitution includes the Islanders' right of self-determination.

43. The governor presides over an Executive Council composed of five members: three elected and two ex-officio (the chief executive and the financial secretary). In addition, the attorney general and the Commander of the British Forces in the Falkland Islands attend by invitation. The Legislative Assembly has eight members elected by universal adult suffrage as well as the two ex-officio members of the Executive Council. It is chaired by a speaker.

44. As is usual in British Overseas Territories, the elected Members have a substantial measure of responsibility for the conduct of their Territory's affairs. The governor is obliged to consult the Executive Council in the exercise of his functions (except in specified circumstances, for example on defence and security issues, where he must consult and follow the advice of the Commander of the British Forces in the Islands). Although he has the constitutional power to act against the advice of the Executive Council, he would be required, without delay, to report such a matter to the UK Government with the reasons for his action.

### **Economy**

45. Since 1982 the economy of the Islands has grown rapidly. Initially this was as a result of UK development aid, but by 1998 the Islands were self-sufficient in all areas except defence. The Falkland Islands Government's stated aim is to ensure a diverse and sustainable economy for the future. The latest Island Plan (2010 – 2015) is available at their website: <http://www.falklands.gov.fk/>. A new iteration of the Islands Plan is produced annually. It outlines their vision for improved financial management, quality of life and communications while ensuring a sustainable economy.

46. The role of tourism in the Islands' economy is also increasing. Tourist numbers continue to grow, with many attracted by the diverse wildlife. Besides the tourists who fly in to stay on the Islands, the number of cruise ship passengers making the day trips to Stanley and the surrounding countryside has grown significantly.

47. Agriculture was the chief industry for most of the last century and remains an important part of the Islands' economy and culture. Though its contribution to GDP in recent years has been lower than the fisheries sector, it remains one of the largest sectors for employment outside of the public sector. The Government has recently encouraged the modernisation of this sector, for example setting up a modern abattoir designed to meet EU standards and strongly supporting organic farming. Offshore oil exploration is underway in the Northern and Southern Basins of the Islands.

### **UK Development Assistance**

48. The Falkland Islands receive no direct financial aid from the UK.

#### **Key facts**

Currency:	Falkland Islands Pound (parity with Pound Sterling)
Population:	2995
Unemployment rate:	Nil
Capital:	Stanley
Government Website:	<a href="http://www.falklands.gov.fk/">http://www.falklands.gov.fk/</a>

## **Gibraltar**

### **General**

49. Gibraltar is a rocky peninsula rising from the south coast of the Iberian Peninsula. It has a total area of 5.8 square kilometres and is just under 5 kilometres long from north to south. It thus has a land border with Spain.

50. The population (2010 figures) is 29,441, of whom 24,127 are Gibraltarians. Most Gibraltarians claim British, Genoese or Maltese ancestry. English is the official language, but Spanish is widely spoken. About four-fifths of the population are Roman Catholic, along with significant Protestant, Jewish, Hindu and Muslim communities.

### **Constitutional status**

51. Sovereignty of Gibraltar was ceded to the UK by Spain under the Treaty of Utrecht of 1713. Spain has, nonetheless, repeatedly sought to regain sovereignty. However Spanish pressure, including the closure of the border from 1969 until the early 1980s, has largely served to strengthen Gibraltarians' sense of identity. The UK Government has reaffirmed that it will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their wishes, and that furthermore, the UK will not enter into a process of sovereignty negotiations with which Gibraltar is not content.

52. Gibraltar's current constitution dates from 2006. Following negotiations between the UK and Gibraltar, it was approved in a referendum on 30 November 2006 by over 60 per cent of those who voted, and came into force on 2 January 2007. It modernised the UK-Gibraltar relationship, giving Gibraltar control over its internal affairs. The Governor remains responsible for external affairs, defence, internal security and ensuring good government, including responsibility for some public appointments, while the Government of Gibraltar has responsibility for all areas not specifically assigned to the Governor,

including economic and environmental management and provision of education, healthcare and other social and public services.

53. Gibraltar's legislature, the Parliament, consists of 17 elected Members plus a Speaker. Elections take place every four years. The territory consists of a single constituency and each elector may vote for up to ten candidates. The most recent elections were held on 8 December 2011.

54. Gibraltar is within the European Union by virtue of Article 355(3) of the Treaty on the Functioning of the European Union. However, under the UK's Act of Accession, Gibraltar is excluded from four areas of EU policy: the Common Customs Territory and Common Commercial Policy (and thus EU rules on the free movement of goods, do not apply); the Common Agricultural Policy; the Common Fisheries Policy; and the requirement to levy VAT. Gibraltarians have rights of free movement within the EU. While the UK Government is ultimately responsible under the Treaty for the implementation of EU Law in Gibraltar, EU measures are implemented within Gibraltar by means of legislation enacted by Gibraltar's Parliament.

### **Economy**

55. Since the late 1970s Gibraltar has diversified its economy, developed niche sectors, which require little land but offer high added value, and adapted to reflect changing circumstances, including the re-opening of the border with Spain. Gibraltar has a thriving economy dominated by four main sectors. The financial services sector accounts for about 22 per cent of GDP (2010 figures); it is regulated by the Gibraltar Financial Services Commission and conforms to EU standards. Retail/tourism makes up 25 per cent of GDP – the Cruise Ship Terminal, which opened in 1997, received 303,371 visitor arrivals in 2010. Shipping accounts for 20 per cent of GDP. The online gaming sector has also become a pillar of the economy in Gibraltar, accounting for a similar percentage (and around 2000 jobs). The former Royal Naval Dockyard is now privately owned and operated.

### **UK Development Assistance**

56. Gibraltar receives no direct financial aid from the UK.

### **Key facts**

Currency:	Gibraltar Pound (Pound Sterling notes & coins issued by the Government of Gibraltar)
Population:	29,441 (2010).
Capital:	Gibraltar
Government Website:	<a href="http://www.gibraltar.gov.gi/">http://www.gibraltar.gov.gi/</a>

## **Montserrat**

### **General**

57. Montserrat is one of the Leeward Islands in the Eastern Caribbean, lying 43 km south-west of Antigua and 64 km north-west of Guadeloupe. The island is 17 km long and 11 km wide, occupying an area of 102 sq km, entirely volcanic and very mountainous. Named after a monastery in Spain by Columbus during his second great voyage in 1493, the island became a British Colony in 1632. The first settlers were largely Irish. Montserrat was captured twice by the French for short periods but was finally restored to Britain in 1783.

58. English is the official language. Christianity is the principal religion and the main denominations are Anglican, Roman Catholic and Methodist.

59. The Soufriere Hills Volcano has been active since 1995, with a fluctuating level of activity. The capital, Plymouth and several other villages were destroyed in 1997. An area around the volcano, approximately two-thirds of the island, has been designated a Special Vulnerable Area and three areas around the coastline have been designated as Maritime Exclusion Zones. The volcano is closely monitored by the Montserrat Volcano Observatory. A Hazard Level System was introduced in August 2008 and information on the current hazard level can be found on the Observatory website ([www.mvo.ms](http://www.mvo.ms)). There has been no significant activity at the volcano since February 2010, representing the longest pause since the first volcanic eruptions in 1995.

### **Government**

60. Government is executed through a Governor appointed by the Crown, a Cabinet which has the general control and direction of government, and a Legislative Assembly. The Governor retains responsibility for external affairs, defence, internal security including the police, aspects of the public service and regulation of offshore finance. The Cabinet is chaired by the Governor and consists of the Premier and three other Ministers, as well as the Cabinet Secretary, Financial Secretary, Attorney General and Deputy Governor. The Legislative Assembly consists of nine elected members and the same ex-officio members as Cabinet. The Deputy Governor may attend but has no voting rights in the Legislative Assembly.

61. A new constitution for Montserrat came into force on 27 September 2011. The new constitution gives more power to the government of Montserrat in the field of international relations and strengthens and expands the fundamental rights and freedoms of those living in Montserrat, reflecting the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The Constitution establishes a number of new Commissions to deal with complaints, integrity, mercy and elections. It establishes a National Advisory Council, and retains the existing Public Service Commission. These are all designed to enhance democracy and good government, and to give greater powers to local politicians and senior civil servants.

62. Elections are held every five years and last took place in September 2009.

### **Economy**

63. Montserrat's economy is dominated by the rebuilding of the island's infrastructure since the start of volcanic activity. A new capital is under development in the north of the island and work continues to re-house the population and government. Tourism and agriculture continue to show solid growth and contribute most to the economy outside the public sector and construction. Prospects for future growth are good, given the significant public investment in Little Bay town and port as well as ferry and air connections.

64. Montserrat aims to grow its declining and ageing population (4,922 in 2011 compared with 11,314 in 1991. back to pre-crisis levels. Currently around 25 per cent of the population are immigrants, largely from other Caribbean countries. Approximately 10 per cent of the population is in receipt of some form of social assistance scheme, all of which operate strict eligibility regimes.

65. The UK has provided financial support to Montserrat since the start of volcanic activity in 1995. This was initially in the form of humanitarian assistance and is now focussed on rebuilding public infrastructure and the provision of basic public services. Both the Government of Montserrat and the UK are working to develop the economy so Montserrat becomes self sufficient in the medium term.

**Key facts**

Currency:	Eastern Caribbean Dollar
Population:	4922 (2011).
Capital:	Little Bay (planned)
Government Website:	<a href="http://www.gov.ms/">http://www.gov.ms/</a>

**Pitcairn, Henderson, Ducie and Oeno Islands****General**

66. The Pitcairn Islands comprise Pitcairn Island itself and three uninhabited islands, Henderson, Ducie and Oeno. Pitcairn is approximately 3 km long and 1.5 km wide. It was first settled in 1790 by some of the HMS Bounty mutineers and their Tahitian companions. Pitcairn was left uninhabited between 1856 and 1859 when the entire population was resettled on Norfolk Island. The present community are descendants from two parties who, not wishing to remain on Norfolk, returned to Pitcairn in 1859 and 1864 respectively.

67. The population totals only 54, all living in the only settlement, Adamstown. The official languages of Pitcairn are English and Pitkern, the latter becoming an official language by declaration of the Island Council in 1997. This is a mixture of English and Tahitian with the former predominating.

**Constitutional issues**

68. Pitcairn is a British settlement under the British Settlements Act of 1887, although the Islanders usually date their recognition as a British territory to a constitution of 1838 devised with the help of a visiting Royal Navy officer. In 1893, 1898, 1904 and 1940 further changes were made in the Islands' government. In 1952 responsibility for Pitcairn was transferred from the High Commissioner for the Western Pacific to the Governor of Fiji. When Fiji became independent the Pitcairn Order and Royal Instructions, both of 1970, were the instruments that embodied the constitution of Pitcairn, establishing the office of the Governor and regulating his powers and duties. The British High Commissioner to New Zealand is appointed concurrently as Governor (Non-Resident) of Pitcairn.

69. In September 2009, a consultation period began on a new Constitution to better meet the needs of Pitcairn in the 21st century. Following a series of discussions between the UK Government and Pitcairn a final text was agreed, which had the support of the Pitcairn Island Council. The Pitcairn Constitution Order 2010 was made on 10 February by Her Majesty in the Privy Council and came into force in March 2010. For the first time the new Constitution included a Fundamental Rights chapter. It also established the role of the Island Council in the Constitution and obliges the Governor to consult with the Island Council before making laws (and, in cases where the Governor acts contrary to advice of the island Council, entitles any member of the Council to submit his or her views on the matter to a UK Secretary of State. The new Constitution affirms the independent role of the Pitcairn courts and judicial officers and guarantees the independence of the public service. Pitcairn Islanders manage their internal affairs through the Pitcairn Island Council, for which elections are held every two years.

70. A new Governance Structure, introduced in April 2009, established for the first time public service positions to head up four Divisions - Community Development, Operations, Natural Resources and Finance and Economic.



Government revenue	NZ\$ 979,186 (2010/11).
Government expenditure	NZ\$ 6,276,814 (2010/11).
Population	54 (February 2012).
Administrative centre	Adamstown

## **St Helena**

### **General**

80. St Helena is a small island of volcanic origin in the South Atlantic with an area of 122 sq km. It is 1,930 km from the west coast of Africa and 2,900 km from South America. The nearest land is Ascension Island, 1,125 km away.

81. St Helena was discovered by the Portuguese navigator, Juan da Nova, on St Helena Day (21 May) 1502. Its existence was kept secret until the English seafarer Thomas Cavendish found it in 1588. In 1658, a Charter from Richard, Lord Protector, authorised the British East India Company to colonise and fortify the Island, which it did the following year. Napoleon was exiled on St Helena from 1815 until his death there in 1821. It became a Crown Colony in 1834.

82. St Helena is currently accessible by sea only. In November 2011 a contract was signed between St Helena Government and Basil Read to construct an airport. An airport could transform St Helena from an island in decline into a prosperous and thriving community. The UK Government will finance an airport and St Helena do all they can to develop and eventually graduate from budgetary aid.

### **Constitutional Issues**

83. The St Helena Constitution Order provides for a Legislative Council consisting of the speaker, twelve elected Members and three ex officio members (the chief secretary, the financial secretary and the attorney general). The last general election took place on 4 November 2009. The Governor enacts laws with the advice and consent of Legislative Council and receives advice from an Executive Council of five elected Members of Legislative Council and the Ex Officio Members. The ex officio members do not vote in Executive Council or Legislative Council.

84. The Governor of St Helena is also Governor of Ascension Island and Tristan da Cunha as the three island form one Territory group. Likewise, the Attorney General of St. Helena is the Attorney General for both Ascension and Tristan da Cunha. The St. Helena Supreme Court and Court of Appeal also have jurisdiction in Ascension and Tristan da Cunha.

### **Legal and Judiciary**

85. St Helena has its own legislation. The law of England as at 1 January 2006 is in force in St Helena in so far as it is applicable and suitable to local circumstances and subject to such changes as local circumstances render necessary. The law of England only applies in so far as it is not inconsistent with any Act of Parliament or Order in Council which extends to St Helena, or with any of the laws of St Helena. Magistrates' Courts deal with minor issues, while more serious cases are tried in the St Helena Supreme Court. A Court of Appeal exists, but typically deals with no more than one or two cases per year.

86. A new Constitution was introduced in 2009, containing a comprehensive suite of fundamental human rights, including provisions to guarantee a fair trial.

87. The St Helena Police Force has an establishment of 28 officers. Their duties include running the small prison. A further detachment of six officers is stationed on Ascension. Crime rates are low.

### **Economy**

88. St Helena's Gross Domestic Product (GDP) stood at £15.5 million in 2009/10. The economy has expanded sluggishly, averaging growth of 0.7 per cent per annum over the past 10 years (real terms). The main driver of growth has been financial support from the UK Government, with the public sector employing 44 per cent of the working population. With construction of an airport underway, St Helena is implementing a number of reforms, in key areas, to encourage inward investment and increased tourism. It is expected that St Helena's economy will be buoyant during the construction of the airport and post-airport as the tourism sector expands rapidly.

89. The St Helena Government is currently developing a ten-year Sustainable Development Plan to set out the strategic vision for the island with a “strengthened community and family life through vibrant economic growth, with opportunities for all to participate, within a framework of effective government and law.”

90. In order to make the most of the airport opportunity, the St Helena Government has embarked on a programme of far reaching reforms to open its economy up for tourism and to encourage greater levels of inward investment. These reforms are designed to make the island a more attractive place to live, invest, work and to visit. A ten-year Economic Development Plan is also being written that will outline what activities will be undertaken in the coming years to attract investors, develop tourism sites and critically to enable Saints to fully participate in the local private sector.

### **UK Development Aid**

91. The total aid agreed DFID aid package has averaged £23.5m a year over the least three years from 2009/10 to 2011/12. The Department for International Development (DFID) provides development support to St Helena to meet the reasonable assistance needs of citizens cost-effectively and to promote greater self-sufficiency. DFID's direct budgetary aid currently provides over half of the St Helena Government's recurrent Budget but this proportion will decrease if, as anticipated, the island's revenue's increase due to construction of the airport. Budgetary aid helps fund the delivery of basic public services such as health care, education social security. DFID aid also maintains maritime access by subsidising the operation of the Royal Mail Ship St Helena. The final component of DFID's aid supports specific interventions, such as the provision of technical expertise, a project to modernisation and increase efficiency in public sector, and support to a number of infrastructure development projects.

### **Key facts**

Currency:	Pound Sterling and St Helena Pound (at parity)
GDP per capita:	£3888 (2009/10).
Local Government Revenue:	£9.3m (2009/10).
Government expenditure net of revenue:	£20.6m (2009/10).
Population:	4000 (2009/10).
Unemployment rate:	2.9 per cent (2008).
Capital:	Jamestown

## Turks and Caicos Islands

### General

92. The Turks and Caicos Islands (TCI) form the south-eastern extremity of the Bahamas chain and lie north of Haiti and the Dominican Republic and south-east of Miami. The territory comprises some 40 islands and cays with a total area of 948 sq km. Six islands are permanently inhabited: Grand Turk – the capital; Salt Cay; South Caicos; Middle Caicos; North Caicos; and Providenciales.

93. The population is estimated to be around 32,000. TCI Islanders account for about one third of the total population; there are many immigrants from other Caribbean Islands and North America as well as significant numbers of illegal migrants. English is the main language with Creole and Spanish predominant among the Haitian and Dominican communities. The religion is Christianity.

94. Juan Ponce De Leon discovered the islands in 1512. Locals claim that the islands were the first landfall of Christopher Columbus in 1492. For several centuries the islands changed hands between the French, Spanish and British. They remained virtually uninhabited until 1678 when they were settled by a group of Bermudians who started to extract salt and timber.

95. The islands became part of the Bahamas in 1799. In 1848 the islanders were granted separate colonial status with an elected Legislative Board and an administrative President. From 1872 until 1962 the islands were part of Jamaica. In 1959 an Administrator for TCI was appointed. From 1965 until 1973 the Governor of the Bahamas was also the Governor of TCI.

### Constitutional Issues

96. Since 1965 the islands have had a Governor in their own right. In June 2009 a Commission of Inquiry concluded that there was a high probability of systemic corruption in the former TCI Government. In August 2009 as a result of these findings, the Governor brought into force an Order in Council suspending those parts of the constitution providing for Ministerial Government and the House of Assembly as well as the automatic right to trial by jury. Powers and functions previously exercised by Ministers were exercised by the Governor acting in his discretion.

97. Since the suspension of parts of the Constitution, the UK Government provided much financial and technical support to the territory to restore the principles of good governance, sustainable development and sound financial management.

98. An FCO/DFID joint Written Ministerial Statement (WMS) in December 2010 set out eight milestones that would have to be met before elections could take place:

- Implementation of a new Turks and Caicos Islands Constitution Order, in support of recommendations of the Commission of Inquiry, which underpins good governance and sound public financial management;

- Introduction of a number of new Ordinances, including those making provision for: (i) the electoral process and regulation of political parties; (ii) integrity and accountability in public life; (iii) public financial management;

- Establishment of robust and transparent public financial management processes to provide a stable economic environment and a strengthening of the Turks and Caicos Islands Government's capacity to manage its public finances;

- Implementation of budget measures to put the Turks and Caicos Islands Government on track to achieve a fiscal surplus in the financial year ending March 2013;

- Implementation of a transparent and fair process for acquisition of Belongership;
- Significant progress with the civil and criminal processes recommended by the Commission of Inquiry, and implementation of measures to enable these to continue unimpeded;
- Implementation of a new Crown Land policy;
- Substantial progress in the reform of the Public Service.

99. A Written Ministerial Statement in January 2012 detailed the progress made towards achieving these milestones. At the time of writing, it was not certain when we would be able to say that all of the milestones have been met. We hope that they will be met in time for elections to take place during 2012.

### **Legal and Judiciary**

100. The legal system, based on English common law, includes a Supreme Court and a Court of Appeal, and has provision for appeal to the Privy Council in London.

101. A Special Investigation and Prosecution Team (SIPT) consisting of former police officers, lawyers and senior counsel from the UK was appointed to investigate matters identified in the 2009 Commission of Inquiry report. A UK law firm was appointed to carry out civil recovery work.

102. The TCI enjoys close cooperation with the US and Bahamian law enforcement agencies, in particular the US Coast Guard under an agreement providing for combined US/TCI/Bahamas interdiction operations.

### **Economy**

103. In the last thirty years TCI has developed from being dependent on budgetary aid and technical assistance from the UK (until 2003) to a territory with a booming economy based primarily on tourism, with a small Financial Services Sector. The territory has become a popular up market holiday destination. By 2007 TCI had a per capita income of US\$23,768. Growth hit a peak of 15 per cent per annum. Foreign investors, mainly from North America and the UK, play a significant role in the Islands' economic life particularly in the development of tourism resorts and real estate.

104. However in 2008 TCI's economy was hit by the global financial crisis hit and by Hurricane Ike which caused widespread damage. The economy suffered further in 2009 when the gross mismanagement of public finances, corrupt practices and unsustainable levels of debt servicing were revealed following the suspension of parts of the Constitution. In 2011, in response to the unfolding financial plight of the Turks and Caicos Islands Government, DFID put in place a guarantee with commercial lenders, to provide TCIG with access to a maximum capital amount of US\$260million over the next five years. A Chief Financial Officer was appointed to meet the urgent task of addressing TCIG's structural deficit and putting it on a course towards a sustainable fiscal surplus in the financial year 2012/13. Once the Territory is in fiscal surplus it will be able to start to pay off its debt and should, after the five year period is over, if not before, be able to secure new and reduced bank lending without the need for a UK Government guarantee.

105. In 2011 the tourism sector began to recover, and in 2012 arrivals were around 10 per cent up from the previous year. The extension of the runway at Providenciales Airport and further development on Grand Turk as a destination for cruise ships should ensure that TCI's tourism market remains buoyant.

### UK Development Assistance

106. Since the suspension of parts of the constitution in 2009, the UK has funded a wide range of technical assistance to work in the key areas highlighted in the Commission of Inquiry report, including public financial management, Crown Land, Public Sector Reform, legislative drafting, Immigration and Customs. Canada has provided and funded the Commissioner and Deputy Commissioner of Police for two years. Whilst the FCO and DFID remain the two government departments most closely involved in the territory, other government departments (eg BIS, UKBA, MOD) have provided invaluable resources. This support will continue after elections are held in the territory.

### Key facts

#### Population: 31,618 (2012):

- Turks and Caicos Islanders ('Islanders' but also referred to as 'Belongers') aged 18 or older - self-identified for the census<sup>3</sup>: 9,853 (2012..)
- Registered electorate eligible to vote in the November 2012 election<sup>4</sup>: 7,239 (2012).

#### Number of men per 100 women: 104 (2012 Census)

- Ethnic groups; African/Negro/Black – 87.6 per cent, White – 7.9 per cent, East Indian – 1.3 per cent, Mixed – 2.5 per cent, Others - 0.7 per cent (2001 Census - figures for 2012 will be available in November 2012.
- Percentage of population under 15: 28.6 per cent (2001 Census - figures for 2012 will be available in November 2012.
- Percentage of population under 65: 96.2 per cent (2001 Census - figures for 2012 will be available in November 2012.
- Percentage of population in urban areas; Grand Turk – 15.4 per cent, Providenciales – 75.6 per cent (2012 Census)
- Religion: Baptist – 35.8 per cent, Methodist – 9.3 per cent, Anglican – 10.0 per cent, Church of God – 11.7 per cent, Seventh Day Adventist – 6.0 per cent, Roman Catholic 11.4 per cent, Jehovah's Witness – 1.8 per cent, Other – 14.0 (2001 Census - figures for 2012 will be available in November 2012.
- GDP. Last formal estimate by TCI: US\$ 726.91 million (constant prices, 2011.
- GDP per head - Figures for 2012 will be available in November 2012.

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<sup>3</sup> See Article 25 – Rights of Citizens. Citizens of the Turks and Caicos Islands are British overseas territories citizens, but the full range of rights and entitlements usually associated with citizenship, including the right to vote, is reserved for Belongers, a status under TCI law which is acquired by birth and descent, or marriage to a Belonger. The provision to acquire Belonger status by grant was identified in the 2009 Commission of Inquiry as having been misused, and was suspended in 2009. Following a consultation in 2011/12 the current position is that Belonger status remains limited to those who acquire it by a family connection: an elected Government will be responsible for bringing forward further legislation after the forthcoming elections to provide a pathway to TCIslander status in line with the new Constitution.

<sup>4</sup> See Article 25 – Rights of Citizens. For the purpose of the 2012 election, a robust process was established to determine whether individuals who presented themselves to register to vote, were in fact Belongers in law and eligible to vote in accordance with an updated Elections Ordinance (enacted in April 2012).

- Inflation. 7.9 per cent (2008. Estimated at 5.2 per cent (2011 - Figures to be confirmed December 2012).
- Government deficit / surplus. Deficit of \$26.27m (2011/12).
- Government debt. \$228 million as of June 2012.
- Employment rate. 91.7 per cent (2008 - figures for 2012 will be available in November 2012).
- Languages. English, Creole and Spanish.
- Life expectancy. Life expectancy at birth: Males 73.1 and Females 77.8 (2009 – figures for 2012 will be available in November 2012).
- Infant mortality. 2 recorded deaths – total number of births not known (2009).

## C. Crown Dependencies

### General background

#### Constitutional relationship

107. The Crown Dependencies comprise:

- The Bailiwick of Guernsey (including Alderney and Sark)
- The Isle of Man
- The Bailiwick of Jersey

108. The Crown Dependencies are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament.

109. The Crown Dependencies have never been colonies of the UK. Nor are they Overseas Territories, like Gibraltar, which have a different relationship with the UK. The constitutional relationship of the Islands with the United Kingdom is not enshrined in a formal constitutional document. On behalf of the Crown, the UK Government has a considerable role – it is responsible for ensuring good government on the Islands, their defence<sup>5</sup> and international relations.

110. The Queen is the Head of State of each Island and the Lieutenant-Governor on each Island is Her Majesty's personal representative. The Lord Chancellor and Secretary of State for Justice is the Privy Counsellor with special responsibility for Channel Islands. Primary legislation passed in Jersey, Guernsey, Alderney and Sark requires Royal Assent from The Privy Council. The Privy Council's Committee called the Council for the Affairs of Jersey and Guernsey (the "Committee") is appointed at each succession of a new monarch and acts as the advisory body to the Crown. The current committee was appointed following

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<sup>5</sup> Although HMG is constitutionally responsible for the Island's defence of the Crown Dependencies, the Island Governments make an annual contribution to that expenditure. In Jersey, this is done by funding a Territorial Army Royal Engineers Squadron on the Island, in Guernsey by remitting to the Treasury the income from passport fees and by meeting the maintenance costs of the Alderney breakwater and the Isle of Man makes an annual cash payment calculated according to an agreement signed in 1994.

Her Majesty's General Order of Reference of 22 February 1952 and consists of: the Lord President of the Council; the Lord Chancellor and Secretary of State for Justice; and Minister of State for Justice. In the Isle of Man the Lieutenant-Governor has delegated responsibility to grant Royal Assent to any non-reserved legislation relating to domestic matters.

111. The Ministry of Justice is responsible for managing the constitutional relationship with the Crown Dependencies, which involves a variety of different responsibilities from involvement in the appointment of key Crown Appointments; working with the Palace on assessing Crown Dependencies Coins and Stamps; helping assess the Crown Dependencies' honours nominations; to processing their legislation for Royal Assent. Lord McNally, the Minister of State for Justice is the Minister responsible for the Crown Dependencies within the Ministry of Justice

112. However, as per the Justice Select Committee Report 2010, all UK Government Department have a responsibility to engage with the Crown Dependencies on their policy areas which may affect the Crown Dependencies.

### **Nationality and Immigration**

113. The British Nationality Act 1981 confers British Citizenship on all those with close connections with the United Kingdom, the Channel Islands and Isle of Man. The Islands have adopted the common format passport and the Lieutenant Governor remains the passport-issuing authority in the Islands.

114. Jersey, Guernsey, the Isle of Man and the Republic of Ireland, together with the United Kingdom, comprise a common travel area. There is no immigration control between the United Kingdom and the Islands.

### **Island Legislation**

115. The Islands' legislatures make their own domestic legislation.

116. The Ministry of Justice examines legislation from the Crown Dependencies to ensure in particular that there is no conflict with international obligations or any fundamental constitutional principles. This enables the Lord Chancellor to advise The Privy Council whether Her Majesty in Council can be advised to make an Assenting Order, and thereby grant Royal Assent. For non-reserved Isle of Man legislation the Ministry of Justice will directly inform the Lieutenant Governor when the Lord Chancellor is content that the delegated responsibility to grant Royal Assent may be exercised.

117. UK legislation does not normally extend to the Crown Dependencies. In instances where it does extend, it may do so either by virtue of the Act itself or by Order in Council made with their agreement under an enabling provision contained in the Act which provides for it to be extended to the Crown Dependencies<sup>6</sup>. For an Act to extend otherwise than by an Order in Council is now very unusual. Departments must consult the Crown Dependencies at the earliest opportunity in the event that extension is under consideration.

### **International Personality**

118. The Crown Dependencies are not recognised as States in their own right but as "territories for which the United Kingdom is responsible". As such they cannot sign up to international agreements under their own aegis but can have the UK's ratification of such

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<sup>6</sup> An enabling provision for an Order in Council, known as a 'permissive extent clause' in a Bill could take the following form: "Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or the Isle of Man".

instruments extended to them. An exception to this is where they have been “entrusted” by the UK to do so where the other party has been willing to engage with any of the Crown Dependencies directly, as has been the case with Tax Information Exchange Agreements and Double Taxation Agreements with EU Member States, including the UK, and countries that are members of the OECD (The Organisation for Economic Co-operation and Development).

119. In 2007/2008 the United Government and the Governments of the Isle of Man, Jersey and Guernsey each signed a document setting out a framework for developing the international identity of these three jurisdictions.

### **Relationship to the European Union**

120. The Islands have a special relationship with the European Union provided by Protocol 3 to the United Kingdom's Treaty of Accession to the European Community. This relationship cannot be changed without the unanimous agreement of all the Member States of the EU. Under Protocol 3, the Islands are part of the customs territory of the EU. The common customs tariff, levies and other agricultural import measures therefore apply to trade between the Islands and non-Member countries and there is free movement of goods in trade between the Islands and the EU.

121. However other EU Rules do not apply. Implementation of the provisions on the free movement of persons, services and capital is therefore not required, and the Islands are not eligible for assistance from the structural funds or under the support measures for agricultural markets. EU tax instruments do not apply, nor the developing justice and home affairs initiatives or the Schengen acquis, although the Islands support improved judicial co-operation within Europe.

### **Treaties and international agreements**

122. Article 29 of the Vienna Convention on the Law of Treaties provides that “unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory”. The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply to them. In addition, the established practice is that if any of the Crown Dependencies or Overseas Territories are not included at the time of the UK’s ratification, accession, or acceptance it may be extended to include them at a later date.

123. This means that, when the UK is planning to ratify a particular convention or treaty, it should consult the Crown Dependencies about whether they wish to have it extended to them.

## **Isle of Man**

### **History**

124. The Isle of Man first came under the English Crown in the fourteenth century following periods under the suzerainty of the Kings of Norway and Scotland. In 1405 the Island, with its regalities, was granted to Sir John Stanley and his heirs. From then up to 1765 it was ruled by the Earls of Derby, and later the Dukes of Atholl, as Kings or Lords of Man. By Acts of Parliament passed in 1765 and in 1825, the rights of the Lords of Man reverted to the Crown, and for a time the Island was very largely governed from London. Since this time, the Isle of Man’s constitution has evolved to become an internally self governing parliamentary democracy.

**Government**

125. The High Court of Tynwald is the parliament of the Isle of Man and has an unlimited, but not necessarily exclusive, legislative competence.

126. It has two Branches, the Legislative Council and the House of Keys, which sit separately to consider legislation, but also sit together in Douglas, the island's capital, and annually at Tynwald Hill in St John's, for other parliamentary purposes such as Tynwald Day the Promulgation of the Acts of Tynwald takes place. By statute, each Act of Tynwald must be promulgated on Tynwald Hill within eighteen months of enactment or it ceases to have effect.

127. The House of Keys is the popularly elected Branch of Tynwald, and consists of 24 Members (MHKs) who represent constituencies having one, two or three seats. The majority of Members sit as Independents, so meetings have to achieve a majority consensus decision.

128. Eight of the eleven members of the Legislative Council (MLCs) are elected by the members of the House of Keys; the remaining Members are the two ex-officio members, H.M. Attorney-General (who may not vote) and the Lord Bishop (who may vote), and the President of Tynwald, who is elected by Tynwald as a whole from its Members and who presides at sittings of Tynwald and the Legislative Council. (The President has a casting vote.)

129. The Legislative Council generally acts as a revising chamber for Bills which are usually first introduced in the House of Keys. Bills are signed in Tynwald, before requesting Royal Assent. Royal Assent is given by The Queen or, now more commonly, by His Excellency the Lieutenant Governor on Her Majesty's behalf.

130. The two branches sit separately throughout the parliamentary year principally to enact primary legislation; they sit together as Tynwald Court mainly to debate matters of policy, approve delegated legislation and to adopt financial motions.

131. Tynwald assigns executive functions to its nominated Chief Minister. At its first sitting, following general elections for Members of the House of Keys, the Chief Minister is nominated by and from the Members of Tynwald for the life of the House of Keys. He or she is then appointed by the Lieutenant Governor on the basis of Tynwald's nomination. The Chief Minister similarly nominates nine Ministers, also from Members of Tynwald, to the nine Departments of Government to sit with him or her to form the Council of Ministers. Tynwald may remove the Council of Ministers by passing a vote of no confidence.

132. Members of Tynwald, other than those appointed as Ministers, are also appointed on the nomination of the Chief Minister to serve as members of Government Departments. Some may also serve, alongside non-Tynwald members, on Statutory Boards that may be regulatory or commercial bodies.

**Election Cycle**

133. By law, every five years the House of Keys is dissolved and a General Election is held to elect members.

**Legal System**

134. Lawyers in the Isle of Man are known as advocates and combine the roles of solicitors and barristers in England. Organised into partnerships, Manx advocates perform a wide range of work and have an exclusive right of audience in the Island's courts (although English barristers can be licensed to appear in certain cases). Other legal work (except

conveyancing) can be undertaken in the Island by registered legal practitioners qualified to practice in other jurisdictions.

135. Although English law does not extend to the Isle of Man, the Manx legal system is based on the principles of English common law, like the legal systems of most Commonwealth countries. Manx criminal law was codified in the 19th century and is closely based on English law. In relation to contract, tort, family law and social security, Manx law is very similar to English law. But in other respects Manx law has been developed to meet the Island's special circumstances, particularly with regard to direct taxation, company law and financial supervision.

### **Economy**

136. The Island's economy combines traditional industries such as agriculture, fishing and tourism with other areas such as financial services, e-commerce, the ship and aircraft registries, the aerospace sector and the film industry.

137. The Island benefits from a special relationship with the European Union and this allows streamlined movement of goods between the Island and the Union. Regular sea and air services for passengers and freight allow quick and easy access to and from the UK, Eire and beyond.

138. The Island's economic progress in recent years has achieved a rapidly rising National Income and very low levels of unemployment.

139. The Isle of Man has a colourful heritage, and the tourism industry is well established, particularly as a prime location for short-breaks or for conferences. Some of the most famous activities on the Island involve motor sports and include the Isle of Man TT, Southern 100 and Manx Grand Prix.

### **Key facts**

Population:	84,497 (2011 Census)
Area:	572 sq km
Location:	In the Irish Sea, between Great Britain and Ireland

## **Bailiwick of Jersey**

### **History**

140. Jersey, together with the other Channel Islands, was part of the Duchy of Normandy before the Norman conquest but remained in allegiance to the King of England when continental Normandy was lost in the year 1204. Jersey has since been subject to the English Crown as successor to the Dukes of Normandy. It did not, however, become part of England either administratively or legally.

### **Government**

141. The legislature of the Island is called 'The States of Jersey'. The States comprises the Bailiff, who is the presiding officer, the Lieutenant Governor, 12 Senators, the Constables (Connétables) of the 12 parishes of the Island, 29 Deputies, the Dean of Jersey, the Attorney General and the Solicitor General. They all have the right to speak in the Assembly, but only the 53 elected members (the Senators, Connétables and Deputies) have the right to vote.

142. The executive arm of government is Jersey's Council of Ministers. This is made up of the Chief Minister and nine other Ministers, who are chosen individually on a vote by all

States members. The Council of Ministers is responsible for producing Jersey's Strategic Plan. Once the plan is approved by the States Assembly, the council ensures the Strategic Plan is properly implemented throughout the public sector.

143. Jersey's 10 government departments are as follows:

- Chief Minister's Department
- Economic Development
- Education, Sport and Culture
- Home Affairs
- Health and Social Services
- Housing
- Planning and Environment
- Social Security
- Transport and Technical Services
- Treasury and Resources

144. Each new Council of Ministers is required, by law, to propose a Strategic Plan for debate and approval within four months. As part of the development of a new Plan, Ministers have defined their vision and priorities for the next three years. These priorities will form the basis for a new Strategic Plan and will emphasise the need for Jersey's economy to flourish in the face of challenging economic conditions while also recognising the need for a balanced approach to economic, social and community issues.

### **Election Cycle**

145. Elections are held every three years although Senators are elected for a six year term with half of the senatorial seats being up for election every 3 years in an overlapping pattern.

146. General elections for the States of Jersey were held in Jersey on 19 October 2011, and for the first time Senators, Deputies and Constables were elected on a single day in Jersey instead of on separate days. The number of members of the States of Jersey was reduced from 53 to 51. Six Senators who had been elected in 2008 for a period of six years did not face election in 2011.

### **Economy**

147. The economy of Jersey has seen a great deal of change during the past 30 to 40 years as markets have become more international and global travel has increased. This has engendered a dramatic change in the Jersey economy. Over the past 20 to 30 years the financial services sector (banking, trust and company administration, fund management, accountancy and legal activities) has grown such that it now accounts for around half of all the economic activity in Jersey and employs almost a quarter of the workforce. This has created a specialised economy in the island based on the presence of a strong, internationally competitive financial services industry.

148. Jersey is in a stronger position than many other jurisdictions to deal with the downturn, however, Jersey is clear that the economic climate has fundamentally changed and opportunities for additional government spending are few.

149. Traditional Jersey industries such as agriculture and tourism operate in fiercely competitive markets and are no longer the dominant industries.

## Infrastructure

150. Jersey has an international airport providing regular air links with London, Manchester, Paris and other major European cities. Approximately 1.5 million passengers pass through Jersey Airport every year, while another 315,000 arrive at the harbour from England, France and the other Channel Islands.

151. Jersey has 350 miles of paved roadways; the roads are crowded during the tourist season, especially in St Helier, where 30 per cent of the Island's population lives. A regular bus service runs to all parts of the Island, but most finance industry businesses are based in St Helier and are generally within walking distance of the town centre.

## Key facts

Area: 116 sq km

Population: 97,857 (March 2011 census.)

Location: Jersey sits in the Bay of St. Malo, 19 miles from France.

Employment: In June 2011, 56,890 people were employed in Jersey, 88 per cent of the total were employed in the private sector.

## Bailiwick of Guernsey

### Background: the Bailiwick of Guernsey

152. The Channel Islands were part of the Duchy of Normandy when Duke William, following his conquest of England in 1066, became King William I of England. They have since been subject to the English Crown as successor to the Dukes of Normandy. They did not, however, become part of England administratively or legally, nor subsequently of the United Kingdom.

153. The Bailiwick of Guernsey is the smaller of the two Channel Island Bailiwicks. It comprises the Island of Guernsey with the adjacent islets of Herm and Jethou, for whose administration Guernsey is responsible, and the separate jurisdictions of Alderney and Sark. The island of Brecqhou is part of Sark.

154. The Bailiwick is an internally self-governing dependency of the Crown. The UK is directly responsible for its external relations and defence and the Crown is ultimately responsible for the Bailiwick's good government. All primary legislation passed in Guernsey, Alderney and Sark requires the approval of The Queen in Council, granted on the advice of the Secretary of State.

## Guernsey

155. Guernsey's parliamentary assembly, which is its legislature and overarching executive, is called 'The States of Deliberation'. It has power to raise taxation, determine expenditure and to pass legislation. The States of Deliberation has 47 directly elected independent members ('Guernsey States Members'); each has the right to vote. Of these members 45 are elected by universal adult suffrage (age 16 for this purpose) from within the island of Guernsey (each of these are carry title 'Deputy') and two are elected representatives elected from within the States of Alderney (described below) themselves elected by universal adult suffrage (age 18 for this purpose). There are no political parties in Guernsey. Elections follow a fixed four year cycle. The Presiding Officer (The Bailiff), the Deputy Presiding Officer (The Deputy Bailiff) and the Law Officers of the Crown are

non-elected apolitical members of the States of Deliberation who retain a right to speak but not vote.

156. In spring 2004, Guernsey introduced a major constitutional change to the way it is governed, changing from the structure of the committee based system of administration. Its government, known as 'the States of Guernsey', is principally conducted through 10 Government Departments. Each Department comprises a 'Minister' and four members. Each of these must be Guernsey States Members and are elected into post by the States of Deliberation. Each Department elects a Deputy Minister from amongst the four States Members. Each Department may nominate for election by the States up to two from outside of the States of Deliberation who do not have a vote.

157. The work of the States of Guernsey is co-ordinated by the Policy Council. The Policy Council consists of the 'Minister' from each of the ten Departments and is chaired by the Chief Minister. The States of Deliberation elect the Chief Minister from within its elected membership. The current Chief Minister is Deputy Peter Harwood. The Deputy Chief Minister is also elected by the States of Deliberation and must be a Minister of one of the ten Departments.

158. The order paper for States of Deliberation Meetings is called the Billet d'État. Items mainly take the form of States Reports submitted by Departments, although from time to time Requête are submitted by Guernsey States Members, (at least seven signatures are needed). The reports are usually recommending the States of Deliberation make executive decisions or direct the preparation of legislation. A Requête is, in effect, a Private Members Motion. The Policy Council and the Treasury and Resources Department comment on the various proposals set out in the Billet d'État. It also includes draft legislation for approval.

## **Alderney**

159. Alderney is the most northerly of the Channel Islands. The island is 3 miles (5 km) long and 1.5 miles (2.5 km) wide for a total area of 3 square miles (8 sq km). Alderney is around 10 miles (15 km) from France, 20 miles (32 km) to the north-east of Guernsey and 60 miles (97 km) from the south coast of England.

160. Alderney has a population of 2400 people.

161. The government of Alderney is administered by the States of Alderney. However, since 1948, with the agreement of the States of Alderney, the States of Guernsey has exercised financial and administrative responsibility for certain public services in Alderney, and applied Guernsey taxes, duties and impôts (which accrue to Guernsey general revenues) in Alderney, as well as enacting legislation in respect of those services for which Guernsey has assumed responsibility. Guernsey's responsibilities in Alderney extend to the airfield and breakwater, immigration, police, social services, health and education.

162. The States of Alderney (the Legislature) consists of a President and ten States Members. The President chairs the monthly States Meetings and stands for election every four years.

163. Alderney States Members hold office for a period of four years and in alternate years there is an "Ordinary" election at which five of the sitting members may offer themselves for re- election. Thus, continuity at all levels is maintained and represents a stable, experienced parliamentary body.

164. Routine matters of Government are performed by three Committees, Policy & Finance, General Services and Building & Development Control, which deal with all aspects of the Island's finances and day-to-day administration.

165. In addition, pursuant to the agreement made in 1948, two States of Alderney Representatives are full members of the Guernsey States of Deliberation with full voting rights on matters laid before that assembly.

166. Guernsey's States of Deliberation has power to enact criminal legislation in Alderney, as well as legislation relating to the reserved services mentioned above.

## Sark

167. Sark is the smallest of the four main Channel Islands, located some 80 miles off the south coast of England. It is three miles long, and a mile and a half wide. Sark has an area of 5.45 square kilometres (2.10 sq mi)

168. Sark has a population of about 600. Its main industries are tourism, agriculture, crafts and finance.

169. Sark forms part of the Bailiwick of Guernsey, but it has its own legislature (the Chief Pleas). For nearly 450 years until 2008 Sark had a feudal system of government under the headship of the hereditary Seigneur. The Chief Pleas was composed of the unelected owners of 40 tenements (landholdings) together with twelve elected Deputies. The undemocratic composition of Chief Pleas gave rise to ECHR concerns, as did the dual role of the appointed Seneschal as President of the Chief Pleas and the Island's only judge.

170. On 9 April 2008, following almost a decade of debate, Royal Assent was given to The Reform (Sark) Law 2008 and The Real Property (Transfer Tax, Charging and Related Provisions) Sark Law 2007 (the "Reform Law" and the "Real Property Law"). The Laws abolished the non-ECHR compliant feudal system of government on Sark and introduced a democratic system of government under which its Chief Pleas would in future be made up of 28 open elected seats, plus the Seigneur and Seneschal as unelected members with very restricted powers. Sark held its first fully democratic elections in December 2008.

171. Following a judicial review of the Reform (Sark) Law, 2008, the UK Supreme Court held that it complies with Article 3 of Protocol 1 of the European Convention of Human Rights, which protects "the free expression of the opinion of the people in the choice of legislature".

172. The role of the Seneschal has been reformed by means of the Sark (Reform) (Amendment) (No 2. Law, 2010. As a result of the commencement of this new constitution a 'President of the Chief Pleas' will replace the Seneschal as the presiding officer in Sark's Chief Pleas. The President of the Chief Pleas shall be appointed for a four year term of office by resolution of the Chief Pleas.

173. Guernsey's States of Deliberation has power to legislate for Sark in criminal matters without the agreement of Chief Pleas, but only on any other matter with the agreement of the Chief Pleas.

## Key facts

<i>Population</i>	Data	As at:	Source
Guernsey (incl. Herm, Jethou and Lihou)	62,915	Mar-11	Social Security Department
Alderney	2,111	Mar-11	Social Security Department
Sark (incl Brecqhou)	591	2001	2001 Census

Entire Baliwick	65,617		
Percentage of population who are:			
Women	51%	Mar-11	Social Security Department
Men	49%	Mar-11	Social Security Department
0-15 YOA	16%	Mar-11	Social Security Department
16-64 YOA	67%	Mar-11	Social Security Department
65+ YOA	17%	Mar-11	Social Security Department
Dependency Ratio	0.48	Mar-11	Social Security Department
National Accounts			
GDP (Guernsey only)	£1,895m	2011	Policy and Research Unit
GDP per capita (Guernsey only)	£30,112	2011	Policy and Research Unit
GNP (Guernsey only)	£1,940m	2011	Policy and Research Unit
Inflation			
RPIX (annual percentage change) (Guernsey only)	3.2%	Sep-12	Policy and Research Unit
RPI (annual percentage change) (Guernsey only)	3.5%	Sep-12	Policy and Research Unit
Government accounts			
Government Deficit	£24m	2011	Government Accounts
Government Deficit	1.2% GDP	2011	Government Accounts/ Policy and Research Unit
Government borrowing	nil	2011	Government Accounts
Labour Market			
Total Employment (employed and self-employed)	32,179	Mar-12	Social Security Department
Employment rate	75.9%	Mar-11	Social Security Department
Registered unemployment	1.3%	Mar-12	Social Security Department
Median Earnings (all employees)	£28,340	2011	Social Security Department
Health			
Life expectancy at birth: males	79.7	2009-2011	Health and Social Services
Life expectancy at birth: females	84.5	2009-2011	Health and Social Services
Life expectancy at birth: overall	82.1	2009-2011	Health and Social Services
Life expectancy at 65: males	18.4	2009-2011	Health and Social Services
Life expectancy at 65: females	21.8	2009-2011	Health and Social Services

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Life expectancy at 65: overall	20.2	2009-2011	Health and Social Services
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*Source: States of Guernsey*

#### **D. Information and publicity**

174. On entering Government in May 2010, the UK Coalition reaffirmed its commitment to the European Convention on Human Rights (ECHR) and committed to promote a better understanding of our human rights obligations and civil liberties.

175. Since 2006, the Ministry of Justice (as the department with responsibility for domestic human rights policy) has produced several publications to help public sector bodies and others understand their obligations under the Human Rights Act (HRA). The publications, ranging from short introductory booklets to the general public to specific guidance for public authorities, are all available on the human rights page on the Ministry of Justice website: <http://www.justice.gov.uk/human-rights>. The MoJ has also worked closely with key human rights organisations in the UK to produce targeted HRA publications. The teaching resource, 'Right Here, Right Now', which is intended for key stage 3 pupils (ages 11-18. was a co-production between the MoJ, Amnesty and the British Institute for Human Rights.

176. MoJ officials have attended conferences to promote an understanding of the HRA and the MoJ also delivers promotion of human rights in partnership with other organisations e.g. the Equality and Diversity Forum (EDF). Lord McNally, Minister for Human Rights at the MoJ, has spoken at several major conferences (including one run by the EDF) to raise awareness of the HRA.

177. Most recently, in 2011, the UK Government supported the adoption of a United Nations declaration on human rights education and training. The declaration, although not legally binding, consists of 14 articles that cover a range of practical education and training activities which aim to help people to understand their fundamental rights and liberties better. The declaration is due to be reviewed later in 2012.

#### **E. Status of the declarations, reservations and derogation**

178. The UK ratified the ICCPR on 20 May 1976. The ratification extends to the CDs and the following OTs: Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St. Helena and its dependencies (Ascension Island and Tristan da Cunha), and the Turks and Caicos Islands.

179. The Committee should note the following:

##### **Declarations**

180. The declaration on article 1, paragraph 3. is maintained.

##### **Reservations**

181. The reservations to articles 13, 23, paragraph 3, and 25(b) and the general reservation relating to Southern Rhodesia are to be considered void because the reservations were made in respect of territories over which the UK formerly exercised sovereignty but which are now independent States.

182. The reservation to article 11 applicable to Jersey is under discussion between the Bailiwick and UK governments.

183. The reservation to article 14, paragraph 3(d) is maintained for the British Virgin Islands, the Cayman Islands and the Falkland Islands but is to be considered void for the Gilbert Islands and Tuvalu because these are now independent States.

184. The reservations to articles 10, 12, paragraphs 1 and 4, 20, and 24, paragraph 3. and the general reservation to preserve service discipline to members of the armed forces and prisoners are maintained for the reasons outlined in the tables below. See also the submissions made by the UK Ministry of Defence on behalf of the Armed Forces.

### Derogation

185. The derogation of 17 May 1976 to articles 9, 10, paragraph 2, 10, paragraph 3, 12, paragraph 1, 14, 17, 19, paragraph 2, 21, and 22 was terminated on 22 August 1984.

186. The derogation of 23 December 1988 to article 9, paragraph 3, was terminated, for the UK, on 26 February 2001, and, for the CDs, on 17 May 2006.

187. The derogation of 18 December 2001 to article 9 was terminated on 14 March 2005.

188. The tables below summarise the status of the declarations, reservations and derogation placed by the UK since the ratification of the ICCPR.

### Declarations

<i>Article of the ICCPR</i>	<i>declarations</i>	<i>status</i>	<i>reasons for position</i>
Article 1(3) – "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."	In the event of any conflict between UK's obligations under article 1 and the UK's obligations under the Charter, the obligations under the Charter shall prevail.	Maintained	The Government considers that it remains necessary to clarify that article 1 of the Covenant is not to be interpreted as imposing on an administering power greater obligations in respect of its overseas territories than the United Nations Charter itself.

### Reservations

<i>Article of the ICCPR</i>	<i>Reservations</i>	<i>status</i>	<i>reasons for position</i>
Article 10 – "1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and	The Government of the United Kingdom reserve the right to apply to members of and persons serving with the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they may from time to time deem to be	Maintained	The reservation continues to be required because while the vast majority of juveniles are held separately from adults (and indeed in 2000, the Prison Service for England and Wales created an under 18 estate to enable greater separation of this group of prisoners), exceptionally there is

<i>Article of the ICCPR</i>	<i>Reservations</i>	<i>status</i>	<i>reasons for position</i>
<p>shall be subject to separate treatment appropriate to their status as unconvicted persons;</p> <p>2 (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status”.</p>	<p>necessary for the preservation of service and custodial discipline and their acceptance of the provisions of the Covenant is subject to such restrictions as may for these purposes from time to time be authorised by law.</p> <p>Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is deemed to be mutually beneficial, the Government of the United Kingdom reserve the right not to apply Article 10 (2). (b) and 10 (3)., so far as those provisions require juveniles who are detained to be accommodated separately from adults, and not to apply Article 10 (2). (a) in Gibraltar, Montserrat and the Turks and Caicos Islands in so far as it requires segregation of accused and convicted persons.</p>		<p>the need to accommodate a youngster in an adult establishment for security/offence reasons or to meet that particular individual’s needs. The reservation needs to be retained for Scotland because children of 16 and over are detained alongside people up to the age of 21 in Scottish young offenders institutions. In Northern Ireland juveniles are segregated wherever possible from adults but, for operational reasons, this is not always possible. This is particularly true of women prisoners, given the small numbers of women – between 15 and 20 – in prison in Northern Ireland at any one time.</p>
<p>Article 11 – “No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”</p>	<p>The Government of the United Kingdom reserve the right not to apply article 11 in Jersey.</p>	<p>Under review</p>	<p>On 2 August 2006, the Bailiwick of Jersey has requested the Government to withdraw the reservation placed on Article 11 on its behalf. The Government has made recommendations with respect to the request, and the Bailiwick of Jersey is currently preparing to make certain legislative changes.</p>
<p>Article 12(1). and (4). – “1. Everyone lawfully within the territory of a State shall, within that territory, have the right</p>	<p>The Government of the United Kingdom reserve the right to interpret the provisions of article 12 (1). relating to the territory of a State as</p>	<p>Maintained</p>	<p>There is uncertainty concerning the correct interpretation of “territory of a State” and “own country”. The purpose of the</p>

<i>Article of the ICCPR</i>	<i>Reservations</i>	<i>status</i>	<i>reasons for position</i>
<p>to liberty of movement and freedom to choose his residence.</p> <p>4. No one shall be arbitrarily deprived of the right to enter his own country.”</p>	<p>applying separately to each of the territories comprising the United Kingdom and its dependencies.</p> <p>The Government of the United Kingdom reserve the right to continue to apply such immigration legislation governing entry into, stay in and departure from the United Kingdom as they may deem necessary from time to time and, accordingly, their acceptance of article 12 (4). and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom. The United Kingdom also reserves a similar right in regard to each of its dependent territories.</p>		<p>Immigration Act 1971 and related legislation is to control immigration into the United Kingdom, including immigration from the British overseas territories (which, in general, are responsible for their own immigration controls). The right to enter and reside in the United Kingdom is restricted, in the main, to British citizens. British Nationals (Overseas), British Overseas Territories citizens, British Overseas citizens, British protected persons and (for the most part) British subjects are eligible for British passports and consular protection but, unless they concurrently hold British citizenship, have no right of abode here. The reservation protects these arrangements.</p>
<p>Article 13 – “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”</p>	<p>The Government of the United Kingdom reserve the right not to apply article 13 in Hong Kong in so far as it confers a right of review of a decision to deport an alien and a right to be represented for this purpose before the competent authority.</p>	Void	<p>The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.</p>

<i>Article of the ICCPR</i>	<i>Reservations</i>	<i>status</i>	<i>reasons for position</i>
Article 14(3).(d) – “To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”	The Government of the United Kingdom reserve the right not to apply or not to apply in full the guarantee of free legal assistance in sub-paragraph (d) of paragraph 3 of Article 14 in so far as the shortage of legal practitioners renders the application of this guarantee impossible in the British Virgin Islands, the Cayman Islands, the Falkland Islands, the Gilbert Islands, the Pitcairn Islands Group, St. Helena and Dependencies and Tuvalu.	Maintained (void for the Gilbert Islands and Tuvalu)	The shortage of legal practitioners renders the application of this guarantee impossible in the British Virgin Islands, the Cayman Islands, the Falkland Islands, the Pitcairn Islands Group, St. Helena and Dependencies.  The Gilbert Islands and Tuvalu are now independent States so the reservation placed on their behalf is void.
Article 20 – “1. Any propaganda for war shall be prohibited by law.  2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”	The Government of the United Kingdom interpret Article 20 consistently with the rights conferred by articles 19 and 21 of the Covenant and having legislated in matters of practical concern in the interests of public order (ordre public) reserve the right not to introduce any further legislation. The United Kingdom also reserve a similar right in regard to each of its dependent territories.	Maintained	There are no plans for new legislation in this area.
Article 23(3). – “3. No marriage shall be entered into without the free and full consent of the intending spouses.”	The Government of the United Kingdom reserve the right to postpone the application of paragraph 3 of article 23 in regard to a small number of customary marriages in the Solomon Islands.	Void	The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.
Article 24(3). – “3. Every child has the right to acquire a nationality.”	The Government of the United Kingdom reserve the right to enact such nationality legislation as they may deem necessary from time to	Maintained	The Covenant is silent both as to the circumstances in which “the right to acquire a nationality” will arise and the identity of the

<i>Article of the ICCPR</i>	<i>Reservations</i>	<i>status</i>	<i>reasons for position</i>
	time to reserve the acquisition and possession of citizenship under such legislation to those having sufficient connection with the United Kingdom or any of its dependent territories and accordingly their acceptance of article 24 (3). and of the other provisions of the Covenant is subject to the provisions of any such legislation.		State on which, in any particular case, the obligation to ensure that the right is respected will fall. There are various statutory restrictions on the ability of minors to acquire British nationality, all of which are consistent with our obligations under the 1961 UN Convention on the Reduction of Statelessness. The reservation is deemed necessary to ensure that any obligation under the ICCPR –and article 24(3). in particular- goes no further than these.
Article 25(b) – “(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”	The Government of the United Kingdom reserve the right not to apply sub-paragraph (b) of article 25 in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong.	Void	The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.
General Reservation	Ratification does not preclude laws and procedures to preserve service discipline of members of the armed forces and prisoners.	Maintained	A range of Service disciplinary procedures have been modified to bring them in line with the ECHR, particularly in relation to the conduct of summary hearings and courts-martial. Notwithstanding this, there remain points within the ICCPR that would impact on the operational effectiveness of the UK Armed Forces if the current reservation were to be removed. The exigencies of Service life may make it impossible to segregate juvenile offenders (who will not be below 16 years of age in the case

<i>Article of the ICCPR</i>	<i>Reservations</i>	<i>status</i>	<i>reasons for position</i>
			<p>of the Armed Forces) from adults. Article 12(1). is inconsistent with the inevitable requirement for Service personnel to be ordered to be sent to, or remain at, a particular location. Article 21 allows the right of 'peaceful assembly', but this is not compatible with service disciplinary ethos (article 11 of the ECHR, covering the same subject matter, recognises this). The use of a single language (English) must be required in the majority of operational situations, and so the linguistic provisions of article 27 could be problematic for the Services. Maintaining the discipline of the Armed Forces, wherever they are deployed, and in peacetime and in conflict, is vital to their operational effectiveness. For this reason the reservation needs to remain in force as it stands.</p>
General Reservation	The Government of the United Kingdom declare that the provisions of the Covenant shall not apply to Southern Rhodesia unless and until they inform the Secretary-General of the United Nations that they are in a position to ensure that the obligations imposed by the Covenant in respect of that territory can be fully implemented.	Void	The UK is no longer responsible for reservations made in respect of territories over which the UK formerly exercised sovereignty but which are now independent states.

## Derogations

<i>Article of the ICCPR</i>	<i>derogation</i>	<i>status</i>	<i>reasons for position</i>
Articles 9, 10(2), 10(3), 12(1), 14, 17, 19(2), 21, 22.	<p>DEROGATION (17 May 1976).</p> <p>The Government of the United Kingdom notify other States Parties to the present Covenant, in accordance with article 4, of their intention to take and continue measures derogating from their obligations under the Covenant. There have been in the United Kingdom in recent years campaigns of organised terrorism related to Northern Irish affairs which have manifested themselves in activities which have included murder, attempted murder, maiming, intimidation and violent civil disturbances and in bombing and fire-raising which have resulted in death, injury and widespread destruction of property. This situation constitutes a public emergency within the meaning of Article 4 (1). of the Covenant. The emergency commenced prior to the ratification by United Kingdom of the Covenant and Legislation has, from time to time, been promulgated with regard to it. The Government of the United Kingdom have found it necessary (and in some cases continue to find it necessary) to take powers, to the extent strictly required by the exigencies of the situation, for the protection of life, for the protection of property and the prevention of outbreaks of public disorder, and including the exercise of powers of arrest and detention and exclusion. In so far as any of these measures is inconsistent with the provisions of articles 9, 10 (2)., 10 (3)., 12 (1)., 14, 17, 19 (2)., 21 or 22 of the Covenant, the United Kingdom hereby derogates from its obligations under those provisions.</p>	Terminated on 22 August 1984	
Article 9 – “1. Everyone has the right to liberty and security of person. No one	<p>DEROGATION (23 December 1988).</p> <p>The Government of the United</p>	Terminated on 26 February 2001 (for the	

<i>Article of the ICCPR</i>	<i>derogation</i>	<i>status</i>	<i>reasons for position</i>
<p>shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.</p> <p>3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.</p> <p>4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.</p> <p>5. Anyone who has been the victim of</p>	<p>Kingdom of Great Britain and Northern Ireland have found it necessary to take or continue measures derogating in certain respects from their obligations under Article 9 of the Covenant. Persons reasonably suspected of involvement in terrorism connected with the affairs of Northern Ireland, or of offences under the legislation and who have been detained for 48 hours may be, on the authority of the Secretary of State, further detained without charge for periods of up to five days. Notwithstanding the judgement of 29 November 1988 by the ECtHR in the case of Brogan and Others the Government has found it necessary to continue to exercise the powers described above but to the extent strictly required by the exigencies of the situation to enable necessary enquiries and investigations properly to be completed in order to decide whether criminal proceedings should be instituted. This notice is given in so far as these measures may be inconsistent with Article 9 (3). of the Covenant.</p>	UK)	

<i>Article of the ICCPR</i>	<i>derogation</i>	<i>status</i>	<i>reasons for position</i>
unlawful arrest or detention shall have an enforceable right to compensation.”	<p>DEROGATION (18 December 2001).</p> <p>Public emergency in the United Kingdom</p> <p>The terrorist attacks in New York, Washington, D.C. and Pennsylvania on 11 September 2001 resulted in several thousand deaths, including many British victims and others from 70 different countries. In its resolutions 1368 (2001). and 1373 (2001)., the United Nations Security Council recognised the attacks as a threat to international peace and security. The threat from international terrorism is a continuing one. In its resolution 1373 (2001)., the Security Council, acting under Chapter VII of the United Nations Charter, required all States to take measures to prevent the commission of terrorist attacks, including by denying safe haven to those who finance, plan, support or commit terrorist attacks. There exists a terrorist threat to the United Kingdom from persons suspected of involvement in international terrorism. In particular, there are foreign nationals present in the United Kingdom who are suspected of being concerned in the commission, preparation or instigation of acts of international terrorism, of being members of organisations or groups which are so concerned or of having links with members of such organisations or groups, and who are a threat to the national security of the United Kingdom. As a result, a public emergency, within the meaning of Article 4(1). of the Covenant, exists in the United Kingdom.</p> <p>The Anti-terrorism, Crime and</p>	Terminated on 14 March 2005	

<i>Article of the ICCPR</i>	<i>derogation</i>	<i>status</i>	<i>reasons for position</i>
	Security Act 2001 (ATCSA)		
	<p>As a result of the public emergency, provision is made in the Anti-terrorism, Crime and Security Act 2001, inter alia, for an extended power to arrest and detain a foreign national which will apply where it is intended to remove or deport the person from the United Kingdom but where removal or deportation is not for the time being possible, with the consequence that the detention would be unlawful under existing domestic law powers. The extended power to arrest and detain will apply where the Secretary of State issues a certificate indicating his belief that the person's presence in the United Kingdom is a risk to national security and that he suspects the person of being an international terrorist. That certificate will be subject to an appeal to the Special Immigration Appeals Commission ('SIAC'), established under the Special Immigration Appeals Commission Act 1997, which will have power to cancel it if it considers that the certificate should not have been issued. There will be an appeal on a point of law from a ruling by SIAC. In addition, the certificate will be reviewed by SIAC at regular intervals. SIAC will also be able to grant bail, where appropriate, subject to conditions. It will be open to a detainee to end his detention at any time by agreeing to leave the United Kingdom. The extended power of arrest and detention in the Anti-terrorism, Crime and Security Act 2001 is a measure which is strictly required by the exigencies of the situation. It is a temporary provision which comes into force for an initial period of 15 months and then expires unless renewed by Parliament. Thereafter, it is subject to annual renewal by Parliament. If, at any time, in the</p>		

<i>Article of the ICCPR</i>	<i>derogation</i>	<i>status</i>	<i>reasons for position</i>
	<p>Government's assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, then the Secretary of State will, by Order, repeal the provision.</p>		
	<p>Domestic law powers of detention (other than under the Anti-terrorism, Crime and Security Act 2001).</p>		
	<p>The Government has powers under the Immigration Act 1971 ('the 1971 Act') to remove or deport persons on the ground that their presence in the United Kingdom is not conducive to the public good on national security grounds. Persons can also be arrested and detained under Schedules 2 and 3 to the 1971 Act pending their removal or deportation. The courts in the United Kingdom have ruled that this power of detention can only be exercised during the period necessary, in all the circumstances of the particular case, to effect removal and that, if it becomes clear that removal is not going to be possible within a reasonable time, detention will be unlawful (Rv Governor of Durham Prison, ex parte Singh [1984] All ER 983..</p>		
	<p>Article 9 of the Covenant</p>		
	<p>In some cases, where the intention remains to remove or deport a person on national security grounds, continued detention may not be consistent with article 9 of the Covenant. This may be the case, for example, if the person has established that removal to their own country might result in treatment contrary to Article 7 of the Covenant. In such circumstances, irrespective of the gravity of the threat to national security posed by the person concerned, it is well established that the international obligations of the United Kingdom prevent</p>		

<i>Article of the ICCPR</i>	<i>derogation</i>	<i>status</i>	<i>reasons for position</i>
	<p>removal or deportation to a place where there is a real risk that the person will suffer treatment contrary to that article. If no alternative destination is immediately available then removal or deportation may not, for the time being, be possible even though the ultimate intention remains to remove or deport the person once satisfactory arrangements can be made. In addition, it may not be possible to prosecute the person for a criminal offence given the strict rules on the admissibility of evidence in the criminal justice system of the United Kingdom and the high standard of proof required.</p> <p>Derogation under article 4 of the Covenant</p> <p>The Government has considered whether the exercise of the extended power to detain contained in the Anti-terrorism, Crime and Security Act 2001 may be inconsistent with the obligations under Article 9 of the Covenant. To the extent that the exercise of the extended power may be inconsistent with the United Kingdom's obligations under Article 9, the Government has decided to avail itself of the right of derogation conferred by article 4(1). of the Covenant and will continue to do so until further notice.</p>		

## II. Reporting on the substantive provisions

### A. Response to the concluding observations

#### **United Kingdom, British Overseas Territories and Crown Dependencies<sup>7</sup>**

##### **Introduction**

189. In paragraph 31 of its concluding observations (CCPR/C/GBR/CO/6, adopted on 18 July 2008. on the United Kingdom's sixth periodic report, the Human Rights Committee asked the United Kingdom to provide, within 12 months, information on matters referred to in paragraphs 9, 12, 14 and 15 of the concluding observations. This was provided to the Human Rights Committee in the information received from the United Kingdom of Great Britain and Northern Ireland on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/GBR/CO/6/Add.1-3).

190. Other recommendations were addressed to the United Kingdom in paragraphs 6, 7, 8, 10, 11, 13 and 16-29 of the Committee's concluding observations.

##### **Reply to the recommendations contained in paragraph 6 of the concluding observations (CCPR/C/GBR/CO/6)**

191. With respect to the protection of Covenant rights in UK law, please see the introductory paragraph to each of the article by article updates in chapter II (B) below. With respect to judicial awareness of Covenant rights, please see the entry regarding training of judges in the update to articles 2 and 26 in chapter II (B) below. With respect to the Optional Protocol the UK Government further responds as follows:

192. The UK Government remains to be convinced of the added practical value to people in the United Kingdom of rights of individual petition to the United Nations. The United Nations committees that consider petitions are not courts, and they cannot award damages or produce a legal ruling on the meaning of the law, whereas the United Kingdom has strong and effective laws under which individuals may seek remedies in the courts or in tribunals if they feel that their rights have been breached. In 2004, the Government acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW). One of the reasons for doing so was to enable consideration, on a more empirical basis, of the merits of the right of individual petition more generally. In 2009, the UK ratified the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities. To date the UK's experience under both protocols has not provided sufficient empirical evidence to decide either way on the value of other individual complaint mechanisms. We will need further evidence, over a longer period, to establish what the practical benefits are.

##### **Reply to the recommendations contained in paragraph 7 of the concluding observations**

193. See table at chapter I (E) above and the update to article 4. Also, the UK regularly reviews its reservations against its international human rights treaties to ensure they continue to remain relevant.

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<sup>7</sup> CCPR/C/GBR/CO/6, adopted on 18 July 2008.

**Reply to the recommendations contained in paragraph 8 of the concluding observations**

194. See updates to articles 2 and 26 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 10 of the concluding observations**

195. See updates to article 6 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 11 of the concluding observations**

196. See updates to article 6 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 13 of the concluding observations**

197. See updates to articles 2, 4 and 7 (specific response inserted at this article) and 14 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 16 of the concluding observations**

198. See updates to articles 2, and 26 and 18 and 26 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 17 of the concluding observations**

199. See updates to articles 9 and 12 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 18 of the concluding observations**

200. See updates to articles 9 and 14 in chapter II (B) below. In addition, the Northern Ireland Office of the UK government provides the following

201. The current provisions for Non-Jury Trials in Northern Ireland expire in July 2013. The Northern Ireland Office is currently considering the options post July 2013.

**Reply to the recommendations contained in paragraph 19 of the concluding observations.**

202. See updates to articles 9 and 14 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 20 of the concluding observations**

203. The UK Government is reforming the formal interventions that are used by professionals to deal with Anti-social Behaviour (ASB). Plans to repeal the ASBO and 18 other powers, and replace them with six more effective ones, were set out in a White Paper: 'Putting victims first: more effective responses to anti-social behaviour' published on 22 May.

204. The UK Government has also committed to publishing new legislation in draft for pre-legislative scrutiny. Pre-legislative scrutiny will ensure that the draft legislation is compatible with the UK Government's obligations under the European Convention on Human Rights (ECHR) and this will include the rights of under 18s. The draft legislation will be accompanied by an ECHR memorandum from the UK Government, which will set how the draft legislation's compatibility with the ECHR and any justification for any provisions that may potentially be considered to touch on Convention rights.

**Reply to the recommendations contained in paragraph 21 of the concluding observations**

205. See updates to article 10 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 22 of the concluding observations**

206. In 2008 the Law Lords (now the Supreme Court of the United Kingdom) upheld the validity of the British Indian Ocean Territory (BIOT) 2004 Orders in Council. This means that no person has the right of abode in BIOT or the right to enter the Territory unless authorised. A case has been brought against the UK at the European Court of Human Rights around these issues. The UK government has not yet been informed when to expect a judgement.

**Reply to the recommendations contained in paragraph 23 of the concluding observations**

207. See updates to articles 10 and 12 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 24 of the concluding observations**

208. Information relating to matters of national security is principally protected by the Official Secrets Act 1989 and the Government's position remains as stated in paragraph 126 of the UK's sixth periodic report - that any release of such information without lawful authority is damaging. It remains the case that there are avenues available for any employees who have concerns and a prosecution will proceed only where the evidence is sufficient, the public interest has been considered and the Attorney General has consented.

**Reply to the recommendations contained in paragraph 25 of the concluding observations**

209. See updates to article 19 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 26 of the concluding observations**

210. See updates to article 19 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 27 of the concluding observations**

211. See updates to articles 7 and 14 in chapter II (B) below.

**Reply to the recommendations contained in paragraph 28 of the concluding observations**

212. The UK Government will consider carefully the recent judgment on prisoner voting in the case of *Scoppola v Italy* (No. 3) and its implications for the UK and will respond in due course.

**Reply to the recommendations contained in paragraph 29 of the concluding observations**

213. See updates to article 26 in chapter II (B) below.

## **B. Information relating to each of the articles in parts I, II and III of the Covenant**

214. In this final chapter of the report, the Government addresses the progress made in the implementation of articles 1-27 of the ICCPR.

215. Entries which are marked as referring to one of the devolved nations is a direct submission from that nation's respective executive (the Northern Ireland Executive, the Welsh Government or the Scottish Government), unless the marking specifies that the entry refers to a reserved matter, in which case it will originate from the relevant UK government department (the Northern Ireland, Wales or Scotland Office). Similarly, entries from the Crown Dependencies and Overseas Territories have in all cases been submitted by their respective administrations.

### **Article 1 – Self-determination**

216. Protection under other international instruments ratified by the UK is as follows:

- Charter of the United Nations (1945).
- International Covenant on Economic, Social and Cultural Rights (1966).
- European Charter for Regional or Minority Languages (1992).
- Framework Convention for the Protection of National Minorities (1995).

### **Progress since the sixth periodic report**

#### **United Kingdom**

##### **The UK and the Crown Dependencies**

217. The Crown Dependencies are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament.

218. The UK Government is open to improving the way we manage our relationship with the Crown Dependencies. However, the constitutional relationship cannot be picked apart in a piecemeal fashion. Any fundamental changes to the relationship would require consultation with the electorate within the Crown Dependencies, the Crown and the UK Government.

##### **The UK and its Overseas Territories**

219. The UK Government's relationship with its Territories is a modern one based on partnership, shared values and the right of the people of each Territory to choose to remain British. Where the people of a Territory choose to remain British, we will maintain and deepen our special relationship. We have reviewed the constitutional status of the Territories. Each Territory has its own unique constitution. The previous government launched in 1999 a process of modernising the constitutions of the inhabited Territories. We are continuing this work with a view to equipping each Territory with a modern constitution. We expect these constitutions to continue to evolve and to require adjustment in the light of circumstances. But we believe that the fundamental structure of our constitutional relationships is the right one: powers are devolved to the elected governments

of the Territories to the maximum extent possible consistent with the UK retaining those powers necessary to discharge its sovereign responsibilities. We believe that at this point in the history of our relationships with the Territories, when a decade of constitutional revision is coming to a close, the time is not right to embark on a further round of constitutional change. Rather our strategy is to ensure the constitutional arrangements work effectively to promote the best interests of the Territories and of the UK. The Government recognises that it is important to continue to reflect on the constitutional relationship. We will ensure that a dialogue on these issues is sustained with all those Territories which wish to engage.

220. The Government maintains the UK's long-standing position on independence for the Territories. Any decision to sever the constitutional link between the UK and a Territory should be on the basis of the clear and constitutionally expressed wish of the people of the Territory. Where independence is an option and it is the clear and constitutionally expressed wish of the people to pursue independence, the UK Government will meet its obligations to help the Territory to achieve it.

### **Devolution throughout the UK – UK Government position**

221. There are important ongoing developments in respect of the devolution settlements reflecting the Government's commitment to devolution within a strong United Kingdom.

222. The original devolution Acts allow for adjustments and evolutionary changes in the settlements. In Northern Ireland, policing and justice powers were restored in 2010, for the first time since 1972. In Scotland, aspects of railways policy and control over Renewable Obligation Certificate banding have been devolved to the Scottish Government.

223. The Scotland Act 2012 was brought forward by the UK Government and represents a significant update to the devolution settlement in Scotland. The Scotland Act 2012 contains a range of finance and non-finance provisions aimed at strengthening Scotland within the UK. In bringing about the largest ever devolution of financial powers to Scotland since the creation of the UK, the Act will deliver real financial accountability to the Scottish Parliament. The UK and Scottish Governments are working together to ensure the smooth implementation of the Act, with most of the non-finance provisions already commenced. The full effects of this strengthening of the devolution settlement in Scotland will continue to be felt over the coming years as the Act is implemented in full, with a new Scottish rate of income tax to be in place from April 2016.

224. The UK Government established the McKay Commission in January 2012 to explore how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. The Commission is in the process of collecting a wide ranging and comprehensive set of evidence and opinions from across the UK. It is expected to report on its findings early in 2013.

225. The Silk Commission was set up in October 2011 to review the present financial and constitutional arrangements in Wales. Part I is looking at the case for the devolution of fiscal powers to improve the financial accountability of the National Assembly for Wales and the Welsh Government, and is due to report on this aspect of its work in the late autumn. In 2013 the Commission will turn its attention to the second part of its remit, and will review the powers of the National Assembly for Wales in the light of experience and recommend modifications to the present constitutional arrangements. This is a substantive process and piece of analysis and the Commission will report its findings by spring 2014.

226. The debate about the constitutional future of Scotland is a priority for the Government. The UK Government is working with the Scottish Government to ensure that

a referendum is fair, legal and decisive. The UK Government firmly believes that Scotland is stronger as part of the UK and the UK is stronger with Scotland within it.

227. Devolution is a dynamic process that the UK Government is and will continue to be committed to.

228. Following the Scottish Parliament elections in May last year, the Scottish Government has made clear its intention to hold a referendum on independence. The question of Scotland's constitutional future is for people in Scotland to answer, and, recognising the Scottish National Party majority in the Scottish Parliament, the UK Government is committed to facilitating a fair, legal and decisive referendum as soon as possible, to provide clarity about how this will be decided. The UK Government held a consultation on the process for holding a referendum and has published the responses.

229. The UK Government's position is clear: Scotland benefits from being part of the UK and the UK benefits from having Scotland within the UK. The UK Government is confident that the people of Scotland will choose to remain part of the UK.

### **Devolution in Scotland**

230. An active and wide-ranging democratic debate concerning the constitutional future of Scotland has been a significant feature of the period since the Sixth Report.

231. Elections to the devolved Scottish Parliament in 2007 resulted in the formation of a minority administration by the Scottish National Party (SNP). The SNP advocates the establishment of Scotland as an independent state within the European Union. The SNP government was subsequently returned to power in 2011 with an absolute majority of seats (69 out of 129.. The next elections to the Scottish Parliament are scheduled for 2016.

232. The Scottish and UK governments agreed on 15 October 2012 to promote an Order in Council under Section 30 of the Scotland Act 1998 in the United Kingdom and Scottish Parliaments to allow a single question referendum on Scottish independence to be held before the end of 2014. It will then be for the Scottish Government to promote legislation in the Scottish Parliament for a referendum on independence. The governments are agreed that the referendum should meet the highest standards of fairness, transparency and propriety, informed by consultation and independent expert advice. The referendum legislation will set out:

- The date of the referendum;
- The franchise;
- The wording of the question;
- Rules on campaign financing; and
- Other rules for the conduct of the referendum.

233. A public consultation on aspects of the Scottish Government's referendum proposal was held during the first half of 2012. There have been three other public consultations by the Scottish Government dealing with aspects of independence, and the referendum, since 2007.

234. Whilst opposing these proposals for constitutional change, the UK Government remains actively engaged in dialogue with the Scottish Government and continues to regard the Scottish Government as an important part of the governance of the UK. The continuing dialogue includes discussions around the proposed legislation for the referendum, which will be considered in due course by the Scottish Parliament.

235. In a parallel development, over the same period, the UK Government has taken forward its own package of enhancements to the existing devolution settlement in Scotland

(which was originally implemented in 1999.. The changes involved encompass new taxation powers and extended competence in relation to air weapons, misuse of drugs, drink-driving and speed limits, amongst other adjustments.

236. The legislation giving effect to these changes (the Scotland Act 2012. was passed by the UK Parliament in April 2012, with the consent of the Scottish Parliament, in line with established constitutional convention. The UK Government and the Scottish Government are currently working together to bring the various provisions of the new Act into force on the basis of a mutually acceptable timetable.

### **Devolution in Wales**

237. The Government of Wales Act 2006 contained major implications for the governance of Wales. It changed, in a number of significant respects, the original devolution settlement as laid down in the Government of Wales Act 1998.

238. It created a formal legal separation between:

- The National Assembly for Wales, the legislature comprising the 60 Assembly members, and
- The Welsh Government, the executive, which comprises the First Minister, Welsh Ministers, Deputy Welsh Ministers and the Counsel General.
- Made new provision for the appointment of Welsh Ministers; and
- Enabled legislative competence to be sought from the UK Parliament to make a new category of legislation, called Measures of the National Assembly for Wales, or Assembly Measures.

239. It also enabled a referendum to be held on further law making powers. Part 4 and Schedule 6 to the Government of Wales Act 2006 made provision for the holding of a referendum. Schedule 7 to the Government of Wales Act detailed the subjects on which it would be able to legislate on.

240. The question asked was: Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?

241. On 3 March 2011, people from across Wales voted in a referendum on the law-making powers. A majority (63.5 per cent) voted “Yes” in the referendum. This represents a significant development of Welsh devolution. Laws can now be made on subjects for which the National Assembly for Wales and the Welsh Government are already responsible without needing permission from the UK Parliament.

### **Devolution in Northern Ireland**

242. Devolution in Northern Ireland is more stable now than at any time since the Northern Ireland Assembly was re-established in 1998. The Assembly term which ended in 2010 was completed without any of the periods of suspension or political crisis which characterised the early years of devolution post-1998. The Assembly has full legislative powers on a range of ‘transferred’ matters – including most economic and social issues, and since 2010, policing and justice. On matters of key importance it votes by the special threshold of “cross-community support” which ensures support on both sides of the community divide.

243. The Northern Ireland devolution settlement, provided for in the Northern Ireland Act 1998, apports subjects into three different categories of legislative competence. This means any given matter falls into one of the following three categories:

“excepted” matters (Schedule 2 to the Act): matters of national importance which would remain the responsibility of HM Government and Westminster;

“reserved” matters (Schedule 3 to the Act): broadly UK-wide issues. This category originally included policing and criminal justice but these moved into the transferred field on 12 April 2010. The Assembly has the power to legislate on these matters only with the formal consent of the UK Government, through the Secretary of State;

“transferred” matters: anything that is not reserved or excepted is deemed to be devolved. The Assembly has full legislative competence and does not require consent from Westminster or HM Government to legislate.

## **Oversees Territories**

### **Bermuda**

244. The Constitution of Bermuda enshrines the majority of the articles of the ICCPR into domestic law, in particular the part 3 articles.

245. However, it was last reported in 2007 with regard to part I, article 1 of ICCPR on the right of people in self-determination to freely pursue economic development, a recently amended legislation, that the Bermuda Immigration and Protection Act, restricted Bermudians married to non-Bermudians to the purchase of one property unless they can access a special licence, was thought to contravene the Convention. This prohibition has been lifted in 2012 through an amendment to the Act.

246. A 2001 amendment to the Bermuda Constitution Order 1968 allowed Bermuda, for the purposes of elections, to move from two member representations in each constituency to 36 single member constituencies. Local legislation provides for continuous voter registration.

247. A Constituency Boundaries Commission was established in accordance with section 53 of the Bermuda Constitution. The Commission’s purpose was to ensure that the constituencies contained, as far as was reasonably practicable, equal numbers of persons qualified to be registered as electors. The Commission took no account of the racial distribution of electors within Bermuda, but did take account of geographical features and natural boundaries. If the need arose, existing parish boundaries were to be ignored. The initial Commission submitted a report in August 2002.

248. In 2009, a subsequent Commission, chaired by Dame Billie Miller of Barbados, was convened. The Commission examined, inter alia, data on the number of persons registered as voters per constituency, existing and planned housing developments as well as geographical maps.

249. Recognizing variances in the number of qualified electors in certain areas, the 2009 Commission determined that boundary adjustments were indeed required, held public meetings and considered written submissions before establishing the new constituency lines. Persons affected by any change in constituency boundary were informed thereof by the Parliamentary Registrar.

### **British Virgin Islands (BVI)**

250. Following a general election in 2007, Constitution for the British Virgin Islands was brought into force on 15 June, 2007 by the British Virgin Islands Constitution Order 2007. Chapter 2 of the constitution protects the following fundamental rights and freedoms:

- (1) Protection of right to life
- (2) Equality before the law
- (3) Protection from inhuman treatment
- (4) Protection from slavery and forced labour
- (5) Protection of right to personal liberty
- (6) Provisions to secure protection of law
- (7) Protection of right of prisoners to humane treatment
- (8) Protection of freedom of movement
- (9) Protection of private and family life and privacy of home and other property
- (10) Protection of the right to marry and found a family
- (11) Protection of freedom of conscience
- (12) Protection of the right to education
- (13) Protection of freedom of expression
- (14) Protection of freedom of assembly and association
- (15) Protection from deprivation of property

251. A Commission will be established to oversee the protection of human rights on the territory, and legislation for its establishment is expected as part of the current government's programme.<sup>8</sup>

252. The Office of the Attorney General is no longer responsible for public prosecutions. The Office of the Director of Public Prosecutions is separate from the Attorney General's Chambers and is responsible for public prosecutions.

253. The Government of the British Virgin Islands now operates on a Cabinet System of Government.

### **Cayman Islands**

254. The most recent general elections in the Islands took place in May 2009. A referendum on a draft constitution was held alongside the general elections. The new constitution was approved by 63 per cent of voters and by the Privy Council on 10 June 2009.

255. The Cayman Islands Constitution Order 2009 (with the exception of the Bill of Rights in part I) subsequently came into effect on November 6, 2009. The Bill of Rights is scheduled to come into force on November 6, 2012 save and except for section 6(2. and (3. which deal with the segregation of prisoners – these sub-sections will come into force on 6 November 2013 to allow the Government adequate time to ensure that it has the appropriate facilities in place to meet its obligations in this respect.

256. In 2011 the Office of the Deputy Governor established a Bill of Rights Implementation Group tasked with responsibility for sensitising all public servants on the

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<sup>8</sup> See speech from the throne delivered by his Excellency the Governor Mr. Boyd McCleary, CMG, CVO, 11 December 2011, para. 50 <http://www.bvi.org.uk/pressrelease/speechfromthethrone2011>, accessed August 2012.

human rights set out therein. To date, over 3,500 public servants have been trained with a view to completion of training before November 6, 2012.

257. Since the Bill of Rights is not currently in force, there is no data in respect of human rights litigation before the local courts.

258. The Constitution Order provides for the establishment of a number of commissions to promote transparency, accountability and good governance in a number of different areas including the Human Rights Commission (see article 2 below); the Commission for Standards in Public Life (which is required to monitor compliance with government transparency and anti-corruption regulations and can investigate instances when those standards are alleged to have been breached); the Judicial and Legal Services Commission and the Constitutional Commission (established as a sounding board and advisory panel on future changes in the Islands' governing document). Each of these entities has been duly constituted and is actively engaged in fulfilling its respective constitutional mandates.

### **Falkland Islands**

259. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 1 of the Constitution affirms the right of all peoples to freely determine their political status and freely pursue their economic, social and cultural development; recognises that the realisation of the right of self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations; and acknowledges that every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual without distinction of any kind but subject to respect for the rights and freedoms of others and for the public interest, in accordance with the subsequent provisions of Chapter 1 of the Constitution (the protection of fundamental rights and freedoms of the individual).

260. The 2008 Constitution updates the definition of those persons who are deemed to belong to the Falkland Islands, and accordingly have the right to vote or stand for election to Legislative Assembly. A status ceremony and status pledge have been introduced for those persons who choose to acquire Falkland Islands Status after 7 years' residence.

261. The Constitution also rebalances the relationship between the Falkland Islands and the United Kingdom by setting out the limits of the Governor's reserved powers. A Public Accounts Committee and a Complaints Commissioner have been established in accordance with new provision in the Constitution.

262. On 12 June 2012 the Falkland Islands Government announced its intention to hold a Referendum in early 2013 to determine whether the people of the Falkland Islands wish for the Islands to remain a self-governing Overseas Territory of the United Kingdom. International observers will be invited to observe the process and verify its outcome.

### **Gibraltar**

263. Since the sixth report, Gibraltar has instituted its constitution under the Gibraltar Constitution Order 2006. This constitution was adopted following a referendum on 30 November 2006, which was supported by 60.24 per cent of the votes cast, on a 60.4 per cent turnout. The reforms enacted by the Constitution include the renaming of the Gibraltar House of Assembly the Gibraltar Parliament and its members as Members of Parliament, a decrease in the UK-appointed Governor's powers and their transfer to elected Ministers, and most significantly, the adoption of a bill of fundamental rights and freedoms. Rights protection under the Constitution include the following:

- (1) Fundamental rights and freedoms of the individual.
- (2) Protection of right to life.
- (3) Protection of right to personal liberty.
- (4) Protection from slavery and forced or compulsory labour.
- (5) Protection from inhuman treatment.
- (6) Protection from deprivation of property.
- (7) Protection for privacy of home and other property.
- (8) Provisions to secure protection of law.
- (9) Protection of freedom of conscience.
- (10) Protection of freedom of expression.
- (11) Protection of freedom of assembly and association.
- (12) Protection of freedom to establish schools.
- (13) Protection of freedom of movement.
- (14) Protection from discrimination on the grounds of race, etc.
- (15) Right to marry and found a family.

and the Order provides for the rights' enforcement and review by the Supreme Court for Gibraltar.

264. The new constitution provides for a modern and mature relationship between Gibraltar and the UK and does not in any way diminish British sovereignty of Gibraltar. The UK retains full international responsibility for Gibraltar, including for Gibraltar's external relations and defence, and as the member state responsible for Gibraltar in the European Union. Gibraltar remains listed as a British Overseas Territory in the British Nationality Act 1981, as amended by the British Overseas Territory Act 2002.

265. The UK Government stands by the commitment stated in the preamble to the Gibraltar Constitution Order 2006 that Gibraltar will remain part of Her Majesty's dominions unless and until an Act of Parliament otherwise provides, and that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes. The UK Government also stands by its commitment that the UK will not enter into any process of sovereignty negotiations with which Gibraltar is not content.

### **Montserrat**

266. The Montserrat Constitution Order 2010, in its preamble recognises the right to self-determination and the right of the people of Montserrat to pursue their hopes, visions, aspirations. Section 2 also reinforces that the realisation of the right to self-determination must be promoted and respected in conformity with the provisions of the Charter of the United Nations, while section 71 confers on the Legislature power to make laws for the peace, order and good government of Montserrat.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

267. This 'seventh report' submission was compiled on Pitcairn by a resident Islander.

268. A review and restructure of the Government of Pitcairn Islands was conducted between 2006 through to 2009. Legislative changes to electoral ordinances ensured advancement in democratic electoral process and better good governance.

**Local Government Ordinance Part II - Island Officers, Island Council 3(1).**

269. Terms of office were increased to provide continuity and stability at governance level. Amendments and additions were made to electoral legislation that further ensured the democratic process: importantly fairness and equality are upheld at the time of elections.

**Part III. Election of Island Officers,**

**Part IV. Election Offences and**

**Part V. Disputed Elections**

270. Part (18). ‘Appointment of proxy to vote 2008’, allows residents off-island to participate in the choice of government representatives at the time of elections.

271. The Local Government Ordinance was amended in 2011 to remove the position on the Island Council filled by an appointee of the Governor and to add, in its place, one further position for an elected member. In its restructure, the government divided on-island administrative and operational functions across 4 newly created divisions. Since implementation, additional responsibilities which were otherwise done off-island by the ‘Pitcairn Island Office’ based in New Zealand are being devolved to the appropriate division on-island. Each elected officer holds a specific portfolio for each division and importantly that of ‘Legal and Policy’ and ‘Human Rights’.

272. The *‘Pitcairn Constitution Order 2010’* was enacted in 2010.

273. The Constitution’s fundamental rights chapter largely corresponds to those rights in the ICCPR and the ECHR (Chapter 1 of schedule to Constitution) and requires all Pitcairn’s laws predating the Constitution to be interpreted ‘so far as possible, with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution’ (provision 5(1. of the Constitution)

274. Islanders were actively involved in the development of the Constitution through consultation and workshops held on island.

275. In 2009 and 2011 the Commonwealth Foundation conducted Human Rights workshops on-island, which covered pre and post enactment of the Constitution. Workshops provided opportunity to review human right matters within local government policy.

276. The Constitution ensures fundamental rights and freedoms are guaranteed with supporting legislation. Local government are actively engaged in continual legislative additions and revisions. The implementation of a high speed telecommunications link in 2006 enabled video-conferencing capability with key external partners.

277. The island community are made aware and empowered on new policies and laws, council minutes and other documents through posting on a community public notice board, which ensures accessibility by all. When appropriate, community meetings are held for discussion and/or contribution towards proposed policy and law.

278. In addition, the government website publicises and makes available current law<sup>9</sup> and government policy.<sup>10</sup>

279. Currently, the government is working on a 'Human Rights' booklet which will simplify and explain the new Constitution, to be distributed in the latter half of 2012 to each individual on Pitcairn Island and thereafter to new arrivals.

280. In a drive to increase the island population, immigration laws will be reviewed over 2012-2013, the motivation being to ensure utmost fairness and equality to new immigrants.

281. CRC, CERD, ICESCR & CAT all have been extended to Pitcairn

282. The following are the Legislative additions and revisions since the sixth report 2007:

#### **2007**

1. Local Government (Amendment) Incorporated in cap. 11 Ordinance
2. Parole (Amendment) Ordinance Incorporated in cap. 34

#### **2008**

1. Judicature (Courts) Amendment Ordinance Incorporated in cap. 2
2. Local Government (Amendment) Incorporated in cap. 11 Ordinance
3. Local Government (Amendment) Incorporated in cap. 11 Ordinance (No. 2).

#### **2009**

1. Interpretation and General Clauses Incorporated in cap. 1 (Amendment) Ordinance
2. Justice (Amendment) Ordinance Incorporated in cap. 3
3. Social Welfare Benefits (Amendment) Incorporated in cap. 22 Ordinance
4. Summary Offences (Amendment) Incorporated in cap. 5 Ordinance
5. Sale and Use of Liquor Ordinance Incorporated in cap. 26
6. Local Government (Amendment) Incorporated in cap. 11 Ordinance
7. Children (Amendment) Ordinance Incorporated in cap. 41

#### **2010**

1. Right of Abode Ordinance Now cap. 43
2. Right of Abode (Amendment) Ordinance Incorporated in cap. 43
3. Sexual Offences (Notification and Now cap. 44 Prevention) Ordinance
4. Pitcairn Constitution (Consequential Incorporated in caps. 1, Amendments) Ordinance 2, 3, 4, 5, 6, 7, 11, 32, 34, 35, 37 and 39
5. Local Government (Amendment) Ordinance Incorporated in cap. 11
6. Judicature (Courts) (Amendment) Incorporated in cap. 2 Ordinance and cap. 3

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<sup>9</sup> <http://www.pitcairn.pn/Laws/index.html>.

<sup>10</sup> <http://www.pitcairn.pn/policies.html>.

**2011**

1. Judicature (Courts) (Magistrates Retirement Age and Filing of Documents) Amendment Ordinance, incorporated in c. 2
2. Local Government Amendment Ordinance 2011, incorporated in c 11.

**Local Government Policy**

- GPI 001 Good Conduct Policy for Council Members
- GPI 002 Employment Recruitment Policy Edition 4
- GPI 003 Education Policy
- GPI 004 ED002 Health Policy Edition Two
- GPI 005 General Store Policy Edition 3c
- GPI 006 Budget Policies & Guidelines
- GPI 007 GPI Employment Confidentiality Policy
- GPI 008 Employee Code of Conduct Policy
- GPI 010 GPI Performance Management Policy
- GPI 011 GPI Harassment Prevention Policy
- GPI 012 Disposal of Surplus Government Property Policy
- GPI 013 Travel Package Policy Edition 1
- GPI 014 Portfolio Holder Policy Edition 1
- GPI 015 Guidelines for Council
- GPI 016 Safeguarding Children Policy
- GPI 018 Conditions for Visits to Pitcairn Islands 2011-12 Charter Vessels & Yachts
- GPI 018 Conditions for Visits to Pitcairn Islands 2011-12 cruise ships 2nd edition
- GPI 019 Conditions for Visits to Pitcairn Islands 2011-12 other ships
- GPI 021 Home Loan Policy
- GPI 024 Public Holidays
- GPI Procurement Policy 2010
- MO Draft Contract
- PI Post Office Postal Rates 01102011

**St Helena**

283. St Helena received a new Constitution by virtue of the St Helena, Ascension and Tristan da Cunha Constitution Order 2009.
284. The new Constitution includes a Human Rights chapter comprehensively covering Civil & Political Rights.
285. Some restrictions are placed on residents of non-Saint Helenian Status who do not have the right to vote and require work permits to work or carry out business if not employed by Government.

286. Prisoners have the right vote only if they are serving less than 12 months in gaol.

287. The Human Rights Capacity Building Committee and the newly constituted Human Rights Office are promoting the realisation of the right to self-determination to the community.

### **Turks and Caicos Islands**

288. In the period since the sixth periodic report the UK, following the Auld Commission findings of corruption in the Islands, through the Turks and Caicos Islands Constitution (Interim Amendment) Order 2009 suspended certain provisions of the 2006 Constitution of the Turks and Caicos Islands in particular relating to ministerial government and the House of Assembly. The Order makes temporary provision for the government of the Islands by the Governor, who may consult an Advisory Council and a Consultative Forum (composed of appointed members) established by the Order.

289. The Turks and Caicos Island Constitution Order 2011 which was made on 13th July 2011 establishes a new Constitution of the Turks and Caicos Islands. The 2011 Constitution sets out the fundamental rights and freedoms of the individual and provisions for their enforcement. It provides for a House of Assembly composed of elected and appointed members and for a Cabinet and for Ministers appointed from among elected or appointed members of the House of Assembly. The Order when brought into force will revoke the Turks and Caicos Islands Constitution Order 2006 as well as the Interim Amendment Order 2009. At that point, under the 2011 Constitution, all references to Belonger will be replaced by 'Turks and Caicos Islander'.

290. The 2011 Order requires that general election must be held within 30 days after the Order is brought into force. This will be on 15th October 2012. Elections are scheduled for November 9th 2012.

291. With regard to the right to freely dispose of natural wealth and resources, the Commission of Inquiry identified serious corruption with respect to the sale of Crown Land. Previous policy was not adhered to; and, in line with the Inquiry's recommendation, the British Interim Administration conducted an extensive policy development exercise including widespread consultation for the development of a now enacted Crown Land Ordinance. This lays down the criteria for the sale and purchase of Crown Land to protect the very limited amount of available land for future generations.

### **Crown Dependencies**

#### **Isle of Man**

292. In 2007 the United Kingdom and Isle of Man Governments signed a framework for developing the international identity of the Isle of Man. This document stated, inter alia, that the UK would not act internationally on behalf of the Isle of Man without prior consultation, that the interests of the Isle of Man might differ from those of the UK, and that the Isle of Man had an international identity which was different to that of the UK.

#### **Bailiwick of Jersey**

293. Since the last report prepared by the State party, the United Kingdom Secretary of State for Constitutional Affairs and the Chief Minister of Jersey have signed a document which sets out a framework for developing Jersey's international identity.

294. An extract from the document states:

*The framework is intended to clarify the constitutional relationship between the UK and Jersey, which works well and within which methods are evolving to help achieve the mutual interests of both the UK and Jersey.*

1. *The UK has no democratic accountability in and for Jersey which is governed by its own democratically elected assembly. In the context of the UK's responsibility for Jersey's international relations it is understood that –*

*The UK will not act internationally on behalf of Jersey without prior consultation.*

*The UK recognises that the interests of Jersey may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of Jersey can be expected to reflect the fact that the UK's membership of the EU only extends to Jersey in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.*

2. *Jersey has an international identity which is different from that of the UK.*

3. *The UK recognises that Jersey is a long-standing, small democracy and supports the principle of Jersey further developing its international identity.*

295. Details of the document are available at - [http://www.statesassembly.gov.je/AssemblyStatements/2007/39814-20096-152007.pdf#search=identity framework](http://www.statesassembly.gov.je/AssemblyStatements/2007/39814-20096-152007.pdf#search=identity%20framework)

## **Bailiwick of Guernsey**

296. In March 2012 Guernsey's parliament, the States of Deliberation, agreed to 'examine the extent to which the structure and functions of the legislature and the government in Guernsey are capable of fulfilling expectations of good governance with reference in particular to the processes of developing, determining, co-ordinating, effecting and monitoring States policies' and to make any necessary recommendations. The review is intended to seek to provide the highest possible standards of good governance in respect of the Island's machinery of government. This detailed review includes examining the membership, operation and effectiveness of the States of Deliberation as the Island's parliament and overarching executive as well as an evaluation as to how it delegates its functions to its relative Department and Committees. In Guernsey, in April 2012, the third general election was held, following the reforms that were adopted in 2004.

297. In 2008 Sark's parliament, the Chief Pleas of Sark, agreed to reform its system of government. The Chief Pleas of Sark now derives its authority and powers from the Reform (Sark) Law, 2008, as amended, which came into force in 2008. Under the new constitution the Chief Pleas will now comprise of: the Seigneur of Sark, the President of the Chief Pleas, and twenty eight Conseillers elected by universal adult suffrage for a period of four years.

298. As a result of the commencement of this new constitution President of the Chief Pleas shall be appointed for a four year term of office by resolution of the Chief Pleas. Neither the Seigneur nor the President of the Chief Pleas is a voting member.

299. The Reform (Sark) Law, 2008 also deals with the franchise and process of registration of elections. Following a judicial review of the Reform (Sark) Law, 2008, the UK Supreme Court held that it complies with Article 3 of Protocol 1 of the European Convention of Human Rights, which protects "the free expression of the opinion of the people in the choice of legislature".

300. There is has been no change in the constitution of the States of Alderney which is responsible for administering Alderney (along with the States of Guernsey for certain services) since the last report.

301. The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006, which came into force on 7th May 2008, abolished any distinction in the treatment of illegitimate and legitimate children in respect of both testate and intestate succession under Guernsey law. The Inheritance (Guernsey) Law, 2011 which came into force on, 2 April 2012, introduced complete testamentary freedom in respect of real and personal property under Guernsey Law. The Personal Property (Succession)(Sark) Law, 2007 which came into force on 4 July 2007, abolished any distinction in the treatment of illegitimate and legitimate children in respect of testate succession of personal property under Sark law.

#### **Article 2 and 26 – Non-discrimination and equality before the law**

302. Protection under other international instruments ratified by the UK is as follows:

- Charter of the United Nations (1945)
- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- ILO Convention No.100 (1951) concerning Equal Remuneration for Men and Women Workers for Equal Value.
- Convention on the Political Rights of Women (1953).
- Convention on the Nationality of Married Women (1957).
- ILO Convention No. 111(1958) concerning Discrimination in Respect of Employment and Occupation.
- European Social Charter (1961).
- ILO Convention No. 122 (1964) concerning Employment Policy.
- International Convention on the Elimination of All Forms of Racial Discrimination (1966).
- International Covenant on Economic, Social and Cultural Rights (1966).
- Convention on the Elimination of All Forms of Discrimination against Women (1979) and Amendment (1995).
- Convention on the Rights of the Child (1989).
- Framework Convention for the Protection of National Minorities (1995).
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2004).
- Convention on the Rights of Persons with Disabilities (2006).
- Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union (as amended in Lisbon – 2010).

## Progress since the sixth periodic report

### United Kingdom

303. The UK Government is firmly committed to the elimination of discrimination. To this end, since the sixth periodic report (gender discrimination is addressed separately under article 3. it has introduced the Equality Act 2010.

304. The Act received Royal Assent in April 2010 and most of its provisions commenced in October 2010. It replaced nine different pieces of equality legislation (including the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995, and subsequent amending legislation, much of which implemented a number of EU Directives). It applies across England, Scotland and Wales.

305. The Act covers nine protected characteristics, which cannot be used as a reason to treat people unfairly. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

306. The Act sets out the different ways in which it is unlawful to treat someone, such as direct and indirect discrimination, harassment, victimisation and failing to make a reasonable adjustment for a disabled person. The Act prohibits unfair treatment in the workplace, when providing goods, facilities and services, when exercising public functions, in the disposal and management of premises, in education and by associations (such as private clubs).

307. The Act also includes a public sector Equality Duty, which commenced in April 2011. It requires public bodies to have due regard in their functions to eliminate unlawful discrimination, advance equality of opportunity and foster good relations across the range of protected characteristics. Prior to the 2010 Act, there were separate duties on Race, Disability and Gender.

308. The public sector Equality Duty is supported by regulations (or Specific Duties) created through Secondary Legislation which require public bodies to publish equality information and their equality objectives periodically. Failure to comply with regulations can lead to enforcement action by the Equality and Human Rights Commission.

### **The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011**

309. The Welsh Government was the first part of Great Britain to regulate to create specific duties under the Equality Act 2010. The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 were approved by the National Assembly for Wales and came into force on 6 April 2011.

310. Public sector bodies in Wales, including the Welsh Government have a statutory duty to publish Equality Objectives by 2 April 2012 and to have developed a Strategic Equality Plan as soon as possible thereafter. We have a statutory obligation to carry out Equality Impact Assessments on all our policies, processes and practices, including our Budget.

311. Engagement, involvement and consultation with stakeholders is a fundamental requirement of the duties, and the regulations require us to engage with people with protected characteristics when considering and designing our Equality Objectives. Unlike with previous equality duties, public authorities will need to say why an action needs to be taken, the desired outcome, what is going to be delivered, by when and how.

312. The aim is for people to be left in no doubt what the Welsh Government and other public bodies in Wales are going to be doing to help eliminate discrimination, and promote equality and foster good relations.

### **Scotland: Equality and non-discrimination**

313. The principles of equality and non-discrimination underpin the work of the Scottish Government. In Scotland, the Scottish Government has some powers in relation to the promotion of equality and it has introduced regulations to set a framework for the better performance by Scottish public authorities of the public sector equality duty in the Equality Act 2010.

### **Judicial training in England and Wales**

314. The Lord Chief Justice is responsible for arrangements for training the courts' judiciary in England and Wales under the Constitutional Reform Act 2005. The Senior President of Tribunals has an equivalent responsibility in relation to judges and members of the tribunals within the scope of the Tribunals, Courts and Enforcement Act 2007. These responsibilities are exercised through the Judicial College, an independent body chaired by Lady Justice Heather Hallett.

315. Since Human Rights Act training was delivered to all judges in 2000 and to magistrates' legal advisers - justices' clerks and court clerks between 1999 and 2000, human rights issues have been incorporated into training materials.

316. All judicial training includes issues of equality, diversity and fair treatment, including race, culture, gender, disability, religion/belief, age, sexual orientation and children and young people. Induction and continuation courses are always evolving and developing and include looking at equality, diversity and fair treatment issues, which are woven into the case studies and sessions on training courses and which are overseen by the College's Diversity and Development Committee. This was formerly overseen by the Equal Treatment Advisory Committee (ETAC). ETAC has produced an Equal Treatment Bench Book (ETBB), which is a guide for all judicial office holders (including magistrates). The ETBB contains a number of specific references to the Human Rights Act 1998. It also contains a broad range of information on equality, diversity and fair treatment issues, including race, culture, gender, disability, religion/belief, age and sexual orientation. The ETBB also includes guidance on children and young people in court proceedings and special measures and processes that need to be adopted to ensure they are treated fairly, their rights are respected, their voice heard and their confidence in the judicial process is maintained. The ETBB is available on the Judiciary website: <http://www.judiciary.gov.uk/publications-and-reports/judicial-college/Pre+2011/equal-treatment-bench-book>. ETAC has also produced a summary of the ETBB - 'Fairness in Courts and Tribunals', this too makes specific reference to the Human Rights Act 1998 and can also be found on the Judiciary website:

[http://www.judiciary.gov.uk/Resources/JCO/Documents/Training/jsb\\_fairness\\_in\\_courts\\_tribunals2\\_web.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Training/jsb_fairness_in_courts_tribunals2_web.pdf)

317. The Judicial College continues to review its provision of materials and consider the appropriateness of training that will assist judges and magistrates to manage the court proceedings to ensure a fair hearing for all court users.

**Counter Terrorism – stop and search powers (observations para 29)**

318. The UK Government's Prevent Strategy, published in June 2011, aims to stop people becoming terrorists or supporting terrorism. Prevent addresses all forms of terrorism, with resources prioritised according to risk and does not target specific communities.

319. Stop and search is an important tool in the fight against both crime and terrorism, but we recognise the need to make sure these powers are used fairly and effectively. The terrorism stop and search powers provided by the Terrorism Act 2000 were significantly changed by the Protection of Freedoms Act 2012. These changes were a result of both the European Court of Human Rights' judgment in Gillan and Quinton becoming final on 28 June 2010 and the Government's review of counter-terrorism and security powers which reported on 26 January 2011.

320. On 28 June 2010, the European Court of Human Rights (ECtHR) made final its decision in the case Gillan and Quinton which found sections 44-46 of the Terrorism Act 2000 to be in breach of Article 8 (the right to respect for private and family life) of the European Convention on Human Rights (ECHR) because they were not 'in accordance with the law'. The ECtHR found the powers in those provisions were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. In a statement to Parliament on 8 July 2010, the Home Secretary announced that the police were no longer to make authorisations under section 44 for stop and search powers to be used without reasonable suspicion. She did this in order to take immediate steps to address the ECtHR's judgment, whilst the issue was considered as part of the Government's review of various counter-terrorism and security powers.

321. The Government published the findings of the review of counter-terrorism and security powers on 26 January 2011.<sup>11</sup> The review concluded that sections 44 to 47 of the 2000 Act should be repealed. The review also took into account the fact that there may be circumstances in which stop and search powers requiring reasonable suspicion, or other measures such as high visibility policing, are insufficient to counter the threat of a terrorist attack. The police may, for example, become aware of an intended terrorist attack on a particular site or transport network, but have no (or incomplete) information about the identity or characteristics of those planning to conduct it. It would be difficult, if not impossible, in such circumstances to reach the threshold required to conduct a stop and search under section 43 of the 2000 Act (power to search an individual where reasonable suspicion exists that the person is a terrorist). And yet it would be vital to have a power of stop and search available to address the potential terrorist threat in such circumstances. The review, therefore, concluded that it was necessary to introduce a replacement stop and search power, which is exercisable without reasonable suspicion, but which is available only in circumscribed circumstances. It was announced that the repeal of the section 44 powers and the introduction of the replacement power would be contained in the Protection of Freedoms Bill.

<sup>11</sup> See <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/>

322. The review also recommended that consideration should be given to whether the replacement provisions could be implemented more quickly than could be achieved by primary legislation (i.e. the Protection of Freedoms Bill), to fill the operational gap left by the non-availability of any terrorism stop and search powers exercisable without reasonable suspicion. The Home Secretary considered that there were compelling reasons to address this operational gap by making a Remedial Order under section 10 of the Human Rights Act 1998, using the urgent procedure. The Remedial Order was approved by Parliament in October 2011. The Terrorism Act 2000 (Remedial) Order 2011 came into force on 18 March 2011 as an interim measure until the Protection of Freedoms Bill received Royal Assent. Two Codes of Practice, one for Great Britain and one for Northern Ireland, governing the use of section 47A powers were issued alongside the Terrorism Act 2000 (Remedial) Order 2011.

323. Section 59 of the Protection of Freedoms Act 2012 repeals the stop and search powers in sections 44 to 47 of the 2000 Act. Section 60 and Schedule 5 to that Act introduce new and tightly circumscribed powers. The new powers enable the police to stop and search people and vehicles with no suspicion only in exceptional circumstances, where a senior police officer reasonably suspects that an act of terrorism will take place and where the powers are considered necessary to prevent such an act. In addition to this significantly higher threshold for the police to authorise the use of the powers, there are a number of strengthening safeguards provided by the Act.

324. Section 62 of the Protection of Freedoms Act 2012 inserts new sections 47AA to 47AE into the 2000 Act, making provision for a Code of Practice for terrorism stop and search powers. New section 47AA places a duty on the Secretary of State to prepare a Code of Practice about the powers in section 43 and 43A of the 2000 Act (stop and search with reasonable suspicion), and those created by new section 47A of the 2000 Act.

325. The new powers contained in the Protection of Freedoms Act 2012, along with the robust statutory Codes of Practice, came into force on 10 July 2012.

### **Equality and Human Rights Commission (EHRC)**

326. As outlined in the Government's response to the sixth report, the EHRC opened its doors on 1st October 2007. It has a statutory remit to promote and monitor human rights; and to protect, enforce and promote equality across the nine "protected" characteristics – age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. It is an 'A' status National Human Rights Institution, meaning that it has been accredited by the International Coordinating Committee of National Human Rights Institutions as fully compliant with the Paris Principles.

327. The EHRC may issue codes of practice on equality legislation and undertake inquiries in the areas of equality & diversity and human rights. From autumn 2013 a new Equality Advice and Support Service will provide information, advice and support to individuals with discrimination or human rights complaints.

328. The EHRC is able to refer to any human rights treaties ratified by the UK, including the ICCPR. A secure and effective remedy is available through the UK courts in the case of alleged violations of the HRA. The EHRC may institute or intervene in legal proceedings which raise human rights issues.

329. Last year the Government Equalities Office consulted on a package of reforms of the Equality and Human Rights Commission *Building a Fairer Britain*. The Government's response was published in May 2012. The purpose of the reforms are to support the EHRC to focus on its core functions (as set out in the Equality Act 2006. and to ensure it becomes a respected Equality Body and National Human Rights Institution and provides value for

money. The reforms are being achieved through a range of legislative and non-legislative measures.

### **Race and gender in the judiciary**

330. The UK's judiciary has a world wide reputation for integrity and independence. This in no small measure is down to the process by which judges are appointed. That process was the subject of a significant overhaul with the passage of the Constitutional Reform Act in 2005 and the creation of the independent Judicial Appointments Commission. These reforms have led to increased public confidence in the appointments process by making it more independent and transparent. However, after six years of operation, the Government has reviewed the new process in order to ascertain where improvements could be made.

331. It is undoubtedly the case that progress has been made over the last decade on the diversity of the judiciary. Ten years ago little over 10 percent of judges were women and around 2 percent were from a black or other minority ethnic background. Today those figures are around 22 percent and 5 percent respectively. This is welcome progress, but continued progress is needed to ensure that the judiciary fully reflects the communities it serves.

332. In February 2012, the Government completed a consultation on a number of proposals arising from the report of the independent Advisory Panel on Judicial Diversity, chaired by Baroness Neuberger. These changes have been included in the Crime and Courts Bill, introduced into Parliament on 10 May. In particular, the Bill will facilitate greater opportunities for part-time working at the most senior levels of the judiciary by providing for the statutory limits on the number of High Court, Court of Appeal and Supreme Court judges to be expressed in terms of full-time equivalents. And we are also providing that where two candidates are equally meritorious, it will be possible to select the candidate from an under represented group through the application of positive action.

333. Concurrent to the legislative changes is the work being taken forward through the auspices of the Judicial Diversity Taskforce, which is implementing as a collective package of change, all of the 53 recommendations arising from the Advisory Panel report. The Taskforce published its first progress report on implementation of the recommendations in May 2011, while its second report will be published in September 2012.

### **UK Armed Forces – equality and diversity**

334. The Armed Forces are subject to the Equality Act 2010 which replaced the 1976 Race Relations Act and the Race Relations (Amendment) Act 2000. The Services, in common with other public sector employers, have a statutory duty to promote race equality.

335. The Armed Forces aim is to reach 8 per cent ethnic minority representation by 2013 (in line with ethnic minority representation in UK society). We continue to engage with ethnic minority communities in a wide range of outreach, and recruiting activities. These activities are undertaken at a local level by dedicated recruitment teams or by Service establishments based in or near the communities. The Armed Forces recognise that it will take many years before the benefits of their recruiting efforts are realised and ethnic minorities are fully represented at all levels in the Services.

#### *Scotland: Judicial appointments/diversity*

336. The Judicial Appointments Board for Scotland were placed on a statutory footing in 2008 to ensure an independent and transparent process for making recommendations about judicial appointments. The Board has a statutory duty to encourage diversity in the range of individuals available for selection and have established a Diversity Steering Group to help deliver a more diverse judiciary.

*Scotland: Police training*

337. Successful applicants to the Scottish Police Service must undergo a national training programme, initially based at the Scottish Police College (SPC). Students are exposed to specific classroom teaching in relation to human Rights and prisoner rights, care and welfare. Police Powers are an integral part of the 10 week programme and officers are constantly reminded that every exercise of power (for example detention, arrest, entry to premises and search) must be proportionate and legally justified.

*Scotland: Judicial Training*

338. Diversity and human rights are integrated into Scotland's judicial training. A three-day residential refresher course organised by the Judicial Studies Council covers diversity in a two hour module, currently focusing on Islam and the sensitivities surrounding Muslims as court users. This module will change in due course to another issue of diversity, for example, gender, race or disability. On human rights, the JSC held a one day seminar exploring the factors brought about by issues arising from a judgement from the European Court of Human Rights.

*Scotland: Human Rights education in schools*

339. Scotland's curriculum, Curriculum for Excellence is non-prescriptive and provides the framework to deliver engaging, creative, relevant and challenging learning. Teachers have the flexibility to deliver the curriculum in a contextualised approach, to suit the needs of the learners. Citizenship education is a key cross-curricular theme and provides learners with the opportunity to develop an understanding of fairness and justice and encourages the expression of attitudes and beliefs to respond to the challenges faced as global citizens in a constructive and positive manner. Schools and local authorities are encouraged to work in partnership to deliver human rights education across the curriculum through citizenship education. The Scottish Government are currently developing the concept of One Planet Schools, which aims to bring together global citizenship, sustainable development education and outdoor learning. A working group is due to report to Scottish Ministers in Autumn 2012.

**Oversees Territories****Bermuda**

340. No developments to report under this article.

**British Virgin Islands (BVI)**

341. The Anti-Discrimination Act 2001 has been brought into force. It is based on the UK's Race Relations Act 1976 and prohibits discrimination on grounds of colour, race nationality, or ethnic or national origins in fields including 'employment, education, the provision of goods, facilities or services, the disposal or management of premises and membership of associations'.

**Cayman Islands**

342. With respect to the prohibition of discrimination in employment matters, this is addressed in the present Labour Law (2011 Revision) and the recently enacted Gender Equality Law 2011 which prohibits discrimination on the basis of gender or characteristics

associated with gender in employment. Immigration matters are dealt with under the Immigration Law (2011 Revision) as amended.

343. Section 16 of the Bill of Rights prohibits discriminatory treatment against any person on the basis of inter alia sex, race, colour, language, religion mental or physical disability. This prohibition is not free-standing however, and like manner to the European Convention on Human Rights, lies only in respect of the other human rights contained in the Bill of Rights. At this time, the introduction of further legislation on racial discrimination is not contemplated.

344. The Human Rights Commission, established in 2010 pursuant to section 116 of the Constitution Order 2009, comprises five members and replaces the Human Rights Committee. The primary responsibility of the commission is to promote understanding and observance of human rights in the Cayman Islands. This remit includes educating the public about the Bill of Rights, Freedoms and Responsibilities (part 1 of the Constitution). The Commission has powers to establish mechanisms to hear and investigate public complaints about potential breaches of human rights, to provide a forum for mediation or conciliation, to give advice and guidance to enquirers of all kinds in relation to their human rights, and to publish reports on its own initiative on human rights issues.

### **Falkland Islands**

345. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 1 of the Constitution provides that every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

346. Section 16 of the Constitution provides that no law shall make any provision which is discriminatory either in itself or in its effect, and no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority. For the purpose of the section 'discriminatory' means affording different treatment to different persons on any grounds such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

347. Section 16 is subject to a number of exceptions. The two most important are that it does not apply to any law so far as it makes provision with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement or residence within, the Falkland Islands of persons who do not belong to the Falkland Islands; and that nothing contained in any law shall be held to be discriminatory to the extent that it has an objective and reasonable justification and there is a reasonable proportion between the provision of law in question, or as the case may be the thing done under it, and the aim which it seeks to realise.

348. The Race Relations Ordinance 1994 prohibits discrimination on the grounds of colour, race, nationality or ethnic or national origins.

349. The Equal Employment Rights Ordinance 1998 requires equal treatment for men and women in the employment sphere, while the Sex Discrimination Ordinance 1998 prohibits discrimination on the grounds of sex or marriage.

350. The Commonwealth Foundation undertook a human rights capacity building project in the Overseas Territories between 2008 and 2012. The Falkland Islands were visited by project representatives on three occasions. Training was provided to elected members and

government officials on how to take human rights into account in policy making. Different occupational groups including the media, lawyers and judges, police, customs and immigration officials received specialist training. Teachers were helped to strengthen the human rights component in the existing school curriculum on Personal, Health and Social Education. Lawyers received assistance with reporting obligations under international human rights instruments.

351. A large number of ‘consciousness raising’ workshops were held by the Commonwealth Foundation which reached significant numbers and sectors of the population including immigrant workers, charities, churches and community groups. Funding was provided for the purchase of human rights materials for the community library, and for the publication of posters and leaflets promoting human rights in English and Spanish. Community members formed a Falkland Islands Human Rights Group which produced a National Action Plan on Human Rights after widespread community consultation. The Action Plan was presented to and approved by Executive Council in March 2012.

352. In 2012 the Falkland Islands Government launched a revised criminal and civil legal aid scheme, extending the scope of financial assistance with legal fees available to persons of limited means. The scheme is administered by the Senior Magistrate who has a discretion to provide legal aid (irrespective of the applicant’s means) where the case involves a challenge or declaration as to the effect of the Constitution in relation to the fundamental rights and freedoms of the individual unless such a case is declared to be frivolous or vexatious by the Chief Justice or Senior Magistrate.

353. The judiciary in the Falkland Islands comprises a Chief Justice (appointed from the High Court in England & Wales), a resident Senior Magistrate appointed on a 3-year contract, and 12 Justices of the Peace drawn from the community. 6 of the Justices of the Peace are men, 6 are women.

354. The 2006 Census records 931 persons of no faith, 1985 Christians, 12 Baha’is, 9 Muslims, 5 Buddhists and 13 persons of other faiths. The secondary school curriculum on personal, health and social education includes a large component on world religions which emphasises tolerance and understanding, and aims to prepare Falkland Islands students for going out into a multicultural world. In 2010 the secondary school held a successful symposium with visiting military chaplains representing 6 major world religions, including Muslims.

355. The provisions of the Public Order Act 1986 and the racially aggravated and religiously aggravated offences under the Crime and Disorder Act 1998 as amended by the Anti-Terrorism, Crime and Security Act 2001 apply as law in the Falkland Islands. Racially-motivated or racially-aggravated crime is vigorously investigated and prosecuted; to date there have been no complaints of any religiously-motivated or religiously-aggravated criminal or anti-social behaviour in the Falkland Islands.

356. There are no allegations of transit rendition flights through the Falkland Islands. The Falkland Islands National Aviation Security Programme ensures that Falkland Islands airports are not used for such purposes.

## **Gibraltar**

357. Further to the Equal Opportunities Ordinance 2004, which was covered in the sixth periodic report, this Ordinance was repealed and re-enacted in the Equal Opportunities Act 2006, which also re-enacts certain provisions of the Employment Act.

358. The Equal Opportunities Act 2006 implements the following EU measures into the law of Gibraltar:

359. Council Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of equal treatment for men and women as regards to access to employment, vocational training and promotion, and working conditions, age and disability discrimination in Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and for connected purposes.

360. Other directives involved are-

- Directive 75/117/EEC – application of the principle for equal pay for men and women.
- Directive 97/80/EC – on the burden of proof in cases of discrimination based on sex.
- Directive 2000/43/EC – implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- Directive 2004/113/EC – implementing the equal treatment between men and women in the access to and supply of goods and services.
- Directive 2008/52/EC – on certain aspects of mediation in civil and commercial matters.

## Montserrat

361. The Montserrat Constitution Order 2010 enshrines the fundamental right of protection against discrimination. Section 16 of the Constitution prohibits the making of a law that is discriminatory of itself or in its effect and protects a person from being treated in a discriminatory manner by public authority or by another person acting under the authority of law or in the performance of the functions of any public office. It also prohibits treatment of persons in a discriminatory manner in respect of access to any place to which the general public has access.

362. Section 16 defines discriminatory to mean “affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

363. Section 16 also provides limitations on the protection afforded against discrimination. The protection against discrimination is not eroded if a law or an act done under it has an objective and reasonable justification.

364. The Complaints Commission Act 2011 makes provision for the composition, functions, operation and procedure of the Complaints Commission, tasked with the investigation and resolution of human rights and maladministration complaints. It is also empowered to make reports and prepare recommendations for the remedying of a breach or infringement of a human right, or of maladministration. The Commission is in the process of being established.

365. The Status of Children Bill 2012 seeks to remove all forms of discrimination against children born out of wedlock and provide for equal status of all children.

366. Section 4(1) provides for the legal distinction in the status of children born within and outside of marriage to be abolished and for all children to be of equal status.

367. The draft Labour Code 2012, also seeks to protect against discrimination in the workplace, on a number grounds, including race, colour, sex, sexual orientation, national extraction, disability, HIV or other medical status.

## **Pitcairn, Henderson, Ducie and Oeno Islands**

368. The Pitcairn Constitution Order 2010, in particular – Article 23, enshrines the fundamental rights of the islanders against discrimination. The Constitution protects most civil and political rights and provides for an additional remedy for Constitutional rights if no other effective and adequate remedy exists (provision 25 of the Schedule to the Constitution). The usual civil, administrative (such as judicial review) and criminal remedies are used to enforce rights.

369. Pitcairn has an established judiciary: it has an island magistrate, senior magistrates and judges of the Supreme Court and Court of Appeal, who may hear cases in Pitcairn or elsewhere if circumstances require it. The Judicial Committee of the Privy Council is the final court of appeal.

370. The Right of Abode Ordinance 2010 defines the category of persons who have the right of abode on Pitcairn Island. Under the laws of Pitcairn, CAP. (12. Immigration Control Ordinance provides for immigrants status, rights, obligations and disabilities and for related or incidental matters. A revision in 2010 now exempts persons from the Immigration Control Ordinance who have the right of abode in Pitcairn under the Right of Abode Ordinance 2010. A further revision of the immigration ordinance will be conducted over the latter part of 2012 and early 2013 as mention under Self-Determination

371. Redress for breach of constitutional rights is possible under section 25 of the Constitution. In addition, the Ombudsman Ordinance provides for appointment of an Ombudsman to whom complaints about government may be brought, and this would include complaints about discrimination including in the employment context.

372. Women are equally represented in government and society. See status under article 3 – Gender Equality.

## **St Helena**

373. The new Constitution contains a comprehensive suite of Human Rights provisions. These were drafted with the ICCPR and ECHR in mind. Anti discrimination provisions are included.

### *St Helena Race Relations Act*

374. The arrival of a Chief Magistrate in July 2012 will enable the new Employment Ordinance to be enforced and this will progress the statements of employment, disciplinary & grievance procedures etc.

375. The Executive Council has approved the St Helena Human Rights Action Plan which includes plans for a National Human Rights Institution. The enabling legislation is planned for 2013/14.

### **Update on human rights education**

376. The rights of the young have been enhanced with the introduction of the Schools Councils and the recently formed Youth Parliament. This, along with the work being done at the New Horizons Youth Organisation has raised the profile of the young and allowed their voices to be heard.

377. In the last five years St Helena has taken a leading role in working with the Commonwealth Foundation and its partners. Under the Developing Human Rights Capacity in the Overseas Territories project, a Human Rights Capacity Building Committee was set up. Training in Human Rights Law has been received by many people including the police,

immigration, teachers, civil society organisations, magistrates, government officials and Honourable Members.

378. A National Human Rights Action Plan for St Helena has been adopted by the Executive Council and the Human Rights Facilitator is working with the Director of Education to develop the incorporation of human rights into the curriculum. The Human Rights Capacity Building Committee has developed a booklet explaining the Constitution in plain English which has been widely distributed and posters have been distributed. In addition a comprehensive range of books and DVDs have been purchased and distributed to schools and the Public Library. A further selection is available from the Human Rights Office.

379. Some training for public officials under the Plan was delivered in 2009 & 2010.

## **Turks and Caicos Islands**

380. The information set out in the sixth periodic report remains substantially the same.

381. Non-discrimination and equality before the law are enshrined in the 2011 Constitution. Section 7 provides that everyone is equal before the law and has a right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms. Section 16 of the Constitution provides protections against discrimination. The definition of discrimination has been expanded and now covers: race, national or social origin, political or other opinion, colour, religion, language, creed, association with a national minority, property, sex, sexual orientation, birth or other status (e.g. disability / transgendered status).

382. The Employment Ordinance 2004 prohibits and penalises discrimination in employment matters.

383. The Interim Administration is preparing a new Equality Bill in support of Section 16 of the 2011 Constitution. It is structured and based on the UK's Equality Act, though not all provisions in the Act will be included or commence on enactment – subject to consultation. The Bill, once enacted will be strengthened over time by amendment as necessary. The Bill is expected to be signed into law in early October 2012.

384. In 2008, the House of Assembly passed the Human Rights Commission Ordinance which provides for the establishment of a Human Rights Committee. In October 2009, the first members of the Human Rights Commission were appointed. The Human Rights Commission is empowered, among other things, to (a) inquire into, and investigate complaints of alleged or perceived human rights abuse and complaints regarding procedures, with a view to promoting respect for, and observance of, fundamental rights; (b) to advise and assist the Government in formulating legislation and administrative directions and procedures in furtherance of the promotion and protection of fundamental rights; (c) to make recommendations to the Government regarding measures which should be taken to ensure that national laws and administrative practices are in accordance with international human rights norms and standards. The Human Rights Commission launched its website and published leaflets on human rights in August 2012.

385. Section 97 of 2011 Constitution identifies the Human Rights Commission as an institution protecting good governance in the Turks and Caicos Islands. Discussion is underway to include the Human Rights Commission in the Equality Bill as one of a suite of tools for monitoring and supporting compliance.

386. Political will and measures are in place on social issues, including the development of strategies to enable women, men and children to achieve their full potential, though limit public funds have hindered implementation in some areas. Examples include programs for

abused women, to tackle bullying, continuous education, support for teenage mothers, and to tackle trafficking and exploitation of women. The review of Legal Indicators has been completed, for CEDAW's Compliance, but has not been enacted.

*Women in prison (on remand) facilities not conducive to cater for their special needs*

387. The TCI government's Social Development and Gender Affairs Department is currently in the process of reviewing the criteria for accessing various social programmes to ensure that citizens below the poverty line have access to basic amenities. There is a proposal to establish "One Stop Shops" throughout the family islands which would make critical services available to the wider populace.

## **Crown Dependencies**

### **Isle of Man**

#### **Articles 2 and 26**

388. The Isle of Man Government notes the comments of the Committee in paragraph 6 of the concluding observations. This is primarily a matter for the United Kingdom as the State party, but if the UK Government decided to accede to the Optional Protocol to the Covenant, the Isle of Man Government would consider the extension of the accession to the Isle of Man.

389. The Race Relations Act 2004 was brought into operation in November 2010. This Act imposes a duty on every public authority to make appropriate arrangements with a view to securing that their various functions are carried out with due regard to the need:

- (a) To promote equality of opportunity, and good relations, between persons of different racial groups; and
- (b) To eliminate unlawful racial discrimination.

390. The 2004 Act also makes it unlawful to directly or indirectly discriminate against a person in the provision of goods and services on the grounds of colour, race, nationality or ethnic or national origins. This does not cover the field of employment but, as previously advised, under the Employment Act 2006, dismissal on the grounds of race or religion is considered to be unfair dismissal and may be dealt with as such by the Employment Tribunal.

391. The Isle of Man Government intends to broaden its ant-discrimination measures and it has included an Equality Bill in its legislative programme for 2011/12 to 2015/16. It is proposed that this Bill will be based on the UK's Equality Act 2010 with adaptations to provide an appropriate comprehensive equality framework in the law of the Isle of Man. Initial drafting of this Bill has begun and it is hoped that it will be ready for consultation by early 2013.

392. Moreover, The Employment Act 2006 was brought fully into operation during 2007, which includes provisions to prohibit discrimination in employment.

393. It continues to be the case that the Isle of Man Government has no plans to incorporate the Covenant into domestic law in the way that has been done with the European Convention on Human Rights. However, the Isle of Man Government remains committed to complying with international obligations, and protecting the vulnerable is one of the Government's three overriding priorities.

## **Bailiwick of Jersey**

394. Jersey respectfully notes the observations of the Committee (with particular reference to paragraph 8. and will continue to give consideration from time to time to introducing the Covenant into the domestic law of the Island. However, at this time, there is no intention of doing so.

395. The Government of Jersey has previously indicated it intended to bring into force a new Discrimination (Jersey) Law which would include provisions to enable protection from discrimination in a number of areas, including racial discrimination.

396. Whilst the aim was to implement the Law by the end of 2011, with subsequent introduction of racial discrimination Regulations, this has not proved possible. The reasons for a delay include a review, following further consultation in 2008, of the mechanisms for implementing and enforcement of the Law and the resource implications of such mechanisms. Further consideration is being given to extending the Law to other forms of discrimination including the timetable and order in which such protection should be introduced.

397. In addition, following introduction of the United Kingdom's Equality Act 2010, which draws together and harmonises provisions relating to several different areas of discrimination, it has been decided to have regard to this Act in formulation of the Jersey Law.

398. Notwithstanding the above considerations, in July 2011, the States of Jersey unanimously resolved to bring forward by the end of 2012, draft anti-discrimination legislation, with adequate funding, for debate. Furthermore, it was decided that after the Law has been registered, draft Regulations should be presented for debate to cover discrimination on the grounds of race, disability, sex and age.

399. The government of Jersey regrets the delay in introducing legislation in accordance with the Committee's recommendation. However, Ministers are collectively committed to seeing a new Discrimination Law come to a conclusion and to having in place effective statutory provisions to prohibit and prevent racial discrimination by any persons, group or organization.

### *Gender Recognition (Jersey) Law*

400. In February 2009 the States of Jersey adopted the Gender Recognition (Jersey) Law 2010, which came into force on 21 May 2010.

401. This Law provides for the legal recognition in Jersey of changes in gender by transsexual people so that they may enjoy any rights conferred by the law of Jersey on people of their acquired gender.

### *Succession rights for children born out of wedlock*

402. In March 2010, the States of Jersey adopted an amendment to the Wills and Successions (Jersey) Law 1993, to confer on an illegitimate child the same rights of succession as if he or she were legitimate. Similarly, the rules as to succession to the estate of an illegitimate child are replaced with a rule that the succession is the same as if the child were legitimate, and any right of succession that is traced through an illegitimate child is to be traced as if the child were legitimate. The amendment came into force on 29 January 2011.

*Civil Partnerships (Jersey) Law*

403. In October 2009, the States of Jersey agreed that same-sex couples should be permitted to enter into a Civil Partnership. The Civil Partnerships (Jersey) Law 2012 came into force on 2 April 2012. This new legal relationship in Jersey, so far as is possible, gives same sex couples the same rights and responsibilities as married couples.

**Bailiwick of Guernsey**

404. The Police Complaints (Guernsey) Law, 2008 was approved by Her Majesty in Council in November, 2009. The Law was brought into force on 1 July, 2011 and establishes an independent Police Complaints Commission to provide greater protection for the public should Police Officers act outside their powers and to provide greater protection for Policy Officers from complaints which are an abuse of process. In July 2012 the Law Enforcement Commission (Bailiwick of Guernsey) Law 2011 was approved by Her Majesty in Council, this will replace the political oversight of the Bailiwick's law enforcement agencies with oversight by an independent commission

405. It was resolved by the States of Deliberation on 27 July 2011 (Billet d'État XIII) to review sexual offences legislation in the Bailiwick. The review takes into consideration the criminal law, which takes into account Article 14 of the European Convention on Human Rights, which govern the right to prohibition of discrimination in the exercise of the rights guaranteed by the Convention.

406. The Sexual Offences (Bailiwick of Guernsey) (Amendment) Law, 2011, currently awaiting approval by Her Majesty in Council, lowers the age of consent for homosexuals to sixteen from eighteen in line with that for heterosexuals. Additionally, in the Sexual Offences (Bailiwick of Guernsey) (Amendment) Law 2011, a section of the Sexual Offences (Bailiwick of Guernsey) Law, 1983 was repealed where previously homosexual acts could constitute as grounds for dismissing a member of the crew of a Guernsey registered ship.

407. The Mental Health (Bailiwick of Guernsey) Law, 2010 was given Royal sanction on 16 November 2011 and is yet to be brought into force. This law updates previous legislation to ensure that those with mental health problems receive the most appropriate treatment and covers the reception, care and treatment of mentally disordered patients, including the management of their property and other related matters.

*In response to the observation contained in paragraph 6 of the Committee's concluding observations*

408. The Bailiwick will continue to give consideration from time to time to introducing the Covenant into domestic law but has no present intention of doing so. However, the rights set out in the Covenant receive consideration in the drafting of new legislation which is put before the States of Deliberation for its approval. The UK is responsible for the Bailiwick's international representation and the Islands are not sovereign states. Consequently they cannot bind themselves internationally, save in certain areas where they have been issued with letters of entrustment from the UK, for example in matters such as tax information exchange. The Bailiwick of Guernsey is considering whether, should the UK decide to accede to the Optional Protocol, it will request the extension at the same time.

*In response to the observation contained in paragraph 8 of the Committee's concluding observations*

409. In 2012, the first female was appointed to an office held under the Crown, namely HM Comptroller (Solicitor General). HM Procureur (Attorney General) and HM

Comptroller are legal advisers to the Crown and to all three legislative Assemblies of Guernsey, Alderney and Sark. HM Comptroller is responsible for criminal proceedings and for the drafting of legislation. Both HM Procureur and HM Comptroller are debarred from private practice. They act independently of government.

410. There is no jury system in the Bailiwick. The judges of fact in civil and criminal cases are Jurats, members of the public who are elected to serve as lay justices by the States of Election, which comprises members of the States of Deliberation and other senior figures such as HM Procureur and HM Comptroller. Currently five of the fifteen jurats are women.

*In response to the observation contained in paragraph 13 of the Committee's concluding observations*

411. The UK Immigration Act 1971 is extended to the Bailiwick and immigrations rules apply in respect of arrivals at Guernsey airport to those in the United Kingdom. There is no evidence that Bailiwick airports have been used for transiting rendition flights. The Bailiwick authorities do not have any policy supporting the use of the Bailiwick airports for transiting rendition flights.

*In response to the observation contained in paragraph 16 of the Committee's concluding observations*

412. The Bailiwick authorities remain committed to its obligations under the United Nations Convention on the Elimination of Racial Discrimination.

*In response to the observation contained in paragraph 29 of the Committee's concluding observations*

413. There are no further developments to report.

### **Article 3 – Gender equality**

414. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- ILO Convention No.100 (1951) concerning Equal Remuneration for Men and Women Workers for Equal Value.
- Convention on the Political Rights of Women (1953).
- Convention on the Nationality of Married Women (1957).
- European Social Charter (1961).
- International Covenant on Economic, Social and Cultural Rights (1966).
- Convention on the Elimination of All Forms of Discrimination against Women (1979) and Amendment (1995).
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2004).
- Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union (as amended in Lisbon – 2010).

## Progress since the sixth periodic report

### United Kingdom

415. The Government Equalities Office (GEO) is responsible for equalities legislation and policy in Great Britain. GEO is responsible for the Government's overall strategy and priorities on equality issues and aims to reduce discrimination and disadvantage for all. It leads on gender issues and is responsible for the integration of gender equality policy in all Government policy. It leads on the Government's international obligations on gender equality and is the 'National Machinery for Women', the institutional mechanism responsible for overseeing and promoting the delivery of UK commitments under CEDAW.

416. The Ministers for Women sit on a number of Cabinet Committees to provide a strategic mechanism to ensure that gender (and broader equalities issues) are integrated and embedded into policy formulation and service delivery issues at the point of development in Government. Ministers with special responsibilities for women's issues and equal opportunities have also been appointed for Scotland, Wales and Northern Ireland.

417. The Equality Act 2010 includes a new integrated public sector Equality Duty (the Equality Duty) which brings together the previous Gender Equality Duty, as well as the previous Race and Disability Duties, and for the first time extends to cover age, religion or belief, sexual orientation, and pregnancy and maternity and gender reassignment in full.

418. The UK's third periodic report on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) was submitted in July 1995. The UK's fourth periodic report was submitted in January 1999. The UK Government submitted its seventh periodic report under the CEDAW in June 2011 and the oral examination will take place in July 2013.

#### *Work and Families Act 2006 – changes to maternity and paternity pay*

419. Changes to maternity and paternity leave provided for in the Work and Families Act 2006 have been implemented:

Qualifying conditions for additional maternity leave were removed so all employed women are able to choose to take one year's maternity leave for women whose babies were due from April 2007 onwards.

- The payment period of Statutory Maternity Pay, Maternity Allowance and Statutory Adoption Pay was extended from 26 weeks to 39 weeks for parents of children due to be born or placed for adoption from April 2007 onwards.

- Measures to encourage communication between women and employers were introduced from April 2007 including the introduction of 'keeping in touch days' enabling women and employers to agree woman will work up to 10 days during maternity leave without it affecting her maternity leave or pay.

- A new right to Additional Paternity Leave and Pay was introduced for fathers of children due to be born or placed for adoption on or after 6 April 2011. This enables the father to take leave where the mother chooses to return to work before the end of her maternity leave period.

- In 2007 the right to request flexible working was extended to carers of adults, in 2009 it was extended further to parents of children aged under 17.

420. The UK Government has announced that it will extend the right to request flexible working to all employees by 2014 and introduce a new system of flexible parental leave by

2015 which will give parents greater choice about how they share childcare and leave between them.

#### *UK Armed Forces*

421. Following a periodic review of the policy on the exclusion of women from ground close-combat roles, the Government announced in November 2010 that the case for lifting the restrictions on women serving in these roles had not been made. The policy of excluding women from ground close-combat was therefore continued. The vast majority of roles in the Armed Forces are open to women and the UK ensures that the maximum number of roles and trades are available to them. Recent changes include allowing women to service as clearance divers in 2010 and in December 2011 it was announced that women will have the opportunity to serve on board our submarines and the first female submariners are expected to take up their posts towards the end of 2013.

422. The Armed Forces offer a generous maternity scheme which allows Servicewomen to accommodate pregnancy and maternity within their Service careers. Servicewomen may choose, if they so wish, to leave the Service prematurely on pregnancy.

423. On 1 April 2012 there were 17,370 women in the Regular Armed Forces (of whom 3,820 were officers and 13,560 were other ranks), which constitutes 9.7 per cent of the total strength of the Armed Forces. The majority of posts are open to women. By Service this equates to: 70 per cent of jobs in the Naval Service; 70 per cent of jobs in the Army; and 96 per cent of jobs in the Royal Air Force.

#### **Reducing violence against women**

424. The UK government's ambition is nothing less than ending all forms of violence against women and girls. On 25 November 2010, the government published its strategy "A call to end violence against women and girls" which highlighted the guiding principles of prevention, provision of services to victims, partnership working, reducing risk to victims and bringing perpetrators to justice. A detailed action plan was published in March 2011 and refreshed in March 2012. We have completed more than half the original actions and are making good progress on 100 actions which have more emphasis on the importance of prevention.

425. As part of our strategy, the Government has ring-fenced nearly £40 million of stable funding up to 2015 for specialist local domestic and sexual violence support services, rape crisis centres, the national domestic violence help lines and the stalking helpline. This is the first time that funding has been ring fenced for domestic and sexual violence victims on a stable basis, and has been supplemented by additional funding to support frontline organisations to tackle female genital mutilation, and to support services focusing on male victims of sexual and domestic violence.

426. Key activity to tackle violence against women and girls in the last 12 months includes: piloting a Domestic Violence (DV) Disclosure Scheme and a DV Protection Order; revising the government's definition of DV; running two campaigns aimed at teenagers to change and challenge attitudes towards sexual violence and relationship abuse; announcing plans to create a new offence of forcing someone to marry against their will; creating two new stalking offences; tightening the law and closed loopholes that might be exploited by registered sex offenders; launching a 12 month national pilot scheme run to help protect sex workers from violent and abusive clients; signing the Council of Europe's convention on preventing and combating violence against women and domestic violence; and announcing a new initiative to prevent sexual violence in conflict and post conflict situations."

**Wales: reducing violence against women**

427. The Welsh Government is committed to reducing rates of domestic abuse and violence against women. Voluntary organisations and Community Safety Partnerships who provide violence against women and domestic abuse support services across Wales are to receive a share of £4.16 million funding in 2012-13.

428. The 'Right to be Safe' Strategy was launched in 2010, a six year integrated strategy for tackling violence against women and domestic abuse across Wales.

429. The 10,000 Safer Lives domestic abuse project is seeking to improve the multi-agency service provided to victims of domestic abuse in standard and medium-risk cases. Based on the direct experiences of victims of domestic abuse, the project has brought together an understanding of good practices across Wales into a clear and accessible set of minimum standards for organisations, accompanied by 5 simple steps for front line staff at that crucial first point of contact.

430. The Welsh Government has also announced their intention to introduce new legislation which will require all relevant public bodies to address violence against women and domestic abuse in a co-ordinated and coherent manner. Whilst the Bill will not seek to address criminal justice matters that are reserved, it will focus on the prevention of violence against women and domestic abuse in the first place; the better protection of victims and the provision of improved services to all victims. Collaboration and multi-agency working are pre-requisites to the effective delivery of Welsh Government's responsibilities to safeguard and protect all victims of violence against women and domestic abuse. The intention is that the Bill's introduction will be supported by strong national and regional leadership to drive up service standards and deliver consistency in outcomes.

*Scotland: Gender equality*

431. The Scottish Government is working towards equality between both sexes as part of its equality work. It funds a range of projects to support gender equality, including:

- Close the Gap: works strategically with employers, employer representative bodies, sectoral bodies, policy makers, trade unions and equality organisations to narrow the gender pay gap by reducing horizontal and vertical occupational segregation, reducing discrimination embedded within pay systems and increase flexible working opportunities.

- The Scottish Resource Centre for Women in Science, Engineering and Technology: provides a delivery resource to improve the participation and progression of women in SET education and employment to tackle occupational segregation.

432. The Equality Budget Advisory Group which provides advice on ensuring the Scottish Budget takes account of equality issues, includes several members with a specific focus on gender equality. The SG has published an Equality Statement on the Budget for the past two years. In recognition of the specific difficulties faced by women as a result of the recession, funding has been provided for a range of projects aimed at improving women's employability.

*Scotland: Domestic Violence against women*

433. The Scottish Government has committed £34.5m (2012 – 15. to tackling violence against women. This includes funding for national bodies such as Scottish Women's Aid and Rape Crisis Scotland, supporting domestic abuse and rape crisis helplines and funding a wide range of front line services including the 14 Rape Crisis Centres in Scotland, and support workers for children and young people experiencing domestic abuse.

434. 'Safer Lives: Changed Lives – a Shared Approach to Tackling Violence Against Women in Scotland' was published in June 2009 jointly with key partners COSLA (the

Convention of Scottish Local Authorities), and a refreshed version will be published towards the end of 2012, with an increased focus on early intervention and prevention.

## **Oversees Territories**

### **Bermuda**

435. With regard to part II, article 3, which speaks to the equal rights of men and women to the enjoyment of all civil and political rights, there still remain some pieces of legislation that require amending to ensure widespread equality. The Government is looking to comply with these articles and through the auspices of the Commonwealth Secretariat undertook a review of all legislation for compliance with the Convention for the Elimination of all forms of Discrimination against Women. When the recommendations from that exercise are completed this will bring Bermuda more in line with the Convention.

### **British Virgin Islands (BVI)**

436. The Labour Code has been brought into force. The Code makes provisions for the protection of pregnant employees and to prohibit discrimination in employment.

### **Cayman Islands**

437. References to Immigration Law have now been amended to refer to the Immigration Law (2011 Revision).

438. The representation of women in society remains substantially the same. There are currently two female members of the Legislative Assembly, one of whom is the Speaker of the House. That said, women continue to occupy a number of key public offices including the Information Commissioner (under the Freedom of Information Law); Complaints Commissioner; the Director of Public Prosecutions; and the Solicitor General.

439. Section 16 of the Bill of Rights in the Constitution Order 2009 prohibits discrimination on the basis of gender. This constitutional prohibition as stated previously, lies only in respect of the existing rights in the Bill of Rights.

440. Gender discrimination in employment is also prohibited by the Labour Law (2011 Revision). However, to date there is clear indication of how many complaints have been made to the Department of Employment Relations against alleged acts of such discrimination.

441. The existing statutory framework is enhanced by the Gender Equality Law, 2011 which came into effect on January 31, 2012 (the “commencement date”) and seeks to provide protection from discrimination in employment, training, and hiring for both sexes. It enshrines the principle of equal pay for work of equal value irrespective of the gender of the employee; prohibits sexual harassment in the workplace; and calls for equal treatment in employment-related matters such as the provision of goods, services, and facilities. Pursuant to section 23 of the Law, the 5 member Gender Equality Tribunal was also appointed on the commencement date and a Secretary to the Tribunal appointed as of May 2012. The Tribunal is currently finalizing its Operating Policies and Procedures; to date, however, no complaints have yet been filed in respect of any act of gender discrimination under the Law.

442. The Law is intended to give partial effect to Government’s obligations to the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW)

once that Convention has been extended to the Islands (which is anticipated will be in the foreseeable future).

### **Falkland Islands**

443. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 1 of the Constitution provides that every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual without distinction of any kind, including sex. Section 16 of the Constitution provides that no law shall make any provision which is discriminatory either in itself or in its effect, and no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority; ‘discriminatory’ means affording different treatment to different persons on any grounds including sex.

444. In 2011 the Domicile (Reform) Ordinance was brought into force. It abolished the rule of law that a married woman automatically had the same domicile as her husband. Whether a woman to whom this Ordinance applies has acquired a new domicile of choice (or if her domicile of origin has revived) is to be ascertained by reference to the same factors as apply to anyone else who is capable of having an independent domicile.

445. The judiciary in the Falkland Islands comprises a Chief Justice (appointed from the High Court in England & Wales), a resident Senior Magistrate appointed on a 3-year contract, and 12 Justices of the Peace drawn from the community. 6 of the Justices of the Peace are men, 6 are women.

446. At the last general election, which took place in 2009, three of the eight members elected to Legislative Assembly were women (although one has subsequently resigned).

447. As at 1 July 2011 the Falkland Islands Government employed 620 full-time, part-time and casual staff in the public service, of whom 315 were male and 305 were female. Of the 10 senior director positions, only one is held by a woman. Of the 40 head of service positions, only 14 are held by women.

448. Primary and secondary education is compulsory for all to age 16. The Falkland Islands Government funds further education in the United Kingdom for children who belong to the Falkland Islands or whose parents have a permanent right of residence provided they meet certain academic standards and have a satisfactory record of attendance and behaviour at school. The Government also funds higher education in the United Kingdom for persons belonging to the Falkland Islands who are successful in their further education. During the academic year 2011-12 the Falkland Islands Government funded 33 further education students (23 women and 10 men) and 22 higher education students (11 women and 11 men).

449. The Falkland Islands Government also operates a Training Centre which provides vocational and management training to school leavers and adults. Training courses are available to those in public or private sector employment or the unemployed. During the year ended 30 June 2012 the Training Centre offered City & Guilds apprenticeships (2 women and 8 men), other City & Guilds accredited vocational training (27 women and 20 men), management training through the Chartered Management Institute (9 women and 1 man) and the European Computer Driving Licence (32 women and 8 men).

450. Since 2010 the Falkland Islands Government has followed the MARAC (multi agency risk assessment conference) principles when providing support, security and assistance to the victims of domestic violence. In recent years there have been several successful prosecutions for domestic violence and for sexual offences against women and girls.

## **Gibraltar**

451. As Gender Equality is covered under the Equal Opportunities Act 2006 as per the government of Gibraltar's comments in article 2.

452. The Citizens Advice Bureau continues to be the body responsible for the promotion of equal treatment of all persons without discrimination on grounds of sex or racial or ethnic origins.

453. The Government also by Regulations may establish an Equal Opportunities Commission who will have the duty and power to promote equal treatment of all persons without discrimination on all or any of equal opportunities ground.

## **Montserrat**

454. The Montserrat Constitution Order 2010 enshrines the fundamental right or protection against discrimination.

455. The Penal Code (Amendment) Act, 2010 amends the Penal Code, to set similar penalties where an indecent assault is committed against a male or female. Previously, the penalty for indecent assault on a man was significantly lower and no special protection was provided for young boys.

456. The draft Labour Code 2012 seeks to protect against discrimination in the workplace on the grounds of pregnancy and provides for protection from dismissal while on maternity leave. It also prohibits harassment and sexual harassment, which amounts to employment unlawful discrimination based on sex.

457. Currently, none of the elected members to the Legislative Assembly are women. Two women however sit in the Assembly as non-elected members.

## **Pitcairn, Henderson, Ducie and Oeno Islands**

458. CEDAW and ECHR have not yet been extended to Pitcairn though a compliance exercise has been completed for the ECHR and CEDAW (reported in FCO annual report on Human Rights 2009).<sup>12</sup> Previously Pitcairn has expressed a wish for ECHR to be extended to it (reported in FCO annual report on human rights 2007, 2008 and 2009). Pitcairn was also a representative at the 9th Consultative Council of the Overseas Territories where the Territories agreed to work towards the extension of CEDAW (2007).

459. Women are equally represented in Pitcairn society. One of the two Supreme Court judges is female. Consideration is being given to the appointment of a female Court of Appeal judge. For the period beginning 2012 to the end of 2013 (a 2 year term), three of 5 elected governing body councillor seats are held by women. Each are responsible for specific portfolio's: Policy and Legislation, On-Island Operations and Community Development. Two of four key governmental management positions, Division Manager for Community Development and Division Manager for Natural Resources are held by woman. In addition, women currently hold key posts of Police and Immigration, Government Treasurer and Coordinator for Tourism. Female civil servants are paid the same rate of pay as male civil servants. The Doctor and School Teacher are contracted to the island for 1–2 year terms. Positions have equally included female/male placements.

<sup>12</sup> <http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>.

## **St Helena**

460. Under the new Constitution gender and sexual orientation are specifically mentioned as unlawful bases for differential treatment, as is any other status.

461. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has still to be extended to St Helena and work has commenced to move its legislation in that direction.

462. The Police Directorate has introduced an effective policy for addressing domestic violence.

## **Turks and Caicos Islands**

463. The representation of women in society remains substantially the same. The Sexual Disqualification (Removal) Ordinance which removes disqualification on account of sex provides that a person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation or for admission to any incorporated society (whether incorporated by Royal Charter or otherwise). TCI Government is also reviewing the law to further emphasise gender equality.

464. Examples of women holding high office in TCI include, four of the five new Permanent Secretaries (recruited in 2012 following reforms of the public service) are women. Two of the TCI's three judges of the Supreme Court are women. Of the three magistrates, one is a woman. Representation on the Advisory Council and the Consultative Forum (the bodies that replaced the Cabinet and House Assembly following the suspension of parts of the 2006 Constitution) have been evenly split between men and women. The post of Deputy Governor was formerly held by a woman: the post is currently vacant.

465. TCI completed its review of Legal Indicators for its compliance to the CEDAW Convention. The Department of Social Development and Gender Affairs has launched a Radio Talk Show "GENCO" focusing on educating the public on the CEDAW, Millennium Development Goals and Beijing Platform for Action which promote gender equality and which TCIG supports and its impact on the society. A website has been developed as a tool to help sensitise the public on social and gender issues. There is a lack of funding to initiate more social and gender programs.

## **Crown Dependencies**

### **Isle of Man**

466. The Income Tax (Amendment) Act 2006 amended the Isle of Man tax treatment of married couples so that, as from the year of assessment commencing on 6 April 2006, the income of a wife would no longer be treated as the income of her husband under the Income Tax Act 1970 (with the husband being required to complete the couple's annual tax assessment). The default position is now that a husband and wife will be assessed separately for income tax, although a married couple may be assessed jointly if they so choose.

467. In 2007 new maternity and adoption leave regulations were made under the Employment Act 2006. The Maternity Leave Regulations 2007 Regulations confer a right for women to take "ordinary maternity leave" of 26 weeks, and (in the case of an employee with 26 weeks' qualifying service) "additional maternity leave" of 26 weeks. The Adoption

Leave Regulations 2007 confer similar rights in respect of 26 weeks' "ordinary adoption leave" and "additional adoption leave".

468. As referred to under article 2 the Isle of Man Government has included a comprehensive Equality Bill in the legislative programme for 2011/12 to 2015/16.

### **Bailiwick of Jersey**

469. No further developments to report under this article.

### **Bailiwick of Guernsey**

470. In October 2009 the States of Deliberation agreed to prioritise work towards the prevention of discrimination against women in its social policy strategic plan. Work continues to be progressed and on 27 February 2012 (Billet d'État IV) the States of Deliberation resolved to agree a number of maternity and paternity provisions in line with recommendations set out in the United Nations Convention on the Elimination of all Forms of Discrimination against Women.

471. In 2012, the first female was appointed to an office held under the Crown, namely HM Comptroller (Solicitor General). HM Procureur (Attorney General) and HM Comptroller are legal advisers to the Crown and to all three legislative Assemblies of Guernsey, Alderney and Sark. HM Comptroller is responsible for criminal proceedings and for the drafting of legislation. Both HM Procureur and HM Comptroller are debarred from private practice. They act independently of government.

472. There is no jury system in the Bailiwick. The judges of fact in civil and criminal cases are Jurats, members of the public who are elected to serve as lay justices by the States of Election, which comprises members of the States of Deliberation and other senior figures such as HM Procureur and HM Comptroller. Currently five of the fifteen jurats are women.

473. The statistics in relation to equality of those in education are not substantially different to those supplied in the sixth periodic report.

### **Article 4 – Derogation**

### **United Kingdom**

474. Since publication of the 6th report, the Armed Forces Act 2006 has been implemented which means that a single system of Service law now applies to all members of the Armed Forces wherever in the world they are serving. This system is robust and fair and its procedures, including those in relation to the conduct of Service Justice, are compliant with the ECHR

475. Notwithstanding this, there remain points within the ICCPR that would impact on the operational effectiveness of the UK Armed Forces if the current reservation were to be removed. The exigencies of Service life may make it impossible to segregate juvenile offenders (who will not be below 16 years of age in the case of the Armed Forces) from adults. Article 12(1) is inconsistent with the inevitable requirement for Service personnel to be ordered to be sent to, or remain at, a particular location. Article 21 allows the right of 'peaceful assembly', but this is not compatible with service disciplinary ethos (article 11 of the ECHR, covering the same subject matter, recognises this). The use of a single language (English) must be required in the majority of operational situations, and so the linguistic provisions of article 27 could be problematic for the Services. Maintaining the discipline of

the Armed Forces, wherever they are deployed, and in peacetime and in conflict, is vital to their operational effectiveness. For this reason the reservation needs to remain in force as it stands.

## **Oversees Territories**

### **Bermuda**

476. No developments to report under this article.

### **British Virgin Islands (BVI)**

477. No further developments to report under this article.

### **Cayman Islands**

478. No issues under this article have arisen in the Cayman Islands.

### **Falkland Islands**

479. The Civil Contingencies (Emergency Powers) Ordinance 2006 empowers the Governor, after consulting Executive Council unless this would not be possible without serious delay, to make emergency regulations if satisfied that an emergency has occurred, is occurring or is about to occur and that it is urgently necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.

480. Among other things, emergency regulations may provide for the confiscation or destruction of property, prohibit or require movement to or from a specified place, prohibit assemblies, prohibit travel or other specified activities, disapply or modify any enactment, make provision for facilitating the deployment of Her Majesty's armed forces or the Falkland Islands Defence Force.

481. Emergency regulations may not require a person to provide military service or prohibit participation in a strike or other industrial action.

482. Emergency regulations lapse after 30 days or at such earlier time as may be specified in the regulations or in accordance with a resolution of Legislative Assembly. Once emergency regulations have lapsed, further emergency regulations may be made if the relevant conditions still apply.

483. There are no allegations of transit rendition flights through the Falkland Islands. The Falkland Islands National Aviation Security Programme ensures that Falkland Islands airports are not used for such purposes.

### **Gibraltar**

484. No development to report under this article.

## **Montserrat**

485. Section 18 of the Montserrat Constitution Order 2010 permits derogation from certain constitutional rights in periods of public emergency and the taking of measures that are reasonably justifiable for addressing the situation that exists in Montserrat during that period. This includes derogation from the protection from arbitrary arrest and detention, protection of right of prisoners to humane treatment, protection of private and family life, protection of freedom of conscience and of religion, protection of freedom of expression, protection of freedom of assembly and association, protection of freedom of movement, protection from discrimination and protection from deprivation of property. However, like the ICCPR, it does not permit derogation from the protection of right to life, protection from inhuman treatment, protection from slavery and forced labour and protection from being held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence.

## **Pitcairn, Henderson, Ducie and Oeno Islands**

486. Article 24 Derogation in Time of Emergency of the Pitcairn Constitution 2010; 24. (1. Nothing contained in or done under the authority of any law shall be held to breach any of the provisions of this Part other than sections 2, 3, 4, 5, 6(1., 8(2). and 10 to the extent that the law in question authorises the taking during a period of public emergency of measures that are strictly required by the exigencies of the situation that exists in Pitcairn during that period, provided that such measures are not inconsistent with the obligations of the United Kingdom in respect of Pitcairn under international law.

487. There has been no declaration of a state of emergency and no instance of derogation on Pitcairn Island.

## **St Helena**

488. No developments to report under this article.

## **Turks and Caicos Islands**

489. In September 2008, as a result of the occurrence of Hurricane Ike, the Governor, on the advice of the Cabinet, and acting pursuant to the powers vested in him under the Emergency Powers Ordinance declared that a state of emergency existed on the islands of Grand Turk and South Caicos. The proclamation of emergency ceased to have effect one month after it came into force.

## **Crown Dependencies**

### **Isle of Man**

490. No developments to report under this article.

### **Bailiwick of Jersey**

491. No further developments to report under this article.

## **Bailiwick of Guernsey**

492. On 21 February 2012 the States of Deliberation approved the Civil Contingencies (Bailiwick of Guernsey) Law, 2012. It was subsequently approved by the States of Alderney and Chief Pleas of Sark. The legislation is aligned to the UK Civil Contingencies Act 2004 and replaces the former Emergency Powers (Bailiwick of Guernsey) Law, 1965. It establishes a Civil Contingencies Authority (CCA) responsible for monitoring and assessing risks, taking action to prevent threats developing into an emergency and dealing with an emergency should one occur. Action by the CCA will be required to be: necessary; proportionate; and consistent with obligations under international law.

493. The definition of Terrorism as defined in the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 was amended in 2010 to ensure it is in line with the UN International Convention for the Suppression of the Financing of Terrorism.

494. Following the UK Supreme Court ruling in 2010 which quashed the Order in Council that had been made under the United Nations Act 1946 to implement UN Security Council Resolution 1373, a corresponding Channel Islands Order in Council implementing UNSCR 1373 was repealed. After certain interim arrangements to give effect to UNSCR 1373, which included the extension to the Bailiwick of the UK Terrorist Asset Freezing etc Act 2010, this regime was replaced in January 2012 when the States of Guernsey enacted the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011. This law gives effect to UNSCR 1373 in the Bailiwick by implementing certain prohibitions concerning the movement of assets, economic resources and financial services in respect of designated persons.

495. The implementation of sanctions made by the UN, and those made by the EU, include a licensing system to allow for the authorisation of certain activities or types of transaction that would otherwise be prohibited by asset freezing legislation. Licences are granted where there is a legitimate need for such transactions to proceed and where they can proceed without giving rise to any risk of terrorist finance. This helps to ensure that the Bailiwick's asset-freezing regime remains effective, fair and proportionate in its application. The Bailiwick's competent authority consults with the UK competent authority to ensure that the issuance of licences in the Bailiwick is aligned to the UK's approach.

496. Should an individual be aggrieved by a decision of the competent authority in respect of licensing they can appeal that decision which the domestic courts may set aside if it is: ultra vires; unreasonable; made in bad faith; made with a lack of proportionality; or if there was a material error as to the facts or as to the procedure.

## **Article 5 – Interpretation**

### **United Kingdom**

497. See chapter I (E) of this report.

### **Oversees Territories**

#### **Bermuda**

498. No developments to report under this article.

**British Virgin Islands (BVI)**

499. No further developments to report under this article.

**Cayman Islands**

500. No issues under this article have arisen in the Cayman Islands.

**Falkland Islands**

501. Article 5, paragraph 1 is understood to mean that the Covenant may not be used to imply the right to carry out an activity or to perform any act which infringes the Covenant to a greater extent than the Covenant itself provides for those rights to be infringed.

502. Article 5, paragraph 2 is understood to mean that the Covenant may not be used to erode existing fundamental rights already recognised by a State Party to the Covenant.

503. There has been no breach of article 5.

**Gibraltar**

504. The Government of Gibraltar has nothing to add in respect of this article.

**Montserrat**

505. No developments to report under this article.

**Pitcairn, Henderson, Ducie and Oeno Islands**

506. The existence and inviolability of the Convention rights has been acknowledged by the Crown in proceedings in the Supreme Court, Pitcairn Court of Appeal and the Privy Council during the period 2004 to 2006.

507. In 2010 the new Pitcairn Constitution introduced explicit constitutional rights into Pitcairn, reflecting those in the Convention but including others as well.

**Turks and Caicos Islands**

508. No developments to report under this Article.

**St Helena**

509. Chapter 1, part 2 para 5 in The St Helena, Ascension and Tristan da Cunha Constitution Order 2009 is an interpretative provision that enables the Courts to balance the rights and freedoms enjoyed by the individual against the public interest and those of others.

## **Crown Dependences**

### **Isle of Man**

510. No developments to report under this article.

### **Bailiwick of Jersey**

511. No further developments to report under this article.

### **Bailiwick of Guernsey**

512. No further developments to report under this article.

### **Article 6 – Right to life**

513. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

### **Progress since the sixth periodic report**

## **United Kingdom**

### *Attenuating Energy Projectiles (AEP) – UK Armed Forces*

514. The use of AEPs by the Armed Forces requires the authorisation of a Defence Minister, and this is only granted on very rare occasions. In order to use AEPs the Armed Forces personnel are required to be specially trained to minimise any risk involved; they will also be made aware of the legal and policy constraints on the use of AEPs. Such training and use provides the Armed Forces with the option to use less than lethal force.

### *The de Menezes inquest – response to the observations contained in paragraph 10 of the Committee’s concluding observations*

515. Following the findings of the coroner’s inquest into the killing of Jean Charles de Menezes, received by the Metropolitan Police on 7th January 2009, much effort has gone into addressing the issues raised. The Metropolitan Police Commissioner’s response to the Coroners’ Rule 43 Report identified the initial findings and described remedial work that was to be put in place to address them. Much of this work had already commenced prior to the coroner’s findings.

516. It was recognised that any learning and development should not be limited to the Metropolitan Police but engage with the UK Police Service as a whole. To this end, the work to address the issues raised in the reports was overseen by the Association of Chief Police Officers (ACPO).

517. Under ACPO auspices programmes of work were created to deliver solutions in relation to training and technology and to embed and support cross discipline interoperability. These programmes have successfully delivered technical solutions for the transfer of images and asset tracking, better communications platforms for covert activity

and delivered a cadre of trained commanders accredited to command CT incidents nationwide.

518. The UK's national CT exercise programme provides a platform to exercise against high end threats in a realistic but safe environment for all levels of Command, Control, Coordination and Intelligence. Lessons identified through this exercising are then taken forward to ensure continued improvement.

#### *Deaths in Prison Custody (England and Wales)*

##### *Investigation of prison deaths*

519. In April 2004, the Prisons and Probation Ombudsman (PPO) took over responsibility for investigating deaths in prison custody and since then all such deaths have been subject to an independent investigation by the PPO in addition to a Coroner's inquest held in public before a jury. The prison concerned may also conduct an internal review in order to learn any immediate lessons. The PPO investigation looks at the circumstances leading up to the death, and obtains a clinical review from a health expert. This is organised by the Department of Health (DH) as healthcare in prison has become the responsibility of DH. The transfer of responsibilities was completed in 2007. In most cases the PPO makes recommendations either to the prison authorities or to DH or both. The National Offender Management Service (NOMS – responsible for all prisons and probation services) responds to the recommendations.

520. The Coroner will hold an inquest to look at the circumstances of the death. At the conclusion of the inquest the Coroner may decide to write to the relevant authority a report under Coroners' Rule 43 if they consider there are lessons to be learned from a death in custody. There is a statutory requirement for the authority to respond to the Coroner's report.

##### *Learning from deaths in prison custody (England and Wales)*

521. NOMS is committed to learning from deaths in custody, and prisons are required to have procedures in place to disseminate learning from incidents of self-harm, violence and deaths in custody, to prevent future occurrences and improve local delivery of safer custody.

522. A revised Safer Custody policy which combines the policies on suicide prevention, self-harm management, violence reduction and deaths in custody, was published on 1 February 2012. The revised policy responded to concerns and suggestions raised during the review of Assessment, Care in Custody and Teamwork (ACCT - which is the individualised care planning approach for prisoners identified as being at-risk of suicide and/or self-harm) and builds on learning from previous incidents of self-harm, self-inflicted deaths and violence. A revised ACCT plan also came into effect on 1 May 2012.

523. In April 2009, the government established the Ministerial Council on Deaths in Custody in response both to the parliamentary Joint Committee on Human Rights Report on Deaths in Custody in 2004 and an internal report. The Council is formed of three tiers and is jointly funded by the Home Office, Ministry of Justice and Department of Health.

524. The first tier is a Ministerial Board on deaths in custody, which comprises senior decision makers responsible for policy and issues related to deaths in custody from a range of government departments and third sector organisations.

525. The second tier of the Council is the Independent Advisory Panel (IAP) on deaths in custody, which is chaired by Lord Toby Harris and replaced the Forum for Preventing Deaths in Custody. The IAP is an advisory non-departmental public body and provides independent advice and expertise to the Ministerial Board. It also provides guidance on

policy and best practice across sectors and makes recommendations to Ministers and heads of key agencies to address any gaps.

526. The IAP is supported by a broadly based ‘virtual’ Practitioner and Stakeholder Group, which forms the third tier of the Council. There are currently over 100 confirmed members of the Practitioner and Stakeholder Group representing a range of organisations including the police, prisons, Youth Justice Board, UK Border Agency, private sector custody providers, DH/NHS secure services, inspectorates, investigative bodies and non-governmental organisations (NGOs).

#### *Numbers of deaths in prisons*

527. Ministers and the NOMS are committed to reducing the numbers of deaths in custody. The number and rate of self-inflicted deaths in prison custody has reduced, year-on-year, since 2004 (with the exception of 2007, by approximately 40 per cent. This is despite a rising prison population.

528. Since 2009, the Ministry of Justice has published a wide range of Safety in Custody statistics. These include annual figures for deaths in custody, recorded assaults and self-harm and are available on the Ministry of Justice website.

#### *Scotland: Deaths in Police Custody*

529. In January 2009, Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) published a Thematic Inspection report on Police use of firearms in Scotland. Data on the frequency with which firearms are used by forces in Scotland are provided within that; annual figures are reported for 1996-97 to 2006-07 inclusive. The number of occasions on which the police discharge conventional firearms during operations is very low. Since 1997-98 there have been 3 instances (all of which were non-fatal) where conventional firearms have been discharged at persons, and 43 instances requiring the destruction of an animal. The range of options available to officers for resolving very dangerous incidents has improved over time, ensuring that the police response is proportionate and involves only reasonable force. Statistics for 2008, 2009, 2010 and 2011 show a marked decrease in deaths in police custody in Scotland. In 2008 there were 9 reported deaths in police custody, in 2009 there were 3, in 2010 there were 5 while in 2011 there were 4. There is positive movement in Scotland towards increasing partnership working between the NHS and the police for the delivery of professional healthcare within custody settings.

#### *Scotland: Deaths in prison*

##### *Self inflicted*

<i>Prison</i>	<i>2007/8</i>	<i>2008/9</i>	<i>2009/10</i>	<i>2010/11</i>	<i>2011/12</i>	<i>Total</i>
Total	11	3	5	14	8	41

##### *Natural causes*

	<i>2007/8</i>	<i>2008/9</i>	<i>2009/10</i>	<i>2010/11</i>	<i>2011/12</i>	<i>Total</i>
Total	11	16	16	5	17	65

530. In all cases of prisoners dying in Scottish Prison Service (SPS) custody, other than some expected deaths by natural causes, a fatal accident enquiry by a Sheriff is held. Following the death of any prisoner who has taken their own life, the Scottish Prison Service conduct a critical incident review to review the circumstances surrounding the

death and impact on those involved. SPS will involve the prisoner's family in this when possible. This review looks at the circumstances of the 'incident' and the immediate actions taken; how the person was being cared for in prison; whether shared services and 'joined up' services were in place; prison processes and practices and how the incident impacted all those involved, including the family and any lessons to be learnt.

*Further update to UK government response to the observation contained in paragraph 9 of the Committee's concluding observations on violations to the right to life in Northern Ireland*

531. Following the Weston Park Agreement retired Canadian Justice Peter Cory was appointed by the British and Irish Governments in 2002 to examine a number of cases where there were allegations of state collusion. He concluded that full public inquiries should be set up into most cases where it had been alleged that the state had colluded in some way in the death of an individual and/or prevented an effective investigation of that death.

532. The Billy Wright Inquiry was published in September 2010. The Robert Hamill Inquiry announced in February 2011 that it had completed its report but that it would not be presented to the Secretary of State until related criminal prosecutions were completed.

533. Both inquiries were held under the 2005 Inquiries Act having been established under earlier legislation but converted into 2005 Act inquiries at the request of the respective chairmen. This Act is now the primary means by which Parliament can establish statutory public inquiries, with previous inquiry legislation (1921 Act) having been repealed. The Government does not see the fact that two of the three inquiries took place under the 2005 Inquiries Act should be any matter for concern.

534. The Rosemary Nelson Inquiry was established under section 44 of the Police (Northern Ireland) Act 1998 and revised terms of reference were announced in a written ministerial statement on 24 March 2005. This Inquiry report was published in May 2011.

535. Each inquiry was conducted by an independent, impartial panel of three individuals chaired by a senior retired judge. The Government did not receive the reports until 24 hours before publication.

536. In October 2011 Rt. Hon. Owen Paterson, then Secretary of State for Northern Ireland, announced that he had asked the distinguished former United Nations war crimes prosecutor Sir Desmond de Silva QC to conduct an independent review to produce a full public account of any state involvement in the murder of Patrick Finucane. The Review Report is expected to be presented to the Secretary of State and published in Parliament in December 2012. As with the inquiries previously published, the Government will only have access to the report 24 hours before publication.

## **Oversees Territories**

### **Bermuda**

537. No developments to report under this article.

### **British Virgin Islands (BVI)**

538. No developments to report under this article.

### **Cayman Islands**

539. Reference should be made to the Penal Code (2010 Revision). The death penalty has been abolished for the offences of treason and piracy and is therefore no longer part of the domestic laws of the Cayman Islands

540. Section 2 of the Bill of Rights guarantees the right to life and this will come into force on 6 November 2012.

### **Falkland Islands**

541. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 2 provides that no person shall be deprived intentionally of his or her life.

542. A person shall not be regarded as having been deprived of his or her life in contravention of section 2 if he or she dies as the result of a lawful act of war, or if he or she dies as a result of the use, to such extent and in such circumstances as are permitted by law, of force which is no more than absolutely necessary (a) for the defence of any person from violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) for the purpose of suppressing a riot, insurrection or mutiny.

### **Gibraltar**

543. The Criminal Offences (Amendment) Ordinance 2000 is now entitled the Criminal Offences Act 1960 (Consolidated legislation is contained here). The death penalty continues to be abolished in Gibraltar.

544. The Right to life is also protected under the Gibraltar's Constitution Order 2006, described under article 1 in this text.

### **Montserrat**

545. The Montserrat Constitution Order 2010, at section 3 provides that every person's right to life must be protected by law. This provision is not infringed if a person dies as the result of a lawful act of war or the use of force for the defence of any person from violence, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained or in action lawfully taken for the purpose of suppressing a riot, insurrection or mutiny.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

546. The Pitcairn Constitution Order 2010; Article 2: Right to Life, protects the fundamental rights of the islanders to Life. It is reiterated, as reported in the Sixth Report 2007, "In line with the Crime and Disorder Act 1998 and the HRA by the UK, the remaining power of capital punishment has been removed in Pitcairn. Paragraph 8 of the Pitcairn Royal Instructions 1970 concerning the death penalty has now been omitted from the written laws of Pitcairn"

547. In regards to pregnancies and in the best interests of mother and child, the option to either give birth on-island or off-island under specialist care exists. The on-island medical centre with full-time doctor has the ability to communicate directly with medical specialists via telecommunications including video-linking capabilities as and if required.

## **St Helena**

548. The new Constitution protects the right to life. No death penalty exists on St Helena.

## **Turks and Caicos Islands**

549. Section 2 of the 2006 Constitution protects every person's right to life. Section 2 of the 2011 Constitution repeats this right.

550. By virtue of the Treason and Piracy (Abolition of Death Penalty) Ordinance (first adopted 2002, revised 2009, the death penalty has been abolished for the offences of treason and piracy.

## **Crown Dependencies**

### **Isle of Man**

551. No developments to report under this article.

### **Bailiwick of Jersey**

552. No further developments to report under this article.

### **Bailiwick of Guernsey**

553. There have been no deaths in police custody since the date of the last report. Whilst both firearms and Tasers have been deployed, neither has been discharged since 2007. In the Bailiwick Tasers used as a 'less lethal' option available to armed police officers. The Guernsey Police's policy on use of Tasers is identical to its counterparts in the UK with emphasis on use of Tasers being proportional to the risk of the situation. However, unlike the UK, only authorised firearms officers can use Tasers within the Bailiwick. There has only been one case of manslaughter and one case of murder in the Bailiwick between 2007 and 2011.

## **Article 7 – Prohibition of torture and cruel, inhuman or degrading treatment**

554. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985) and Amendments (1992).
- European Convention against Torture and Inhuman or Degrading Treatment or Punishment (1987) and Protocols 1 and 2 (1987).

## Progress since the sixth periodic report

### United Kingdom

#### Response to allegations of transit of rendition flights through UK territory

555. In July 2010, the Prime Minister announced a series of measures in order to try and draw a line under the serious allegations that had been made about the role the UK has played in the treatment of detainees held by other countries. We have published Consolidated Guidance which provides clear directions for intelligence officers and service personnel dealing with foreign liaison services regarding detainees held overseas.

556. The Government also established the Detainee Inquiry to investigate whether Britain was implicated in the improper treatment or rendition of detainees held by other countries that may have occurred in the aftermath of 9/11. Although a decision has since been taken to draw this Inquiry to a conclusion while the Metropolitan Police Service carry out related criminal investigations, the Inquiry Chair, Sir Peter Gibson has provided the Government as requested with a report on its preparatory work to date, highlighting particular themes or issues which might be the subject of further examination.

557. The Government is now looking carefully at its contents and is committed to publishing as much of this interim report as possible. In his statement to the House of Commons on 18 January 2012, the Justice Secretary said that the UK Government remained committed to drawing a line under these issues and fully intends to hold an independent, judge-led inquiry once it is possible to do so and all related police investigations have been completed. In the debate that followed, the Justice Secretary said that the Government now had more time, although it did not want it, to consider the reservations some NGOs had raised about the Gibson Inquiry's approach. However, the Government will not look at the question of terms of reference and protocols for a new Inquiry until we reach the point that one can be set up. In the meantime, relevant government departments and agencies are co-operating fully with the police investigations.

#### *Use of torture evidence and Memoranda of Understanding on Deportation with Assurances*

558. An appeal by the British Government to the House of Lords on the use of torture evidence arose as a result of individual appeals by 10 of the individuals who were certified and detained under the ATCS Act. On 8 December 2005, the Law Lords ruled that there is an exclusionary rule precluding the use of evidence obtained by torture. The effect of this ruling is simply to replace the British Government's stated policy, namely, not to rely on evidence which is believed to have been obtained by torture by an "exclusionary" rule of law.

559. To date, the British Government has signed Memoranda of Understanding (MoU) on Deportation with Assurances (DWA) with the Libyan Arab Jamahiriya, Jordan, Lebanon, Ethiopia and Morocco and an Exchange of Letters with Algeria. It does not consider the arrangement with the Libyan Arab Jamahiriya to be active and has never deported anyone under DWA policy to Libya. The British Government has a number of on-going discussions with other countries.

560. Bilateral arrangements on DWA enable the Government to obtain assurances that will safeguard the rights of individuals being returned, for example in relation to humane treatment, access to medical care, adequate nourishment and accommodation, in accordance with internationally accepted standards - in particular article 3 of the ECHR (prohibition of torture or inhuman or degrading treatment). The specificity of bilateral arrangements, including in relation to particular individuals, mean that they provide an additional level of protection over and above that provided by international agreements.

561. The British Government has responsibility to the public to take action to reduce the threat of terrorism in the United Kingdom and to consider all options for doing so. Bilateral arrangements on DWA are an important tool in this respect, which enable the Government to remove individuals who are foreign nationals and pose a terrorist threat to the United Kingdom, thereby providing a means of disrupting their activity and reducing the threat to national security.

*Allegations of use of torture and degrading treatment by UK Armed Forces*

562. UK Armed Forces personnel are not free to act with impunity: they act in accordance with international laws as well as mandated rules of engagement and the Armed Forces Act 2006. The Service Justice System is separate and universally deployable to ensure that any allegation of criminal conduct by a member of the Armed Forces on duty can be properly investigated and tried, no matter where the crime is committed or who the victim may be. However, we still hold that the UK's human rights obligations are primarily territorial, owed by the government to the people of the UK and that the UK considers that the Covenant could only have effect outside the territory of the UK in very exceptional circumstances.

563. The use of torture is specifically banned by the rules and regulations under which our Armed Forces and all government officials operate. Military chiefs and the responsible politicians condemn all acts of abuse, and treat allegations of wrongdoing extremely seriously. All substantive allegations are investigated; there are robust mechanisms in-place to ensure that investigations are complete and transparent.

564. We acknowledge that some past military practices and training methods were not compliant with acceptable standards and acknowledged this publicly when we made submissions to the latter stages of the Public Inquiry into the death of Baha Mousa, who died whilst in UK custody in Iraq in 2003, and which are available at: <http://www.bahamousainquiry.org/>. We have worked hard to remedy any deficiencies that have been identified; detention today in Afghanistan is a very different business. The Chairman of the Baha Mousa Inquiry made 73 very helpful recommendations. We have accepted in principle all of his recommendations with one reservation. We have in place mechanisms which will permit us to continue learning lessons as they emerge from the ongoing investigations. Doctrine and military training are kept under constant review.

565. While the overwhelming majority of our military personnel conducted themselves with decency and honour in Iraq, we accept there may have been occasional lapses in what was a very violent conflict. The Secretary of State for Defence established the Iraq Historic Allegations Team (IHAT) in 2010 to investigate these allegations. We have not ruled out a public inquiry at some point in the future, should serious and systemic issues emerge from IHAT's investigations that would justify it.

566. The position on reparation is as described in our 2008 submission, which is that reparation will be made to victims or their families where there is a legal liability to do so resulting from the unlawful activities of any member of the UK armed forces. Claims for death and personal injury can be brought under UK common law and compensation may be payable for human right breaches under the Human Rights Act where that applies. Compensation may also be payable under UK criminal injuries compensation provisions where applicable. Details of our compensation payments are available on request.

*The Care Quality Commission*

567. The Care Quality Commission is an independent body established by the Health and Social Care Act 2008 that regulates standards of quality and safety in relation to health and adult social care services in England. Providers of regulated activities are required to

register with the CQC which has enforcement powers to take action in the event that services are unacceptably poor. Enforcement powers include:

- The issue of fines or warnings.
- Stopping admissions into a care service.
- Imposing conditions, suspending or cancelling a care service's registration
- Prosecuting for breach of registration requirements.

568. As the regulator for the health and social care sector the CQC therefore has a role to play in protecting the rights of all service users including older and vulnerable people in regulated care settings. This is one of the ways in which the UK seeks to ensure compliance with article 7 (prohibition of torture and cruel, inhuman or degrading treatment).

569. The Government knows that reform of the social care and support system is needed to provide people with more choice and control and to reduce the insecurity that they and their families face. This is one of the biggest challenges faced by society today. An engagement exercise, 'Caring for our future', was launched 15th September 2011 to identify the key priorities in the reform of Adult Social Care, building on the recommendations from the Commission on Funding of Care and Support and the Law Commission. We are now taking decisive steps so that older people and disabled people can plan and prepare for their future care needs, access high quality care when they need it, and exercise choice and control over the care they receive. The Department of Health published the 'Caring for our future: reforming care and support' White Paper in July 2012, which sets out a vision for a reformed care and support system. The draft Care and Support Bill published at the same time, creates a single modern piece of law for adult care and support, replacing complex and outdated legislation. The Government has made it clear that there is no place for poor quality care in any care services.

### **Physical punishment**

570. Corporal punishment is unlawful in state and full-time independent schools, in nursery and childminding settings, children's homes and secure establishments.

571. Mild physical punishment by parents is not prohibited by law. The UK Government does not wish to criminalise parents for administering a mild smack. However, an assault on a child that results in injuries that are more than transient or trifling would normally be charged as an assault occasioning actual or grievous bodily harm. Where that is the case, the assault cannot be defended on the basis that it is reasonable punishment.

572. The law on physical punishment in England and Wales was reviewed in 2007. The review included a full public consultation, a survey of parents' views, research into the views of children and young people, and field visits to get the views of front-line social services, police and the prosecution service staff. Following the review the then Government decided to retain the law in its current form in the absence of evidence that it was not working satisfactorily.

573. The survey of parents showed that fewer parents were choosing to use physical punishment and that more parents were using alternative approaches to discipline. The Government hopes that trend continues. It encourages the provision of evidence-based parenting programmes that promote alternatives to physical punishment to manage children's behaviour.

## Oversees Territories

### Bermuda

574. No developments to report under this article.

### British Virgin Islands (BVI)

575. No developments to report under this article.

### Cayman Islands

576. Corporal punishment is not prohibited in homes by legislation. While the Education Law allows corporal punishment to be administered in schools, it recognizes this as a measure of last resort which may only be administered by the principal or any teacher appointed in writing by the principal for that purpose where no other form of punishment is considered suitable or effective by the principal. In practice, however, corporal punishment is not utilized in schools. The government is in the latter stages of revising the Education Law with a view to banning corporal punishment in schools (including private schools), nurseries/early-years centres and institutions where children are in care.

577. Corporal punishment is not imposed as a sentence where a criminal offence has been committed nor is it used or as a disciplinary measure in the penal system.

### Falkland Islands

578. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 3 provides that no person shall be subjected to torture or to inhuman or degrading treatment or punishment.

579. In 2002 the Education Ordinance was amended so that section 66 now provides that it is unlawful for corporal punishment of any pupil at any school in the Falkland Islands to be imposed or carried out by a member of the staff of that school in consequence of any act or omission of the pupil at the school or elsewhere.

580. There are no allegations of transit rendition flights through the Falkland Islands. The Falkland Islands National Aviation Security Programme ensures that Falkland Islands airports are not used for such purposes.

### Gibraltar

581. The Government of Gibraltar has nothing to add in respect of this article.

### Montserrat

582. Section 4 of the Montserrat Constitution Order 2010 provides protection against torture and inhuman or degrading treatment and punishment.

### Pitcairn, Henderson, Ducie and Oeno Islands

583. The Pitcairn Constitution Order 2010; Article 4: Human Dignity and article 5: Prohibition of Torture, protect the fundamental rights of the islanders against torture and cruel, inhuman or degrading treatment.

584. As reported under article 10, places of detention have been constructed to ensure the humane detention of prisoners remanded or sentenced by the Court; prison regulations modelled upon those in other Overseas Territories and incorporating modern methods and practice as advised by expert consultant.

585. An amendment to the Children Ordinance in 2009 abolished common law rules permitting the use of force for punishment of a child. This applies to all persons, whether in schools or in the domestic context.

### **St Helena**

586. The new Constitution protects these rights.

587. The Education Ordinance 2008 prohibits in the enforcement of discipline in public or private schools, degrading or injurious punishment, which includes corporal punishment.

#### *Prison and probation reform in St Helena*

588. Anyone serving five years or more in a St Helena prison has to be accommodated in the UK. This raises human rights issues with regard to the right to family life and the ability of wives, children, and parents to visit. Funding for a new prison has been approved (completion date 2014, which should address this issue. St Helena has developed its probation service and probation is now a viable alternative to a custodial sentence.

589. The new prison will more effectively segregate pre charge (PACE) prisoners. Segregation now takes place as far as is possible within the physical constraints of the existing prison.

#### *Turks and Caicos Islands*

590. Currently the Education Ordinance does allow for corporal punishment in schools but only under the authority of the headmaster and in specific circumstances. This practice is to be reviewed.

591. A number of laws prohibit inhumane and degrading treatment and torture and cruelty. For example, the Prison Ordinance establishes a Prison's Visiting Committee tasked with monitoring the welfare and treatment of prisoners. The government will be legislating for a National Independent Monitoring Board to monitor the care, custody, treatment and welfare of persons held in the custody of the State in places such as the prison, remand centre, immigration detention centres, police cells and juvenile institutions. In addition, the Government has pledged its commitment to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, the government recognises that more sensitisation in this area is needed as financial resources allow.

## **Crown Dependencies**

### **Isle of Man**

592. The Isle of Man Government notes the comments of the Committee in paragraph 27 of the Concluding Observations. It would invite the Committee to note that although the United Kingdom is the State party for the Covenant, and it is ultimately responsible for the Island's international relations, as a Crown Dependency the Isle of Man is a self-governing jurisdiction with its own government, parliament (Tynwald) and courts. Under the constitutional relationship between the Isle of Man and the UK matters such as this fall within the domestic responsibility of the Isle of Man Government and not the UK Government.

593. As described in the last periodic report, the use of corporal punishment in schools provided or maintained by the Department of Education (renamed the Department of Education and Children in 2010. in the Isle of Man was prohibited by law in 2004.

However, at the time of the last report the prohibition did not extend to independent schools.

594. The Education (Miscellaneous Provisions) Act 2009 inserted a new section into the Education Act 2001, which effectively extended the prohibition of the use of corporal punishment to all educational settings. The new provision removed the right for any teacher to give corporal punishment to a minor in any school or any other place where education is provided under any arrangements made by the Department. In this new section “teacher”, in relation to a minor, means a teacher who works at the school or other place at which education is provided for the minor, and includes any person who works or otherwise provides services there (whether or not for payment) and has lawful control or charge of the minor.

595. The comments of the Committee in the concluding observations were a contributing factor in the decision to include the provision in what became the 2009 Act.

596. The Isle of Man has enacted the Prohibition of Female Genital Mutilation Act 2010, which came into operation on 1 July 2011. This Act, which is based on United Kingdom legislation, prohibits all female genital mutilation unless it is committed by an approved person who performs

- (a) A surgical operation on a woman or a girl which is necessary for her physical or mental health; or
- (b) A surgical operation on a woman or a girl who is in any stage of labour, for purposes connected with labour or birth.

#### **Bailiwick of Jersey**

597. The legislative powers in the Education (Jersey) Law 1999 have enabled corporal punishment in schools to be prohibited by the Minister for Education.

598. However, by way of an Act issued by the States of Jersey Education Committee on 10 December 1986, the use of corporal punishment by teachers in all States schools and private schools in Jersey is prohibited.

599. Corporal punishment of a child is treated as a criminal assault. A defence that the corporal punishment was reasonable, as provided by Article 79 of the Children (Jersey) Law 2002, can only be raised by a parent or a relative, or someone else with care of the child who has permission of the parent, and where no more than a hand is used.

#### **Bailiwick of Guernsey**

600. The Optional Protocol to the Convention against Torture is currently under consideration by the insular authorities. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is extended to the Bailiwick. A visit to the Bailiwick took place from 19 to 22 March 2010. The States of Guernsey has also contributed to the UK’s fifth periodic report to the Committee against Torture.

*In response to the observation contained in paragraph 13 of the Committee’s concluding observations*

601. The UK Immigration Act 1971 is extended to the Bailiwick and immigrations rules apply in respect of arrivals at Guernsey airport to those in the United Kingdom. There is no evidence that Bailiwick airports have been used for transiting rendition flights. The Bailiwick authorities do not have, any policy supporting the use of the Bailiwick airports for transiting rendition flights.

*In response to the observation contained in paragraph 27 of the Committee's concluding observations*

602. By an administrative directive made Education Department under the Education (Guernsey) Law, 1970, corporal punishment is not permitted in schools controlled by the Department. Private schools in Guernsey are licensed and inspected by the Education Department. They have all discontinued the use of corporal punishment.

#### **Article 8 – Slavery and forced labour**

603. Protection under other international instruments ratified by the UK is as follows:

- General Act of the Brussels Conference relative to the African Slave Trade (1890)
- International Agreement for the Suppression of the White Slave Traffic (1904), International Convention for the Suppression of the White Slave Traffic (1910) and Protocol amending both instruments (1949).
- Slavery Convention (1926) and Protocol Amending the Slavery Convention (1953).
- ILO Convention No. 29 (1930) concerning Forced Labour.
- ECHR (1950) and Protocol 1 (1952), Protocols 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956)
- ILO Convention No. 105 (1957) on the Abolition of Forced Labour.
- ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment.
- Convention on the Rights of the Child (1989) and Optional Protocol on the involvement of children in armed conflict (2000) and Optional Protocol on the sale of children, child prostitution and child pornography (2000).
- ILO Convention No. 182 (1999) on Worst Forms of Child Labour.

#### **Progress since the sixth periodic report**

### **United Kingdom**

#### **Human trafficking**

604. The UK Government is committed to tackling human trafficking and punishing the perpetrators of this terrible crime.

605. In 2009, following ratification of the Council of Europe convention on trafficking, the UK introduced a National Referral Mechanism to help identify and provide support to victims of trafficking. The NRM is administered primarily through the UK Human Trafficking Centre (UKHTC) with decision makers (called competent authorities) from both the UKHTC and the UK Border Agency. The NRM has helped the UK to understand more about where victims are coming from and the methods used by traffickers to 'recruit' them.

606. In July 2011 the UK Government published its Human Trafficking Strategy focused on four key areas: improving victim identification and care; working upstream to stop the

threat early; smarter action at the border; and coordinating law enforcement efforts in the UK. The strategy also had a separate chapter on child victims, recognising their particular vulnerabilities. We are working on implementation of the strategy with key NGO stakeholders and a range of other government departments.

607. In the same month last year the UK Government also opted into the EU Directive on trafficking in human beings and is working towards full compliance by the April 2013 deadline. The UK has decided that to comply with Article 19 of the Directive the Inter-Departmental ministerial group (IDMG) on human trafficking will be the UK's equivalent rapporteur mechanism. To this end the IDMG published its first annual report on 18 October 2012, ahead of the Directive requirements, setting out how the UK is combating the threat of human trafficking and what further work can be undertaken to strengthen its overall response. Primary legislation has already been amended in England and Wales to comply with the Directive to extend extraterritorial jurisdiction and to widen one existing offence of labour trafficking.

608. In England and Wales the Government has maintained funding of £2m per annum to support victims of human trafficking. In July 2011 The Salvation Army (TSA) was awarded a contract to provide care and support to identified victims of trafficking. TSA has since subcontracted with a number of specialist organisations to deliver tailored care and support to adult victims, based on their particular needs.

#### *New forced labour and slavery legislation*

609. It is essential that the UK has effective legislation to deal with servitude and forced labour. The behaviour can cause serious harm to individuals and to society. It creates an expectation that labour vacancies can be filled at lower than the legitimate market rate, and it creates unfair competition amongst competing businesses. The UK has a positive obligation under article 4 of the ECHR to protect those within its jurisdiction from slavery, servitude and forced or compulsory labour.

610. Section 71 of the Coroners and Justice Act 2009 created a new offence in England and Wales and Northern Ireland of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour. The offence was to be interpreted in accordance with Article 4 of the ECHR and came into force on 6 April 2010. The maximum sentence on conviction is imprisonment for 14 years.

611. Prior to this legislation trading in slaves was already an offence and there was other pre-existing legislation which could cover behaviour relating to servitude and forced or compulsory labour including false imprisonment, blackmail and assault, employment legislation and trafficking. However, there was no single offence that addressed the specific criminality involved with servitude and forced labour, and some pre-existing offences had lower maximum penalties meaning that offenders might not have been adequately punished. In introducing this offence, it was Parliament's intention to introduce clear, enforceable offences of servitude and forced labour in order to give further and specific protection to those who may be victims.

#### *Scotland: Human Trafficking*

612. The Scottish Government is committed to tackling the abhorrent crime of human trafficking through partnership working with the police, the UK Government, and other stakeholders, and has provided the resources needed to tackle trafficking and the organised crime that lies behind it.

613. In 2010, with additional funding of £4M from the Scottish Government, the Scottish Crime and Drug Enforcement Agency (SCDEA) established the Scottish Intelligence Coordination Unit (SICU) with a purpose and remit designed to improve the coordination

of analysis of information and intelligence, link into the regional intelligence units across England and Wales and into the wider European information sharing initiatives. It has a dedicated Human Trafficking desk tasked with raising awareness across policing, coordinating intelligence activity and developing the best picture of human trafficking across the country. In 2011 the Human Trafficking National Strategic Intelligence Assessment Report, produced by SCDEA, highlighted that trafficking does exist in Scotland but the true extent of it is difficult to quantify.

614. In financial year 2012-13 the Scottish Government has provided funding of £724k to Migrant Helpline and the Trafficking Awareness Raising Alliance to provide support to potential victims of trafficking.

615. In Scotland, the first conviction for the specific offence of human trafficking was secured in September 2011. Many other offenders are prosecuted for prostitution and immigration offences even where the trafficking element is not able to be proved.

616. The Scottish Government cooperated with recent trafficking Inquiries conducted by the Equal Opportunities Committee (14 December 2010), the Scottish Commissioner for Children and Young People (14 March 2011), and the Equality and Human Rights Commission (28 November 2012). The Scottish Government accepts in principle most of the recommendations contained with these reports and during 2012, plans to host a summit with key delivery partners to discuss in terms of policy and delivery what more needs to be done.

617. The Proceeds of Crime Act extends to Scotland. The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 also extends to Scotland, but was amended by the Criminal Justice and Licensing (Scotland) Act 2010, which came into force on 28 March 2011. The amendments mean that a victim does not need to have previously been trafficked into the UK, in relation to the offence of trafficking within the UK. It also expanded the provisions to include exploitation involving the removal of body parts which would amount to an offence other than under the human tissue legislation and introduced a new criminal offence in respect of those who traffic persons into, within or out of a country other than the UK regardless of where the exploitation is to occur.

618. Section 22 of the Criminal Justice (Scotland) Act 2003 created offences of trafficking for the purposes of sexual exploitation, and apply into, out of and within the UK. Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010 amended s22 to extend its scope so that it refers to facilitating 'entry into' the UK as well as the 'arrival in' the UK. A new offence was created under s22(1A) to criminalise those who traffic persons into, within or out of a country other than the UK.

619. The Criminal Justice and Licensing (Scotland) Act 2010 creates a new statutory offence of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour and amends the Antisocial Behaviour etc. (Scotland) Act 2004 to provide a new set of circumstances where notices and orders may be invoked for the closure of premises associated with the commission of human exploitation offences including premises used for certain immigration offences such as the falsification of documents, the housing of victims of trafficking and to house individuals being exploited by way of forced or compulsory labour, slavery and servitude. The Act also raises the age of automatic entitlement to standard special measures from under the age of 16 years to under the age of 18 years when giving evidence in trafficking cases, such as allowing victims to give evidence via video link.

620. The Scottish Government considers that these amendments ensure compliance with the EU Directive on Human Trafficking and will assist in the enforcement and prosecution of trafficking offences.

*Wales: Anti Trafficking Coordinator*

621. The first Anti Human Trafficking Coordinator post for Wales was created in April 2011 with a primary aim of coordinating the best possible support for victims and to make Wales a hostile place for Human Trafficking to exist. The appointment of the coordinator has been successful in utilising existing resources and ensuring we have an appropriate and proportionate response. The Welsh Government is fully committed to targeting the traffickers and supporting victims.

**Oversees Territories****Bermuda**

622. No developments to report under this article.

**British Virgin Islands**

623. No further developments to report under this article.

**Cayman Islands**

624. There have been no developments in the Cayman Islands in relation to this article.

**Falkland Islands**

625. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 4 provides that no person shall be held in slavery or servitude, and no person shall be required to perform forced labour.

626. For the purposes of section 4, forced labour does not include (a) any labour required in consequence of the sentence or order of the court; (b) any labour required of a member of a disciplined force in pursuance of his or her duties as such or any labour that a conscientious objector to military service is required by law to perform; (c) any labour required of any person while he or she is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he or she is detained; or (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community where such labour is reasonably justifiable as a result of the emergency.

627. The Prison Ordinance provides that all male prisoners over the age of 17 and under the age of 60 years who are undergoing a sentence of imprisonment, shall be set to work, if certified by the medical officer to be fit, and may be compelled to work inside and outside the walls of the prison, on such work and at such times and in such manner as may be prescribed in standing orders issued by the Officer in Charge, subject to the approval of the Governor. Female prisoners shall not work outside the prison unless so ordered by the medical officer and shall be employed only on such labour as is suitable for women. The work which a prisoner may be required to undertake may include the necessary services of the prison or of the quarters for the Officer in Charge, but shall not include any personal services for prison officers. The Officer in charge of the prison is the Chief Police Officer.

628. Prisoners work under the direct supervision of the Prison Officer. In so doing they are engaged in such work as general maintenance around the prison buildings and police station. Prisoners are generally supportive of the requirement to work, as it gives them an opportunity to make a beneficial contribution, limits the boredom which they no doubt experience, and enables them to earn a wage of £7.00 per week. Prisoners are not physically compelled to work. Prisoners are not hired to, or placed at the disposal of, private companies, individuals or associations.

629. A community service order may be imposed by the courts upon adult offenders, both male and female, provided the convicted person consents to the making of the community service order. The nature of the unpaid work they are required to do under a community sentence order will be only such work as they are fit to do and may involve assistance to the elderly with gardening and other chores or the maintenance of community property.

#### **Gibraltar**

630. Protection from slavery and forced labour is enshrined in the Gibraltar Constitution Order 2006.

631. The Criminal Procedure Ordinance is now entitled Criminal Procedure Act 1961 (Consolidated legislation) but there have been no further changes since the comments submitted in the sixth report.

632. The Government of Gibraltar passed in Parliament the Criminal Procedure and Evidence Act 2011. This Act provides for community orders for adults and young offenders (16 to 17 at the time of conviction) where the person is required to undertake unpaid work of not less than 40 hours and not more than 240. (sections 521 and 522). These provisions have not yet been commenced so it is not yet law in Gibraltar.

#### **Montserrat**

633. Section 5 of the Montserrat Constitution Order 2010 protects a person from being against held in slavery or servitude and from being required to perform forced or compulsory labour. It excludes from forced or compulsory labour:

- (a) Any labour required in consequence of the sentence or order of a court;
- (b) Any labour required of a member of a naval, military or air force;
- (c) Labour required of a person while he or she is lawfully detained; or
- (d) Any labour required for the purpose of dealing with any situation arising during a period of public emergency.

634. The Penal Code (Amendment) Act, 2010 criminalises the act of dealing in slaves and imposes a sentence of life imprisonment. This includes selling, purchasing or transferring a person as a slave, employing or using a person as a slave, detaining, confining, imprisoning a person as a slave or to be dealt with as a slave, inducing a person to sell another as a slave and constructing selling, purchasing, using, providing with personnel, navigating, or serving on board any ship or aircraft for the purpose of dealing in slaves.

635. It also criminalises the act of dealing in people under 18 for sexual exploitation and the engagement of persons under 18 in forced labour by a person within or outside Montserrat and imposes a sentence of life imprisonment for both offences.

636. The Penal Code (Amendment) Act, 2010 makes the Smuggling migrants and trafficking in people by means of coercion or deception an offence, both carrying a \$500,000 or 20 years imprisonment or both.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

637. Article 6 of the Pitcairn Constitution Order 2010 provides that:

- (1) No person may be held in slavery or servitude.
- (2) No person shall be required to perform forced or compulsory labour.

638. Pitcairn acknowledge these as absolute rights.

639. Traditional communal activities, e.g. making molasses, gathering arrowroot, fishing and the like are continued, although at the discretion of the individual should they wish to participate and benefit.

640. Part V of the Local Government Regulations, the duty of "Public Work" was modified in 2010 to community work carried out under "Civic Obligation".

641. It is at the individual's discretion whether to participate in collective work or services if called on. There is no penalty for non-compliance.

642. Compliant prisoners may be permitted to work for limited periods, including working the longboats or similar for the benefit of the community.

### **St Helena**

643. The new Constitution prohibits slavery or servitude.

644. Prisoners are not compelled to work, it is encouraged through enhanced privileges but no one is punished for not working.

645. Community Service Orders are available to the Courts and most offenders prefer this to a custodial sentence but if they do not wish to undertake community service they can opt for a prison sentence.

### **Turks and Caicos Islands**

646. A large proportion of the labour force in the TCI are migrant workers, often in low or unskilled jobs. This can give rise to concerns about exploitation, trafficking, slavery and forced labour. The 2011 Constitution (Section 4. provides that no person shall be held in slavery or servitude and no person shall be required to perform forced or compulsory labour. Protections for all workers in the TCI are provided under the Constitution and through the Employment Ordinance 2004, as administered by the Employment Services Department and the Labour Tribunal. Migrant workers and migrant employers equally have rights to be heard at the Tribunal. Protection against facilitation of illegal migration is provided currently under the Immigration Ordinance, and by the Border Control and Enforcement Department in partnership with the police and, increasingly, the international network of the UK Border Agency. In early 2011 staff from across a range of departments and agencies, and NGOs, in the TCI attended a training workshop led by the UNHCR and the International Organisation for Migration (IoM) which covered human trafficking and human smuggling. Draft legislation on human trafficking based on a Caribbean model has been drafted, but needs to be adapted to TCI's circumstances, and implementation will have resource implications. The US authorities have offered to provide training in these matters in late 2012. The TCI Government liaises with the IoM where appropriate on cases of "stranded migrants". The TCI Red Cross provides assistance also. See summary re migrant labour attached ("Living and Working in the TCI").

647. Prisoners are not forced to work, but they can do so voluntarily for a token daily remuneration. The Department of Social Development and Gender Affairs as well as the Prisons are guided by the Prisons Ordinance; Juvenile Ordinance as well as the Rights of the Child and National Action Plan for Human Rights.

### **Crown Dependencies**

#### **Isle of Man**

648. No developments to report under this article.

**Bailiwick of Jersey**

649. No further developments to report under this article.

**Bailiwick of Guernsey**

650. There are no further developments to report under this article.

**Article 9 – Liberty and security**

651. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

**Progress since the sixth periodic report****United Kingdom**

652. Since the Sixth report, the UK government has undertaken a review of six of the most sensitive and controversial counter-terrorism powers with the aim of correcting the imbalance that has developed between the State's security powers and civil liberties, restoring those liberties wherever possible and focusing those powers where necessary. The Review of Counter Terrorism and Security Powers was published in January 2011<sup>13</sup> and included a commitment to repeal control orders legislation, which, although compatible with human rights, has proved controversial, and to replace control orders with a more focused system of terrorism prevention and investigation measures.

*Terrorism Legislation*

653. Key terrorism-related legislation introduced since the sixth report submission:

- Counter-Terrorism Act 2008. Its main provisions include:
- Strengthened powers to investigate suspected terrorists and the powers to combat terrorist finance;
- Stronger powers to freeze the assets of terrorists, including enabling intercept material to be used in asset-freezing proceedings;
- Additional police powers to enter and search the properties of individuals subject to control orders in carefully defined circumstances for the purposes of monitoring compliance with and enforcing the control order;
- Powers to take routinely and use non intimate samples and fingerprints from people subject to control orders (the control order related powers have now been repealed);
- Retention and use of fingerprints and DNA acquired under the Terrorism Act 2000 and other biometric material not previously subject to existing statutory restriction (these powers repealed and replaced by a new legal framework by the Protection of Freedoms Act 2012.;
- Tougher sentences for terrorists and new powers for the courts to order the forfeiture of cash and property used for terrorist purposes; and

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<sup>13</sup> See [www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/](http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/)

- New controls on convicted terrorists who come to the end of their sentences, including the power to impose travel bans and a requirement to inform the police about changes of name and address;
- Powers to question terrorist suspects after charge.

654. Terrorism Investigation and Prevention Measures (TPIM) Act 2011. This Act replaced the Control Order regime provided for in the Prevention of Terrorism Act 2005. It allows the Home Secretary to impose a range of restrictions and requirements on an individual that she reasonably believes is, or has been, involved in terrorism-related activity. A TPIM notice must be necessary for purposes connected with protecting the public from a risk of terrorism. The specific measures in any TPIM notice can only be imposed for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity. The measures are civil and preventative in nature (i.e. the suspect has not necessarily been found guilty in a criminal court for the suspected terrorism-related activity so the TPIM notice is not a punishment). There is extensive judicial oversight of the powers, including the automatic review of each TPIM notice by the High Court after it is imposed and full rights of appeal in relation to decisions taken under the TPIM Act. The legislation governing TPIM notices is not permanent (reflecting the exceptional nature of such powers) – Parliament is required to renew the legislation every 5 years.

655. Protection of Freedoms Act 2012. Main provisions include:

- A new framework for police retention of fingerprints and DNA data, and requirement for schools to get parents' consent before processing children's biometric information;
- A new regime for police stops and searches under the Terrorism Act 2000 (set out in detail above); and
- Reduction to the maximum pre-charge detention period under the Terrorism Act 2000 from 28 to 14 days.

656. Details of terrorism-related arrests and charges are as follows:<sup>14</sup>

<i>From 11 September 2001 to 31 December 2011</i>	<i>Number of People</i>
Arrested	2,114
Charged under terrorism legislation	323
Charged under non-terrorism legislation but where offence considered as terrorism	154
Charged under non-terrorism legislation and where offence is considered as non-terrorism activity	277
Convicted	273
Alternative action <sup>15</sup>	210

<sup>14</sup> Source: Home Office Statistical Bulletin: *Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches*. Quarterly update to December 2011. Published 14 June 2012. HOSB 07/12.

<sup>15</sup> Includes cautions for non-terrorism offences, transfers to immigration authorities, transfers to Police Service of Northern Ireland, summonses, those bailed awaiting charge and those dealt with under mental health legislation.

<i>From 11 September 2001 to 31 December 2011</i>	<i>Number of People</i>
Released without charge	1,150

*Case of HV v UK*

657. The European Court of Human Rights (ECtHR) in its October 2004 judgement in *HL v UK* (2005. 40 E.H.R.R. 32 held that the UK was in breach of article 5 and that additional safeguards were needed for people who lack capacity and are deprived of their liberty. The case concerned an autistic man with severe learning disabilities who was informally admitted to Bournwood Hospital under common law. The ECtHR found that he had been deprived of his liberty unlawfully, because of a lack of a legal procedure that offered sufficient safeguards against arbitrary detention and speedy access to a court.

658. The Mental Health Act 2007 inserted new provisions in the Mental Capacity Act 2005, known as the deprivation of liberty safeguards, which came into force in 2008. These have strengthened the rights of hospital patients and those in care homes, as well as ensuring compliance with the European Convention on Human Rights.

659. The aim of the deprivation of liberty safeguards is to provide legal protection for those vulnerable people who are deprived of their liberty otherwise than under the Mental Health Act 1983, to prevent arbitrary decisions to deprive a person of liberty and to give rights to challenge deprivation of liberty authorisations. The safeguards apply to people who lack capacity to consent to care or treatment, and who are suffering from a disorder of the mind.

*UK Government: Additional response to the recommendations contained in paragraphs 14 and 15 of the Committee's concluding observations*

660. Following a letter from the HRC special rapporteur for Follow-up on Concluding Observations addressed to the UK Government of 21 July 2012, we provide the following additional statement on pre-trial detention.

661. The review of counter-terrorism powers concluded that the limit on pre-charge detention for terrorist suspects should reduce to 14 days. The 28 day maximum period of detention for terrorist suspects was always meant to be an exceptional provision. It had become the norm. The current coalition government was not prepared to allow this to continue. The 28 day order was therefore allowed to lapse on 24 January 2011 and it is now 14 days.

662. The Government has drafted emergency legislation to extend the period of pre-charge detention to 28 days. It would only be introduced in order to deal with urgent and exceptional situations. The Government believes emergency fast-track legislation is the most appropriate way to deal with the exceptional circumstances in which longer than 14 days might be necessary. The pre-legislative scrutiny committee conceded that there was no perfect solution – but this provides the best balance between operational requirements and appropriate scrutiny.

663. We will not do anything that puts national security at risk. We have allowed the maximum limit to revert to 14 days because we have concluded that the current 28 day provision is not currently necessary.

*Northern Ireland (UK Government submission on a reserved issue)*

664. "The Part 7 provisions of the Terrorism Act 2000 which concerned Northern Ireland expired on various dates in 2006 and 2007 (see the Terrorism (Northern Ireland) Act 2006. On the 24 May 2007, the Justice and Security (Northern Ireland) Act 2007 came into force.

The purpose of this Act is to deliver a number of measures which are necessary to deliver on the commitment to security normalisation in Northern Ireland. The Act contains some powers which can be used in a range of situations which could include terrorism; it provides the police and military with powers of entry, search and seizure and a compensation scheme is provided for in respect of damage or loss caused by the exercise of the powers in the Act. Although great strides have been made with regard to normalisation, it should be noted that the threat level in Northern Ireland remains at Severe given the threat from dissident terrorist groups.

665. The Diplock system, under Part 7 of the Terrorism Act 2000, ceased to have effect on 31 July 2007. The Justice and Security (Northern Ireland) Act 2007 makes provision regarding juries and non-jury trials and these provisions came into force on 1st August 2007. Sections 10 to 13 of and Schedule 2 to the 2007 Act make provision to reform the jury system in Northern Ireland by amending the Juries (Northern Ireland) Order 1996 to give effect to a number of reforms which it is considered would reduce the risk of juror intimidation and partisan juries by achieving a greater anonymity for jurors and by promoting greater randomness in jury selection. Sections 1 to 8 of and Schedule 1 to the 2007 Act, which provide for trial on indictment without a jury, came into force on 1st August 2007. This was for an initial two year period and Section 9(2) allows the Secretary of State to extend, by Order, on one or more occasions. The provisions have been extended on two further occasions (S.I. 2009/2090 and S.I./ 2011/1720). The current extension will expire on 31st July 2013.

666. Policing and Criminal Justice functions were devolved to the Northern Ireland Assembly and the Department of Justice Northern Ireland on 31st March 2010 via the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (SI 2010/976). The Order amends existing legislation to give effect to the devolution of policing and justice provisions in the Northern Ireland Act 1998 (Amendment of Schedule) Order 2010 (SI 2010/977). The functions are transferred from the Secretary of State to the Northern Ireland Department of Justice (DOJ NI), with some functions being split between the two.'

#### *Length and Conditions of Detention*

667. The UK considers that the legislative framework for the detention of terrorist suspects before they are released or charged is necessary and proportionate.

668. Part 5 of, and Schedule 8 to, the Terrorism Act 2000, as amended by the Terrorism Act 2006, previously allowed for the arrest of those suspected of being a terrorist and their detention prior to charge for a maximum of 28 days. The Government's 2011 review of counter-terrorism and security powers concluded the limit on pre-charge detention for terrorist suspects should be reduced from 28 to 14 days. The last 28 day order therefore lapsed on 24 January 2011 and the Protection of Freedoms Act 2012 removed the order-making power to increase it to 28 days. The maximum is, therefore, now 14 days.

669. To deal with exceptional circumstances, the review of counter terrorism and security powers recommended publication of draft fast-track legislation which could be introduced where more than 14 days was necessary, which would temporarily increase the maximum back to 28 days.

670. Draft legislation was published on 11 February 2011 alongside the Protection of Freedoms Bill, which received Royal Assent on 1 May 2012. The Government believes emergency fast-track legislation is the most appropriate way to deal with the exceptional circumstances in which longer than 14 days might be necessary. This provides the best balance between operational requirements and appropriate scrutiny. The draft emergency bill has been subject to independent Parliamentary pre-legislative scrutiny.

671. All detention beyond 48 hours is subject to judicial authorisation. A judge can only agree to issue a warrant of further detention if satisfied that there are reasonable grounds for believing that the further detention of the person to whom the application relates is necessary and the investigation is being conducted diligently and expeditiously. Section 117 of the Coroners and Justice Act 2009 provides that the Independent Reviewer of Terrorism Legislation (the incumbent is David Anderson Q.C) must be notified of any warrants of further detention issued and may consider as part of his review whether requirements and practises have been complied with in relation to persons detained under section 41 of the Terrorism Act 2000 pursuant to a warrant of further detention (WFD).

672. The compatibility of Schedule 8 of the Terrorism Act 2000 with the ECHR was recently upheld in the Sultan Sher and Duffy court cases.

673. Under Section 66 of the Police and Criminal Evidence Act 1984, generally referred to as PACE, the Secretary of State for the Home Department has a duty to issue codes of practice to regulate the police in the exercise of their powers, following appropriate consultation and Parliamentary scrutiny. There are eight Codes, A to H and together, these set out the core framework of police powers and safeguards for individuals. PACE Code H governs the detention, treatment and questioning by police officers of persons detained under the Terrorism Act 2000 and individuals in respect of whom authorisation has been given under the Counter-Terrorism Act 2008 to question after charge.

#### *Access to a lawyer*

674. This matter was dealt with fully in the UK Government's response to the fifth report. Paragraph 8 of Schedule 8 to the Terrorism Act 2000 enables the police to authorise a delay in permitting a person, detained under the Act, access to legal advice for up to 48 hours only in very limited circumstances. The powers can only be authorised by an officer of Superintendent rank and an officer may give an authorisation only if he has reasonable grounds for believing that granting access to a solicitor would have one of a number of serious consequences, as set out within the Act.

#### *Access to a lawyer (Scottish Government)*

675. The Criminal Procedure (Legal Assistance, Detention and Arrest) (Scotland) Act 2010 creates a legal right of access in October 2010. The Scottish Legal Aid Board now has a duty under the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011, to arrange for solicitors to be available for the purpose of providing advice and assistance to suspects, to whom section 15A of the Criminal Procedure (Scotland) Act 1995 applies. In summer 2011, the police station duty scheme was established to make the right of access work smoothly. The scheme includes providing legal advice via a telephone helpline, providing a duty solicitor in police stations, and facilitating contact with a named solicitor, where the suspect requests this. All suspects requesting advice can secure access to legal advice in a timely manner through the Solicitor Contact Line (SCL), part of the Police Station Duty Scheme and manned continuously by solicitors employed by the Scottish Legal Aid Board. Advice is available automatically to all suspects, although they may have to pay a contribution towards the cost of that advice.

## **Oversees Territories**

### **Bermuda**

676. No developments to report under this article.

### **British Virgin Islands (BVI)**

677. The Police (Amendment) Act 2001 and Evidence Act have been brought into force. The two Acts aim to prevent arbitrary arrest & detention by providing procedural protection for detained persons, including the recording of police interviews.

### **Cayman Islands**

678. The Police Law 2010 and the Police Regulations (the latter is currently under review and will be submitted to Cabinet shortly) enshrines the rights of a person detained in police custody. Section 64 (1. provides that a person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult an attorney-at-law privately and at any time. In addition, pursuant to section 63 (1. the person detained, if he so requests, shall be entitled to have a friend or relative or other person who is known to him or is likely to take an interest in his welfare told as soon as practicable. Custody Officers are also under a legal duty to ensure compliance with the relevant law.

679. A Code of Practice similar to that of the UK has been developed in consultation with the Cayman Islands Human Rights Committee. Police officers, in particular Custody Officers have received training in Custody procedures and human rights.

680. See also information for articles 10 and 12.

681. Prior references to the Immigration Law should be amended to the 2011 Revision.

682. The right to legal advice is now enshrined in section 5 of the Bill of Rights (see information on article 14..

### **Falkland Islands**

683. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 5 provides that every person has the right to liberty and security of person, and no person shall be deprived of his or her personal liberty save as may be authorised by law in certain circumstances specified in the section.

684. Section 5 further provides that a person who is arrested and detained shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands, of the reason for his or her arrest or detention, and shall have the right at any stage to instruct and have private communication with a lawyer. A person who is arrested or detained on reasonable suspicion of having committed or being about to commit a criminal offence, and who is not released, shall be brought promptly before a court. Any person who is unlawfully arrested or detained is entitled to compensation.

685. Section 6 provides that if any person is charged with a criminal offence, then, unless the charge is withdrawn, he or she shall have the right to a fair hearing within a reasonable time by an independent and impartial court established by law.

686. Part IX of the Criminal Justice Ordinance gives a person who is awaiting trial a right to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he or she will fail to surrender to custody, or will commit an offence while on bail, or will interfere with witnesses or otherwise obstruct the course of justice.

687. In 2012 the Falkland Islands Government launched a revised criminal and civil legal aid scheme, extending the scope of financial assistance with legal fees available to persons of limited means. The scheme is administered by the Senior Magistrate who has a discretion to provide legal aid (irrespective of the applicant's means) where the case involves a challenge or declaration as to the effect of the Constitution in relation to the fundamental rights and freedoms of the individual unless such a case is declared to be frivolous or vexatious by the Chief Justice or Senior Magistrate.

688. Section 15 of the Immigration Ordinance provides that if a person makes a claim for asylum, or otherwise claims that on humanitarian grounds it would be unconscionable to take action to require them to leave the Falkland Islands, the Principal Immigration Officer shall grant leave to the claimant and their dependants to remain in the Falkland Islands until the claim is determined. The claim must be investigated and a written report presented to the Governor, who makes a decision on the claim. No appeal lies to any person, tribunal or authority from any decision of the Governor to refuse to grant asylum to any person. While the claim is being determined, the Principal Immigration Officer may grant permission to the asylum-seeker (or one or more dependants) to take up employment. There is no record of any person ever claiming asylum in the Falkland Islands.

### **Gibraltar**

689. No developments to report under this article.

### **Montserrat**

690. Section 6 of the Montserrat Constitution Order 2010 provides protection from arbitrary arrest or detention. It protects a person from being deprived of his personal liberty except where reasonably required and in accordance with law. Hence, the protection may be overridden on suspicion that a person is committing, has committed or is about to commit an offence, in the execution of a sentence or order of a court, for the purpose of preventing the unlawful entry of a person into Montserrat, for the purpose of effecting the expulsion, extradition of a person, in execution of a sentence or order of a court, in respect of a criminal offence of which a person has been convicted and for the protection of the community from a person who is, or is reasonably suspected to be, of unsound mind or for the care or treatment of that person.

691. The Constitution further provides that:

- A person who is arrested or detained must be informed promptly, in a language that he understands, of the reasons for his arrest or detention and of any charge against him.
- A person who is arrested or detained has the right without delay to a legal representative of his own choice but if he is unable to retain a legal representative, he be represented by a legal representative at the public expense, or another person as the court may approve and he must be informed of this right after he is taken to a place of custody.
- A person arrested has the right, to remain silent and to have one person informed by the quickest practicable means of his arrest and whereabouts.
- If a person who is unlawfully arrested or detained by any other person, he is entitled to compensation in respect of it from that other person.
- A person arrested or detained and who is not released must be brought promptly before a judge or other officer authorised to exercise judicial power and if he is not tried within a reasonable time he be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

### *Criminal Procedure Code 2010*

692. The Code empowers a police officer to, at any time on or before the institution of criminal proceedings, release a person on bail, requiring the person to attend a police

station or to attend a Magistrate's Court, on the terms and conditions that the police officer sets.

693. It also provides for the granting of bail to a person, other than a person accused of treason, murder or genocide and allows bail to be granted with or without a surety or sureties.

694. The sections of the legislation addressing bail are, however, not in force as yet.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

695. The Pitcairn Constitution Order 2010; Article 7: Right to Liberty and Security largely protects the fundamental rights of the islanders to Liberty and Security. No islanders (0 per cent) are being held in custody or remand.

696. There are no unlawful immigrants or asylum seekers in Pitcairn due to its particular situation.

697. The remand of prisoners in custody and the granting of bail or home detention are also closely prescribed in recently modernized laws.

698. 3. Justice Part 9. Police Officers (79.) defines the role of police in support of article 9.

#### **St Helena**

699. The Constitution protects our right to liberty as defined by article 9.

700. The Police & Criminal Evidence rules apply on St Helena and all arrested persons have the right to see the Public Solicitor or a Lay Advocate.

701. The only delays which occur in getting someone before a judge do so because of the Island's physical isolation. But video/telephone conferencing help speed up the bail process. Time spent on remand is accounted for when a convicted prisoner is sentenced.

#### **Turks and Caicos Islands**

702. Supported by UK technical assistance, the TCI Government has made significant improvements to the arrangements for immigration detention in recent years. Some of these are reported under article 10: Treatment of Detainees below. For this Article (9. It should be noted that new guidance and training has been provided for Border Control and Enforcement officers in the law on who can be detained when, and the procedures and levels of authorisation which apply. This followed training from UNHCR and IoM on immigration detention, on the needs of vulnerable migrants, and screening for humanitarian protection, in February 2012. During 2011 a cross-departmental working group developed a National Contingency Plan on Irregular Migrants, specifically for the handling of numbers of irregular migrants by boat (attached). The contingency plan has been shared with UNHCR and reflects their comments. They have told us they see it as a model for the Caribbean and have commended it to other territories. Under current instructions, no one under the age of 18 is to be detained in the immigration detention centre.

703. Detention is applied for the shortest time possible in order to establish a person's identity and test their claim to be lawfully admitted into the TCI. Section 5 of the Constitution protects the right to arbitrary arrest or detention.

704. The Ministry's respective departments, Social Development and Gender Affairs as well as the Prisons are all guided by the Migrants Temporary Detention Ordinance and Parole of Prisons Ordinance. The government is also preparing new legislation: "Alternatives to Custodial Sentencing" to allow the Court to make community services orders, curfew orders, drug and alcohol testing orders and to require electronic tagging.

## **Crown Dependencies**

### **Isle of Man**

705. The Criminal Justice, Police and Courts Act 2007 made a number of amendments to relevant Isle of Man legislation, including introducing a power for the Island's courts to impose anti-social behaviour orders based on those available in the United Kingdom, and to impose electronic monitoring requirements.

706. The Immigration (Isle of Man) Order 2008 (UK SI 2008/680. updated the UK Immigration Acts in their application to the Isle of Man, including in relation to the arrest and detention of immigrants.

707. The Anti-Terrorism and Crime (Amendment) Act 2011 made a significant number of amendments to the Island's terrorism legislation as set out in the Anti-Terrorism and Crime Act 2003. The purpose of the new Act was to update the Isle of Man's legislation to take account of certain developments in UK anti-terrorism legislation and to enable the Island to comply with the provisions of certain international instruments relating to countering terrorism. However, UK provisions in respect of control orders (or their successor TPIMs) were not adopted. In addition, the maximum period of pre-charge detention for a terrorist suspect in the Isle of Man continues to be seven days.

### **Bailiwick of Jersey**

708. No further developments to report under this article.

### **Bailiwick of Guernsey**

709. The Mental Health (Bailiwick of Guernsey) Law, 2010 was given Royal sanction on 16 November 2011 and is yet to be brought into force. This law updates previous legislation to ensure that those with mental health problems receive the most appropriate treatment and covers the reception, care and treatment of mentally disordered patients, including the management of their property and other related matters.

*In response to the observation contained in paragraph 17 of the Committee's concluding observations.*

710. There are no equivalent provisions to the control order regime established in the Prevention of Terrorism Act 2005 within the Bailiwick.

*In response to observation contained in paragraph 19 of the Committee's concluding observations.*

711. Right to access to legal advice of any persons arrested or detained on a criminal charge provided for in the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003. There are equivalent provisions in relation to detention for terrorism charges in the Terrorism and Crime (Bailiwick of Guernsey) Law 2002.

*In response to the observation contained in paragraph 21 of the concluding observations*

712. Guernsey forms part of the Common Travel Area and the immigration rules are aligned to those in the United Kingdom by virtue of the Immigration Act 1971 which is extended to the Bailiwick. Part 11 of the Immigration (Bailiwick of Guernsey) Rules 2008, amended by the Immigration (Bailiwick of Guernsey) (Amendment) Rules 2011, describes how applications for asylum are handled. Asylum applicants will be granted asylum in the Bailiwick of Guernsey provided that they are: in the Bailiwick of Guernsey or at a port of entry; a refugee as defined by the United Nations Convention and Protocol relating to the

Status of Refugees; and if refusal would breach this Convention and Protocol. No asylum seekers have been detained in Guernsey since the sixth periodic report.

### Figures for 2011

	<i>PRISON</i>	<i>POLICE</i>	<i>CUSTOMS</i>
Deaths in custody	0	0	0
Complaints against Officers	24	60	5
(a) Upheld	0	2	0
(b) Dismissed	13	15	3
(c) Resolved informally	4	33	1
(d) Other	7	10 <sup>16</sup>	1
(e) Dismissed	-	0	0
Strip searches	-	9	104
Intimate searches	-	0	3
Maximum Prison population – Guernsey	119		
Minimum Prison population – Guernsey	66		
Maximum Prison population – Sark	1		
Minimum Prison population – Sark	0		

### Article 10 – Treatment of detainees

713. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1985) and Amendments (1992).
- European Convention against Torture and Inhuman or Degrading Treatment or Punishment (1987) and Protocols 1 and 2 (1987).

### Progress since the sixth periodic report

## United Kingdom

### Immigration detention

714. Detention remains an unfortunate but essential element in the effective enforcement of immigration control. The primary focus of detention continues to be its use in support of the Government's removal strategy, including the deportation of foreign national offenders. There is a presumption in favour of temporary admission or release and, wherever possible,

<sup>16</sup> This includes one complaint outstanding in Sark for want of action by complainant. It will be 'struck off' in May 2014 (6 years from date of complaint in 2008)

alternatives to detention are used. Detention is used sparingly and for the shortest time necessary.

715. In line with its commitment to end the detention of children for immigration purposes, the Government is committed to a humane approach that fully respects the dignity and rights of families and children who do not qualify to be in the UK. In March 2011 the UK Border Agency implemented a new process to achieve this.

716. The new process involves more systematic engagement with families and seeks to maximise the opportunity for them to cooperate, avoiding the need for enforcement action. It ensures that families are aware of the options available to them, in particular the benefits of Assisted Voluntary Return programmes. When families fail to take up assistance packages, the UK Border Agency will arrange flights for them and require them to check themselves in. Only if the family fail to do so will the UK Border Agency take steps to ensure they leave. All plans for doing this are referred in advance to an independent Family Returns Panel comprising safeguarding and medical experts. These experts advise the UK Border Agency on how these return plans can best take account of the welfare of the children involved.

717. The new family returns process has four stages:

- Decision-making strengthened through the training of specialist family case owners.
- Assisted return, including family return conferences to discuss the family's return home, welfare and medical concerns and the availability of tailored assisted voluntary return packages to help them resettle on their return.
- Required return for families who fail to take up assistance packages, allowing them to remain in the community, but giving two weeks notice to board their flight home and allowing self check-in without the need for enforcement action.
- Ensured return, as a last resort for families who refuse to depart the UK.

718. All return plans at the ensured return stage are referred for advice to the independent Family Returns Panel and may include a stay in new family friendly pre-departure accommodation, Cedars, close to Gatwick Airport. This can house families for short periods (any stay over 72 hours requires ministerial approval and no stay may last longer than 7 days). Welfare and support services at Cedars are provided by the children's charity Barnardo's.

719. The figures for children entering detention have changed significantly since the introduction of the new approach. In the last full year before the new process (2009, 1,119 children entered detention. 2010 was a transitional year during which 436 children entered detention. The new process began in March 2011 and in the whole of that year 99 children entered detention.

720. Detainees are informed of their right to legal representation and how they can access this within 24 hours of their arrival at an immigration removal centre. Information about legal services is readily available in all removal centres and detainees have access to free, on-site legal advice surgeries. Whilst some areas of immigration advice will be removed from the scope of Legal Aid as part of the Legal Aid reforms, this service will continue to facilitate legal advice on asylum, aspects of detention and bail.

721. The routine use of prison accommodation to hold immigration detainees ended in 2002. Prison accommodation continues to be used for individual detainees, particularly foreign national offenders pending deportation on release from custodial sentences, for reasons of security and control in line with published criteria.

*UK Armed Forces – application of UK law to UK personnel on military operations overseas*

722. UK personnel on military operations overseas are subject to English criminal law wherever in the world they operate and are required to act in accordance with applicable human rights law and the law of armed conflict.

723. Wherever the evidence exists to justify doing it, HMG is committed to investigating allegations of any mistreatment by its personnel.

724. In 2010, we set up the dedicated Iraq Historic Allegations Team (IHAT) to establish the truth or otherwise of these allegations and identify any action that needs to be taken. It should be noted, however, that the degree of independence required in such investigations continues to be contested before the domestic courts.

725. The recommendations of the independent Baha Mousa Inquiry which have been accepted by the Government form a comprehensive programme to prevent the recurrence of maltreatment of captured persons and the Government is currently engaged in their implementation.

726. A substantial number of persons alleging maltreatment while in detention have made claims for compensation, and these are being considered by the Government and, where necessary, the courts, in accordance with UK law.

*Baha Mousa inquiry*

727. Baha Mousa died on 15 September 2003 while in the custody of 1st Battalion, Queen's Lancashire Regiment in Basra. Two officers and five soldiers were court-martialled. Only one was found guilty of Inhuman Treatment and was sentenced to 12 months' imprisonment, to be reduced to the ranks and dismissed from the Service. The pressure for a public inquiry was considerable for two main reasons: (1) the investigation and court-martial were felt to be inadequate, resulting in those responsible not being brought to justice, and (2) a number of wider issues not covered by the court-martial needed to be investigated more thoroughly. It was announced in May 2008 that there would be a Public Inquiry. The Inquiry Chairman's Report was published on 8th September 2011

728. It is clear that what happened to Baha Mousa was utterly deplorable; MoD and the Army have apologised wholeheartedly. MoD is determined to continue to learn all possible lessons from this disturbing incident and as acknowledged in the report, much has been done since 2003 to rectify deficiencies.

729. The Chairman has made 73 very helpful recommendations. The evidence from the Inquiry is now being reviewed to see whether more can be done to bring those responsible to justice.

730. MoD acknowledges that some past military practices and training methods were not compliant with acceptable standards. We have worked hard to remedy the deficiencies that have been identified; detention today in Afghanistan is a very different business.

731. The Service Justice System is universally deployable to ensure that any allegation of criminal conduct by a member of the Armed Forces can be properly investigated, no matter where the crime is committed or who the victim may be.

732. See also the submission for the UK Armed Forces for article 7.

*The Al Sweady Inquiry*

733. The Al Sweady Inquiry is investigating the allegations that were the subject of judicial review proceedings also known as Al Sweady. They are allegations of murder of Iraqi nationals by British forces at a British camp in Southern Iraq in May 2004 and

specific allegations by 5 Iraqi nationals of ill-treatment during their detention at the camp and subsequently at a detention facility between May and September 2004. Although the MOD has never found any credible evidence to support these allegations, failings in the disclosure process meant that we could not reassure the Court that it was in possession of all the material it needed to determine with certainty what actually took place. The decision was therefore taken by the MOD that a fresh investigation was necessary and announced on 2 October 2009 that it would establish a public inquiry.

*Detainee inquiry*

734. The Detainee Inquiry was set up in July 2010. It is an independent judge-led Inquiry into allegations of UK involvement in the detention and mistreatment of individuals held by other States. The Government explained at the outset that it would not be possible to formally start the Inquiry until two related police investigations had concluded.

735. The police investigations finished in early January 2012, but the launch of a new police enquiry into related matters prompted the Government to announce on 18 January 2012 that it had decided to bring the work of the Detainee Inquiry to a conclusion, as there was no prospect of it being able to start in the foreseeable future.

736. HMG fully intends to hold an independent, judge-led Inquiry, once all police investigations have concluded.

*Scotland: Treatment of asylum seekers*

737. The Scottish Government is clear that asylum seekers in Scotland must be welcomed, supported and integrated from day one. To ensure this happens the Scottish Government is providing funding of £1.65m to the Scottish Refugee Council between 2012-2015 in order to provide information and support, as well as work in partnership with other organisations to deliver services to asylum seekers and refugees living in Scotland. In addition to this, the Scottish Government is also providing funding to other smaller organisations such as the Bridges Programme, the Integration Networks and Positive Action in Housing to deliver specific projects and services which help support and integrate this group of people.

*Scotland: Investment in prisons*

738. In Scotland, major investment in improving the prison estate has taken place and is continuing. Accommodation at Barlinnie has been upgraded to provide in-cell toilets. New houseblocks have also been completed at Glenochil, Perth and Polmont. New prisons at Addiewell and Low Moss were opened in 2010 and 2012. The Scottish prison estate will be further modernised and improved with the completion of a new replacement prison being fully opened in 2012, Grampian in 2014 and Inverclyde in 2016. Work is also being taken forward to develop the female prison estate.

*Scotland: Treatment of prisoners*

739. In Scotland, the latest Prisoner Survey was undertaken in 2011. SPS and its partner agencies have identified and articulated 9 desirable "Offender Outcomes" and measures have been put in place to assess progress on these.

740. See also the response to article 6.

## Oversees Territories

### Bermuda

741. No developments to report under this article.

### British Virgin Islands (BVI)

742. No developments to report under this article.

### Cayman Islands

743. Section 6 of the Bill of Rights requires the segregation of juvenile prisoners from adult prisoners. This section, unlike most others in the Bill of Rights, will come into effect on 6 November 2013.

744. Construction is underway of a purpose-built facility specifically for the detention of juveniles which will ensure the separation of both remand and convicted young offenders from the adult population. In addition, this will ensure that young persons removed from their homes for the purpose of care and protection, are no longer housed together with those involved with the criminal justice system.

745. Government's long-term plans include the establishment of a new organisation to oversee and manage youth rehabilitation services in the Cayman Islands. This organisation will be responsible for the new purpose-built facility (a Youth Centre), as well as existing Bonaventure facilities, and will ensure that juvenile prisoners are detained and treated in accordance with the Constitution.

746. The Youth Centre will have two cottages to accommodate two groups of 10-12 boys convicted of an offense, along with a separate unit for the secure remand of 10-12 boys and girls awaiting adjudication. Girls convicted of an offence will be placed at the Bonaventure Home. Both the Youth Centre and the Bonaventure Home will have an open dorm layout for staff observation, and offer a daily schedule consisting of education, group counselling, individual counselling, meals, recreation, personal hygiene, dorm cleaning, and bedtime check-ins.

747. At the Youth Centre, the Secure Remand Unit ("the Unit") will be separate and distinct from the other two cottages. The Unit will be significantly more secure with individual rooms to hold up to 12 youth and separated into a boys section and a girls section. The Unit will have a movable wall to increase or decrease the number of rooms needed for boys or girls depending upon the number of youth awaiting adjudication. The Unit will have an open area for the boys and girls for classroom space, individual counselling and recreation.

748. The two facilities (the new Youth Centre and renovated Bonaventure Home), will allow for the humane treatment of juvenile prisoners and those on remand (awaiting adjudication) in a safe and secure environment by 6 November 2013.

749. In addition to addressing the needs of juvenile offenders, it is acknowledged that a significant amount of work needs to be done to improve the adult prison system to ensure that good outcomes are obtained in the essential areas of safety, respect, purposeful activity and resettlement. This will require a comprehensive review and update of all policies, procedures and practices, the implementation of a comprehensive training and professional development programme for all staff and phased improvements to the physical infrastructure. In order to ensure that all action taken in this system-wide improvement process is evidence-based, H.M. Inspectorate of Prisons was asked to conduct a full inspection utilizing their Expectations Document, which was completed in July 2012 and the Portfolio will receive the final report in November 2012.

750. In the interim, feedback from an assessment of the system-wide rehabilitation needs conducted by the Institute of Public Administration of Canada (IPAC) in early 2012 is being used to make critical changes to improve the delivery of rehabilitative services. Currently, a recruitment process is underway to hire a Deputy Director of Prison Rehabilitation and a licensed Clinical Psychologist and there are plans to add an Addictions/Mental Health Counsellor and a Case Manager to the in-house clinical team. These posts are critical to ensure that the required emphasis is placed on Sentence Planning and preparing offenders for re-entry. In addition, a MOU has been drafted between the Prison Service and the Department of Community Rehabilitation to formalize the existing working relationship and foster greater collaboration and asset sharing. Similar MOU's will be entered into with other entities in the public and private sector to create a more robust and responsive internal and external rehabilitation network. An example of this is the Prison Service's recent partnership with the Ministry of Education's new "Workforce Development Unit" which will hopefully result in a greater number of ex-offenders successfully participating in community work release programmes and securing gainful employment post-release.

751. While funding for capital projects is limited it is also recognized that there is a need to modify the existing facilities to ensure that they are human rights compliant. In addition, future infrastructure plans must address the gender specific needs of female offenders and those with mental illness and various disabilities. There is also a need to provide separate facilities for those offenders on remand from those who have been convicted.

#### **Falkland Islands**

752. A new prison was opened in Stanley on 24 March 2009, built onto the eastern aspect of the existing Stanley Police Station. This facility was designed by the Falkland Islands Government's Public Works Department to United Kingdom Home Office specifications for a category C prison.

753. The facility comprises 4 cells with integral sanitation and shower, capable of holding a total of 9 prisoners in bunk beds. A further cell, without sanitation and shower, is intended for short term use as an observation cell for a single prisoner. This and another cell can be separated from the other cells for use by prisoners who are required to be held apart from others (eg. women prisoners or juvenile offenders). All the cells are designated by order as prison cells and as a young offender institute, allowing the most flexible use of the facility, at the discretion of the Officer in Charge, depending on the mix of prisoners being held.

754. This modern facility is warmed by under floor heating and has a controlled ventilation system which is electronically monitored for smoke and air quality. An independent fire detection system is also provided. All the circulation areas within the facility, the observation cell and the exercise yard are covered by Closed Circuit Television and officer panic buttons. All cells are equipped with a call button which, together with the closed circuit television and officer panic alarm system, is linked to a control desk which is manned 24 hours a day.

755. A small kitchen area is provided to allow prisoners to prepare light refreshments and drinks and is equipped with a Refrigerator, Microwave Oven, Toaster and electric kettle. Meals are not prepared in the facility but bought in from the Falkland Islands Government's hospital kitchen. A washing machine and tumble dryer are also provided to allow prisoners to do their laundry.

756. The two main circulation areas are equipped with modular table and seating units where prisoners eat their meals, receive visitors and engage in pastimes such as cards, chess and electronic gaming devices. Each cell can be provided with a television with integral

DVD player and this, together with the use of electronic gaming devices, is provided as a privilege, earned by prisoners for good behaviour, under the prison's privilege scheme.

757. The prison is inspected by an Overseas Prison Advisor, normally on a bi-yearly basis. This advisor was also consulted at all stages of the design and build of the new prison. A board of prison visitors, consisting of 3 justices of the peace, attends the prison, on a no notice basis, at least 4 times a year and has access to all prisoners. All prisoners may request a visit from the board at any time.

758. A new Prison Ordinance and Prison Regulations have been drafted by the Overseas Prison Advisor in consultation with all stakeholders in the Falkland Islands. These draft documents have reached final consultation stage and it is expected that they will become law later this year. The new Ordinance and Regulations have been written to reflect modern thinking and practices from within the prison service in the United Kingdom and in accordance with the Constitution of the Falkland Islands.

759. Section 15 of the Immigration Ordinance provides that if a person makes a claim for asylum, or otherwise claims that on humanitarian grounds it would be unconscionable to take action to require them to leave the Falkland Islands, the Principal Immigration Officer shall grant leave to the claimant and their dependants to remain in the Falkland Islands until the claim is determined. The claim must be investigated and a written report presented to the Governor, who makes a decision on the claim. No appeal lies to any person, tribunal or authority from any decision of the Governor to refuse to grant asylum to any person. While the claim is being determined, the Principal Immigration Officer may grant permission to the asylum-seeker (or one or more dependants) to take up employment. There is no record of any person ever claiming asylum in the Falkland Islands.

#### **Gibraltar**

760. No developments to report under this article.

#### **Montserrat**

761. Section 6 of the Montserrat Constitution Order 2010 provides protection from arbitrary arrest or detention. It protects a person from being deprived of his personal liberty except where reasonably required and in accordance with law. Hence, the protection may be overridden on suspicion that a person is committing, has committed or is about to commit an offence, in the execution of a sentence or order of a court, for the purpose of preventing the unlawful entry of a person into Montserrat, for the purpose of effecting the expulsion, extradition of a person, in execution of a sentence or order of a court, in respect of a criminal offence of which a person has been convicted and for the protection of the community from a person who is, or is reasonably suspected to be, of unsound mind or for the care or treatment of that person.

762. The Constitution further provides that:

- A person who is arrested or detained must be informed promptly, in a language that he understands, of the reasons for his arrest or detention and of any charge against him.
- A person who is arrested or detained has the right without delay to a legal representative of his own choice but if he is unable to retain a legal representative, he be represented by a legal representative at the public expense, or another person as the court may approve and he must be informed of this right after he is taken to a place of custody.
- A person arrested has the right, to remain silent and to have one person informed by the quickest practicable means of his arrest and whereabouts.

- If a person who is unlawfully arrested or detained by any other person, he is entitled to compensation in respect of it from that other person.

- A person arrested or detained and who is not released must be brought promptly before a judge or other officer authorised to exercise judicial power and if he is not tried within a reasonable time he be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

763. Section 19 also makes provision for the protection of persons detained under emergency laws. A person:

(a) must be informed as soon as reasonably practicable and in any case not more than two days after the commencement of detention, of the grounds for his detention;

(b) is entitled to have his case reviewed by an independent and impartial tribunal established by law as soon as practicable and in any case not more than 30 days after the commencement of his detention;

(c) must be afforded a reasonable opportunity to consult a legal representative of his own choice and to hold private communication with the legal representative; and

(d) must be permitted to appear in person or by his legal representative at his hearing.

764. The draft Criminal Procedure Code (Amendment) Bill, 2012 seeks to amend the Criminal Procedure Code 2010 so that an accused who is arrested without a warrant and is charged is brought before a Magistrate within 48 hours, instead of 72 hours.

765. It also requires that an initial hearing of a charge take place within 48 hours of arrest if the defendant has not been granted bail, as opposed to 72 hours.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

766. The Pitcairn Constitution Order 2010; Article 9: Right of Prisoners to Humane Treatment, protects detainees.

767. In the second quarter of 2012 a holding cell was constructed under specialist's recommendations and design.

768. There are currently no detainees in Pitcairn Island.

769. There are no unlawful immigrants or asylum seekers.

770. The enacted Bail Ordinance and Sentencing Ordinance are closely modelled upon New Zealand legislation, giving emphasis to community-based sentences, home detention and restorative justice; these should prove to be of the utmost value in the circumstances of this tiny community.

771. As a result of an agreement between the Governments of the U.K. and New Zealand, certain trials may take place in New Zealand and a prisoner sentenced to imprisonment may, if he or she consents, serve that term in a New Zealand prison.

#### **St Helena**

772. The new Constitution contains provisions for the protection of detainees, including access to legal advice. A recent new Immigration Ordinance provides for secondary legislation to deal with asylum seekers. Work is still in progress to develop policies to lead to such legislation.

773. In their 2001 report ‘Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland. 06/12/2001’, the United Nations Human Rights Committee said: “The Committee is concerned at the mixing of accused and convicted prisoners, especially since St. Helena is not one of the overseas territories to which a reservation to article 10, paragraph 2 (a), of the Covenant has been applied. The State party should ensure that accused and convicted prisoners are appropriately segregated.”

774. Funding has now been secured to build a new prison (completion date 2014. that will more effectively segregate pre charge (PACE) prisoners from remand and convicted prisoners. Segregation now takes place as far as it is possible within the physical constraints of the existing prison.

775. All prisoners have access to the gym, woodwork shop and Maths and English classes. The prisoners with the lower risk categories have access to the prison farm where livestock is reared and vegetables are grown.

776. The take up of these opportunities is encouraged through a reward scheme designed to reinforce good behaviour within the prison regime.

777. Work release is available for qualifying prisoners. Release on Licence or parole is also available.

778. A Juvenile unit at Police Headquarters has been created to accommodate juveniles who have been detained for questioning or are awaiting police bail. Juveniles are not detained overnight and a responsible adult as well as a police officer are always present while they are in the Juvenile unit and being questioned

#### **Turks and Caicos Islands**

779. All adult prisoners serve their sentences in the Turks and Caicos Islands. There is a Visiting Committee as well as a Parole Board that monitor, evaluate, advise and make recommendations on the treatment of detainees.

780. The former immigration detention centre in Providenciales, about which there were significant concerns, was closed, and a new (temporary) centre opened in 2010. This followed the recommendations of a Humanitarian Adviser funded by the UK’s Department for International Development. Work continues with the owner of the centre and with the security contractors to seek to ensure that immigration detainees are held in humane as well as secure conditions. Funding is being provided in 2012/13 for some improvements to the existing centre, which is not purpose built. The Red Cross have monitored conditions and assisted with hygiene supplies, interpreters and family contact for the detainees. TCI Government is setting in place an Independent Monitoring Committee for all forms of detention. The Ministry of Border Control and Labour has recently set in place arrangements whereby immigration detainees can be offered the opportunity for their consular authorities to be notified of their detention, via the UK, with their consent. Attached is the current guidance on immigration detention.

781. Finance has not been available to progress a juvenile rehabilitation centre, but plans are now underway to establish a Juvenile Home in Grand Turk as well as develop a comprehensive Juvenile Rehabilitation program which focuses on education, psychological and emotional health for young offenders. A proposal is also in place to implement a Probation Unit and Alternative to Custodial Sentencing.

## **Crown Dependencies**

### **Isle of Man**

782. The Criminal Justice, Police and Courts Act 2007 amended the Custody Act 1995 to replace the Board of Visitors for every institution in which persons may be detained with an Independent Monitoring Board.

783. In August 2008 all detainees were transferred to the new modern prison that was referred to as being under construction at the time of the last report.

### **Bailiwick of Jersey**

784. During 2010, the Bailiwick of Jersey received a periodic visit by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). The Committee visited a number of places of detention and found no evidence of ill-treatment or abuse. The Committee made a number of positive observations and certain recommendations which have been acted on or are receiving consideration.

785. The ECPT made recommendations relating to certain procedures and policy matters which could readily be addressed or have received consideration by the relevant authorities.

786. However, the ECPT considered that detention facilities in the Police Station were not compliant with the European Convention. Since then active progress has been made to relocate the Police Station to a new purpose-built facility which will meet international standards for detention.

787. The ECPT also recommended that the Jersey authorities take necessary steps to ensure that all juveniles deprived of their liberty in Jersey are held in an appropriate centre for this age group. In view of the practical difficulties in a small island of creating a dedicated facility to manage the infrequent occurrence of juvenile detentions, the Jersey authorities are actively considering the legislative changes required to ensure that juveniles are located in the facility most appropriate for their care.

### **Bailiwick of Guernsey**

788. On 25 November 2009 the States of Deliberation resolved to agree to continue Community Service as an alternative sentence to detention. Community Service has proved a valuable sentence for the Courts to impose, generally as an alternative to an immediate custodial sentence, where it is deemed that the punishment can be undertaken safely within the Community. It was agreed that the restrictions placed upon the offender's liberty, coupled with the positive contribution made to the Community due to the work undertaken, make this an effective and worthwhile sentence.

789. In January 2011, the States of Deliberation resolved to continue to approve the provision of a learning and skills facility for the Guernsey Prison to help offenders to enter employment, training, or education to facilitate legitimate earning capacity and self-support in order to reduce re-offending after an initial pilot scheme. The notion that an offender should leave prison in a better state than he or she entered it is enshrined in the Guernsey Prison Service Statement of Purpose: 'Our duty is to look after them with humanity and to help them lead law-abiding and useful lives in custody and after release'.

790. During 2010 the Bailiwick of Guernsey received a periodic visit by the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). The report, response and press statement from this visit are available

on the ECPT's website<sup>17</sup>. The ECPT noted that there was no evidence of the ill-treatment of persons in police custody or in the Prison. Conditions of detention at the Police Headquarters in St. Peter Port, Guernsey, were recorded as being "on the whole adequate". Material conditions of detention were generally of a good standard in the Bailiwick of Guernsey. However, efforts should continue to be made to improve activities for prisoners, in particular those subject to the "standard" regime; in their responses, the authorities highlight the action being taken in this connection. The Guernsey authorities made changes to activities taking into account the comments of the ECPT with effect from November 2010.

791. The CPT expresses concern about the current practice of holding juveniles (i.e. persons under the age of 18. in the prisons. It emphasises that juveniles who have to be deprived of their liberty should be held in facilities specifically designed for persons of this age. The Committee recommends that for as long as juveniles continue to be held at Guernsey, particular attention be paid to their education (including physical education) and to offering them a wide range of opportunities to develop their life skills. In their responses, the authorities recognise the drawbacks of the present situation and highlight efforts to overcome them. The Guernsey authorities recognised the limitation in relation to the detention of juveniles in prison which is utilised as a last resort. The introduction of a new Children's Law and use of alternative sentencing options is part of the Guernsey's Criminal Justice Strategy is designed to reduce the need to deprive juveniles of their liberty.

792. The ECPT made recommendations relating to certain procedures and policy matters have been addressed in the States of Guernsey response or are being considered by the relevant authorities.

#### **Article 11 – Inability to fulfil a contract**

793. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

#### **Progress since the sixth periodic report**

##### **United Kingdom**

794. No further developments to report under this article.

##### **Oversees Territories**

###### **Bermuda**

795. No developments to report under this article.

###### **British Virgin Islands (BVI)**

796. No developments to report under this article.

<sup>17</sup> <http://www.cpt.coe.int/en/states/gbr.htm>.

**Cayman Islands**

797. The constitutionally recognized grounds for the deprivation of liberty by the State in section 5 of the Bill of Rights (Personal Liberty) do not include a failure to fulfil a contractual obligation.

798. There have been no developments in the Cayman Islands in relation to this article.

**Falkland Islands**

799. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 5 includes a provision that no person shall be deprived of his or her liberty merely on the ground of inability to fulfil a contractual obligation.

800. A court order for the payment of money may be enforced by a number of means including an order for committal to prison, although in practice such an order has not been made in the Falkland Islands for many years (if ever).

**Gibraltar**

801. No developments to report under this article.

**Montserrat**

802. No development to report under this article.

**Pitcairn, Henderson, Ducie and Oeno Islands**

803. There is no such provision within legislation on Pitcairn.

804. Government has developed and operates 'Lending' of money schemes with terms and conditions. Terms and conditions are modelled on New Zealand criteria and do not infringe on a person's liberty.

**St Helena**

805. On St Helena domestic law does not permit the imprisonment of a person on the ground of his failure to fulfil a contractual obligation.

**Turks and Caicos Islands**

806. The domestic law of the Turks and Caicos islands does not permit the imprisonment of any person on the ground of his failure to fulfil a contractual obligation.

**Crown Dependencies****Isle of Man**

807. No developments to report under this article.

**Bailiwick of Jersey**

808. The United Kingdom Government has indicated its unwillingness to support the withdrawal of the derogation in relation to article 11 in reliance only on the Royal Court case law cited; *Benest v. Le Maistre* [1998 JLR 213], and maintains that amending legislation is a pre-requisite. The Government of Jersey's Legislation Advisory Panel is therefore considering whether to initiate such legislation or to reiterate its earlier position that there is now adequate protection to ensure that the United Kingdom will not be in breach of the Covenant.

**Bailiwick of Guernsey**

809. There are no further developments to report under this article.

**Article 12 – Freedom of movement**

810. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union (as amended in Lisbon – 2010).

**Progress since the sixth periodic report****United Kingdom**

811. The control order regime has now been abolished and replaced under the Terrorism Prevention and Investigation Measures Act 2011, which is discussed under Article 9 above.

**Overseas Territories****Bermuda**

812. No developments to report under this article.

**British Virgin Islands (BVI)**

813. No developments to report under this article.

**Cayman Islands**

814. In 2008, an Electronic Monitoring of offenders programme was initiated as a result of the passing of the Alternative Sentencing Law (ASL). The programme consists of a staff of 5 civil servants who use one-piece devices attached to the ankles of offenders. Cellular and GPS technology allows real-time tracking and monitoring of the status of the selected offenders. In addition to the Courts having the option of using Electronic Monitoring as a substitute for incarceration, police, immigration and customs may use it as a condition of bail. Her Majesty's Prison Service uses Electronic Monitoring for those persons who have been granted early release through a Governor's licence. Between 2008 and 30 June 2012, 138 persons have been placed on Electronic Monitoring and the daily average was 30 persons being monitored simultaneously during June 2012.

815. There have been no further developments or amendments to the referred Memorandum of Understanding between Cuba and the Cayman Islands. The reception and registration procedures are followed by the Cayman Islands in keeping with the instrument. Similarly, there are no changes to the repatriation process once the Cuban authorities have acquiesced to their return.

816. The regularity of migration of Cuban nationals arriving by vessels from Cuba to the Cayman Islands has been at the rate of one to two vessels per quarter. The number of migrants per vessel has been on average 15 and peaking to 28. While they arrive in the Cayman Islands with the intention of continuing on to a 3rd country, it is difficult to track their movements once they voluntarily depart Cayman. It should be noted that the MOU

provides that no assistance be given to assist migrants to reach a 3rd country and accordingly the policy is strictly enforced.

817. Once in Grand Cayman, all migrants are housed at the Immigration Detention Centre (IDC). No detention arrangements are made to house migrants at any jail or prison facility while they await hearing of their asylum application or confirmation of repatriation arrangement. The IDC is inspected by the Prison Inspection Board every three months. Medical and dental care is available to any migrant when necessary. Also of note, pastoral visits and visitors are allowed within the parameters of the IDC.

818. There have been no minor children reported in the numbers of arriving migrants over the past three years.

819. All asylum applications are handled in accordance with the UNHCR's procedures and criteria under the 1951 Convention.

### **Falkland Islands**

820. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 8 provides that a person shall not be deprived of the right to move freely throughout the Falkland Islands or the right to reside in any part of the Falkland Islands. It also provides that a person who belongs to the Falkland Islands shall not be deprived of the right to enter, remain in and leave the Falkland Islands. Nothing contained in or done under the authority of any law shall be held to be inconsistent with these rights to the extent that the law makes provision in relation to any of the matters specified in the section.

821. Section 15 of the Immigration Ordinance provides that if a person makes a claim for asylum, or otherwise claims that on humanitarian grounds it would be unconscionable to take action to require them to leave the Falkland Islands, the Principal Immigration Officer shall grant leave to the claimant and their dependants to remain in the Falkland Islands until the claim is determined. The claim must be investigated and a written report presented to the Governor, who makes a decision on the claim. No appeal lies to any person, tribunal or authority from any decision of the Governor to refuse to grant asylum to any person. While the claim is being determined, the Principal Immigration Officer may grant permission to the asylum-seeker (or one or more dependants) to take up employment. There is no record of any person ever claiming asylum in the Falkland Islands.

### **Gibraltar**

822. Protection of freedom of movement is enshrined in section 13 of the Gibraltar Constitution Order 2006. Other than this there are further developments to report under this Article.

### **Montserrat**

823. Section 15 of the Montserrat Constitution Order 2010 protects the freedom of movement, including the right to move freely throughout Montserrat, the right to reside in any part of Montserrat, the right to enter or leave Montserrat and immunity from expulsion from Montserrat. This protection is however subject to limitations, such as a person's lawful detention, the removal of a person from Montserrat to be tried or punished in some other country for a criminal offence under the law of that country, for the imposition of restrictions on the acquisition or use by any person of land or other property in Montserrat or for the imposition of restrictions on persons who are not Montserratians.

824. Further, limitations that are reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons are permitted.

825. The Emergency Powers (Unsafe Areas) (No. 2. Order 2010 restricts freedom of movement in certain parts of Montserrat. Movement in designated unsafe areas is permitted, with the authorisation issued by or on behalf of the Governor or the Police Commissioner. Further, where an emergency alarm sounds or an announcement to evacuate is issued, the unsafe area must be evacuated until re-entry is authorised.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

826. The Pitcairn Constitution Order 2010 – Article 18 protects the fundamental right of islanders to Freedom of Movement.

827. New immigrants or visitors are subject to the provisions of the Pitcairn Immigration Ordinance which governs the entry into, stay in and departure from Pitcairn in regards to persons who do not have the right of abode. A person who does not have the right of abode may be expelled from Pitcairn only in pursuance of a decision reached in accordance with law under the Immigration Control Ordinance.

828. When applying Pitcairn's immigration law, due allowance is made for those who are unable to leave in a timely fashion due to delays in shipping or adverse weather conditions.

829. Those with right of abode (meaning the right of abode in Pitcairn under any law) are not restricted in movement within, travelling to and from Pitcairn Island.

830. Given the island's circumstances there are no asylum seekers on Pitcairn, and there are unlikely to be any in the future. If it were thought that this might change, appropriate planning would take place.

#### **St Helena**

831. The new Constitution contains provisions for the protection of freedom of movement.

#### **Turks and Caicos Islands**

832. The regulation of deportation by the Immigration Ordinance remains unchanged.

833. Further details for article 12 are incorporated in the submission for article 13.

### **Crown Dependencies**

#### **Isle of Man**

834. The Isle of Man's immigration and nationality legislation continues to be linked to that in the United Kingdom. The UK legislation as it has effect in the Island was updated by the Immigration (Isle of Man) Order 2008 (UK Statutory Instrument 2008/680). This Order extends certain provisions of United Kingdom immigration and related legislation to the Isle of Man, with modifications as necessary. In particular, this Order extended provisions contained in the following UK statutes

- (a) The Immigration Act 1971 (c.77);
- (b) The Immigration Act 1988 (c.14);
- (c) The Asylum and Immigration Act 1996 (c.49);
- (d) The Immigration and Asylum Act 1999 (c.33);
- (e) The Nationality, Immigration and Asylum Act 2002 (c.41);
- (f) The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19);

(g) The Immigration, Asylum and Nationality Act 2006 (c.13).

835. The 2008 Order was amended by the Immigration (Isle of Man) (Amendment) Order 2011 (SI 2011/1408). Apart from drafting corrections, the effect of the new order was to extend to the Isle of Man certain further sections of the Immigration, Asylum and Nationality Act 2006 concerning the disclosure of information, and to make amendments consequential on the Civil Partnership Act 2011 (an Act of Tynwald) and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2011 (SI 2011/1158)

836. Copies of the UK legislation as it has effect in the Isle of Man, subordinate legislation made under that legislation in the Isle of Man and other immigration, nationality and passport information can be found on the Isle of Man Government website at: [www.gov.im/cso/immigration/](http://www.gov.im/cso/immigration/)

837. The Anti-Terrorism and Crime (Amendment) Act 2011 inserted a new Part into the Anti-Terrorism and Crime Act 2003 to provide to the possibility of imposing notification requirements on persons in relation to offences committed under the 2003 Act. The provisions are based on those in the UK's Counter-Terrorism Act 2008.

#### **Bailiwick of Jersey**

838. There are no further developments to report under this article.

#### **Bailiwick of Guernsey**

839. The Immigration (Bailiwick of Guernsey) Rules 2008 as amended by The Immigration (Bailiwick of Guernsey) (Amendment) Rules 2011 in force on 1 June 2011 state that Immigration Officers and all staff of the Immigration and Nationality Division of the States of Guernsey will carry out their duties without regard to the race, colour or religion of persons seeking to enter or remain in the Bailiwick of Guernsey and in compliance with the provisions of the Human Rights (Bailiwick of Guernsey) Law, 2000.

#### **Article 13 – Expulsion of aliens**

840. Protection under other international instruments ratified by the UK includes:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- Convention relating to the Status of Refugees (1951) and Protocol relating to the Status of Refugees (1967)
- Convention relating to the Status of Stateless Persons (1954)
- Convention on the Reduction of Statelessness (1962)
- European Agreement on the Abolition of Visas for Refugees (1959)
- European Agreement on Transfer of Responsibility for Refugees (1980)
- Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union (as amended in Lisbon – 2010).

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**Progress since the sixth periodic report****United Kingdom**

841. Please see submissions on Immigration Detention under article 10.

**Oversees Territories****Bermuda**

842. No developments to report under this article.

**British Virgin Islands (BVI)**

843. No developments to report under this article.

**Cayman Islands**

844. See response to article 12.

**Falkland Islands**

845. Section 5(6) of the Immigration Ordinance 1999 sets out the circumstances in which a person who does not belong to the Falkland Islands may be liable to deportation from the Falkland Islands; the provisions cover both aliens who are lawfully present in the Falkland Islands and those who are unlawfully present.

846. Schedule 3 provides that the Governor may not make a deportation order without notifying the person concerned in writing of his intention to make a deportation order, the relevant grounds upon which it is intended the deportation order will be made, and the country to which it is intended to deport the person. The person concerned must be given at least 7 days in which to make written representations against the making of the deportation order or objecting to the country to which it is intended he or she shall be deported. The Governor shall not make a deportation order until the period for representations has elapsed, and shall consider any written representations made by the person concerned.

**Gibraltar**

847. No further developments to report under this article.

**Montserrat**

848. Section 15 of the Montserrat Constitution Order 2010 protects the freedom of movement, including the right to move freely throughout Montserrat, the right to reside in any part of Montserrat, the right to enter or leave Montserrat and immunity from expulsion from Montserrat. However, limitations on this protection permit the expulsion of non-Montserratians, where it is done by law or done under its authority.

849. The Immigration (Amendment) Act, 2009 makes provision for a person to make an asylum claim if he wishes to remain in Montserrat as a refugee. The Chief Immigration Officer is empowered to grant exceptional leave; however he is also empowered to revoke, vary or modify the leave. He is also empowered to grant refugee status, which gives the refugee leave to remain indefinitely in Montserrat and to apply for asylum on behalf of a spouse, dependent child under 18 years or another relative by blood or marriage, who is dependent on him. Where an asylum claim is unsuccessful, the person may be issued a deportation order by the Governor.

850. The Chief Immigration Officer is obligated to consider every asylum application made within 30 days of the application being so made, unless it is impossible or inexpedient to do so and must have regard to the Refugee Convention and any directions given by the Governor relating to asylum applications.

851. A person whose asylum claim has been refused may appeal to the Immigration Appeals Tribunal against the refusal on the grounds that requiring him to leave Montserrat would be contrary to the Refugee Convention and he may alternatively appeal to the High Court from a decision of the Immigration Appeals Tribunal on a point of law only.

852. The Immigration (Asylum Appeals) Rules 2009 ensure that proceedings before the Immigration Appeals Tribunal are handled as fairly, quickly and efficiently as possible.

853. The Immigration (Amendment) Bill 2012 seeks to achieve the free movement of citizens of protocol Member State of the OECS, in accordance with the OECS regional integration process. As such, it provides for a citizen of protocol Member State to enter and remain in Montserrat for an indefinite period and removes the requirement for a citizen of a protocol Member State to produce evidence of a return ticket on entry into Montserrat. However, it permits a revocation of the right to enter Montserrat where a citizen of a protocol Member State is deemed to be a prohibited immigrant.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

854. The Immigration Control Ordinance was revised in 2010.

855. An alien unlawfully in Pitcairn can be lawfully expelled in accordance with an enabling provision of the Immigration Control Ordinance 2010 and after the fulfilment of any rights conferred by that provision.

#### **St Helena**

856. Persons who do not have St Helenian status who illegally land or remain in St Helena, who are convicted of an offence against the Immigration and Passport Ordinance or whose presence would in the opinion of the Governor, acting after consultation with the Chief Immigration Officer, be undesirable and not conducive to the public good are subject to deportation.

#### **Turks and Caicos Islands**

##### *Article 12: freedom of movement; and article 13: expulsion of aliens*

857. These are covered by Section 15 of the 2011 Constitution of which provides that no one who is not a Turks Islander may be expelled from the Islands unless the decision is taken by an authority, in a manner and on grounds prescribed by law; and that due process is followed including rights of representation and review.

858. Under the Immigration Ordinance a person who is not both a British Dependent Territories citizen and a Belonger or who is not a permanent resident may be deported for the Turks and Caicos islands if he (a) has remained in the Islands contrary to any provision of the Immigration Ordinance, and the Director of Immigration has recommended that he be deported; (b) has been convicted of any offence against the Immigration Ordinance or of an offence against any other Ordinance and the court so convicting that person has recommended that he be deported; (c) is a person whose presence in the Islands would in the opinion of the Director Of Immigration be undesirable and not conducive to the public good and the Director of Immigration or the Immigration Board, as the case may be, has recommended that he be deported; or (d) is a person whose presence in the Islands would in the opinion of the Governor, acting in his discretion in the exercise of his special

responsibilities under the Constitution, be undesirable and not conducive to the public good.

859. However, a deportation order cannot be made in respect of a person who is the spouse of a Belonger and who is living together with the Belonger unless that person has been convicted of a criminal offence and sentenced to not less than 12 months imprisonment and the court which convicted him recommended deportation.

860. Concerns have been raised, including in the Immigration Review Commission 2004 ("Blue Ribbon Commission"), that the immigration department has for many years been arbitrarily removing people from the territory without due process. But no one who entered the Territory lawfully can be removed, by law, except by deportation under Section 62 of the Immigration Ordinance, which (as amended in 2012) sets out the circumstances in which anyone who is not a Belonger, a British overseas territories citizen, a permanent resident, or the spouse of a Belonger living with the Belonger, may be deported if they are in breach of the Immigration Ordinance; or have been convicted and recommended for deportation by the court; or if the Director of Immigration or the Governor is satisfied that their deportation would be conducive to the public good.

861. The Ministry of Border Control and Labour now has a clear written procedure for deportation, providing for due process, and the Border Control and Enforcement officers have been issued with guidance, and been trained, in this. All decisions to deport must be weighed against the strength of the individual's connections with the Islands and with the full circumstances of their case.

862. People who enter the Islands illegally (for example by boat) may be removed by the authority of the Director of Immigration in the same way as if they had been refused entry, but the policy and practice is that they should not be removed without being screened for humanitarian protection, and otherwise assessed for special needs. The UNHCR came to the TCI in February 2011 to train officers in screening for humanitarian protection, and has taken a close interest in the development of policies and practice in the Territory. It is hoped that the UNHCR will make a return mission during 2012.

## **Crown Dependencies**

### **Isle of Man**

863. Please see the information provided under article 12.

### **Bailiwick of Jersey**

864. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

865. There are no further developments to report under this article.

## **Article 14 – Procedural guarantees**

866. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## Progress since the sixth periodic report

### United Kingdom

#### Legal aid reform

867. The new legal aid scheme in England and Wales brought under the Legal Aid, Sentencing and Punishment of Offenders Act will commence in April 2013. This is aimed at focussing funding for civil legal aid on the most important cases, whilst maintaining the current criminal legal aid system. The new scheme focuses funding on cases where people's life or liberty is at stake, where they are at risk of serious physical harm or immediate loss of their home or where their children may be taken into care. The reform to the system builds on the Government's commitment to ensure continued access to justice, whilst at the same time achieving a more affordable system. These reforms go jointly with the Government's proposals to modernise civil justice and the forthcoming reforms to family justice of which legal aid is just one element of a broader agenda for change. The ultimate aim is a fundamental shift in the way the justice system works, for an equitable system based on continued access to justice, earlier resolution of disputes and less complexity.

#### *Scotland: Procedural guarantees*

##### *Access to a lawyer*

868. The Scottish Government has provided in legislation the right of persons suspected of having committed a crime and questioned by the police to be provided with legal representation. This ensures that the integrity of the Scottish legal system is maintained and enhances public confidence.

##### *Delay in criminal proceedings*

869. Under Scots law, strict time limits apply to prosecutions for the most serious custody cases. The indictment, which details the charges which the accused will face, must be served within 80 days of the accused being fully committed in custody. Where proceedings are taken before a jury in the Sheriff Court, the trial must start within 110 days of full committal. A First Diet must take place not less than 10 days before the trial. That calling of the case gives the Sheriff an opportunity to ascertain the state of preparation of the parties generally, and he will only allow the matter to proceed to trial when the parties are ready. The procedure and time limits which apply are slightly different in the most serious cases, which are heard in the High Court. There, the next step after full committal is the preliminary hearing which must occur within 110 days from the point of full committal. This Hearing gives the judge, among other things, a chance to ascertain the state of preparation of the parties, and he will only allow the matter to proceed to trial when the parties are ready. The trial in custody cases must begin within 140 days. For less serious (non jury) offences 74 per cent of cases are completed within 26 weeks. An ongoing change programme seeks to restructure courts to improve case management and widen access to justice.

##### *Right to silence*

870. Suspects in criminal proceedings have a fundamental right to remain silent in the face of police questioning. This is an absolute right in Scotland, subject only to the need to answer certain questions seeking basic facts such as name and address. Unlike England and Wales, Scottish courts do not permit an adverse inference to be drawn from the silence of

an accused person when questioned by the police. This distinction was approved by a judicially led review in 2011.

*Prosecution disclosure*

871. Scots criminal law on disclosure of evidence was overhauled in the Criminal Justice and Licensing (Scotland) Act 2010. This fully committed in statute the duty on prosecutors to disclose all relevant information in criminal proceedings to the accused.

*Bad character evidence*

872. Evidence of previous bad character is not generally permissible as evidence in Scottish courts unless it is sufficiently relevant to the proof of a crime. This subject has however been the subject of a recent review by the Scottish Law Commission, who recommended in favour of permitting relevant bad character evidence a broader range of circumstances.

*Legal aid*

873. The Scottish Government has already taken forward significant reforms to the legal aid system. In the 2007-11 Parliament, financial eligibility for civil legal aid was substantially widened, so that over 70 per cent of the Scottish population potentially qualify. A further series of changes were made following the UK's 2010 Spending Review to reduce expenditure, while maintaining the broad scope of the legal aid system. The Scottish Government published its detailed plans for the ongoing reform of the legal aid system in Scotland in October 2011 in the paper *A Sustainable Future for Legal Aid*. The ambition is to build on the Government's existing commitment to access to justice by maintaining a fair, high quality and equitable system which maintains public confidence at an affordable and sustainable level of expenditure.

*Plans for wider reform*

874. The Scottish Government are actively looking to make further improvements to criminal law and procedure and commissioned Lord Carloway to undertake an independent review to consider long term reform of criminal procedure (reported November 2011). The Report is focused upon 'future proofing' against future human rights challenges. A consultation on adoption of Lord Carloway's recommendations was launched on 2 July 2012 and will run for 3 months. Key recommendations in the Carloway Report include: the right to legal advice when taken into police custody; limiting the period of arrest before charge to 12 hours; particular protections and rights for children and vulnerable adults; greater flexibility for police in conducting investigations whilst ensuring fairness for suspects; less restrictive rules around evidence and a removal of the need for corroboration; adjustments to the relationship between the Scottish Criminal Cases Review Commission (SCCRC) and the High Court.

*Northern Ireland (Northern Ireland Office): Nonjury trial*

875. Sections 1 – 9 of the Justice and Security (Northern Ireland) Act 2007 provide for non-jury trials in Northern Ireland. Unlike the previous "Diplock Courts", under the 2007 non-jury trial provisions, the presumption is always that indictable cases are tried before a jury, unless a judgment is taken that the administration of justice might be impaired if there was a jury trial.

876. The current non-jury provisions will expire in June 2013, unless renewed in Parliament for a further two years. Non-jury trial can take place where the Director of Public Prosecutions (DPP) considers that:

- That the defendant is, or is an associate of, a current or former member of a currently or formerly proscribed organisation;
- That the offence was committed on behalf of a proscribed organisation, or that a proscribed organisation was involved with the carrying out of the offence;
- That an attempt was made to prejudice the investigation or prosecution, by or on behalf of a proscribed organisation; and
- That the offence was committed as a result of, or in connection with, or in response to, religious or political hostility.

877. A certificate can be made and lodged with the court at any point before arraignment.

878. The Police Service of Northern Ireland (PSNI) indicate an initial view to the DPP on whether a certificate for non-jury trial should be issued. If the PSNI indicate that a certificate should be issued, the PSNI is then asked for a considered view on whether the conditions for non-jury trial are satisfied. This view may refer to the views of the investigating officer, the Detective Superintendent and any material facts or information, including intelligence. This report is forwarded to the DPP, who considers if a certificate should be issued.

879. The legislation only allows an appeal on the grounds of dishonesty, bad faith or other exceptional circumstances (such as lack of jurisdiction or error of law). This principle reflects the case law which emerged following the *Re Shuker and others* case, which challenged the Attorney General's power to deschedule a Diplock case. Lord Chief Justice Kerr ruled that it was not appropriate for the Courts to review the Attorney General's decision for non-jury trial because it was similar to a decision of whether or not to prosecute. Parliament has entrusted these decisions to the Attorney General and so the courts should be reticent in reviewing such decisions. However, LCJ Kerr ruled that Judicial Review ought to be allowed in limited circumstances, where bad faith, dishonesty or other exceptional circumstances could be proved.

880. The limited grounds for challenging the issue of a non-jury trial certificate, as set out in section 7 of the Act, were recently challenged in the *Arthurs' (Brian and Paula) Application [2010]* on the basis that the DPP's decision for non-jury trial was procedurally unfair and contrary to Article 6 ECHR (right to a fair trial). The Court dismissed the appeal on both grounds.

881. The number of non-jury trials in Northern Ireland remains relatively low. During 2011, the DPP issued 29 certificates for non-jury trials. In 2010 the number of certificates issued was 14.

## **Oversees Territories**

### **Bermuda**

882. No developments to report under this article.

### **British Virgin Islands (BVI)**

883. No developments to report under this article.

### **Cayman Islands**

884. The requirements of due process (right to silence; to be informed of reason for arrest; right to instruct counsel, etc) are enshrined in section 5 (Personal Liberty) of the Bill of Rights. Section 19 also requires that all decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair. While these constitutional provisions

are not yet in force, in practice they are duly observed (the former arising from well-established common law principles and the latter most commonly invoked in applications for judicial review).

### **Falkland Islands**

885. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 5 provides that every person has the right to liberty and security of person, and no person shall be deprived of his or her personal liberty save as may be authorised by law in certain circumstances specified in the section.

886. Section 5 further provides that a person who is arrested and detained shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands, of the reason for his or her arrest or detention, and shall have the right at any stage to instruct and have private communication with a lawyer.

887. Section 6 provides that if any person is charged with a criminal offence, then, unless the charge is withdrawn, he or she shall have the right to a fair hearing within a reasonable time by an independent and impartial court established by law. Every person who is charged with a criminal offence –

(a) shall be presumed to be innocent until he or she is proved to be or has pleaded guilty;

(b) shall be informed orally and in writing as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;

(c) shall be given adequate time and facilities for the preparation of his or her defence;

(d) shall be permitted to defend himself or herself before the court in person or by a legal representative (at the public expense where the interests of justice so require);

(e) shall be afforded facilities to examine the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his or her behalf on the same conditions as those applying to prosecution witnesses;

(f) shall be permitted to have without payment the assistance of an interpreter at court if he or she cannot understand or speak English;

(g) shall, when charged before the Supreme Court, have the right to trial by jury or before a judge sitting alone, as he or she may choose;

(h) shall not be compelled to give evidence at the trial.

888. Except with his or her own consent, the trial of a person charged with a criminal offence shall not take place in his or her absence, unless that person so behaves in the court as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered that person to be removed, or the court, being satisfied that no injustice will result, orders the trial to proceed in that person's absence on account of the abscondment or involuntary illness or incapacity of that person.

889. No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence. No penalty shall be imposed for any criminal offence that is more severe than the maximum penalty that might have been imposed for the offence at the time when it was committed.

890. No person who has been tried for a criminal offence and either convicted or acquitted shall again be tried for that offence, save upon the order of a superior court in the course of appeal or review proceedings, or save where a court makes an order under an

Ordinance permitting a person to be retried where in all the circumstances a retrial is in the interests of justice.

891. No person shall be tried for a criminal offence for which he or she has already been pardoned.

892. Where a conviction is quashed or a convicted person is pardoned on the basis that a newly-disclosed fact shows that there has been a miscarriage of justice, the person concerned shall be compensated out of public funds for any punishment that he or she has suffered as a result of the conviction unless it is proved that the non-disclosure in time of that fact was wholly or partly his or her fault.

893. Section 6 further provides that for the determination of the existence or extent of his or her civil rights and obligations, every person shall have the right to a fair hearing within a reasonable time before an independent and impartial court or other authority established by law.

894. Except with the agreement of all the parties to them, all criminal and civil court proceedings shall be held in public. This does not prevent the court or other authority from excluding from the proceedings persons other than the parties to them and their legal representatives to such an extent as the court or other authority may by law be empowered to do in the interests of justice, the welfare of minors, the protection of the private lives of persons concerned in the proceedings, defence, internal security, public safety, public order or public morality.

895. The Criminal Justice Ordinance makes specific provision for juvenile defendants.

896. The Administration of Justice Ordinance gives to any person convicted of a criminal offence the right to have his conviction and sentence reviewed by a higher court.

897. In 2012 the Falkland Islands Government launched a revised criminal and civil legal aid scheme, extending the scope of financial assistance with legal fees available to persons of limited means (earnings below £17,500 and capital below £10,000.. The scheme is administered by the Senior Magistrate who has a discretion to provide legal aid (irrespective of the applicant's means) where the case involves a challenge or declaration as to the effect of the Constitution in relation to the fundamental rights and freedoms of the individual unless such a case is declared to be frivolous or vexatious by the Chief Justice or Senior Magistrate.

898. There are no allegations of transit rendition flights through the Falkland Islands. The Falkland Islands National Aviation Security Programme ensures that Falkland Islands airports are not used for such purposes.

899. The Falkland Islands does not have any legislation on anti-social behaviour orders (ASBOs) or similar provision.

900. The Criminal Procedure and Investigations Ordinance 2003 is based on the Criminal Procedure and Investigations Act 1996. The principles applying to the disclosure of sensitive evidentiary material are the same as those in England & Wales. Unused material that meets the disclosure test can be withheld from the defence only if the court decides that the public interest lies in favour of its non-disclosure. Where the court orders disclosure, the prosecution must either disclose the material or cease the prosecution. The Falkland Islands Government is currently drafting a protocol clarifying how disclosure arrangements work in practice, given the different issues that can arise in a unitary authority encompassing police, prosecution, prison, probation, social services, health, education and housing services.

*Abolition of illegitimacy*

901. Section 22(5) of the Falkland Islands Constitution Order 2008 (UK S.I. 2008, No. 2846, which came into force on 1 January 2009) defines those persons who are to be regarded as belonging to the Falkland Islands by virtue of holding Falkland Islands Status. The Constitution does not differentiate on the basis of illegitimacy or which parent status is derived from.

902. An amendment is to be proposed to the Children Ordinance 1994 which will automatically grant parental responsibility on the father of a child born to a woman to whom the father is not married provided he is named as the father on the child's birth certificate.

**Gibraltar**

903. The Terrorism Ordinance 2005 is now entitled the Terrorism Act 2005. An amendment to the Act in 2007 also transposed Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

904. Gibraltar also has adopted other Terrorism legislation. This is contained in the Terrorist Asset Freezing Regulations which involves Council Regulation (EC) No. 2580/2001 on certain restrictive measures directed against certain persons and entities with a view of combating terrorism and UN Security Council Resolution 1373 (2001, adopted by the Security Council of the United Nations on 28th September 2001) and Resolution 1452 (2002, adopted by the Security Council of the United Nations on 20 December 2002) and the Counter-Terrorism Act 2010.

**Montserrat**

905. Section 6 of the Montserrat Constitution Order 2010 provides protection from arbitrary arrest or detention. It protects a person from being deprived of his personal liberty except where reasonably required and in accordance with law. Hence, the protection may be overridden on suspicion that a person is committing, has committed or is about to commit an offence, in the execution of a sentence or order of a court, for the purpose of preventing the unlawful entry of a person into Montserrat, for the purpose of effecting the expulsion, extradition of a person, in execution of a sentence or order of a court, in respect of a criminal offence of which a person has been convicted and for the protection of the community from a person who is, or is reasonably suspected to be, of unsound mind or for the care or treatment of that person.

906. Section 7 of the Montserrat Constitution Order 2010 provides for any person charged with a criminal offence to be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

907. The procedural guarantees secured to a person include

- (a) A presumption of innocence until he is proved guilty according to law;
- (b) The right to be informed promptly, in a language that he understands and in detail, of the nature and cause of the accusation against him;
- (c) Adequate time and facilities for the preparation of his defence;
- (d) The opportunity to publicly defend himself before the court;
- (e) The opportunity examine prosecution witnesses and to testify before the court;
- (f) The right to an interpreter if he cannot understand or speak the language used at the trial of the charge;

- (g) The right to trial by jury when tried before the High Court;
- (h) The right to choose not to give evidence in his own trial;
- (i) The right to a review of his conviction or sentence by a higher court;
- (j) Protection from being tried for a criminal offence if he has already been tried for that offence and either convicted, acquitted or pardoned; and
- (k) Protection from being held guilty of a criminal offence for an act which did not at the time of commission constitutes an offence.

908. The Criminal Procedure Code 2010 improves the procedure to be followed in criminal cases. It covers a wide range of areas including preliminary procedures in court, adjournments and remand, bail, disclosure, procedure in respect of juveniles, jury trial and sentencing.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

909. The Pitcairn Constitution Order 2010 – Article 8 Right to a Fair Trial, Article 10 No Punishment without Law, Article 20 Just Administrative Action, Article 25 Enforcement of Protective Provisions (1-15., largely guarantees procedural rights.

910. CAP 3. Justice Ordinance, revised 2010, in general defines the jurisdiction of the Island Magistrate, prescribes the procedure of the Magistrate's Court and makes provision for evidence and procedures in all criminal proceedings and other matters incidental to the administration of justice.

911. As reported under articles: 2 and 26 – Non-Discrimination and Equality before the Law, in this seventh submission, the Pitcairn Island Constitution protects most civil and political rights and provides for an additional remedy for its Constitutional rights if no other effective and adequate remedy exists (provision 25 of the schedule to the Constitution).

912. The usual civil, administrative (such as judicial review) and criminal remedies are used to enforce rights.

913. Pitcairn has an established judiciary; it has an island magistrate, senior magistrates and judges of the Supreme Court and Court of Appeal who may hear cases in Pitcairn or elsewhere if circumstances require it. The Judicial Committee of the Privy Council is the final court of appeal.

914. The Judicature Amendment Ordinance 2002 allows for the sitting of Pitcairn Courts in New Zealand for the purpose of a Pitcairn trial.

915. Judicature (Courts) Ordinance revised 2011 provides:

3. (1) The judges of the Supreme Court shall be the Chief Justice and up to four other judges or acting judges.

916. Judicature (Courts) (Magistrates' Retirement Age And Filing Of Documents) Amendment Ordinance 2011 provides:

11B. Every magistrate shall retire from office on attaining the age of 70 years.

917. The Constitution provides the opportunity for an independent Ombudsman to be set up under a separate law to investigate 'any complaint of maladministration in the government of Pitcairn or such other matters as may be prescribed by Ordinance.' (Sections 59 and 60 of schedule to the Constitution).

918. In 2012 the 'Ombudsman Ordinance 2012' was enacted. The ordinance prescribes the functions, powers and jurisdiction of ombudsmen in Pitcairn

919. Legal Aid is provided for in criminal cases under Pitcairn law Chapter 9 Legal Aid (Criminal Proceedings) Ordinance, which provides for legal aid costs to persons with insufficient means.

920. The Justice Ordinance revised 2010 ensures right to a fair trial and public hearing.  
33. Public Defender in Criminal proceedings, of Pitcairn law provides for the office of Public Defender in criminal proceedings.

### **St Helena**

921. The new Constitution contains provisions adapted to the particular circumstances of each part of the territory, to allow access to legal advice for detained persons.

### **Turks and Caicos Islands**

922. The requirements of article 14 are reflected in section 6 of the 2006 Constitution. However, the provision regarding a person's right to trial by jury was suspended by the Turks and Caicos Islands Constitution (Interim Amendment) Order 2009 which suspended certain provisions of the Constitution.

923. In 2010 the Governor signed into domestic law the Trials Without A Jury Ordinance. This Ordinance provides for trials on indictment without jury. The legislation was introduced with regard to concerns about the ability to conduct fair trials by jury, drawn from a small community, for high profile cases involving former political leaders accused of corruption as identified by the Commission of Inquiry. The 2011 Constitution reflects the requirements of Article 14. The 2011 Constitution is silent on trial by jury.

## **Crown Dependencies**

### **Isle of Man**

924. The Administration of Justice Act 2008, which came fully into operation in September 2009, made new provision with respect to the judges of the High Court, it modernised the law relating to the admission of hearsay evidence in civil proceedings and amended enactments relating to civil proceedings and the administration of justice.

925. The Rules of the High Court of Justice 2009 made comprehensive, updated provision for the procedures of the High Court in civil matters. These Rules are available online at the website of the Isle of Man Courts of Justice ([www.courts.im/](http://www.courts.im/)) which has been established to provide information to the public on range of matters relating to the Island's Courts.

926. In respect of the information provided in paragraphs 160 to 162 of the sixth periodic report, the Tynwald Commissioner for Administration Act 2011 (which essentially provides for an Ombudsman) and the Tynwald Auditor General Act 2011 have been passed. These Acts are not yet in operation as the resource implications of establishing these new offices needs to be carefully assessed.

### **Bailiwick of Jersey**

927. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

*In response to the observation contained in paragraph 13 of the Committee's concluding observations*

928. The UK Immigration Act 1971 is extended to the Bailiwick and immigrations rules apply in respect of arrivals at Guernsey airport to those in the United Kingdom. There is no evidence that Bailiwick airports have been used for transiting rendition flights. The Bailiwick authorities do not have any policy supporting the use of the Bailiwick airports for transiting rendition flights.

*In response to the observation contained in paragraph 17 of the Committee's concluding observations*

929. There are no equivalent provisions to the control order regime established in the Prevention of Terrorism Act 2005 within the Bailiwick.

*In response to the observation contained in paragraph 18 of the Committee's concluding observations*

930. Not applicable

*In response to the observation contained in paragraph 19 of the Committee's concluding observations*

931. Right to access to legal advice of any persons arrested or detained on a criminal charge provided for in the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003. There are equivalent legislative provisions in relation to detention for terrorism charges in the Terrorism and Crime (Bailiwick of Guernsey) Law 2002.

*In response to the observation contained in paragraph 20 of the Committee's concluding observations*

932. There is no equivalent provision to the anti-social behaviour orders made under the UK Crime and Disorder Act 1998 in the Bailiwick of Guernsey.

### **Article 15 – Retrospective punishment**

933. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

### **Progress since the sixth periodic report**

#### **United Kingdom**

934. No developments to report under this article.

#### **Oversees Territories**

##### **Bermuda**

935. No developments to report under this article.

**British Virgin Islands (BVI)**

936. No developments to report under this article.

**Cayman Islands**

937. No issues under this Article have arisen in the Cayman Islands.

**Falkland Islands**

938. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846) came into force on 1 January 2009. Section 37 provides that the Governor, with the advice and consent of the Legislative Assembly, may make laws for the peace, order and good government of the Falkland Islands. Section 53 provides that no law made under section 37 shall come into operation until it has been published in the Gazette, but, where the law in question expressly so provides, the coming into operation of any such law may be postponed and any such law may be given retrospective effect. Under section 6(5), no person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

939. Under section 53(1) of the Crimes Ordinance a person may not be prosecuted in respect of any act or omission which did not constitute an offence at the time it was done or made. Under section 53(2), a person is not liable in respect of any offence committed before the commencement of the Ordinance to any more severe punishment than that to which he would have been liable if that Ordinance had not been enacted.

**Gibraltar**

940. The general rule, explained in the sixth periodic report, that no Ordinance is to be construed to have a retrospective effect unless such a construction appears very clearly in the terms of the Ordinance, or arises by necessary and distinct implication, has been updated to replace the term Ordinance with 'Act'. There are no further developments since the last report.

**Montserrat**

941. Section 7 of the Montserrat Constitution Order 2010 secures to persons the protection of law. It provides that no person must be held guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute the offence. It also provides that no penalty must be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

**Pitcairn, Henderson, Ducie and Oeno Islands**

942. The rule of English law set out in the first sentence of the article would apply in Pitcairn.

**St Helena**

943. The new Constitution prevents the imposition of criminal liability for acts or omissions which were not criminal at the time they occurred. It also prevents retrospective increases in penalties.

### **Turks and Caicos Islands**

944. The requirements of article 15 are reflected in Section 6 of the 2011 Constitution. Under section 6 of the Constitution no one shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might.

### **Crown Dependencies**

#### **Isle of Man**

945. No developments to report under this article.

#### **Bailiwick of Jersey**

946. There are no further developments to report under this article.

#### **Bailiwick of Guernsey**

947. There are no further developments to report under this article.

### **Article 16 – Recognition as a person**

948. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

### **Progress since the sixth periodic report**

### **United Kingdom**

949. Regarding the issue of prisoners' right to vote, please see response to the recommendation contained in paragraph 10 of the concluding observations (chapter II (A)).

### **Oversees Territories**

#### **Bermuda**

950. No developments to report under this article.

#### **British Virgin Islands (BVI)**

951. No developments to report under this article.

#### **Cayman Islands**

952. No issues under this Article have arisen in the Cayman Islands.

#### **Falkland Islands**

953. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Under the Constitution every person has the right to recognition as a person before the law, irrespective of their status.

**Gibraltar**

954. The definition of a minor in section 2 of the Interpretation and General Clauses Act remains unchanged. However, under the Employment Act a child is defined as being under the age of 15.

**Montserrat**

955. No developments to report under this article.

**Pitcairn, Henderson, Ducie and Oeno Islands**

956. All births on Pitcairn are to be registered within two (2) months of birth. Time limit restrictions are described under the 19. Births and Deaths Registration Ordinance (.9.), which makes provision for the registration of births and deaths on Pitcairn.

957. The registrar or deputy registrar of births is appointed by the Governor, and duty is to keep the register for births on Pitcairn under (4.) of the ordinance.

958. Points (10 – 11.), Registration of Name is required within month thereafter of registration of birth.

959. Points (15 – 16.), specifies entitlement and the means in which information is obtain from the register.

960. Certified copies of entries within the register can be received as prima facie evidence in all courts of law.

**St Helena**

961. No developments to report under this article.

**Turks and Caicos Islands**

962. The Human Rights Commissioner has raised concerns in TCI about the position of children born here of non-Belongers. In many cases their parents, often from Haiti or the Dominican Republic, may not be here legally, or may not know the legal status to which they may be entitled. It has widely been suggested, including by the Haitian authorities, community representatives and some NGOs, that these children are "stateless". They are not, but a large number of them are undocumented, which is a matter of significant concern. See article 24 for examples of government measures to tackle this problem.

**Crown Dependencies****Isle of Man**

963. No developments to report under this article.

**Bailiwick of Jersey**

964. There are no further developments to report under this article.

**Bailiwick of Guernsey**

965. There are no further developments to report under this article.

**Article 17 – Privacy**

966. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- Treaty on European Union and the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union (as amended in Lisbon – 2010).

### **Progress since the sixth periodic report**

## **United Kingdom**

### **Phone tapping and the Leveson enquiry**

967. In July 2011 the Prime Minister announced a two-part inquiry investigating the role of the press and police in the phone-hacking scandal. This followed suggestions that the News of the World may have routinely paid private investigators to hack into voicemail messages of celebrities and of other people involved in high profile news stories. There were also allegations that the Metropolitan Police Service's (MPS) earlier enquiries – although resulting in two convictions – had not been sufficiently thorough. This raised questions about the nature of the relationship between senior MPS Officers and News International.

968. Lord Justice Leveson was appointed as Chairman of the Inquiry and is being assisted by a panel of six independent assessors with expertise in key issues considered by the Inquiry: Sir David Bell, Shami Chakrabarti, Lord David Currie, Elinor Goodman, George Jones and Sir Paul Scott-Lee.

969. Lord Justice Leveson delivered his report on 29 November 2012.<sup>18</sup>

### *Retention of Biometric information*

970. In December 2008, in the case of *S and Marper v. United Kingdom* [2008] ECHR 1581, the European Court of Human Rights ("ECtHR") ruled that the provisions in UK legislation permitting the 'blanket and indiscriminate' retention of DNA and fingerprints from individuals not previously convicted of an offence violated Article 8 (right to privacy) of the European Convention on Human Rights ("ECHR"). In response to this judgment, Part 1 Chapter 1 of the Protection of Freedoms Act 2012 has been enacted. This Act allows for the retention of fingerprints and DNA profiles of persons arrested for, but not convicted of, any recordable offence for a period of three years. Although this period may be extended where it is necessary on national security grounds, all such extensions will be overseen by the independent Biometrics Commissioner who has the power to order destruction of material where they considered that such necessity has not been demonstrated.

## **Oversees Territories**

### **Bermuda**

971. No developments to report under this article.

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<sup>18</sup> Available from <http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780.asp>

**British Virgin Islands (BVI)**

972. No developments to report under this article.

**Cayman Islands**

973. Section 9 of the Bill of Rights provide the qualified right to respect every person's private and family life. This will come into effect on 6 November 2012.

974. Due to a dramatic increase in the number of violent crimes including gang-related shootings and robberies, the Cayman Islands Government determined that a public surveillance system would assist with the gathering of evidence for successful prosecutions of those involved in future crimes as well as to act as a deterrent.

975. The National CCTV Programme includes the placement of over 400 cameras throughout all three islands. Phase 1 of the system, now complete, includes 224 cameras on Grand Cayman. All operators of the system must undergo formal training as required by the Cabinet-approved Code of Practice which ensures that human rights are duly observed and that the use of the public surveillance system is proportional. Although the system was just completed in July 2012, during the previous six months testing mode, over 100 requests for evidentiary copies of video images were made by the Royal Cayman Islands Police Service and the Department of Immigration. The system has been successful in providing evidence in several armed robberies -- one of which was a bank robbery which led to charges being brought against four persons -- as well other violent crimes, burglaries and even identifying the vehicle causing an oil spill which resulted in several motor vehicle collisions.

**Falkland Islands**

976. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Under section 9(1. of the Constitution Every person has the right to respect for his or her private and family life, his or her home and his or her correspondence and, except with his or her own consent, no person shall be subjected to the search of his or her person or property or the entry by others on his or her premises.

977. There are exceptions where it is considered reasonable to require certain information such as in the interests of defence, internal security, public safety, public order, public morality, public health town and country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit or for the purpose of protecting the rights and freedoms of other persons.

978. The Falkland Islands Government is currently engaged in a review of its legislation and policies on data protection and freedom of information. The Committees (Access to Information) Ordinance which governs the release of information about government business, and sets out the various grounds (which include national security) on which such information can be kept confidential is being replaced with a new Committees (Public Access) Ordinance which has been enacted and will shortly be brought into force once training on the new provisions is complete. The accompanying Code on Access to Information is also being rewritten. The Data Protection Ordinance was never brought into force and has been repealed as it was not in compliance with the Data Protection Act 1998; work on replacement legislation is at an early stage.

979. The Falkland Islands Government has not yet introduced legislation authorising the conduct of same-sex marriage or the formation of civil partnerships, but same-sex relationships are now recognised in immigration and mental health legislation.

**Gibraltar**

980. The Data Protection Ordinance 2004 has been re-enacted as the Data Protection Act 2004, transposing into the law of Gibraltar European Directive 95/46/EC. With the exception of this update to terminology, there are no further developments to report.

**Montserrat**

981. Section 9 of the Montserrat Constitution Order 2010 affords protection of private and family life and privacy of home and other property and protects a person from a search of his person or property or the entry by others on his premises. This protection is however subject to limitations that are reasonably justifiable in a democratic society.

982. The Electronic Transactions Act 2009 provides for a limited restriction on the disclosure of confidential information which relates to the private affairs of any individual or to any particular business. Disclosure is however permitted in connection with investigations by the police of a criminal offence or for the purposes of any criminal proceedings or for the purposes of certain civil proceedings.

**Pitcairn, Henderson, Ducie and Oeno Islands**

983. The Pitcairn Constitution Order 2010 – Article 11: Right to Respect for Private and Family Life, protects the fundamental right of the islanders to Privacy.

984. The Justice Ordinance, Part 4 – Criminal Proceedings, Point 23.-(1. Search Warrants, the Magistrate may issue a search warrant authorising a police officer to search premises and the like.

985. A draft ‘Freedom of Information Ordinance 2012’ is currently with Attorney General which will enable members of the public rights of access to information held by public authorities under legislation.

**St Helena**

986. The new Constitution contains provisions concerning the right to privacy.

**Turks and Caicos Islands**

987. The requirements of article 17 of the Covenant are reflected in section 9 of the Constitution.

988. Also by virtue of the Caribbean Territories (Criminal Law) Order 2000 homosexual acts in private no longer constitute an offence provided that the parties consent and have attained the age of eighteen years. The age of consent for heterosexuals is 16. In support of the International Day Against Homophobia and Transphobia in 2012, the Governor announced that there would be a consultation on the age of consent with a view to make it equal for both heterosexuals and homosexuals, and that the TCI government would conduct a review of all legislation to ensure that there is no discrimination against individuals on the basis of sexual orientation, in line with UN resolutions and the 2011 Constitution, and that diversity policies would be prepared for the TCI civil service. It is the intention of the government, subject to funding, to hold a conference in the TCI for human rights commissioners across the Caribbean region on tackling homophobia. The hopes are that the UN will participate.

989. There is currently no Data Protection Act in TCI. However, there is an Oath of Confidentiality, Code of Conduct, General Orders and Integrity in Public Life by which public officers are guided.

## Crown Dependencies

### Isle of Man

990. The Regulation of Surveillance, etc. Act 2006 came into operation in December 2006. This Act, together with subordinate legislation made under it, provides a legal framework for authorisation and regulation of surveillance by investigating authorities and the use of covert intelligence sources. The Act provides for appropriate safeguards, including the appointment of a Surveillance Commissioner and for the tribunal established under section 8 of the Interception of Communications Act 1988 to have functions under the Act.

991. The Gender Recognition Act 2009 provides for the legal recognition of a transgender person's acquired gender. The Act includes a provision which prohibits the disclosure of protected information about a transgendered person where a person has obtained that information whilst acting in an official capacity. Protected information means information concerning the fact that a person has either applied for or obtained a gender recognition certificate, and a person acquires protected information in an official capacity if the person acquires it

(a) In connection with the person's functions as a member of the civil service, a constable or the holder of any other public office or in connection with the functions of a public authority or of a voluntary organisation;

(b) As an employer, or prospective employer, of the person to whom the information relates or as a person employed by such an employer or prospective employer; or

(c) In the course of, or otherwise in connection with, the conduct of business or the supply of professional services.

992. The Criminal Justice (Witness Anonymity) Act 2011 provides a legal basis for a court to make a 'witness anonymity order' for a witness if the following three conditions are:

- The proposed order is necessary to:
  - (a) Protect the safety of the witness or another person or to prevent any serious damage to property ('the protection purpose'); or
  - (b) Prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on those activities, or otherwise;
- Having regard to all the circumstances, the effect of the proposed order would be consistent with the defendant receiving a fair trial; and
- The witness's testimony is important enough that it is in the interests of justice that the witness testifies and
  - (a) The witness would not testify if the proposed order were not made; or
  - (b) There would be real harm to the public interest if the witness were to testify without the proposed order being made.

### Bailiwick of Jersey

993. In July 2011, the States of Jersey unanimously resolved to bring forward draft anti-discrimination legislation, with adequate funding, for debate by the end of 2012. Furthermore, it was decided that after the Law has been registered, draft Regulations should be presented for debate to cover discrimination on the grounds of race, disability, sex and

age. Consideration is being given to the timescale in which the Law would be extended to forms of discrimination other than race. Measures in respect of sexual orientation may be proposed as part of the sex discrimination regulations, or as a separate measure.

### **Bailiwick of Guernsey**

994. The Human Rights (Bailiwick of Guernsey) Law 2000 requires Guernsey courts to take account of any relevant judgements from the European Court of Human rights, in December 2007, such a ruling was passed giving due regard to the right to privacy in the matter of X [2007] GLR 161. Whilst not having a direct bearing on the Covenant it reflects the commitment to the principles of the Covenant.

#### *In response to the observation contained in paragraph 24 of the Committee's concluding observations*

995. Whilst personal data is protected pursuant to the Data Protection (Bailiwick of Guernsey) Law, 2001, the Bailiwick does not currently have an equivalent to the UK Freedom of Information Act 2000. The States of Guernsey is currently developing a strategy to recommend the adoption of a non statutory corporate code of practice on access to government information based on established principles of: developing a culture of openness; the presumption of disclosure; proactive publication; and improved record management. The code of practice will ensure there is a proportional approach between the cost and burden on administration in the implementation of a new access to information regime whilst ensuring that the people of these islands have sufficient right to information.

### **Article 18 – Freedom of thought**

996. Protection under other international instruments ratified by the UK includes

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

### **Progress since the sixth periodic report**

## **United Kingdom**

### **Religious Discrimination - Worker's practice of religious dress**

997. Religious discrimination is discussed under articles 2 and 26.

998. There is no legislation in the UK stating what people can or cannot wear as this is considered to be a matter of personal choice. However, it is possible for UK employers to apply certain rules, for example, about not wearing jewellery, which may have an impact on people of certain religions. If any policy has that effect then the employer must have a proportionate and legitimate reason for adopting it, for instance, for health and safety reasons or in order to comply with a legitimate uniform policy.

999. UK law applies in the same way to people of all religions and beliefs. It makes clear that any actions that would directly discriminate against those of a particular religion, such as Muslims, are unlawful. In addition, where a policy indirectly discriminates against those of a particular religion and that this cannot be justified, that is also unlawful.

1000. The UK Government believes that the Equality Act 2010 strikes the right balance between employees' rights to manifest their religion or beliefs at work and the business needs and requirements of the particular employer.

*Religious Education in Schools*

1001. There have been no substantial developments with respect to Religious Education in schools since the Sixth Report.

*Scotland: Religious Education and Faith Schools*

1002. The Education (Scotland) Act 1980 which repeats legislation dating back to 1872, gives local authorities the right to deliver religious and moral education in all Scottish schools. Every child and young person can expect their education to provide them with a broad general education, and within the subject area of religious and moral education this includes well planned experiences and outcomes across Christianity, world religions and developing beliefs and values for non denominational and denominational schools. The position of religious education in denominational schools is set out in statute. In catholic schools, the Scottish Catholic Education Service has responsibility for the faith content of the curriculum on behalf of the Bishops' Conference of Scotland.

1003. All independent schools in Scotland are required to be registered with Scottish Ministers in accordance with section 98 of the Education (Scotland) Act 1980 ('the 1980 Act'). There is no distinction between or specific requirements within the legislation if the school is to be a faith school. All applications are subject to the same criteria. The 1980 Act also makes provision for Local Authorities to establish a denominational school for any denomination or faith if it is satisfied that such a school is required, either in response to representations made to it, or on its own initiative.

**Oversees Territories****Bermuda**

1004. No developments to report under this article.

**British Virgin Islands (BVI)**

1005. No developments to report under this article.

**Cayman Islands**

1006. The right to freedom of thought, conscience and religion is now enshrined in section 10 of the Bill of Rights. Section 20 (Education) also recognises the right of every parent or guardian of a child to have his/her child educated at a private school and "in such a school, to ensure the religious and moral education of his or her child in accordance with his or her convictions". These provisions will come into effect on November 6, 2012.

**Falkland Islands**

1007. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Under section 11 of the Constitution no person, except with his or her own consent, shall be hindered in the enjoyment of his or her freedom of conscience which includes freedom of thought and of religion, freedom to change one's religion or belief and freedom, either alone or in community with others, and either in public or in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.

1008. Except with his or her own consent (or, if he or she is under the age of sixteen years, the consent of his or her parent or guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious

ceremony or observance if that instruction, ceremony or observance relates to a religion other than his or her own.

1009. No religious community or denomination shall be prevented from or hindered in providing religious instruction for persons of that community or denomination in the course of any education provided by it whether or not it is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such education.

1010. No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.

1011. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that is reasonably required in the interests of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons, including the right of any person to observe and practise his or her religion or belief without the unsolicited intervention of adherents of any other religion or belief except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

1012. The 2006 Census records 931 persons of no faith, 1985 Christians, 12 Baha'is, 9 Muslims, 5 Buddhists and 13 persons of other faiths. There are active communities of Anglicans, Roman Catholics, Non-Conformists, Baha'is and Jehovah's Witnesses.

1013. The secondary school curriculum on personal, health and social education includes a large component on world religions which emphasises tolerance and understanding, and aims to prepare Falkland Islands students for going out into a multicultural world. In 2010 the secondary school held a successful symposium with visiting military chaplains representing 6 major world religions, including Muslims.

1014. The provisions of the Public Order Act 1986 and the racially aggravated and religiously aggravated offences under the Crime and Disorder Act 1998 as amended by the Anti-Terrorism, Crime and Security Act 2001 apply as law in the Falkland Islands. Racially-motivated or racially-aggravated crime is vigorously investigated and prosecuted; to date there have been no complaints of any religiously-motivated or religiously-aggravated criminal or anti-social behaviour in the Falkland Islands.

#### **Gibraltar**

1015. No further developments to report under this article.

#### **Montserrat**

1016. Section 11 of the Montserrat Constitution Order 2010 protects the freedom of conscience, including the freedom of religion and thought, freedom to change one's religion or belief and freedom to manifest and propagate one's religion or belief in worship, teaching, practice and observance. The Constitution also protects a person's right to choose not to receive religious instruction or to take part in or attend any religious ceremony, while attending any place of education.

1017. This protection is however limited to the extent that the limitation is reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons.

1018. The draft Labour Code 2012 prohibits discrimination in the workplace based on religion and political opinion or affiliation.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

1019. Rights to islanders' Freedom of Opinion are largely protected under Article 12, 'Freedom of Thought, Conscience and Religion' of the Pitcairn Constitution Order 2010.

1020. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

1021. Approximately 10-12 per cent of the adult resident community actively attend the Seventh Day Adventist (SDA) church on a weekly basis. Sixty-seven percent of children attend a weekly 1 hour 'Sabbath School', practising the SDA doctrine.

1022. There is no governmental requirement to legally recognise or attain authorisation to practise an alternative religious doctrine.

### **St Helena**

1023. Freedom of thought, conscience and expression are protected by the new Constitution.

1024. The Education Ordinance 2008 makes provision for students to be wholly or partly excused from attendance at collective worship in schools.

### **Turks and Caicos Islands**

1025. The information set out in the sixth periodic report remains unchanged. The 2011 Constitution mirrors the 2006 Constitution in this matter. It records in the preamble that the people of the Turks and Caicos Islands are '*God-fearing people with convictions based on sound Christian culture, values and principles, tolerant of other religions*'. The Education Ordinance requires that Bible Knowledge form part of the curriculum of every public school, and requires that the facilities for religious observance in the school be provided in such manner as is prescribed. However, any pupil may be withdrawn by his/her parent from the instruction or observance without forfeiting any of the other benefits of the school.

## **Crown Dependencies**

### **Isle of Man**

1026. No developments to report under this article.

### **Bailiwick of Jersey**

1027. No further developments to report under this article.

### **Bailiwick of Guernsey**

1028. There are no further developments to report under this article.

## **Article 19 – Freedom of opinion**

1029. Protection under other international instruments ratified by the UK is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## Progress since the sixth periodic report

### United Kingdom

#### *Encouragement of Terrorism*

1030. The Terrorism Act 2006 established new ‘glorification’ offences which includes the offence of encouragement of terrorism. This was necessary in order to combat those who seek to create, either directly or indirectly, a climate in which terrorism is more likely to flourish – something the UN Security Council unanimously agreed with when it repudiated ‘attempts at justification of glorification of terrorist acts that may incite further terrorist acts’ [see UNSC resolution 1624, 14 September 2005]. However, in order for an encouragement offence to be committed a person making a statement must intend members of the public to be encouraged to commit acts of terrorism or be knowingly reckless as to the effect of their statements. The offence can only be committed if members of the public can reasonably be expected to infer that what is being encouraged is indeed being glorified as conduct that should be emulated by them in existing circumstances. It is a defence for a person to show that the statement or statements do not represent their views or have their endorsement and it was clear in all the circumstances that this was so. The Act’s provisions do not seek curtail political debate or to criminalise innocent activity and the offence does not apply in situations where there is no intent to encourage terrorism.

1031. In June 2011 the Government published its review (independently overseen by Lord Carlile of Berriew QC, the former independent reviewer of the UK terrorism legislation) of the implementation of the UK’s Prevent strategy – the aim of which is to stop people becoming terrorists or supporting terrorism. As the ‘glorification’ offences (as they have become known) form part of the implementation of that strategy, the review considered their impact. The Terrorism Act 2006 was also subject to post-legislative scrutiny as part of the ongoing process of assessing of its effects by Parliament, the outcome of which was published in September 2011. The Government considers that the offence remains necessary and proportionate. The offences have been used very sparingly and we do not consider that they directly or indirectly undermine freedom of speech. As for all of its counter-terrorism powers, we will keep the position under review.

#### *Libel laws*

##### *In response to the observation contained in paragraph 25 of the Committee’s concluding observations*

1032. The Government is aware of the concern about the state of the law of defamation. It is for that reason that the Coalition Agreement committed to reviewing the law of libel to protect legitimate free speech. A draft Defamation Bill was published for public consultation and pre-legislative scrutiny by a Joint Committee of Parliament in March 2011, and the substantive Defamation Bill was introduced into Parliament on 10 May 2012. The Defamation Bill completed its House of Commons stages on 12 September 2012 and received its second reading in the House of Lords on 9 October 2012.

1033. In addition to the Defamation Bill currently before Parliament, the Government has made a priority of reforming civil litigation. Part 2 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 is being implemented in April 2013 and will reform the way in which civil litigation cases are funded and reduce the costs for parties involved. The Government recognises the impact that excessive costs can have in libel cases, not only in terms of access to justice but upon freedom of speech. The LASPO Act therefore rebalances the system to make it easier for defendants to defend cases where they are in the right, rather than settle them for fear of the costs should the claim succeed. In

particular, the costs borne by defendants will be reduced because defendants will no longer have to pay conditional fee agreement (CFA) success fees agreed by claimant lawyers, nor the premium for any after the event (ATE) insurance taken out by the other side. From April 2013, the party entering into a CFA will have to pay their lawyer's success fee and any ATE insurance premium. Notwithstanding these reforms, the Government is also aware that defamation cases can be complex and costly, especially for less wealthy parties, and has therefore committed to look at the rules on costs protection for when the defamation reforms come into effect.

*Scotland: Freedom of information*

1034. As set out in its 6 Principles of Freedom of Information, the Scottish Government is committed to Freedom of Information as an essential part of open democratic government. While also committed to operating within FOISA rather than proposing significant changes to it, the Government will adjust the regime where it is necessary and sensible to do so. The Freedom of Information (Amendment) (Scotland) Bill was introduced into the Scottish Parliament in May. Key elements of the Bill pave the way for more information to be made public, while significantly strengthening the deterrent against the deliberate destruction or concealment of information. The Bill forms part of a wider transparency agenda being developed by the Scottish Government, rooted in our existing strategic framework. The Scottish Government has also recently published an A-Z index of information intended to make accessing proactively published information easier.

## **Oversees Territories**

### **Bermuda**

1035. No developments to report under this article.

### **British Virgin Islands (BVI)**

1036. No developments to report under this article.

### **Cayman Islands**

1037. The Freedom of Information Law, 2007 came into force on January 5, 2009. The FOI Law removes the discretion of government/public authorities to determine what information, if any, they choose to provide, when, and to whom. It replaces this discretion with a set of rules that apply when responding to a freedom of information request. The Law seeks to strike a balance between the public's legitimate right to know and the need for government to keep some information confidential. To date, the Information Commissioner has issued at least 16 rulings on requests for records under the FOI Law. These are available from the Office of the Information Commissioner's website at [www.infocomm.ky](http://www.infocomm.ky)

1038. Further, section 11 of the Bill of Rights (Expression) enshrines the individual's right to enjoyment of freedom of expression which includes freedom to hold opinions and to receive and impart ideas and information without interference. Like other qualified rights in the Bill, this right may be interfered with on public interest grounds, for the protection of the rights of others and for the imposition of restrictions on public officers in the interests of the proper performance of their functions.

1039. In February 2012, the Deputy Governor as Head of the Civil Service, issued a Policy on the Signing of Petitions by Civil Servants in accordance with the Public Service Management Law (2011 Revision). Section 5 of the latter Law sets out the Public Servant's Code of Conduct which requires that civil servants be politically neutral in his work and serve the government of the day in a way that ensures that he maintains the confidence of

the government. The Code also recognises the right of the civil servant to be politically informed.

1040. The Policy recognises various types of petitions which may arise (ranging from those addressed to the Cabinet seeking to trigger a people-initiated referendum to those on social, civic or community matters) and strives to maintain a balance between the civil servant's freedom of expression and the requirement of political neutrality within the civil service by permitting the signing of certain types of petitions by certain categories of civil servants.

### **Falkland Islands**

1041. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Under section 13 except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of expression which includes his or her freedom to hold opinions without interference, his or her freedom to receive information and ideas without interference, his or her freedom to disseminate information and ideas without interference (whether the dissemination be to the public generally or to any person or class of persons) and his or her freedom from interference with his or her correspondence or other means of communication.

1042. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of that section to the extent that the law in question makes provision that is reasonably required in the interests of defence, internal security, public safety, public order, public morality or public health; or for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Legislative Assembly and the courts, or regulating telecommunications, post, broadcasting or public shows; or that imposes restriction on public officers that are reasonably required for the proper performance of their functions, except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

1043. The Constitution is supported by existing legislation prohibiting discrimination on the grounds of race and sex.

1044. The Commonwealth Foundation undertook a human rights capacity building project in the Overseas Territories over 4 years from 2008 to 2012. The Falkland Islands were visited by Foundation representatives on three occasions. Training was provided to elected members and government officials in how to take human rights into account in policy making. Different occupational groups including the media, lawyers and judges, police, customs and immigration officials received specialist training. Teachers were helped to strengthen the human rights component in the existing school curriculum on Personal, Health and Social Education. Lawyers received assistance with reporting obligations under international human rights instruments. A large number of 'consciousness raising' events were held which reached significant numbers and sectors of the population including immigrant workers, charities, churches and community groups. As a result of these initiatives a Falkland Islands Human Rights Group was formed. After widespread community consultation the Group produced a National Action Plan on Human Rights which was presented to and approved by Executive Council in March 2012.

1045. The Falkland Islands Government is currently engaged in a review of its legislation and policies on data protection and freedom of information. The Committees (Access to Information) Ordinance which governs the release of information about government

business, and sets out the various grounds (which include national security) on which such information can be kept confidential is being replaced with a new Committees (Public Access) Ordinance which has been enacted and will shortly be brought into force once training on the new provisions is complete. The accompanying Code on Access to Information is also being rewritten. The Data Protection Ordinance was never brought into force and has been repealed as it was not in compliance with the Data Protection Act 1998; work on replacement legislation is at an early stage.

### **Gibraltar**

1046. No further developments to report under this article.

### **Montserrat**

1047. Section 13 of the Montserrat Constitution Order 2010 protects the freedom of expression, which includes the freedom to hold opinions, the freedom to receive and impart ideas and information without interference and freedom from interference with a person's correspondence and other means of communication.

1048. This protection is however limited to the extent that the limitation is reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health, for the purpose of protecting the rights, reputations and freedoms of other persons and for the imposition of restrictions on public officers or teachers that are reasonably required for the purpose of ensuring the proper performance of their functions.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

1049. Rights to islanders Freedom of Opinion are largely protected under Article 13, Freedom of Expression of The Pitcairn Constitution Order 2010.

1050. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

1051. Currently there is one independently run publication, circulated on a monthly basis internationally via its dedicated website and other sponsors websites.

1052. Under the government owned '.pn' domain, multiple privately run and operated websites freely publish and distribute opinions and views on governmental matters.

1053. Since 2006 Pitcairn Island receives and broadcasts to local community 2 international television channels, one being international news. There are no restrictions or mechanisms hindering public receipt of the broadcasts.

1054. An upgraded telecommunications system in 2006 has enabled local and international phone calls with internet access, installed into every government building and residential home.

### **St Helena**

1055. Freedom of thought, conscience and expression are protected by the new Constitution.

### **Turks and Caicos Islands**

1056. The information set out in the sixth periodic report with respect to article 18 remains unchanged and applies to article 19. The 2011 Constitution mirrors the 2006 Constitution in this matter.

### **Crown Dependencies**

#### **Isle of Man**

1057. The Anti-Terrorism and Crime (Amendment) Act 2011 inserted new sections into the Anti-Terrorism and Crime Act 2003 to prohibit the publishing of statements in connection with terrorism and the dissemination of terrorist publications. A person commits an offence if the person publishes or causes to be published a statement to the public-

(a) With the intent to incite the commission of acts of terrorism or related offences; and

(b) That increases the risk of one or more such offences being committed, whether or not the statement directly advocates the commission of such an offence.

1058. However, before instituting any proceedings the Attorney General must certify that, in his or her opinion, the prosecution is both in the public interest and proportionate to the harm or risk of harm caused by the action giving rise to the alleged offence.

1059. In addition, in proceedings for an offence under this section it is a defence for the person to show that the statement was a proportionate exercise of the right to freedom of expression in a democratic society.

1060. A Freedom of Information Bill, to put the present Code of Practice on Access to Government Information on a statutory footing, has been subject to public consultation and the Bill is currently being given further consideration.

#### **Blasphemy legislation in the Isle of Man**

1061. The Government of the Isle of Man notes the comments set out in paragraph 15 of the HRC's Observations to the UK's fifth periodic report on the continuing existence of anti-blasphemy legislation in the jurisdiction. The relevant provision of the Criminal Code 1872 continues to exist on the Isle of Man statute book:

*Other offences not specified*

*Whosoever shall do any other act or thing (not hereinbefore or in any other unrepealed Act of Tynwald or bye-law made by authority of any Act of Tynwald, specified or referred to, or otherwise provided for by law), in contempt of God or religion, or in contempt of the Queen's Government, or against public justice, or against public trade, or against the public health, or to the disturbance of the public peace, or injurious to public morals, or outraging decency, shall be guilty of a misdemeanour.*

1062. As advised in the last report, in practice the provision has not been used in relation to blasphemy in modern times, but it is accepted that this provision is archaic and that those aspects of the provision that may still be required should be replaced with a modern provision when other legislative priorities permit.

1063. The Isle of Man Government has noted that in the UK the common law offences of blasphemy and blasphemous libel in England and Wales were abolished in 2008.

#### **Bailiwick of Jersey**

1064. No further developments to report under this article.

## **Bailiwick of Guernsey**

*In response to the observation contained in paragraph 24 of the Committee's concluding observations*

1065. Whilst personal data is protected pursuant to the Data Protection (Bailiwick of Guernsey) Law, 2001, the Bailiwick does not currently have an equivalent to the UK Freedom of Information Act 2000. The States of Guernsey is currently developing a strategy to recommend the adoption of a non statutory corporate code of practice on access to government information based on established principles of: developing a culture of openness; the presumption of disclosure; proactive publication; and improved record management. The code of practice will ensure there is a proportional approach between the cost and burden on administration in its implementation of a new access to information regime with ensuring that the people of these islands have sufficient right to information.

*In response to the observation contained in paragraph 25 of the Committee's concluding observations*

1066. There is no public figure exemption within libel law in the Bailiwick of Guernsey. There are no Conditional Fee Arrangements or 'success fees'. Costs are awarded in the discretion of the Bailiwick courts. To date there have been no libel actions where the issue of journalistic standards has arisen, but in line with the well established practice of applying English authorities to tort cases in the Bailiwick cases, were such an issue to arise in the Bailiwick courts the defence established in the Reynolds case would almost certainly be applied.

*In response to the observation contained in paragraph 26 of the Committee's concluding observations*

1067. There is no equivalent offence to the 'encouragement of terrorism' under the UK Terrorism Act 2006 within the Bailiwick of Guernsey.

## **Article 20 – War propaganda and incitement to discrimination**

### **Progress since the sixth periodic report**

## **United Kingdom**

### *Race and the definition of terrorism*

1068. Section 75 of the Counter-Terrorism Act 2008 amended the definition of "terrorism" as set out in s1(1.(c) of the Terrorism Act 2000 (TACT), by extending terrorism to mean the use of threat of action where the such use of threat is made in order to advance a racial cause. Legislation already exists to define the use or threat of acts carried out for the purpose of advancing a religious cause (also under s1(1.(c) of TACT 2000..

### *Anti-Muslim hatred*

1069. The Government is determined to tackle anti-Muslim hatred and stamp out extremism and racism wherever it occurs.

1070. We deplore all religious and racially motivated attacks and will not tolerate racists and trouble-makers disrupting our local communities.

1071. The Department for Communities and Local Government (DCLG) have set up a cross-Government working group on anti-Muslim hatred, which is made up of individuals from the Muslim community, academics and officials from across Whitehall. The group has

met three times and is currently working on a work plan to address issues of concern including the conditions that create anti-Muslim hatred and what we need to do to prevent it.

1072. Additionally the DCLG has also given Faith Matters £183,000 over two years to deliver a project to help develop a better understanding of anti-Muslim hate crime. As part of that project Faith Matters have developed a system called MAMA (Measuring Anti-Muslim Attacks) which statistically collates and analyses anti-Muslim incidents in England and offers support to victims. This was launched by the Secretary of State for Communities and Local Government on 21st February 2012.

1073. Based in six locations the key to the project is getting real grassroots buy in. We do not believe that the only way to achieve this is by meeting high profile individuals in national organisations. Instead getting to local people on the ground that experience anti-Muslim hate crime is of paramount importance. This project will enable us to get information about the nature and extent of anti-Muslim hatred in the UK which will feed into the cross-Government working group on anti-Muslim hatred.

#### *Scotland: Hate Crime*

1074. The Offensive Behaviour and Threatening Communications (Scotland) Act prohibit threats intended to stir up hatred on grounds of religious belief or lack of religious belief. Additionally, the Offences (Aggravation by Prejudice) (Scotland) Act 2009 introduced new "racially aggravated" offences where there is evidence of racist motivation or hostility, with higher penalties for such hate crimes.

## **Oversees Territories**

### **Bermuda**

1075. No developments to report under this article.

### **British Virgin Islands (BVI)**

1076. Section 16 of the 2011 Constitution prohibits discrimination under the law and by any person in public office (including public broadcasters). However, there is no domestic legislation in place to prohibit conduct which is intended to stir up or incite racial hatred.

### **Cayman Islands**

1077. No issues under this article have arisen in the Cayman Islands.

### **Falkland Islands**

1078. The Civil Contingencies (Emergency Powers) Ordinance 2006 empowers the Governor, after consulting Executive Council unless this would not be possible without serious delay, to make emergency regulations if satisfied that an emergency has occurred, is occurring or is about to occur and that it is urgently necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.

1079. Among other things, emergency regulations may provide for the confiscation or destruction of property, prohibit or require movement to or from a specified place, prohibit assemblies, prohibit travel or other specified activities, disapply or modify any enactment, make provision for facilitating the deployment of Her Majesty's armed forces or the Falkland Islands Defence Force.

1080. Emergency regulations may not require a person to provide military service or prohibit participation in a strike or other industrial action.

1081. Emergency regulations lapse after 30 days or at such earlier time as may be specified in the regulations or in accordance with a resolution of Legislative Assembly. Once emergency regulations have lapsed, further emergency regulations may be made if the relevant conditions still apply.

1082. The provisions of the Public Order Act 1986 and the racially aggravated and religiously aggravated offences under the Crime and Disorder Act 1998 as amended by the Anti-Terrorism, Crime and Security Act 2001 apply as law in the Falkland Islands. Racially-motivated or racially-aggravated crime is vigorously investigated and prosecuted; to date there have been no complaints of any religiously-motivated or religiously-aggravated criminal or anti-social behaviour in the Falkland Islands.

### **Gibraltar**

1083. The Criminal Offences Ordinance is now entitled the Criminal Offences Act.

1084. The Government passed in Parliament the Crimes Act 2011 but it is not yet in force. The Crimes Act 2011 would repeal the Criminal Offences Act. Once the Crimes Act 2011 becomes law in Gibraltar, section 81 of the Crimes Act would mirror section 34 of the Criminal Offences Act save for the term of imprisonment for the commission of an offence. Under the new Act the term of imprisonment is increased from 3 to 9 months.

### **Montserrat**

1085. The Montserrat Constitution Order 2010 enshrines the fundamental right of protection against discrimination. Section 16 of the Constitution prohibits the making of a law that is discriminatory of itself or in its effect and protects a person from being treated in a discriminatory manner by public authority or by another person acting under the authority of law or in the performance of the functions of any public office. It also prohibits treatment of persons in a discriminatory manner in respect of access to any place to which the general public has access.

1086. Section 16 defines discriminatory to mean “affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

1087. Section 16 also provides limitations on the protection afforded against discrimination. The protection against discrimination is not eroded if a law or an act done under it has an objective and reasonable justification.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

1088. Under the laws of Pitcairn, Chapter 5. Summary Offences Ordinance revised 2009, in part prohibits behaviour that could otherwise lead to breaches of Article 20.

### **St Helena**

1089. No developments to report under this article.

### **Turks and Caicos Islands**

1090. Section 16 of the 2011 Constitution prohibits discrimination under the law and by any person in public office (including public broadcasters impartiality). The government is preparing a Equality Bill – largely based on the UK’s Equality Act - expected for enactment in early October 2012.

## **Crown Dependencies**

### **Isle of Man**

1091. The proposed Crime and Disorder Bill, which was referred to under this article in the last report, became the Criminal Justice (Miscellaneous Provisions) Bill. This Bill included provisions which would have made it an offence to stir up hatred against persons on the grounds of race, religious belief (or lack of religious belief), disability or sexual orientation. The Bill also included provision allowing the courts to consider increases in sentences for aggravation related to race, religion, disability or sexual orientation. However, after public consultation on this Bill in 2009, the incitement provisions were removed from the Bill following concerns that had been expressed about freedom of expression. The Bill itself was subsequently lost following its introduction into the parliamentary process as was referred to a Select Committee due to its length, complexity and the number of issues that it covered. Time for the Bill then ran out prior to the General Election held in September 2011.

1092. The Isle of Man Government has now included a Bill to specifically deal with incitement to racial hatred in its five year legislative programme.

### **Bailiwick of Jersey**

1093. In the context of Jersey's community, the draft Crime (Racial Hatred) (Jersey) Law is currently not considered to be an urgent priority. Progress is in abeyance pending a further commitment to advance this legislation.

### **Bailiwick of Guernsey**

1094. There are no further developments to report under this Article.

## **Article 21 – Freedom of assembly**

1095. Protection under other international instruments ratified by the UK, is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).

## **Progress since the sixth periodic report**

## **United Kingdom**

### **Parliament Square Protests**

1096. Peaceful protest is a vital part of a democratic society. It is a long-standing tradition in this country that people are free to gather together and to demonstrate their views, however uncomfortable these may be to the majority of us, provided that they do so within the law.

1097. There is, of course, a balance to be struck. Protesters' rights need to be balanced with the rights of others to go about their business without fear of intimidation or serious disruption to the community. Rights to peaceful protest do not extend to violent behaviour or threatening behaviour and the police have powers to deal with any such acts.

1098. The Government fully supports the public's rights to peaceful protest and is committed to ensuring that everyone can enjoy our public spaces, which is why it brought in legislation to remove the unnecessary restrictions on the right to peaceful protest around

Parliament, whilst dealing with the harms caused by encampments and other disruptive activities in and around Parliament Square.

1099. The Parliament Square provisions (Part 3: Section 141 to 149. of the Police Reform and Social Responsibility Act 2011 (commenced on 19 December 2011. have repealed sections 132 to 138 of the Serious Organised Crime and Police Act (SOCPA) 2005, which regulated demonstrations and the use of loudspeakers in the designated area around Parliament.

1100. This means that there is no longer a requirement to give notice to and obtain authorisation from the Metropolitan Police in respect of a static demonstration. Instead, section 14 of the Public Order Act 1986, which was disapplied when SOCPA came into force, will once more apply to static demonstrations in the vicinity of Parliament as it applies in relation to the rest of the country. The reinstatement of section 14 of the Public Order Act 1986 means that the police will have powers to impose conditions on public assemblies of two or more persons to prevent, where necessary, serious public disorder, serious disruption to the life of the community, serious damage to property and to prevent intimidation of others.

1101. The 2011 Act also prohibits certain types of activity from taking place on the controlled area of Parliament Square - the central area of Parliament Square and the pavements immediately adjoining that area. This includes:

- The erection of tents and other similar structures; and
- The use of sleeping equipment for the purpose of sleeping or staying within the controlled area.

1102. These provisions deal with the disruptive activities that cause harm in a targeted, proportionate and enforceable way and allow everyone to enjoy the public space around Parliament.

#### *The Case of Austin and others vs. the UK*

1103. The Grand Chamber of the European Court of Human Rights handed down its judgment in the case of *Austin and others vs. the UK* on 15 March 2012. The case concerned whether the police tactic of containment (used to impose a cordon in Oxford Circus for a significant period of time during the May Day protests in 2001 amounted to a deprivation of liberty in breach of article 5 of the ECHR.

1104. The court held by a majority of 14-3 that the particular circumstances of the case meant that the police containment did not amount to a deprivation of liberty under article 5 and therefore that there was no violation of article 5.

1105. The Government supports the targeted and proportionate use of containment as a key police tactic to manage risks of violence and disorder at protests and the policing efforts to use containment in a way that minimises the impact on those protesting peacefully.

1106. The use of containment by police at demonstrations is an operational matter for chief officers of police.

## **Oversees Territories**

### **Bermuda**

1107. No developments to report under this article.

**British Virgin Islands (BVI)**

1108. No developments to report under this article.

**Cayman Islands**

1109. Section 12 of the Bill of Rights provides the right to peaceful assembly and association which is subject to public interest grounds and for the imposition of restrictions on public officers in the interests of the proper performance of their functions.

1110. No issues have arisen under this article to date.

**Falkland Islands**

1111. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 14 of the Constitution provides that no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, in particular the right to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

1112. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of that section to the extent that the law in question makes provision that is reasonably required in the interests of defence, internal security, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedoms of other persons; or that imposes restrictions on public officers that are reasonably required for the proper performance of their duties, except so far as that provision or the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

1113. The Civil Contingencies (Emergency Powers) Ordinance 2006 empowers the Governor, after consulting Executive Council unless this would not be possible without serious delay, to make emergency regulations if satisfied that an emergency has occurred, is occurring or is about to occur and that it is urgently necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.

1114. Among other things, emergency regulations may provide for the confiscation or destruction of property, prohibit or require movement to or from a specified place, prohibit assemblies, prohibit travel or other specified activities, disapply or modify any enactment, make provision for facilitating the deployment of Her Majesty's armed forces or the Falkland Islands Defence Force.

1115. Emergency regulations may not require a person to provide military service or prohibit participation in a strike or other industrial action.

1116. Emergency regulations lapse after 30 days or at such earlier time as may be specified in the regulations or in accordance with a resolution of Legislative Assembly. Once emergency regulations have lapsed, further emergency regulations may be made if the relevant conditions still apply.

**Gibraltar**

1117. The Constitution sets out the right to peaceful assembly. Section 11 of the Gibraltar Constitution Order 2006 provides:

1118. Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

1119. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

- In the interests of defence, public safety, public order, public morality or public health;
- For the purpose of protecting the rights or freedoms of other persons;
- For the imposition of restrictions upon public officers;
- For the registration of trades unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register (including conditions as to the minimum number and qualifications of persons necessary to constitute a trade union qualified for registration); or
- For the imposition of restrictions upon persons who are not resident in Gibraltar with respect to the holding of office in a trade union or membership of the general committee of management of a trade union or with respect to voting in any proceedings of a trade union relating to or connected with the calling or financing of a strike,
- Except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

#### **Montserrat**

1120. Section 14 of the Montserrat Constitution Order 2010 protects the freedom of assembly and association that is, the right to assemble freely and associate with other persons, to form or belong to political parties or to form or belong to trade unions or other associations for the promotion and protection one's interests.

1121. This protection is however limited to the extent that the limitation is reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health, for the purpose of protecting the rights and freedoms of other persons or for the imposition of restrictions on public officers that are reasonably required for the purpose of ensuring the proper performance of their functions.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

1122. The Pitcairn Constitution Order 2010 – Article 14, protects the fundamental right of the islanders to Freedom of Assembly.

1123. There is no requirement by law for authorisation to hold an assembly.

1124. Traditionally on Pitcairn, assembly (public or community meetings) is used by both government and public as a crucial communications tool within society.

#### **St Helena**

1125. Freedom of assembly is protected by the new Constitution.

1126. The Constitution allows for peaceful assembly.

#### **Turks and Caicos Islands**

1127. The requirements of article 21 of the Covenant are reflected at section 14 of the 2011 Constitution. For example, there were no barriers imposed for the peaceful protests organised by striking civil servants during 2011.

## **Crown Dependencies**

### **Isle of Man**

1128. No developments to report under this article.

### **Bailiwick of Jersey**

1129. There are no further developments to report under this article.

### **Bailiwick of Guernsey**

1130. There are no further developments to report under this article.

## **Article 22 – Freedom of association**

1131. Protection under other international instruments ratified by the UK is as follows:

- ILO Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.
- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- ILO Convention No. 135 (1971) concerning Protection and Facilities to be Afforded to the Workers' Representatives in the Undertaking.
- ILO Convention No. 151 (1978) concerning the Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Services.

## **Progress since the sixth periodic report**

## **United Kingdom**

### *Terrorist organisations*

1132. The list of organisations proscribed in the UK is found in Schedule 2 of the Terrorism Act 2000 and contains 49 international organisations and 14 organisations in Northern Ireland, proscribed under previous legislation. This list is kept under review by the Government, who must seek the approval of Parliament before amendments can be made. A proscribed organisation, or any person affected by its proscription, may apply to the Home Secretary for de-proscription. There have been no prosecutions in England and Wales for membership of a proscribed organisation.

1133. There have been 30 charges relating to proscription offences under the Terrorism Act 2000 between 19 February 2001 and 31 March 2012 in Great Britain, excluding Northern Ireland (Home Office Statistical Bulletin).

### *Armed Forces Representation*

1134. Regular Service personnel may become members of civilian trade unions and professional associations to enhance their trade skills and professional knowledge, and as an aid to resettlement into civilian life. They may also join organisations representing their interests such as the Forces Pension Society, British Armed Forces Federation, single Service Lesbian, Gay, Bisexual and Transgender fora, and the Armed Forces Muslim

Association. They are not allowed to participate in industrial action or in any form of political activity organised by civilian trade unions or professional associations.

1135. Representation and safeguarding the well-being of Service Personnel is a vital function of the chain of command. The Armed Forces have never been represented by their own trade union or federation and neither has there been a ground swell of opinion from Service personnel for a change in this direction. There are other mechanisms through which the views of Service personnel can become known, and their various interests are represented by a number of independent bodies, such as the Armed Forces Pay Review Body, the Service Families' Federations. All Service personnel have a statutory right to complain on any matter relating to their Service. On 1 January 2008, a new Service complaints process came into effect with independent oversight provided by the new Service Complaints Commissioner. The Service Complaints Commissioner also provides an alternative route for Service personnel who, for whatever reason, do not have the confidence to raise allegations of bullying, harassment, discrimination or other improper behaviour directly with the chain of command. Therefore, Service personnel no longer have to rely only on the chain of command to address their grievances.

## **Oversees Territories**

### **Bermuda**

1136. No developments to report under this article.

### **British Virgin Islands (BVI)**

1137. No developments to report under this article.

### **Cayman Islands**

1138. See information for article 21.

### **Falkland Islands**

1139. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 14 of the Constitution provides that no person shall be hindered in the enjoyment of his or her freedom of peaceful assembly and association, in particular the right to form or belong to trade unions or other associations for the promotion and protection of his or her interests.

1140. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of that section to the extent that the law in question makes provision that is reasonably required in the interests of defence, internal security, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedoms of other persons; or that imposes restrictions on public officers that are reasonably required for the proper performance of their duties, except so far as that provision or the thing done under its authority is shown not to be reasonably justifiable in a democratic society.

1141. The Civil Contingencies (Emergency Powers) Ordinance 2006 empowers the Governor, after consulting Executive Council unless this would not be possible without serious delay, to make emergency regulations if satisfied that an emergency has occurred, is occurring or is about to occur and that it is urgently necessary to make provision for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency.

1142. Among other things, emergency regulations may provide for the confiscation or destruction of property, prohibit or require movement to or from a specified place, prohibit

assemblies, prohibit travel or other specified activities, disapply or modify any enactment, make provision for facilitating the deployment of Her Majesty's armed forces or the Falkland Islands Defence Force.

1143. Emergency regulations may not require a person to provide military service or prohibit participation in a strike or other industrial action.

1144. Emergency regulations lapse after 30 days or at such earlier time as may be specified in the regulations or in accordance with a resolution of Legislative Assembly. Once emergency regulations have lapsed, further emergency regulations may be made if the relevant conditions still apply.

#### **Gibraltar**

1145. As under article 21 above. Section 11 of the Constitution Order 2006 provides protection for the freedom of association.

#### **Montserrat**

1146. Section 14 of the Montserrat Constitution Order 2010 protects the freedom of assembly and association that is, the right to assemble freely and associate with other persons, to form or belong to political parties or to form or belong to trade unions or other associations for the promotion and protection one's interests.

1147. This protection is however limited to the extent that the limitation is reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health, for the purpose of protecting the rights and freedoms of other persons or for the imposition of restrictions on public officers that are reasonably required for the purpose of ensuring the proper performance of their functions.

#### **Pitcairn, Henderson, Ducie and Oeno Islands**

1148. The Pitcairn Constitution Order 2010 – Article 14, protects the fundamental right of the islanders to Freedom of Association.

1149. No controls or restrictions are place on political parties and associations.

1150. As mentioned in the sixth submission 23. The Trade Unions and Trade Disputes Ordinance 1959 requires registration of trade unions, the appointment of a Registrar of Trade Unions and the regulation of trade unions.

1151. There are no trade unions currently registered in Pitcairn.

1152. The government of Pitcairn encourages public groups or public associations in support of advancement in political and social development.

#### **St Helena**

1153. The new Constitution protects this right.

#### **Turks and Caicos Islands**

1154. The requirements of Article 22 of the Covenant are reflected in section 14 of the 2011 Constitution. In addition, the Trade Unions Ordinance provides for and requires Trade Unions to be registered under the Ordinance. In January 2012, a Registrar of Trade Unions was appointed for the first time. At the point of preparing this report one body has registered as a trade union: the Civil Service Association.

1155. The UK terrorism legislation is extended to the Turks and Caicos Islands. There have been no prosecutions for membership of proscribed organisations.

## **Crown Dependencies**

### **Isle of Man**

1156. No developments to report under this article.

### **Bailiwick of Jersey**

#### *Employment Relations (Jersey) Law*

1157. The Employment Relations (Jersey) Law 2007 came into force on 21 January 2008. The main aims of the Law are to:

- Provide a system of legal identification and registration of trade unions and employer associations and to give such bodies legal status.
- Create a legal dispute resolution process which supports and develops good industrial relations, with the aim of reducing the likelihood of disputes and enabling early resolution of disputes where they occur, using the Employment Tribunal where necessary.
- Support codes of practice to describe good and reasonable employment relations practice.

1158. In preparing the Codes of practice, regard has been given to Jersey's international obligations, including under the Human Rights (Jersey) Law 2000 and International Labour Organization (ILO) Conventions No. 98 (1949) – Right to Organise and Collective Bargaining, and No. 87 (1948) – Freedom of Association and Protection of the Right to Organise.

### **Bailiwick of Guernsey**

1159. There are no further developments to report under this article.

## **Article 23 – Family and marriage**

1160. Protection under other international instruments ratified by the UK, is as follows:

- ECHR (1950) and Protocol 1 (1952), Protocol 2 and 3 (1963), Protocol 5 (1966), Protocol 6 (1983), Protocol 8 (1985), Protocol 10 (1992), Protocol 11 (1994), Protocol 13 (2002), Protocol 14 (2004).
- European Social Charter (1961)
- Convention on consent to marriage, minimum age for marriage and registration of marriages (1962).
- International Covenant on Economic, Social and Cultural Rights (1966)

## **Progress since the sixth periodic report**

### **United Kingdom**

#### *Civil partnerships*

1161. In December 2005 the Civil Partnership Act came into force. Civil Partnerships were a completely new legal relationship, exclusively for same-sex couples, distinct from marriage. The Act gives civil partners broadly equivalent treatment with opposite-sex

spouses, as far as is possible, in the rights, responsibilities and freedoms that flow from forming a civil partnership.

1162. The aim of the Civil Partnership Act is to address the injustices that same-sex couples faced because they have been unable to secure legal recognition of their relationships. Provisions in the Act include both rights and responsibilities. For example a duty to provide maintenance to the other partner; access to fatal accident compensation to name a few. The Act does not apply to opposite-sex couples as they already have the opportunity to obtain a legally recognised status for their relationship through marriage, whether through a religious or civil ceremony.

1163. Since December 2011, same-sex couples have also been able to register their civil partnership on religious premises, where the religious organisation agrees. The forming of the civil partnership, however, must remain entirely secular.

1164. In December 2012, the Government published its response to its consultation on enabling same-sex couples to get married. The government's response outlines the intention to:

- Enable same-sex couples to have a civil marriage ceremony;
- Enable those religious organisations that wish to conduct same-sex marriage ceremonies to do so on a permissive basis only;
- Provide explicit legal protections for religious organisations that will allow them to continue to operate unhindered within their doctrines and beliefs as they do now;
- Retain civil partnerships for same-sex couples only;
- Enable existing civil partners to convert their partnership to a marriage if they wish; and
- Enable individuals to change their legal gender without having to end their marriage.

1165. The Government has committed to introducing legislation to enable same-sex couples to get married by the end of this Parliament. Legislation will be brought forward to Parliament as soon as possible.

#### *Civil Partnerships (Scottish Government)*

1166. In July 2012, following consultation, the Scottish Government announced its intention to legislate to allow same sex marriage.

#### *Gender Recognition Act 2004*

1167. The Gender Recognition Act 2004 continues to work well and since its introduction in 2005 some 3,200 people have been granted legal recognition of their acquired gender in the UK.

## **Oversees Territories**

### **Bermuda**

1168. No developments to report under this article.

### **British Virgin Islands (BVI)**

1169. No developments to report under this article.

### **Cayman Islands**

1170. Section 9 of the Bill of Rights guarantees the right to family and private life. Section 14 provides the right of every unmarried man and woman of marriageable age (as determined by law) freely to marry a person of the opposite sex and found a family, and entitles each spouse to equal rights /responsibilities as between themselves and as regards their children both during and after marriage. This section also prohibits forced, non-consensual marriage.

1171. The Cayman Islands Government has no plans to introduce legislation to permit same-sex marriages or civil partnerships within the Islands.

1172. Although the foregoing provisions are not yet in force, the Department of Immigration has been assessing deportation cases in light of the Bill of Rights and with particular reference to the right to family and private life. Cases are reviewed on the basis of their unique circumstances to determine whether the deportation of an offender may result in a violation of any of his/her constitutional rights.

### **Falkland Islands**

1173. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Under section 10 of the Constitution every man and woman of marriageable age (as determined by or under any law) has the right to marry and found a family. No person shall be compelled to marry, that is to say, to do so without his or her free and full consent. Under section 10(4. of the Constitution spouses shall be entitled to equal rights and shall be subject to equal responsibilities as between themselves and as regards their children both during marriage and, if the marriage is dissolved, on and after dissolution, but this equality of rights and responsibilities shall be subject to such arrangements or measures as may be agreed, or as may be ordered by a court, in the interests of their children.

1174. In 2011 the Domicile (Reform) Ordinance was brought into force. It abolished the rule of law that a married woman automatically had the same domicile as her husband. Whether a woman to whom this Ordinance applies has acquired a new domicile of choice (or if her domicile of origin has revived) is to be ascertained by reference to the same factors as apply to anyone else who is capable of having an independent domicile.

1175. Section 16 of the Constitution prohibits discrimination on the grounds of sexual orientation. However, section 22(7. of the Constitution provides that the 'spouse' of a person with Falkland Islands Status has the right to apply for status, and if their application is refused, to be given a permanent right to remain. In the absence of a definition, it seems likely that 'spouse' would be interpreted as meaning married couples only.

1176. The Immigration Ordinance 1999 was amended in 2009 so as to recognise unmarried partnerships (of the opposite or same sex) for the purposes of residence permits. The Immigration (Permanent Residence Permits) Regulations 2009 recognise unmarried partnerships (of the opposite or same sex) for the purposes of permanent residence permits, but only where the partnership has subsisted for at least three years.

1177. The Mental Health Ordinance 2010 recognises same sex partnerships for the purpose of defining a patient's 'nearest relative'.

1178. An amendment is to be proposed to the Falkland Islands Pensions Scheme Ordinance 1997 which will give same sex partners a right to a spouse's pension.

### **Gibraltar**

1179. No further developments to report under this article.

**Montserrat**

1180. The right to marry is protected under section 10 of the Montserrat Constitution Order 2010. Section 10 affords to every man and woman of marriageable age the right to marry a person of the opposite sex and to create a family. It however doesn't compel a person to marry without his or her free consent. The protection affords to spouses equal rights and subjects them to equal responsibilities as it relates to children both during marriage and on and after dissolution of the marriage.

1181. This protection is however limited to the extent that the limitation is reasonably justifiable in a democratic society in the interests of public order, public morality or public health, for regulating, in the public interest, the procedures and modes of marriage or for protecting the rights and freedoms of other persons.

1182. The draft Matrimonial Proceeding Bill 2012 provides for the dissolution of marriages. It empowers the High Court to grant on application, a divorce, an annulment of marriage, or a dissolution of marriage where a spouse is presumed dead and reduces the length of time within which a person can seek a divorce. It also makes the necessary provision for the care and protection of any children of the marriage.

**Pitcairn, Henderson, Ducie and Oeno Islands**

1183. The Pitcairn Constitution Order 2010 – article 15, protects the fundamental right of the islanders to marry.

1184. On May 2012 the Government of Pitcairn's Island introduced an ordinance that provides for separation and dissolution of marriage proceedings in Pitcairn. Part (9.) of the ordinance specifically protects the welfare of Spouse and Children.

1185. In February 2012 the government approved same-sex marriage yet to be introduced into legislation.

1186. There is common acceptance of civil partnerships on Pitcairn.

**St Helena**

1187. The new Constitution protects this right.

**Turks and Caicos Islands**

1188. The requirements of article 23 are reflected in Section 10 of the 2011 Constitution which provides that every unmarried man and woman of marriageable age (as determined by or under any law) has the right to marry. Unlike the 2006 Constitution, the 2011 Constitution now specifies that entitlement to marriage and found a family is to a person of the opposite sex. This insertion follows public concern raised after the completion of the 2006 Constitution that its wording – which mirrored article 23 – was a means of allowing for same-sex marriage.

1189. In line with article 23, which is covered by Section 10 of the 2011 Constitution, migrants who work or reside, whether temporarily or permanently, in the TCI are generally permitted to be joined by their spouses and dependent children under 18, provided they can support them. However, there is a longstanding (since 1998. exception to this in relation to unskilled workers on work permits, who may not be joined by their spouses and dependent children. The Human Rights Commissioner has raised concerns about this, querying comments made in the TCI's 2006 entry to the periodic report. The rationale for the policy was that such workers were expected to be in the Territory for no longer than three years in total, and then to return home. There were also concerns about the impact of families on health and education services. In practice, the policy on term limits has not been consistently applied, and there are a number of unskilled workers who are now qualifying

for permanent residence after ten or more years in the Territory, and seeking to be joined by their families. Policy in this area needs to be reviewed during 2012/13, in the light of Article 23, and a fuller assessment of the impact on the Territory.

1190. The law also provides for the spouse of a Belonger to reside and work in the Territory until such time as they qualify to be a Belonger on the basis of marriage. Following a territory-wide consultation, legislation is being brought in in 2012 which will extend the period for which the couple must be married before the non-Belonger spouse qualifies to be a Belonger from five to ten years. This may raise article 23 concerns but it should be noted that the non-Belonger spouse is in the meantime free to live and work in the TCI and cannot be deported, under the Immigration Ordinance.

1191. The British Interim Administration is developing Family Law Bills which, for example, deal with divorce, child care and adoption, maintenance and guardianship, in order to address growing social problems/issues in this area. However, limited public funds have meant that progress in implementing programmes of social reform and awareness raising have struggled to have significant impact.

## **Crown Dependencies**

### **Isle of Man**

1192. The Gender Recognition Act 2009 was brought fully into operation in July 2010. Under this legislation any transgendered resident of the Isle of Man who has obtained a full gender recognition certificate from the UK Gender Recognition Panel established under the Gender Recognition Act 2004 (of the UK Parliament) is legally recognised as a person of their acquired gender. For reasons of privacy in a small jurisdiction and the availability of the necessary expertise it was considered to be more appropriate to link legal recognition of a transgendered person's acquired gender to the UK process rather than to establish a separate recognition procedure in the Isle of Man.

1193. The Isle of Man's Act is closely based on the UK Act so a transgendered person in the Island has the same rights as a transgendered person in the UK, including:

- Being able to get married in the acquired gender (to a person of the opposite gender or (from March 2011. form a civil partnership in the acquired gender with a person of the same gender);
- Being eligible for the State retirement pension and other benefits at the age appropriate to the new gender; and
- Being able to apply for a new birth certificate in their acquired name and gender (if their birth was registered in the Isle of Man).

1194. The Civil Partnership Act 2011 came into operation in March 2011. This Act is closely based on the UK Civil Partnership Act 2004, and allows same-sex couples into a legal relationship. The Act gives civil partners parity of treatment with spouses, as far as is possible, in the rights and responsibilities that flow from forming a civil partnership.

1195. The Marriage and Civil Registration (Amendment) Act 2011, which came into operation in July 2011, amended the Marriage Act 1984 to simplify marriage procedures and to enable civil marriages to be solemnised in places and circumstances approved by the Chief Registrar and amended the Civil Registration Act 1984 to abolish registration districts and make provision about the jurisdiction of the High Court in divorce.

### **Bailiwick of Jersey**

1196. There are no further developments to report under this article.

**Bailiwick of Guernsey**

1197. In September 2006, the States of Deliberation resolved to direct the Policy Council to initiate an investigation into the desirability of the enactment of legislation enabling people to enter into legally recognised and binding civil partnerships in Guernsey; addressing all issues that might be associated with, or arise out of, the creation of such partnerships; and enabling the recognition for the purposes of Guernsey law of similar civil partnership arrangements entered into under the laws of other jurisdictions.

1198. On 28 January 2009 the States of Deliberation resolved to approve the amendment of the Matrimonial Causes Law (Guernsey), 1939, as amended. The amendment will grant power to the Divorce Courts to transfer real property and personal property to a wider range of people, including for the benefit of children of the family and other persons for their (the children) benefit.

1199. The Assisted Reproduction (Parentage) (Guernsey and Alderney) Ordinance, 2009, provides that the husband of a woman who bears a child from donated sperm shall be treated as the father of the child with the exception being where the husband did not consent to the procedure or being treated as the father at the time.

1200. The Inheritance (Guernsey) Law 2011, which came into force on 2 April 2012 provides that civil partners who have registered as such in the UK or whose legal relationship formed elsewhere would be recognised and treated as a civil partnership for the purposes of the UK Act will enjoy full inheritance rights in Guernsey where the deceased was domiciled in Guernsey or owned real property in Guernsey.

1201. In 2007 Her Majesty in Council approved the Personal Property (Succession) (Sark) Law, 2007 which removes all discrimination in law in respect of the inheritance rights of illegitimate persons in Sark.

**Article 24 – Rights of children**

1202. Protection under other international instruments ratified by the UK, is as follows:

- European Social Charter (1961).
- International Covenant on Economic, Social and Cultural Rights (1966).
- ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment.
- Convention on the Rights of the Child (1989), and Optional Protocol on the involvement of children in armed conflict (2000 and Optional Protocol on the sale of children, child prostitution and child pornography (2000).
- ILO Convention No. 182 (1999) concerning Worst Forms of Child Labour.
- Progress since the sixth periodic report

**United Kingdom***UK Armed Forces*

1203. The minimum age for entry into the UK Armed Forces reflects the normal school leaving age of 16. Evidence of age is required, and formal written consent is required from the parents of those under 18. There is no compulsory recruitment into the UK Armed Forces, and personnel under 18 have a statutory right to discharge from the Armed Forces if they wish to leave. There is no intention to change this policy, which is compliant with the UNCRC.

1204. The UK's interpretative declaration on the Optional Protocol on the Involvement of Children in Armed Conflict makes clear that 'the United Kingdom will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take part in hostilities. However, the UK understands that article 1 of the Protocol would not exclude the deployment of members of the Armed Forces under the age of 18 to take a direct part in hostilities where:

- There is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place, and;
- By reason of the nature and urgency of the situation it is not practical to withdraw such persons before deployment; or to do so would undermine the operational effectiveness of their ship or unit; and thereby put at risk the successful completion of the military mission or the safety of other personnel.

1205. The Government believes that its policies on under-18s in Service are robust and comply with national and international law. In addition to the comprehensive welfare system that is in place for all Service personnel, we remain fully committed to meeting our obligations under the United Nations Convention on the Rights of the Child Optional Protocol on the involvement of children in armed conflict, and have taken steps to bestow special safeguards on young people under the age of 18.

*Safeguarding Vulnerable Groups Act 2006/Disclosure and Barring Service*

1206. The Safeguarding Vulnerable Groups Act became law in November 2006, shortly after the UK submitted its sixth periodic report. It provided the legislative framework for barring unsuitable people from working with vulnerable groups, including children. The purpose of those arrangements was to minimise the risk of vulnerable groups suffering harm at the hands of those engaged to work with them. Many of its provisions came into effect in 2009. The Protection of Freedoms Act 2012, which became law in May 2012, makes a number of amendments to the SVGA; the first of those amendments are due to come into effect in September 2012. These amendments were adopted following a review of the Vetting and Barring Scheme conducted by the Government in 2012.<sup>19</sup>

1207. Following an independent review of the Office of the Children's Commissioner in England in 2010. The Government is introducing new legislation to strengthen the powers of the Children's Commissioner for England so that it is able to promote and protect children's rights. The Government is determined to have a strong Children's Commissioner who can help to identify emerging concerns and issues that need a national solution and can challenge the Government on aspects of its policy or practice which may not be working well for children. The proposed legislative reforms to the role and function of the Children's Commissioner were confirmed in the Queen's speech in May 2012 and have been the subject of pre-legislative scrutiny by the Joint Committee on Human Rights. In December 2010, at the same time as responding to the review of the Office of the Children's Commissioner, the Government also made a written commitment to Parliament that it would give due consideration to the UNCRC articles when making new policy and legislation.

*Wales: The Rights of Children and Young Persons Measure*

1208. The 'Rights of Children and Young Persons (Wales) Measure 2011' was passed by the National Assembly for Wales on 18 January 2011 and approved by Her Majesty in

<sup>19</sup> Home Office, Vetting & Barring Scheme Remodelling Review – Report and Recommendations, February 2011 <http://www.homeoffice.gov.uk/publications/crime/vbs-report?view=Binary>

Council on 16th March 2011. The Measure embeds consideration of the United Nations Convention on the Rights of the Child (UNCRC), and the Optional Protocols, into Welsh law and builds on the rights based approach of the Welsh Government to making policy for children and young people in Wales.

1209. It places a duty on Welsh Ministers to have due regard to the rights and obligations within the United Nations Convention on the Rights of the Child and its Optional Protocols. The duties within the Measure will be implemented in two stages:

- From 1 May 2012 – 30th April 2014, Welsh Ministers must have due regard to the rights in the UNCRC when making decisions about proposed new policies or legislation, or about reviewing or changing existing policies.
- From 1 May 2014 Welsh Ministers must have due regard to the rights in the UNCRC whenever they use any of their legal powers or duties.

1210. There is now also a Children's Rights Scheme which sets out the arrangements Welsh Ministers have put in place to ensure that they, and those who work for them, consider children's rights in policies and legislation. This Scheme was debated, welcomed and approved by the National Assembly for Wales and came into force on the 1st May 2012 to comply with the first stage of the Measure.

#### *Scotland: Rights of Children and Young People*

1211. In Scotland, the Scottish Government plans to introduce a Children & Young People Bill in 2013. This will bring together the Government's previous proposals for separate legislation focussing on children's rights and children's services. The Government will continue to reflect the principles of the UNCRC in policy and legislation wherever possible, and the legislative principles to be introduced through the Children & Young People will enhance this approach. Detailed proposals for the Bill were published as part of a public consultation in summer 2012, with the proposals building on key findings from the 2011 consultation on children's rights. The consultation involves a wider discussion with the whole of Scotland's public sector about the types of legislative duties which are necessary if Scotland is to improve its approach to children's rights across all public services. Alongside the Bill, the Scottish Government will be taking forward a range of activity designed to further strengthen the approach to children's rights; this is described in more detail in our "Do the Right Thing" children's rights progress report which was published on 11 May 2012 and includes, for instance, a commitment to review whether the age of criminal responsibility should be raised from 8 to 12 in Scotland.

## **Oversees Territories**

### **Bermuda**

1212. Although alternative forms of discipline are used in the main, corporal punishment is still permitted in public schools in Bermuda. However, corporal punishment must be administered in accordance with specific conditions, such ensuring that a person of the same sex as the student administers the punishment. All such punishments must be recorded in the school discipline logbook.

1213. The Bermuda Government re-established the National Youth Council as a means of affording young people a voice in the democratic process. The Council is an advisory one, and consists of one student from each of the Island's senior schools and has regularly scheduled meetings.

**British Virgin Islands (BVI)**

1214. No developments to report under this article.

**Cayman Islands**

1215. The Children Law (2003. and the Children (Amendment) Law 2009 came into force on July 1, 2012. The Law provides a comprehensive framework for a wide range of matters relating to children such as parental responsibility; the making of orders (residence, contact orders, orders for financial assistance); provision of support by the Department of Children and Family Services (DCFS) to children and families; care and supervision; and the protection of children. The (Amendment) Law inter alia, provides for the mandatory reporting of child abuse.

1216. Given the limited resources of DCFS at the time of this submission, it was decided that certain sections of the Law would not come into force at this time (namely, those relating to the day care, nurseries and child minding); however, the Government is committed to ensuring implementation of the Law in its entirety.

1217. The Draft Regulations are currently before the Legislative Assembly for a statutory 21 day period for public consultation. This statutory period will afford the public and other stakeholders an opportunity to give feedback on the draft Regulations.

1218. Once the entire Law comes into effect, the Cayman Islands will have a comprehensive legal framework that modernises the current legal provisions regarding children's welfare and reinforces Government's commitment to meeting its obligations under the United Nations Convention on the Rights of the Child. A more detailed analysis of the Law and its application will be submitted in the next periodic report on the Convention on the Rights of the Child.

1219. Section 80A of the Labour Law (2011 Revision) gives effect to the ILO Convention on the Worst Forms of Child Labour, No. 182 (1999) by prohibiting acts such as compulsory/forced child labour, holding a child in slavery or servitude and the offer or use of a child for prostitution or pornography.

1220. With respect to pornography, the Government is in the process of developing child pornography legislation.

1221. Under the Trafficking in Persons (Prevention and Suppression) Law, 2007 any person who recruits, transports, harbours or receives a child for the purpose of importation of that child commits the offence of trafficking in persons. Under the Law, provision is made for assistance to victims and the forfeiture of any article, vehicle or property that is being or has been used for the purpose of any offence therein. To date, however, the trafficking of persons into or out of the Cayman Islands has not appeared to be an issue which law enforcement agencies have encountered.

1222. See also information on detention of juveniles under article 10.

**Falkland Islands**

1223. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 1 of the Constitution provides that every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This includes children.

1224. Section 3 of the Constitution provides that no person shall be subjected to torture or to inhuman or degrading treatment or punishment.

1225. In 2002 the Education Ordinance was amended so that section 66 now provides that it is unlawful for corporal punishment of any pupil at any school in the Falkland Islands to be imposed or carried out by a member of the staff of that school in consequence of any act or omission of the pupil at the school or elsewhere.

1226. The Children and Young People's Strategy Group has been wound-up as the Action Plan adopted in 2005 to implement certain recommendations under the United Nations Convention on the Rights of the Child has been fulfilled.

1227. The promotion of the rights of the children is now overseen by the Safeguarding Children and Young Persons Board of the Falkland Islands Government. In 2012 the Government adopted new Safeguarding Procedures and new Fostering Procedures. New arrangements to encourage children and young persons to voice their views, concerns and aspirations, and to contribute to policy making in areas that directly affect or are of interest to them, are being explored by the Board.

1228. Section 15 of the Immigration Ordinance provides that if a person makes a claim for asylum, or otherwise claims that on humanitarian grounds it would be unconscionable to take action to require them to leave the Falkland Islands, the Principal Immigration Officer shall grant leave to the claimant and their dependants to remain in the Falkland Islands until the claim is determined. The claim must be investigated and a written report presented to the Governor, who makes a decision on the claim. No appeal lies to any person, tribunal or authority from any decision of the Governor to refuse to grant asylum to any person. While the claim is being determined, the Principal Immigration Officer may grant permission to the asylum-seeker (or one or more dependants) to take up employment. There is no record of any person ever claiming asylum in the Falkland Islands.

### **Gibraltar**

1229. The Government of Gibraltar is considering the extension of the ILO Worst Forms of Child Labour Convention.

1230. The Government of Gibraltar has been asked to consider the UN Convention on the Rights of the Child.

1231. In relation to corporal punishment in schools, even though the Education and Training Act is silent on corporal punishment, this is banned in Gibraltar schools.

### **Montserrat**

1232. The Montserrat Constitution Order 2010 enshrines the fundamental right or protection against discrimination. Section 16 of the Constitution prohibits the making of a law that is discriminatory of itself or in its effect and protects a person from being treated in a discriminatory manner by public authority or by another person acting under the authority of law or in the performance of the functions of any public office. It also prohibits treatment of persons in a discriminatory manner in respect of access to any place to which the general public has access. Section 16 also defines discriminatory to mean 'affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.'

1233. Section 16 also provides limitations on the protection afforded against discrimination. The protection against discrimination is not eroded if a law or an act done under it has an objective and reasonable justification.

1234. The Immigration (Amendment) Act, 2009 makes provision for special protection of minors where an asylum claim to remain in Montserrat as a refugee is made on their behalf, particularly where the minor is not accompanied by parents.

1235. The Status of Children Bill 2012 was recently approved in Cabinet. It removes all forms of discrimination against children born out of wedlock and empowers court to make a declaration of parentage where parentage is alleged and founded.

1236. Section 315 of the Criminal Procedure Code 2010 makes special provision for young persons who are charged with a criminal offence. It amends the Magistrate's Court Act by allowing for an offence for which a young person is charged to be heard either by the Magistrate's Court or before a court established under the Juveniles Act, depending on whether the young person is charged alone or with another person or whether it is a summary offence or indictable offence. However, this section of the Code is not yet in force.

1237. The Criminal Procedure Code, at sections 270 to 275 also makes special provisions and sets out special measures available for the protection of child complainants and child witnesses. Section 288 provides for the protection of children from cross-examination in person in a trial for certain offences, including a sexual offence.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

1238. The 'Children Ordinance' revised in 2010 provides for the care and protection of children and ensures a child's fundamental rights under Article 16 of the Pitcairn Constitution – 'Children's Rights' are largely protected.

1239. Child means a person under the age of 16 years. The age of majority in civil matters is 18 years and over.

1240. In 2009 the common law rules permitting the use of force for punishment of a child were abolished. If convicted of an offense under (7.) of the Children Ordinance before the Supreme Court, imprisonment is available for a term not exceeding 5 years or to a maximum fine of \$1000 or both, or on conviction before the Magistrate's Court imprisonment for a term not exceeding 2 years or to a maximum fine of \$250 or to both. There follows a brief summary of relevant legislation.

#### *The Pitcairn Constitution Order 2010 – Article 17: Right to Education*

1241. 1. Every child of the appropriate age, as provided by law, shall be entitled to receive primary education which shall, subject to subsection (2., be free.

1242. Addition legislation under 5. Summary Offences

*(15.) Any person who, being a parent or guardian or a person for the time being having the care of a child under the age of fourteen years, leaves that child without making reasonable provision for the supervision and care of the child for a time that is unreasonable or under conditions which are unreasonable having regard to all the circumstances, shall be guilty of an offence and liable to a fine not exceeding one hundred and fifty dollars or to imprisonment for a term not exceeding ninety days or to both such fine and imprisonment.*

*(23.) Any person who:*

*(a) is the parent or guardian of any child who resides on Pitcairn Island and has attained the age of 5 years but not yet attained the age of 16 years; and*

*(b) without just cause, refuses or neglects to keep that child in regular attendance at the public school on Pitcairn Island shall be guilty of an offence and liable to a fine not exceeding \$200.*

*(24.) Any person who supplies tobacco in any form whatsoever to another person under the age of eighteen years shall be guilty of an offence and liable to a fine not exceeding twenty five dollars.*

1243. The Pitcairn Constitution Order 2010 – Article 22: Protection from arbitrary deprivation of right of abode and of British citizenship, protects the child and its right to nationality.

1244. Births And Deaths Registration Ordinance largely protect a child's right to registration of birth and right to a name.

1245. Since 2007 a specialist social worker is contracted to the island on a 1 to 2 year term as 'Community and Family Advisor' (FCA). Although the roles brief is to support the wider community, much work is carried out with parents and children. Included is regular consultation with other government contracted professionals such as the doctor, school teacher and community constable on matters relating to children's well-being.

1246. Under the guidance of FCA and partners, in 2008 the government developed and approved 'GPI 016 Safeguarding Children Policy'. This was done in consultation with community and other specialist advisors on and off island.

1247. The 'GPI 016 Safeguarding Children Policy' references the 'UN Convention on the Rights of the Child' to which Pitcairn Island is a signatory through the UK. The document clearly outlines process and procedures that organisations and individuals should take to safeguard and promote the welfare of children on Pitcairn Island. In 2011 this policy was favourably scrutinised by Human Rights advisors on island at the time.

1248. In 2008 the community formed a community watch group, now known as the 'Community Action Group' (CAG). Although its primary purpose is identifying and taking proactive measures on community wellbeing, 50 per cent of its work encapsulates children's wellbeing. A successful milestone was the formation of the 'Pitcairn Island Sea Scouts' attended by 80 per cent (8 of 10., age eligible children on a weekly / monthly basis.

1249. In addition, CAG were drivers in implementation of 'all visiting yachts with children are reminded of appropriate conduct ensuring safety of their children whilst on-island'.

1250. In 2010 and 2011 'Child Matters', an organisation in New Zealand specialising in child welfare, conducted workshops via video-link to community participants. Titled 'Child Protection Studies Programme For Pitcairn Island' (CPS), the programme was attended by 24 per cent of the adult resident population. Attendees were equally male/female. It is anticipated a third workshop will be run in 2012.

### **St Helena**

1251. The Welfare of Children Ordinance (WOCO) came into effect in 2008. Some of the major changes this brought meant that crèches and child minders have to be registered with Social Services and meet certain minimum standards in the process. Family law also changed with the introduction of residence, contact, prohibited steps and specific issues orders and also modernising of all legislation relating to safeguarding children. Private fostering regulations were also brought into place and were further amended in 2011 so that only carers who are not close family members would be considered for this service. Additional provision has been made for the issuance of special guardianship orders. This order gives long term cares parental responsibility for the child they are looking after but unlike adoption it does not take away the parental responsibilities of the birth parent/s. The WOCO enabled the formation of the Safeguarding Children Board, whose chief role is to ensure that procedures and protocols pertaining to the protection of children are in place.

1252. The Welfare of Children Ordinance provides Children & Young People with a good framework for protecting their rights.

1253. The Youth Parliament and the Student Council allow children to represent themselves.

1254. Corporal punishment in schools is illegal under the Education Ordinance 2008.

1255. The National Human Rights Action Plan for St Helena calls for the Reservation under this convention to be removed, thus preventing any retrograde legislation (as unlikely as this may be).

1256. A recent new Immigration Ordinance provides for secondary legislation to deal with asylum seekers. Work is still in progress to develop policies to lead to such legislation.

### **Turks and Caicos Islands**

1257. The International Convention on the Rights of the Child 1994 has been extended to TCI. TCI is also signatory to the International Labour Organisation No.182 Worst Forms of Child Labour - it covers exploitation of children, trafficking in children and the worst forms of abuse of children. Local legislation namely the Family Law Bills seeks to protect the children.

1258. The new Family Law Bills in draft include amendments to the Adoption process lowering the age to eighteen (18. years. The government's Social Development and Gender Affairs Department is responsible for ensuring that children are not exploited and have access to Education and other basic amenities.

1259. The Human Rights Commissioner has raised concerns in TCI about the position of children born here of non-Belongers. In many cases their parents, often from Haiti or the Dominican Republic, may not be here legally, or may not know the legal status to which they may be entitled. It has widely been suggested, including by the Haitian authorities, community representatives and some NGOs, that these children are "stateless". They are not, but a large number of them are undocumented, which is a matter of significant concern. The TCI Government is addressing this as follows:

- Instructions have been given by the Registrar General that all children born in the Islands must be issued with birth certificates. An unlawful practice had grown up whereby parents were not being issued with birth certificates for their children until they had paid their hospital bills. The Registrar General will take forward a drive to increase registration of births during 2012/13.
- The TCI Government (and the UK) are cooperating with the Haitian Government to set in place consular arrangements in the TCI so that Haitian nationals here can get passports
- Guidance has been published to increase public awareness of the ways in which it is possible to qualify for British overseas territories citizenship (BOTC), under the British Nationality Act 1981(BNA). The BNA is compatible with international obligations re statelessness, and provides, among other things, that a child born in the territory and resident for the first ten years of their life is entitled to be registered as a BOTC. The Ministry of Border Control and Labour has improved the way in which these applications are processed, and cleared longstanding backlogs.
- The Immigration (Amendment) Ordinance 2012 specifies that a BOTC by virtue of a connection with the TCI is able to enter, live and work in the Territory, and may not be excluded nor deported from the Territory.

1260. With respect to access to education, the 2006 and 2011 Constitutions require that no child in the TCI should suffer discrimination in the allocation of places for primary and secondary education (to 16.. However, in practice, children of Belongers have tended to have preferential treatment, and children whose status has been, or is unclear, or who are here illegally (as a consequence of the actions of their parents or guardians) have not been given an easy route to education, if at all. Given limited public resources, this is

understandable, but needs to be tackled to ensure that access to education does not become an informal means of managing illegal immigration. The draft Equality Bill explains responsibilities under the Constitution with regard to access to education. However, reactions to this section of the Bill have been intense with pressure mounting on the Interim Administration to remove the section until a later date to be added by amendment to the Bill once enacted. The recommendation has been to give the Belonger public more time to be sensitized to requirements. In the meantime, senior officials in TCIG have been alerted to their responsibilities with respect to ensuring that schools and government follow the correct procedure.

## **Crown Dependencies**

### **Isle of Man**

1261. Please see the information provided under article 7 concerning the prohibition on the use of corporal punishment of children in all educational settings.

### **Bailiwick of Jersey**

1262. The States of Jersey have resolved to request the United Kingdom to extend to Jersey their ratification of the United Nations Convention on the Rights of the Child (UNCRC) and this commitment forms part of the Strategic Plan of the States of Jersey 2009 – 2014.

1263. Following a review of the implications of extension, it is evident that a number of legislative changes are required and work is progressing in a number of departments on resolving the policy and legislative issues.

1264. See also the comments in relation to article 7.

### **Bailiwick of Guernsey**

1265. The Children (Guernsey and Alderney) Law 2008 came into force in January 2010, updating in its entirety the legislation dealing with the care and protection of children and young persons. The principal purpose of this Law was to reform the law relating to children and their families, and aims to do the following:

- The creation of obligations concerning the provision of services for children in need and for children who require care, protection, guidance or control.
- The prescription of the duties, powers and rights of parents and others caring for children.
- The establishment of a Child, Youth and Community Tribunal, which offers children and young people in need or in trouble the opportunity to have their case heard outside of a court environment.
- The setting of standards, and creation of conditions, which will enable there to be ratified on behalf of Guernsey and Alderney, such international agreements concerning children as the States or the States of Alderney, as the case may be, may resolve.

*The Chief Pleas of Sark are developing an equivalent law for that island.*

1266. The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law 2008 also came into force, which brings in considerations to be taken into account when dealing with a child who has committed an offence. The main consideration is the prevention of offending in the long and short term. The age at which a child can be

convicted under the Law is twelve years. Children under twelve can still be referred to the Tribunal if they are in need of control.

1267. The welfare of children is at the heart of the new legislation, emphasising the responsibilities of the parents and others caring for children. The welfare of children is subject to considerations of public interest and safety and the laws recognise this. They also recognise that the government has responsibilities in supporting families that may be struggling and ensuring that when children cannot live at home they have the next best thing to loving and competent parents. The new laws give better support and protection to children and young people who need it, which includes involving the community in decisions about children at risk.

*In response to the observation contained in paragraph 21 of the Committee's concluding observations*

1268. Guernsey forms part of the Common Travel Area and the immigration rules are aligned to those in the United Kingdom by virtue of the Immigration Act 1971 which is extended to the Bailiwick. Part 11 of the Immigration (Bailiwick of Guernsey) Rules 2008, amended by the Immigration (Bailiwick of Guernsey) (Amendment) Rules 2011, describes how applications for asylum are handled. Asylum applicants will be granted asylum in the Bailiwick of Guernsey provided that they are: in the Bailiwick of Guernsey or at a port of entry; a refugee as defined by the United Nations Convention and Protocol relating to the Status of Refugees; and if refusal would breach this Convention and Protocol. No asylum seekers have been detained in Guernsey since the sixth periodic report.

*In response to the observation contained in paragraph 27 of the Committee's concluding observations*

1269. By an administrative directive made Education Department under the Education (Guernsey) Law, 1970, corporal punishment is not permitted in schools controlled by the Department. Private schools in Guernsey are licensed and inspected by the Education Department. They have all discontinued the use of corporal punishment.

## **Article 25 – Rights of citizens**

### **Progress since the sixth periodic report**

#### **United Kingdom**

1270. No developments to report under this article.

#### **Oversees Territories**

##### **Bermuda**

1271. Per section 55 of the Bermuda Constitution Order 1968, no person shall be qualified to be registered ...who, on the qualifying date is disqualified for such registration under any law in force in Bermuda by reason of his serving or being under such a sentence of imprisonment (by whatever name called) as may be prescribed by any such law, or is disqualified for such registration under any such law by reason of his having been convicted of any offence relating to elections.

1272. Section 3 of the Parliamentary Election Act 1978 is reflective of the same: a person is disqualified for registration as an elector if on the qualifying date for registration as an elector; he is in prison or is detained in a senior training school.

1273. After the issue of a Writ of Election, the Commissioner of Corrections must provide a certified list of all persons incarcerated to the Parliamentary Registrar so that their names can be rendered ineligible.

1274. There is no intent to amend the Constitution on this point.

#### **British Virgin Islands (BVI)**

1275. No developments to report under this article.

#### **Cayman Islands**

1276. By virtue of section 91(1) of the Constitution, a person shall not be entitled to be registered as an elector in any electoral district who, inter alia, is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him or her by a court in any country or substituted by competent authority for some other sentence imposed on him or her by such a court, or is under such a sentence of imprisonment the execution of which has been suspended.

#### **Falkland Islands**

1277. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846) came into force on 1 January 2009. The Constitution protects the fundamental rights and freedoms of the individual.

1278. Prisoners serving sentences of less than 12 months are entitled to vote.

#### **Gibraltar**

1279. The Gibraltar legislature has 17 elected members, two of which are women (1 in Government office and another in the Government opposition).

#### **Montserrat**

1280. Section 51 of the Montserrat Constitution Order 2010 facilitates the liberty to partake in the political process by setting the qualification criteria for elected membership to the Legislative Assembly. These include being a Montserratian, having attained the age of 21 years, being a registered voter and having been resident in Montserrat at least twelve months during the five years immediately preceding the date of nomination for election.

1281. Section 52 also sets out the grounds for disqualification from elected membership. These include being a public officer or a judge, having been declared bankrupt by a court or disqualification for membership by virtue of any law in force in Montserrat relating to offences connected with elections.

1282. Additionally, the Montserrat Constitution Order provides for the establishment of an Electoral Commission. The Electoral Commission Act 2012, in accordance with the Constitution requires the Commission to supervise elections and regulate the conduct of elections. The Commission is also tasked with reviewing the electoral districts or the boundaries of the electoral districts at least once every ten years and submit a report of the review, including its recommendations, to the Legislative Assembly.

1283. The draft Legislative Assembly (Election Petition) Rules 2012 provide the necessary legislation to facilitate the hearing of petitions challenging an election.

### **Pitcairn, Henderson, Ducie and Oeno Islands**

1284. The Pitcairn Constitution Order 2010 – Articles 22 Protection from Arbitrary Deprivation of Right of Abode and British Citizenship, and Article 23 Prohibition of Discrimination, largely protects the rights of citizens.

1285. Chapter 12 – Immigration Control Ordinance Part V, 12. Entry Clearance for Settlement, Permanent Settlement and Part VI Permanent Residence, largely defines the criteria for obtaining and protecting the status of residents with exception to persons as described under the Laws of Pitcairn, Chapter 43 - Right Of Abode Ordinance enacted 2010.

1286. Part 6, 13 of the Immigration Ordinance has special provision protecting the status of children born off-island to permanent residents. The Right of Abode Ordinance enacted in 2010, defines categories of persons with right of abode on Pitcairn Island. Part (4. of the ordinance ensures those citizens who have attained the status of permanent residence in accordance the Immigration Control Ordinance are rightfully protected with right of abode.

1287. As generalised under the section on ‘Self Determination’ in this report, the Government’s governing body is elected through a democratic process. Since 2007 considerable work has been done on the electoral process to ensure that the choice of government officers by citizens is fair, open and transparent.

1288. Additionally, consideration was given to governance stability and consistency best supporting island advancement, with terms of office for elected officers being revised and increased in the Local Government Ordinance as follows:

- Under Part II – Island Officers, Island Council: the terms of office for Mayor, Deputy Mayor and Councillors were increased to 3, 2 and 2 years respectively. Each Mayor may be eligible for a maximum of 2 terms (6 years).
- Section 4 (1-3. revised in 2009, sees the Deputy Mayor fill the position of Mayor should the Mayor become incapacitated.
- Officers may need to travel off-island for personal reasons, given Pitcairn’s unique situation, and vacancy from office and periods of time absent are largely factored around shipping schedules i.e. in increments of 3 months, up to a maximum of 6 months.
- Section 4 (4-7. enacted 2009 and 5 (1-4. revised 2009, protects both officer and government should a vacancy occur. Should the vacancy be permanent, a by-election occurs using democratic process as described within Part III of the Local Government Ordinance – Election of Island Officers.
- As described under sections 11. (a-d) and 11A (a-b) of the Ordinance, and 4(2A) of the Immigration Ordinance, residents with status of permanent residence not excluding native born who have resided for a period of 3 years or more, and have attained the age of 18 years are eligible to vote.
- Age qualification for election to office, as currently described under section 14. of the Local Government Ordinance are: persons over the age of twenty-one years and whose names appear in the Register of Voters shall be eligible for election to the office of Councillor and those of or over the age of twenty-five years to the office of Mayor or Deputy Mayor.

1289. Pitcairn is currently developing a strategy to increase its population. In this, qualifications for office have been reviewed by Island Council, in particular age eligibility, which is now with the Attorney General.

1290. In addition to the powers and duties of Council under Part II – Island Officers, Island Council section 7 (1)-(5), revised 2010, the codes of conduct of the Island Council are detailed in the following government policies:

- GPI 001 Good Conduct Policy for Council Members (2011).
- GPI 014 Portfolio Holder Policy (2010).
- GPI 015 Guidelines for Council (2010).

1291. Section 18 (a-k) of the ordinance, Appointment of Proxy to Vote enacted 2008, protects the right of citizens to vote should they be temporally absent off-island at the time of elections.

1292. Importantly, Part IV sections 19-25, ‘Election Offences’ enacted 2008, ensures the democratic process is upheld at the time of elections. Interfering with or influencing voters, offences in respect of official documents, voting offences, bribery, undue influence, infringement of secrecy and criminal proceedings are detailed. Equally, Part V – Disputed Elections sections 26-39 enacted 2008, allows for and provides the means by which a person can call for scrutiny of election results.

### **St Helena**

1293. Persons with St Helenian Status are allowed to vote in elections and there is no discrimination between men and women.

### **Turks and Caicos Islands**

1294. Also see article 1

1295. In common with the other Overseas Territories, the citizenship of the TCI is British overseas territories citizenship (BOTC), conferred by the British Nationality Act 1981; but the full range of rights and entitlements usually associated with citizenship, including the right to vote, is reserved for those who have a status conferred under local immigration law, known as Belonger status. [Under the 2011 Constitution, the term Belonger will be replaced by Turks and Caicos Islander (Islander).] This situation in itself raises concerns under Article 25, as well as being a source of confusion for many people who live in the Territory. The question of who should be able to vote, and the associated question of how it should be possible for those who make their homes in the Territory to progress to Belonger status, has been the subject of extensive, and heated, debate in the TCI since the partial suspension of the 2006 Constitution in 2009.

1296. The 2011 Constitution provides that there should be legislation setting out the conditions to be met in order to qualify for Belonger status. However, a territory-wide consultation exercise in 2011/12 yielded a strong majority view from those who took part that Belongership should be limited to those who have it by a family connection, ie birth, descent, adoption, or by marriage to a Belonger for at least ten years, ie: the restriction of voting only to those who have Belonger status. The UK Government recognises the strength of feeling on this matter, which is replicated in other Overseas Territories. There is a strong desire among island communities to maintain their cohesion and hence the need for a reasonable qualifying process. Accordingly the British Interim Government has brought forward legislation (a new Immigration Ordinance, to be signed into law in July 2012, which gives effect to the main messages received in the consultation: this includes increasing the current time limit of 5 years for those who marry a Belonger to 10 years before they will be eligible for Belongership and voting rights, similarly to the provisions in Bermuda. In 2012, the Interim Administration conducted a full census of the TCI. Respondents had to self-identify as ‘Belonger’.

1297. However, for the purpose of registering for the 2012 elections, in which only Belongers can vote, the registration process required documentary evidence of Belonger status, which was verified by the Ministry of Border Control and Labour.

1298. At that time, the TCI's Human Rights Commissioner raised with the Interim Administration that some people in the community had complained about having to pay a \$20 fee for a copy of their birth certificate (if they did not have one) to confirm Belonger status for the purposes of voting. The Commissioner noted that some might see the timing of the fee as an unreasonable restriction in their ability to exercise their right to vote. The Interim Administration regarded the birth certificate copy fee as a separate issue, ie: to secure a copy of a birth certificate at any time, a fee is charged. Furthermore, to facilitate election registration the normal cost of birth certificate copy was halved from \$40. Additionally, senior citizens were exempted, and the fee was waived for those who could reasonably claim to be unable to pay (eg: the unemployed). Furthermore, all who confirmed their belonger status would get a free belonger card. Legal advice from the TCI's Attorney General was that the fee was not in contravention of Article 25 which requires that the right to vote should not be subject to unreasonable restrictions: payment of a fee to obtain a birth certificate in order to register to vote should not sensibly be characterised as unreasonable.

1299. There were also some complaints made about restrictions placed on 'belongers' living abroad. Legal advice was that it was not unreasonable to require voters to have lived in the Islands for a reasonable period before being allowed to exercise the franchise; for example, Jersey, British Channel Islands, requires 2 years' residence.

1300. Following the 2012 Census and election registration process, the breakdown of the different categories of TCI residents is: Belongers (self-identified) aged 18 or older – 9,853, Belongers registered to vote – 7,239 (2012..

1301. It will be the responsibility of an elected Government (following elections in November 2012. to consult further on the conditions to be met in order to qualify for TCI Islander status, and to bring forward legislation in line with section 132 of the new 2011 Constitution.

1302. Prisoners on remand or convicted with a sentence of less than one year and who qualify as 'Belongers' are permitted to apply to have their name on the Register of Electors. This was facilitated by the Elections Office during the recent voter registration.

## **Crown Dependencies**

### **Isle of Man**

1303. The Isle of Man Government notes the comments of the Committee in paragraph 28 of the concluding observations. The rights, or otherwise, for convicted prisoners in the United Kingdom is a matter for the UK Government to consider. As advised in the previous report, convicted prisoners in the Isle of Man are able to exercise the right to vote in the Island's elections.

### **Bailiwick of Jersey**

1304. The Government of Jersey respectfully notes the recommendation of the Committee in paragraph 28 of its observations regarding the rights of convicted prisoners to vote.

1305. Further to the judgement of the European Court of Human Rights in *Scoppola v Italy* in May 2012, the Government of Jersey is waiting to be informed by the United Kingdom's response before considering amendment of the Public Elections (Jersey) Law 2002, article 4 of which currently disenfranchises prisoners from voting.

**Bailiwick of Guernsey**

1306. The Reform (Guernsey) (Amendment) Law, 2007 reduced the voting age from eighteen to sixteen years.

1307. In 2008 Sark's parliament, the Chief Pleas of Sark, agreed to reform its system of government. The Chief Pleas of Sark now derives its authority and powers from the Reform (Sark) Law, 2008, as amended, which came into force in 2008.

1308. The Reform (Sark) Law, 2008 also deals with the franchise and process of registration of elections. Following a judicial review of the Reform (Sark) Law, 2008, the UK Supreme Court held that it complies with Article 3 of Protocol 1 of the European Convention of Human Rights, which protects 'the free expression of the opinion of the people in the choice of legislature'.

*Response to the observation contained in paragraph 28 of the Committee's concluding observations*

1309. Prisoners in Guernsey are not debarred from being inscribed on the electoral roll and under the Reform (Guernsey) Law 1948, as amended, can vote either by postal vote or in person, at the discretion of the Prison Governor.

1310. In 2008 Sark's parliament, the Chief Pleas of Sark, agreed to reform its system of government. The Chief Pleas of Sark now derives its authority and powers from the Reform (Sark) Law, 2008, as amended, which came into force in 2008. Under the new constitution of the Chief Pleas will now comprise of: the Seigneur of Sark; the President of the Chief Pleas; and twenty eight Conseillers elected by universal adult suffrage for a period of four years.

1311. As a result of the commencement of this new constitution the Seneschal will cease to be the presiding officer of Chief Pleas and the role will be judicial only. The Seneschal will be appointed by committee chair by the Seigneur. President of the Chief Pleas shall be appointed for a four year term of office by resolution of the Chief Pleas. Neither the Seigneur nor the President of the Chief Pleas is a voting member of Chief Pleas.

1312. The Reform (Sark) Law, 2008 also describes the Franchise and process of registration of elections. Following the judicial review of the Reform (Sark) Law, 2008,<sup>20</sup> the UK Supreme Court held that it complies with Article 3 of Protocol 1 of the European Convention of Human Rights, which protects "the free expression of the opinion of the people in the choice of legislature".

**Article 27 – Rights of minorities**

1313. Protection under other international instruments ratified by the UK is as follows:

- International Covenant on Economic, Social and Cultural Rights (1966).
- European Charter for regional or minority languages (1992).
- Framework Convention for the protection of national minorities (1995).

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<sup>20</sup> R (on the application of Barclay and others) v Secretary of State for Justice and others [2009] UKSC 9.

## Progress since the sixth periodic report

### United Kingdom

#### Welsh in Wales

1314. As a result of the devolution of power within the United Kingdom, the Welsh Government is responsible for promoting the Welsh language.

1315. The Welsh Language Act 1993 established the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality. The Welsh Language (Wales) Measure, which replaced the 1993 Act, received Royal Assent in February 2011. The Measure confirms the official status of the Welsh language and provides for the establishment of the post of Welsh Language Commissioner, an Advisory Panel for the Commissioner and a Welsh Language Tribunal. The Measure also provides for the development of Welsh language standards that will replace Welsh language schemes introduced by the 1993 Act. The Measure also includes provisions with regard to the freedom of people wishing to speak Welsh with one another. In addition, it provides for the establishment of a statutory Welsh Language Partnership Council to advise the Welsh Ministers about their Welsh Language Strategy.

1316. As a result of the Welsh Language (Wales) Measure 2011, the Welsh Language Board was abolished on 31 March 2012 and the Welsh Language Commissioner became operational on 1 April 2012. In addition, the Advisory Panel and the Welsh Language Partnership Council have been established.

1317. The Welsh Language Commissioner has a general power to promote and facilitate the use of Welsh and to work towards ensuring that Welsh is treated no less favourably than English. The Commissioner will have a key role to play in safeguarding the rights of Welsh speakers and contributing to the public debate surrounding the future of the Welsh language. The range of services available to the public in Welsh will be improved as a result of the Measure. This will be achieved by means of the Welsh language standards which will impose duties on organisations that fall within the scope of the Measure to:

- provide services in Welsh;
- consider the effect of policy decisions on the Welsh language
- promote the use of Welsh in the workplace
- promote and facilitate the use of Welsh more widely
- keep records of compliance with standards and of complaints.

1318. Both the Commissioner and the Welsh Government will have important roles to play in the creation of standards. The Commissioner will also have significant powers to enforce compliance with standards and powers to undertake investigations into allegations of interference with individuals' freedom to use Welsh with one another. The Commissioner will also have the power to advise and make recommendations to the Welsh Government in relation to the Welsh language. The Commissioner will also be duty-bound to formulate a report every five years on the position of the Welsh language.

1319. The Welsh Language (Wales) Measure 2011 will contribute towards implementing the aims of the new Welsh Language Strategy 2012–17 A living language: a language for living, which was launched on 1 March 2012.

1320. Adopting a Welsh language strategy is a requirement placed on Welsh Ministers by section 78 of the Government of Wales Act 2006. <http://wales.gov.uk/docs/dcells/publications/122902wls201217en.pdf>

1321. Six strategic aims have been identified for the strategy. They are:

- (1) To encourage and support the use of the Welsh language within families.
- (2) To increase the provision of Welsh medium activities for children and young people and to increase their awareness of the value of the language;
- (3) To strengthen the position of the Welsh language in the community;
- (4) To increase opportunities for people to use Welsh in the workplace;
- (5) To improve Welsh language services to citizens; and
- (6) To strengthen the infrastructure for the language, including digital technology.

1322. In March 2012, the Welsh Government published an Action Plan for 2012-2013 setting out how it will implement the proposals set out in the Welsh Language Strategy for that financial year:  
<http://wales.gov.uk/topics/welshlanguage/publications/actionplan1213/?lang=en>

*Wales: Education*

1323. Pre-school education is available to all parents/guardians through the medium of Welsh there is a statutory entitlement to at least half-time provision from the child's 3rd birthday. Voluntary sector provision Mudiad Meithrin is responsible for approximately 550 cylchoedd meithrin across Wales offering daily sessional care and education for children 2–5 years old. Over 12,000 children are given the opportunity to learn through play through the medium of Welsh in the cylchoedd meithrin. Mudiad also supports over 450 cylchoedd Ti a Fi across Wales. These groups offer an opportunity to children from birth through to compulsory school age and their parents to meet once a week to socialise, share experiences and to play together in an informal Welsh atmosphere.

1324. Currently, there are 1,435 primary schools in Wales. Of these, 33 per cent are Welsh-medium or bilingual (419 Welsh-medium primary schools, where Welsh is the sole or main medium of instruction, and 48 dual stream schools, where Welsh-medium provision is provided for some pupils). Four new Welsh-medium primary schools were established in 3 local authorities in September 2011. The numbers of 7-year-old learners being taught through the medium of Welsh or bilingually in 2010/11 formed 21.9 per cent of the total.

1325. Out of the 222 secondary schools at January 2011, there were 32 Welsh-medium schools in the secondary sector in Wales and 24 bilingual schools, where Welsh-medium provision is used for part of the curriculum or for one or more streams in the school. In 2010/11 16.6 per cent of 14-year-old pupils studied Welsh as a first language.

1326. In April 2010, the Welsh Government launched its Welsh-medium Education Strategy which sets the Welsh Government's national strategic direction for Welsh-medium education. This Strategy sets out the ambition of the Welsh Government for a country where Welsh-medium education and training are integral parts of the education infrastructure. A key focus of the Strategy, therefore, is on supporting learners to achieve fluency in Welsh and English through Welsh-medium education, from the early years onwards.

1327. In order to monitor progress in implementing the Strategy, fixed five-year and indicative ten-year targets have been set based on outcomes that are central to its success. The Welsh Government will use this evidence as a contribution to a comprehensive review of the Strategy after the initial five-year period. Some small increases can be demonstrated against the five outcome targets set in the Welsh-medium Education Strategy, though the latest data from 2010-11 can still only show early indications of progress.

1328. In December 2011 local authorities, for the first time, reported to the Welsh Government on how they are progressing against targets outlined in the Strategy through the new, non-statutory Welsh in Education Strategic Plans. This action is proposed in the first Education Bill put before the Assembly in 2012.

1329. The commencement of the Coleg Cymraeg Cenedlaethol in September 2011 will provide substantial Welsh-medium developments in higher education. The provision of 26 staff posts being either fully or partially funded by the Coleg from 2011/12, with potentially another 33 coming on stream in 2012/13, will enable advances in a wide range of disciplines, which in turn will provide improved opportunities for Welsh-medium progression from pre-19 learning

1330. In the post-14 sector, the Bilingual Champion project was rolled out to an additional 4 FE colleges in 2011-12, making a total of 8 colleges being supported by the project. Preparations have now been made to roll out the scheme to all remaining FE colleges by April 2013. Effective cooperation has been established through the FE colleges Bilingualism Strategy with Colegau Cymru to move the Welsh-medium and bilingual agenda forward in Further Education. An appointment has also now been made for a Bilingual Champion in the work-based learning sector, funded by the Welsh Government.

## **Oversees Territories**

### **Bemuda**

1331. No developments to report under this article.

### **British Virgin Islands (BVI)**

1332. No developments to report under this article.

### **Cayman Islands**

1333. No issues under this article have arisen in the Cayman Islands.

### **Falkland Islands**

1334. The Falkland Islands Constitution Order 2008 (UK S.I. 2008 No. 2846. came into force on 1 January 2009. Section 1 of the Constitution provides that every person in the Falkland Islands is entitled to the fundamental rights and freedoms of the individual without distinction of any kind, such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1335. The Commonwealth Foundation undertook a human rights capacity building project in the Overseas Territories between 2008 and 2012. The Falkland Islands were visited by project representatives on three occasions. A large number of 'consciousness raising' workshops were held by the Commonwealth Foundation which reached significant numbers and sectors of the population including immigrant workers, charities, churches and community groups. Funding was provided for the purchase of human rights materials for the community library, and for the publication of posters and leaflets promoting human rights in English and Spanish.

1336. The provisions of the Public Order Act 1986 and the racially aggravated and religiously aggravated offences under the Crime and Disorder Act 1998 as amended by the Anti-Terrorism, Crime and Security Act 2001 apply as law in the Falkland Islands. Racially-motivated or racially-aggravated crime is vigorously investigated and prosecuted; to date there have been no complaints of any religiously-motivated or religiously-aggravated criminal or anti-social behaviour in the Falkland Islands.

**Gibraltar**

1337. No developments to report under this article.

**Montserrat**

1338. The Montserrat Constitution Order 2010 enshrines the fundamental right of protection against discrimination. Section 16 of the Constitution prohibits the making of a law that is discriminatory of itself or in its effect and protects a person from being treated in a discriminatory manner by public authority or by another person acting under the authority of law or in the performance of the functions of any public office. It also prohibits treatment of persons in a discriminatory manner in respect of access to any place to which the general public has access.

1339. Section 16 defines discriminatory to mean ‘affording different treatment to different persons on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.’

1340. Section 16 also provides limitations on the protection afforded against discrimination. The protection against discrimination is not eroded if a law or an act done under it has an objective and reasonable justification.

**Pitcairn, Henderson, Ducie and Oeno Islands**

1341. Given Pitcairn’s unique situation – minority groups as defined do not exist on Pitcairn. In Pitcairn context and very small population, ‘minority’ could equally be contextualised as ‘individuals’ whose rights are fully protected under The Pitcairn Constitution Order 2010.

**St Helena**

1342. No developments in this area save the impact of this in the area of Human Rights provision in the new Constitution.

**Turks and Caicos Islands**

1343. English remains the official language and is used widely throughout the islands. It is the medium of teaching in all state schools.

1344. Spanish is also taught as part of the Curriculum. This caters to the growing Spanish population. There is the need to introduce French / French Creole in public schools.

1345. Public health and disaster announcements are issued in English, Spanish and French Creole. The Human Rights Commissioner has also issued public information leaflets in all three languages and launched a new website – both funded by the UK.

**Crown Dependencies****Isle of Man**

1346. No developments to report under this article.

**Bailiwick of Jersey**

1347. .There are no further developments to report under this article.

**Bailiwick of Guernsey**

1348. .There are no further developments to report under this article.

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