Ministry of JUSTICE

Report of the United Kingdom to the Committee of Ministers of the Council of Europe on the implementation at national level of the Interlaken and Izmir Declarations

December 2011

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Presented to Parliament
by the Lord Chancellor and
Secretary of State for Justice
by Command of Her Majesty

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Question 1

Please indicate whether a specific domestic structure has been established to implement or oversee the implementation of the Interlaken declaration at national level.

The United Kingdom ("the UK") is implementing the Interlaken Action Plan within this framework of established structures; no new policies or legislation were necessary. The report reflects the established activity of Government, local authorities, public authorities and the courts. However the UK takes its national implementation of the European Convention on Human Rights ("the Convention") very seriously, and we continue to keep this under review.

The UK has three legal systems, due to its creation by the political union of previously independent countries: English law, Northern Ireland law, and Scots law. Both English law, which applies in England and Wales, and Northern Ireland law are based on common-law principles. Common law is law developed by judges in courts, which is binding in future cases. Scots law, which applies in Scotland, is a hybrid system based on both common-law and civil-law (codified law) principles. There are also three Crown Dependencies and fourteen overseas territories associated with the UK, but not constitutionally part of it.

Protections for fundamental rights in the UK have been developed over many centuries, through common law and statute. Most recently, these protections were supplemented by the Human Rights Act 1998 ("the HRA"), which came into force on 2 October 2000 and gave effect in domestic law to the rights contained in the Convention. This enables UK citizens to seek remedy for a breach of Convention rights in national courts. The UK Government has recently established a Commission to investigate the case for a UK Bill of Rights, conducting a thorough examination of the way our rights and traditional liberties are protected in the UK. The Government has made clear that any such Bill would incorporate and build on the Convention rights, and that the Convention rights will continue to be enshrined in UK law. The Commission is due to report on its findings by the end of 2012.

The UK has a parliamentary system of government; a system whereby the ministers of the executive branch attain their democratic legitimacy from the legislature and are accountable to that body. Legislative competence in relation to certain matters has been devolved to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly ("the devolved administrations"); each with varying powers.[1] However the UK

[1] See Government of Wales Acts 1998 and 2006; Northern Ireland Act 1998; and Scotland Act 1998

Parliament is the ultimate legislative authority in the United Kingdom since the devolved Parliament in Scotland as well as the devolved Assemblies in Northern Ireland and Wales derive their power from the UK Parliament. Executive power is exercised by the Prime Minister and Cabinet. The UK Government's system of 'Cabinet Government' follows the principle of collective Cabinet responsibility, which means that all Government ministers are responsible for all the decisions which the Government takes.

To ensure there is consideration given to the protection of human rights, the UK Parliament has several provisions under the HRA to enable scrutiny, primarily section 2 which expressly requires domestic courts to take account of the full range of case law of the European Court of Human Rights ("the Court"). In addition, since 2001 the UK has had the Joint Committee on Human Rights ("the JCHR"), a UK parliamentary committee which consists of members of both Houses of Parliament; the House of Lords and the House of Commons. The JCHR plays an important role in scrutinising matters relating to human rights in the UK, including scrutinising draft legislation to consider compatibility with human rights, undertaking inquiries on issues relating to human rights and making recommendations to Parliament. The JCHR also looks at the Government's response to human rights judgments.

Furthermore the UK has three national human rights institutions, each with specific jurisdiction and functions: the Equality and Human Rights Commission (for England and Wales), the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission. All three are accredited with 'A' status by the International Coordinating Committee of National Human Rights Institutions ("NHRIs"), and all participate in the European Group of NHRIs. They are mandated with promoting and raising awareness of human rights. The UK Government also routinely engages with many charities and non-governmental organisations on a range of human rights issues.

Within the UK, the Ministry of Justice (MoJ) within has lead responsibility for domestic human rights policy issues, often working closely with other government departments and the devolved administrations. The MoJ has been working with other departments and the devolved administrations to oversee and support the delivery of the various strands of work which form part of the Action Plan, ranging from the rapid and effective execution of judgments of the Court, to awareness raising and education on human rights issues.

Question 2

Please indicate whether any national priorities have been identified with respect to the implementation of the Action Plan and if so, what?

There is much debate in the UK at the moment on human rights, particularly around the establishment of a Commission on a UK Bill of Rights to consider the way rights and liberties are protected in the UK. The UK remains a strong supporter of the Convention, which reflects many of the basic rights and freedoms which have been fundamental to British law for centuries – such as the right to a fair trial, freedom from torture, freedom of speech. These rights are still vitally important today throughout the world.

Through the UK's current Chairmanship of the Committee of Ministers of the Council of Europe, we will have to opportunity to consider national implementation further as one of our stated priorities is to strengthen the implementation of the Convention at national level, to ensure that national courts and authorities are able to assume their primary role in protecting human rights.[2]

[2] Priorities of the United Kingdom Chairmanship of the Committee of Ministers of the Council of Europe (7 November 2011 – 14 May 2012)
https://wcd.coe.int/ViewDoc.jsp?id=1859397&Site=CM

Question 3

Specific elements of the Interlaken Declaration Action Plan

i. Continuing to increase, where appropriate in co-operation with national human rights institutions or other relevant bodies, the awareness of national authorities of the Convention standards and to ensure their application

The UK Government continues to make efforts to ensure all parts of Government and other public authorities comply with Convention standards.

The primary domestic mechanism for ensuring public authorities comply with the Convention standards is the HRA. Section 6 of the HRA provides that it is unlawful for a public authority to act in a manner that is incompatible with the Convention rights. Section 7 of the HRA allows administrative policies and practices to be challenged as incompatible with the Convention rights before domestic courts.

The Equality and Human Rights Commission's Human Rights Inquiry noted that there can be variable understanding amongst public authorities of their duties under the HRA.[3] To raise awareness and understanding, the MoJ has provided a range of guidance and support materials for public authorities on human rights issues. This includes a handbook, entitled *Human Rights, Human Lives* which was designed to help officials in public authorities to implement the HRA, and a *Guide to the HRA* for practitioners in the criminal justice system, both of which are available free of charge on the MoJ website.[4] An e-learning resource *Raising Awareness of Human Rights* has also been made available to employees in a wide range of public authorities via the National School of Government website.[5] This interactive resource was designed to promote a wider understanding of the HRA and its impact across public authorities.

[3] http://equalityhumanrights.com/uploaded_files/hri_report.pdf

[4] http://www.justice.gov.uk/guidance/freedom-and-rights/human-rights.htm

[5] http://virtual.nationalschool.gov.uk/eLearning/Pages/RaisingAwarenessOfHumanRights.aspx

The UK's three NHRIs, the Equality and Human Rights Commission, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission, have statutory responsibilities for promoting and raising awareness of human rights issues, in compliance with the Principles relating to the Status of National Institutions (the 'Paris Principles'). For example, the Equality and Human Rights Commission has statutory duties to:

- promote understanding of the importance of human rights;
- encourage good practice in relation to human rights;
- promote awareness, understanding and protection of human rights, and
- encourage public authorities to comply with section 6 of the HRA (the duty to act in a manner that is compatible with the Convention rights).

All three Commissions maintain websites which provide general information on the Convention rights, and have undertaken a range of activities to raise awareness of human rights and to scrutinise compliance with the Convention

The UK Government and the devolved administrations work closely with the three Commissions. For example, the Government and the Equality and Human Rights Commission have together been working closely with the UK's inspectorates, regulatory bodies and ombudsmen to provide leadership for the implementation of a human rights approach within these bodies. Inspectorates, regulators and ombudsmen play a crucial role in promoting human rights within public services; both directly through ensuring that public authorities respect human rights, and also disseminating best practice and involving service users in monitoring standards. MoJ and the Equality and Human Rights Commission have jointly chaired a quarterly meeting of these bodies since October 2009 at which information, experience and good practice examples are shared. The partnership also led to the publication of guidance entitled *The Human Rights Framework as a Tool for Regulators and Inspectorates* which was praised as an example of good practice by the European Union Fundamental Rights Agency.[6]

[6] http://www.justice.gov.uk/downloads/guidance/freedom-and-rights/human-rights/guide-for-regulators-and-inspectorates.pdf

ii. Fully executing the Court's judgments, ensuring that the necessary measures are taken to prevent further similar violations

The Committee of Ministers' report of April 2011 demonstrates that in 2010, only 17 judgments finding violations were made and became final in UK cases.[7]

The UK makes considerable efforts to secure timely and effective implementation of judgments as far as possible. At the same time, the Government recognises that there will always be some particularly sensitive and difficult areas in which progress towards implementation will not be as rapid as in other cases. This is a consequence of the complexity of the issues raised in such cases.

For example in the case of S and Marper v UK,[8] the Court concluded that the retention of fingerprint and DNA samples following discontinuation of proceedings or acquittal violated Article 8 of the Convention. This was debated in the context of the Policing and Crime Bill. The Government consulted on proposed changes to the retention of DNA and fingerprints. It initially proposed to use secondary legislation under the then Policing and Crime Bill to implement the judgment. Following comments, in particular from the JCHR, the Government subsequently withdrew these clauses and addressed the issue through primary legislation.

One case which has attracted considerable comment in the UK is that of Hirst v the United Kingdom (no 2).[9] In 2005, the Grand Chamber of the European Court of Human Rights found in this case that the UK's blanket ban on all serving prisoners voting was in contravention of Article 3 of the First Protocol of the Convention. The Court has granted an extension to the deadline set by the Greens and MT v UK[10] judgment on prisoner voting rights. This is because the Grand Chamber of the Court is considering Scoppola v Italy,[11] an Italian prisoner voting rights case. The Attorney General represented the UK at the Scoppola hearing in Strasbourg on 2 November, to put the UK's views to the Court. He argued that it should be for Parliament to decide the way forward on prisoner voting rights. We now await the final judgment on the Scoppola case and will consider the judgment and wider legal context before setting out the next steps on prisoner voting.

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[7] http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2010_en.pdf

[8] [2008] ECHR 1582

[9] (2006) 42 EHRR 41

[10] Application no. 60041/08, 23 November 2010

[11] Application no. 126/05, 18 January 2011

Since 2010, improvements have been made to the domestic means for ensuring full execution of Court judgments. The MoJ now performs a light touch coordination role for the implementation of adverse judgments. In practice, this involves responsibility for the domestic co-ordination of information from the Government departments leading on particular cases and its onward transmission to the Foreign and Commonwealth Office (FCO), and the UK Delegation to the Council of Europe (UKDel). Lead responsibility for the implementation of a particular judgment continues to rest with the relevant Government department, whilst the UKDel continues to represent the UK at the Committee of Ministers' meetings on the execution of judgments.

A core component of this cross-Government coordination mechanism is a specifically-designed 'implementation form', which is issued to lead Government departments to assist them in responding to adverse Court judgments. The form includes advice on the completion of the Action Plan for implementation which is required by the Committee of Ministers,[12] and helps ensure that all the information needed for the effective oversight of the implementation process is provided to the MoJ and FCO. This enables MoJ and FCO to ensure that the required information can be submitted to the Committee of Ministers on time.[13] All Actions Plans are sent to the Department for Execution of Judgments. It is the Government's policy to share these with the JCHR.

The UK's record on executing judgments which concern Convention rights is regularly scrutinised by the JCHR. The UK produces a report approximately once a year which outlines the Government's progress in responding to adverse human rights judgments from both the European Court of Human Rights and UK domestic courts. This year for the first time the UK has proactively published a report. The JCHR holds oral evidence sessions with Government Ministers and others during which it can ask questions relating to the application of Convention rights. The JCHR also regularly visits the Department for Execution of Judgments to discuss cases with them. This oversight function helps to ensure there are effective systems in place for the timely and effective execution of human rights judgments, as well as promoting and disseminating information about judgments of the Court.

[12] The Secretariat of the Committee of Ministers has a dedicated execution of judgments website: http://coe.int/t/dhjl/monitoring/execution/default_en.asp. This provides access to a searchable list of all judgments currently outstanding against all Member States and information on all the action taken by Member States to date and proposed future action where needed.

[13] Evidence of payment of just satisfaction is required within three months of the judgment becoming final and an outline of steps for general measures is normally required after six months.

iii. Taking into account the Court's developing case-law, also with a view to considering the conclusions to be drawn from a judgment finding a violation of the Convention by another state, where the same problem of principle exists within their own legal system

The UK has taken steps to ensure the Court's developing case-law is taken into account. Section 2 of the HRA expressly requires a court or tribunal determining a question which has arisen in connection with a Convention right to take into account, inter alia, any relevant judgment, decision, declaration or advisory opinion of the Court or its predecessor bodies. Thus, domestic courts and tribunals are obliged to consider and take into account the Court's case-law, and – through the system of common law precedent – to interpret and develop domestic law in a way which is compatible with its developing jurisprudence. The UK benefits from the expertise of its judiciary and lawyers in Convention case law.

There is a significant number of cases in which domestic courts, including the UK Supreme Court, have expressly taken into account the precedent of the Court, [14] some of which have led to development of the position previously taken by domestic courts. For example, in the case of Cadder v HM Advocate[15] the court held that the previous decisions made in similar cases[16] (to the effect that Article 6 of the Convention did not create a universal right for an accused to have access to a lawyer before or during questioning by the police) could no longer survive in light of the Strasbourg decision in Salduz v Turkey.[17]

Where a judgment directly involves the UK, the Agent to the Court will communicate information about the judgment to the relevant department(s). MoJ and FCO officials meet regularly to discuss newly communicated cases, following which details are forwarded to the departments and the devolved administrations identified at those meetings as having potential interest. The MoJ and FCO work with the relevant departments to ensure the Committee of Ministers is provided with confirmation that the adverse judgment has been sent to any relevant bodies affected by it (or, where this not considered necessary, an explanation as to why) and information on at least two relevant publications where the adverse judgment has been published in the public

[14] Recent examples include: ZH (Tanzania) (FC) v Secretary of State for the Home Department [2011] UKSC 4: Mayor and Burgesses of the London Borough of Hounslow v Powell [2011] UKSC 8: R (Adams) v Secretary of State for Justice [2011] UKSC 18: McCaughey's application for Judicial Review [2011] UKSC 20: R (GC) v Commissioner of the Police of the Metropolis [2011] UKSC 21: Shepherd Masimba Kambadzi v Secretary of State for the Home Department [2011] UKSC 23: E (Children) [2011] UKSC 27: R (G) v The Governors of X School [2011] UKSC 30: R (McDonald) v Royal Borough of Kensington and Chelsea [2011] UKSC 33: Home Office v Tariq [2011] UKSC 35

[15] [2010] UKSC 43

[16] For example, Paton (Gary Alexander) v Ritchie (2000) JC 271, Dickson v HM Advocate (2001) JC 203 and HM Advocate v McLean (Duncan) [2009] HCJAC 97

[17] Application No. 36391/02 (2009) 49 EHRR 19.

domain.[18] Additionally where judgments have been found against the UK, the devolved administrations are alerted to the equivalent provisions in their law.

Primary responsibility for identifying significant cases against other states which are relevant to the UK lies with the department which leads on the relevant policy area. The MoJ supplements this process through monitoring Court judgments to identify cases that have a clear read-across to existing UK cases and issues. The MoJ legal team produces and circulates a bi-monthly cross-Whitehall *Human Rights Information Bulletin* to highlight significant developments in the Court and domestic jurisprudence. MoJ will also send ad hoc emails to inform departments of significant judgments as and when they are handed down.

Government officials use a number of sources to obtain information about new cases, including contact with officials from other States and the information published on the Court's website. The Court now publishes a weekly list of communicated cases, which, together with informal contacts, is the main basis for identifying cases of potential interest. Until quite recently states had little opportunity to find out about cases pending against other states except through bilateral contacts with other government agents. This change is the result of requests made to the Court by the UK and others. The MoJ also hosts regular Human Rights Lawyers Working Groups for nominated human rights lawyers from each department: these meetings are used to discuss new or ongoing cases which deal with cross-cutting human rights issues.

iv. Ensuring, if necessary by introducing new legal remedies, whether they be of a specific nature or a general domestic remedy, that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate;

The general domestic remedy for a violation of the Convention rights in all legal jurisdictions of the United Kingdom is provided by the HRA. As flagged in section 3i, Section 6 of the HRA provides that it is unlawful for a public authority to act in a manner that is incompatible with the Convention rights. However the Convention rights may be relied upon in proceedings before any court or tribunal, or proceedings may be brought particularly under section 7(1)(a) of the HRA, by any person who is or would be a victim of the alleged unlawful act. The conditions for bringing the complaint, including the fee payable, and the specific remedies available depend on the court in which the proceedings are brought. However, the guiding principles (set out in section 8 HRA) are that the court or tribunal may grant any remedy which is within their

[18] There is no definitive list of where judgments need to be published. However, it is usual for departments to publish details of adverse judgments on their website, especially where the remedy involves changes to legislation.

powers and which is just and appropriate. Specific remedies might include an award of damages, quashing the original decision, quashing a conviction, or ordering a public authority not to take proposed action which, if taken, would be unlawful. In considering whether to award damages and the amount of any such award, the domestic court or tribunal must take into account the principles applied by the Court in relation to the award of compensation.

Under section 3 of the HRA, legislation must be read and given effect, so far as it is possible to do so, in a way which is compatible with the Convention rights.[19] If a higher court[20] finds itself unable to do so in respect of primary legislation,[21] it may make a declaration of incompatibility under section 4 of the Act. Such declarations constitute a notification to Parliament that an Act of Parliament is incompatible with the Convention rights.

A declaration of incompatibility neither affects the continuing operation or enforcement of the Act it relates to, nor binds the parties to the case in which the declaration is made,[22] since Parliament is supreme in the making of the law.

Where the courts find that an item of secondary legislation is incompatible with Convention rights, they have the power to strike the law down or not to apply it. The only circumstance where this is not possible is where the secondary legislation repeats a requirement of an Act of Parliament.[23]

Remedial measures in respect of both declarations of incompatibility and European Court of Human Rights judgments may, depending on the provisions proposed in any particular case, be brought forward by way of a remedial order, under section 10 of the HRA. This is a special order placed by a Minister before Parliament to bring incompatible legislation in line with the Convention. Alternatively, primary legislation can be used in the usual way to make the necessary changes. These processes help avoid repetitive cases and allow structural or general deficiencies identified by the courts to be addressed.

Since the HRA came into force on 2 October 2000, 27 declarations of incompatibility have been made, of which 19 have become final (in whole or in part) and none of which are subject to further appeal. The remainder were overturned on appeal.

[19] The rights drawn from the ECHR listed in Schedule 1 of the HRA 1998

[20] Of the level of the High Court in England and Wales or equivalent in Scotland and Northern Ireland, and above, as listed in section 4(5) of the HRA

[21] Or secondary legislation in respect of which primary legislation prevents the removal of any incompatibility with the Convention rights other than by revocation.

[22] Section 4(6) of the HRA

[23] Secondary legislation is law made under the authority of an act of Parliament. Rather than set out detailed provisions, the act will give Government Ministers the power to make law but the law itself will be set out in regulations or orders

There is no legal obligation on the Government to take remedial action following a declaration of incompatibility, nor upon Parliament to accept any remedial measures the Government may propose. However there has been a general practice that the Government does take action.

Of the 19 declarations of incompatibility that have become final:

- 12 will have been remedied by later primary legislation;
- 2 will have been remedied by a remedial order under section 10 of the Human Rights Act;
- 4 related to provisions that had already been remedied by primary legislation at the time of the declaration;
- 1 is under consideration as to how to remedy the incompatibility[24].

In addition to a remedy under the HRA, a person may also have remedies under the common law, for example to seek habeas corpus if unlawfully detained and, if appropriate, damages for false imprisonment.

v. Considering the possibility of seconding national judges and, where appropriate, other high-level independent lawyers, to the Registry of the Court;

At present, the UK has not seconded national judges or other senior lawyers to the Registry of the Court. This is largely because of the career structure of the judiciary in the UK, and specifically the absence of a career judiciary.

vi. Ensuring review of the implementation of the recommendations adopted by the Committee of Ministers to help States Parties to fulfil their obligations;

CM/Rec(2010)3: Remedies for excessive length of proceedings

The requirement under section 6 of the HRA for public authorities to act in a way which is compatible with Convention rights extends to courts and tribunals, which are therefore compelled to respect the right, under Article 6 of the Convention, of individuals to a fair and public hearing 'within a reasonable time'. In general it is not possible to make claim for damages under the HRA for a violation under Article 6. However there is provision in section 9 of the HRA for the award of damages where a breach of Article 5 of the Convention has arisen as result of untimely action. Alternatively complaints can be made

[24] http://www.justice.gov.uk/downloads/publications/policy/moj/responding-to-human-rights-judgments.pdf

to Her Majesty's Courts and Tribunals Service[25] which, if successful, could lead to compensation being paid in appropriate cases under administrative arrangements.

In civil cases, the reasonable time requirement could be used to press an argument to compel a court to take action to properly progress a case. In England and Wales, within the framework of the Civil Procedure Rules, courts have power to actively manage cases, through dealing with as many aspects of the case as it can on the same occasion, giving directions to ensure that the trial of a case proceeds quickly and efficiently and fixing timetables for the progress of a case. The court can apply sanctions for non-compliance with timetables and orders – for example denying a dilatory party a proportion of his or her costs. Parties may also be penalised for failing without good reason to comply with a relevant rule or practise direction.

In criminal cases, a defendant may recover damages if delay occurs in the proper investigation and prosecution of cases. A sentence could also arguably be reduced to acknowledge and remedy unreasonable delay. A criminal prosecution may also be stayed on the grounds that it would be an abuse of process as a result of delay, but this will be ordered in England and Wales only where the resolution of the trial has been compromised as a result, for example, through the decay of evidence over time.

CM/Rec(2008)2: Effective domestic capacity for rapid execution of Court judgments

The UK's overall record on the rapid implementation of judgments continues to be a strong one. Section 2 above outlines the domestic mechanisms in place to ensure that judgments are executed quickly and effectively; including the role MoJ plays as a cross-Government coordinator for the execution of judgments, FCO's role in transmitting information to the Committee of Ministers and the role of the JCHR in scrutinising the Government's performance on executing human rights judgments.

As of 31 December 2010,[26] the UK was responsible for a relatively low number of cases before the Committee of Ministers (30 cases), representing 0.34% of the overall total. The UK had a relatively large proportion of "leading cases"[27] when compared to other states: however, although the problems identified by the Court tend to be systemic problems, rather than one-off violations, the UK is not responsible for many repetitive cases, indicating that

[25] This is an agency of the MoJ and is responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales and non-devolved tribunals in Scotland and Northern Ireland.

[26] Committee of Ministers Annual Report 2010 on the Supervision of the execution of judgments of the European Court of Human Rights http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2010_en.pdf

[27] A "leading case" is a case which reveals a new systemic problem in a state which therefore requires the adoption of new general measures. It is to be distinguished from "repetitive cases" which raise a systemic problem which has already been raised before the Committee of Ministers.

problems are generally being addressed where identified or are affecting relatively low numbers of people. The limited number of 'one-off' violations also seems to indicate that public authorities are taking their responsibilities under the HRA seriously when making decisions in individual cases and that the UK courts are effectively identifying and resolving cases where mistakes are made.

Additionally performance has been stronger this year. Since the last published results, the UK has noted significant improvement. For example, in December alone the Committee of Ministers adopted 17 final solutions.

Just satisfaction payments in almost all cases are paid within the three months deadline. Only one payment was recorded as being after the deadline. In relation to the relatively high number of cases where the UK had 'control of payment for more than six months'[28] (three out of eight cases in 2010), the UK will continue to monitor progress in this area but anticipates that the performance will improve in line with the arrangements and guidance put in place over the past year as a result of the MoJ's new coordination role.

The UK currently has a high proportion of leading cases outstanding for more than two years (eight cases). However, six of these cases are a group relating to one issue, the investigation of deaths in Northern Ireland[29] and work is progressing to bring those cases to a close; all general measures are closed and individual measures remain open in four of them. While it is important that these cases are brought to a close swiftly and effectively, and work will continue to accomplish this, the relatively large number of cases in the group has a disproportionate effect on the UK's statistics.

Nonetheless, performance has generally been maintained at a high level across the past three years. The number of leading UK cases before the Committee of Ministers has fallen from 34 in 2008 (12 leading, 22 clone) to under 30 (21 leading, 9 clone) at the time of the publication of the Committee of Ministers' report, and we anticipate that several other open leading cases will be ready to be closed by the end of 2011.

CM/Rec(2004)6: The improvement of domestic remedies

See above text re. effective remedies (iv) and remedies for excessive length of proceedings (vi).

There are a number of review mechanisms in place to ensure that effective remedies are available for breaches of Convention rights. The JCHR scrutinises all primary legislation in the UK Parliament to ensure that it provides effective remedies in respect of arguable Convention violations. In addition, the Equality and Human Rights Commission has a broad power to monitor the law and advise central and devolved government about both the existing law and proposed changes thereto.

[28] Meaning that payment was still pending from the UK, but had missed the deadline.

[29] McKerr v UK (Application no. 28883/95); Finucane v UK (Application no. 29178/95); McShane v UK (Application no. 00043290/98); Shanaghan v UK (Application no. 37715/97); Jordan v UK (Application no. 24746/94); Kelly & others v UK (Application no. 30054/96).

The Government has also established a Commission to investigate the case for a UK Bill of Rights, conducting a thorough examination of the way our rights and traditional liberties are protected in the UK. We have made clear that any such Bill would incorporate and build on the Convention rights.

CM/Rec(2004)5: Verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in ECHR

The compliance of existing laws and practices with Convention standards is ensured through the mechanisms and obligations set out in the HRA. (See in particular the text above re obligations under sections 3, 6 and 10 of the HRA.)

All draft legislation in the UK Parliament is subjected to close scrutiny by the JCHR during its passage through Parliament. It is recommended that the department responsible for the bill prepare a memorandum which sets out the Government's position on the bill's compliance with Convention standards before it is introduced to Parliament: this memorandum will be updated as necessary throughout the bill's Parliamentary passage. The Minister responsible for the bill is also required, under section 19 of the HRA, to sign a statement on compatibility with the Convention.

The JCHR will produce a report on the human rights issues raised by the bill, having examined carefully the arguments put forward by the relevant department to justify any interference with a Convention right, or any other international human rights standards. The Government is expected to indicate its response to this report, either during Parliamentary debates or in writing.

In Scotland, similar scrutiny is conducted. Section 29(1) of the Scotland Act 1998 provides that an Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament. A provision is outside legislative competence for several reasons, but one of those is that it is incompatible with any of the Convention rights or with Community law (s29(2)(d)). Section 31 of the Act requires a member of the Scottish Executive, on or before a Bill is introduced, to state that in his view the provisions of the Bill would be within the legislative competence of the Scottish Parliament and, separately, the Presiding Officer of the Scottish Parliament must also decide whether or not in his view the provisions of the Bill would be within legislative competence and must state his view. Section 33 gives power to the Advocate General, the Lord Advocate or the Attorney General to challenge the legislative competence of a Bill or any provision of a Bill.

A similar provision regarding legislative competence exists under section 6 of the Northern Ireland Act 1998.

CM/Rec(2004)4: ECHR in university education and professional training

Legal training

In England and Wales the conditions that a law course must meet in order to be recognised as a 'qualifying law degree' are set out in the Joint Statement on Qualifying Law Degrees, which is prepared jointly by the Law Society and the Bar Council, and approved by the Lord Chancellor. The most recent statement came into

effect in September 2002.[30] All barristers and solicitors are required to complete an academic study in the field of law, and Schedule 2 to the Joint Statement indicates that human rights is a key element which must be covered.

Persons who complete the academic stage of training must then progress onto either the Legal Practice Course (LPC) or the Bar Vocational Course (BVC), depending on whether they wish to become a solicitor or barrister. The Law Society's Legal Practice Course Written Standards sets out the criteria that must be met by all LPC providers. The BVC Specification Requirements and Guidance, issued by the Bar Council, contains similar criteria for all BVC providers. It is a requirement for students on both the LPC and the BVC to demonstrate a thorough understanding of the HRA and the Convention.

Human rights may additionally be studied as a part of other relevant university courses, and a number of specialist postgraduate courses consider the subject in greater depth.

Other professional training

The Convention, or human rights standards more generally, may be dealt with as appropriate in other forms of professional training. For example, the basic principles of human rights relating to all of those in custody are dealt with on the entry-level course for prison service staff, and the Prison Service receives ad hoc training on human rights issues both from Government legal advisers.

Additional the Equality and Human Rights Commission (for England and Wales) provides sector specific guidance.[31]

CM/Rec(2002)13: Publication and dissemination of ECHR and case law

As outlined in section 3iii, the UK has taken significant steps to take into account the Court's case law. The MoJ monitors Court judgments and circulates bulletins across Government. See section 3iii for further detail.

CM/Rec(2002)2: Re-examination of cases at national level

The UK government firmly believes in the importance of the principle of legal finality: without it, the certainty of legal decisions by a court of last resort could be called into question, precluding individuals or organisations from relying on such resolutions. Therefore, there is no general provision for the re-opening of proceedings in the UK in the event of an adverse judgment from the Court.

Exceptionally, for criminal proceedings, the Criminal Cases Review Commission (for England, Wales and Northern Ireland), or in Scotland, the Scottish Criminal Cases Review Commission – both independent public bodies - have the power to review possible miscarriages of justice and decide, on the basis of new evidence or argument which casts doubt on the original decision, to refer a case back to the appropriate appeal court for re-consideration.

[30] http://www.sra.org.uk/students/academic-stage.page

[31] http://www.equalityhumanrights.com/advice-and-guidance/

For cases to which the Government was party in domestic proceedings, which have then been the subject of a decision of the Court against the UK, the Government would be expected to take such measures as necessary to rectify the position as part of the implementation of the judgment.

However the Government does not believe that it would be appropriate to make general provision for the reopening of cases between private parties. A general ability to reopen proceedings may adversely affect the rights and interests of other parties to domestic proceedings: an application to the Court by a unsuccessful litigant in domestic proceedings could take some years to be resolved finally, during which period the other parties, who would not ordinarily be party to the Strasbourg case, could not rely on the conclusion reached in the domestic proceedings remaining final.

vii. Ensuring that comprehensive and objective information is provided to potential applicants on the Convention and the Court's case-law, in particular on the application procedures and admissibility criteria;

The *Guide to the Human Rights Act*, available free of charge on the MoJ website,[32] provides a factual overview of the Convention rights and the obligations on public authorities, including the courts. It also includes information about what individuals should do if they believe their rights have been violated, the time limits within which cases must be brought, and links to the Court website, where information on application procedures and admissibility criteria can be found.

One of the key purposes of the UK's NHRIs is also provide information and guidance to members of the public in relation to the Convention rights. For example, the Equality and Human Rights Commission website provides guidance to individuals on the steps they can take if they believe their human rights have been breached,

viii. Facilitating, where appropriate, within the guarantees provided for by the Court and, as necessary, with the support of the Court, the adoption of friendly settlements and unilateral declarations;

The UK has concluded 9 cases by reaching a friendly settlement with the applicant(s) since May 2010, and had three unilateral declarations that have been accepted by the Court. However there are a number of other cases where friendly settlements are being negotiated and unilateral declarations have been submitted.

[32] http://www.justice.gov.uk/downloads/guidance/freedom-and-rights/human-rights/act-studyguide.pdf

ix. Cooperating with the Committee of Ministers, after a final pilot judgment, in order to adopt and implement general measures capable of remedying effectively the structural problems at the origin of repetitive cases;

The UK works very closely with the Committee of Ministers and the Execution of Judgments Secretariat on measures to implement judgments and take account of decisions and interim resolutions of the Committee of Ministers. In addition, the JCHR, which scrutinises UK implementation of judgments, maintains a direct relationship with the Secretariat.

x. Ensuring, if necessary by improving the transparency and quality of the selection procedure at national level, full satisfaction of the Convention's criteria for office as a judge of the Court, including knowledge of public international law and of the national legal system as well as proficiency in at least one official language;

The UK process for selecting the list of three candidates to the Parliamentary Assembly to the Council of Europe has been recognised as a largely independent, transparent process.[33]

The UK Judicial Appointments Commission ("JAC"), the Judicial Appointments Board for Scotland and the Northern Ireland Judicial Appointments Commission, are responsible for selecting candidates for almost all UK judicial appointments, however the process for selecting candidates for the Court is managed differently.

This process has evolved over the past 15 years, but currently comprises the following elements:

- Publication of an advertisement in the national press, and wide dissemination online.
- Selection based on a completed application from, incorporating the model CV in Resolution 1646(2009), and interview.
- Selection panel composed of the following to examine applications, short-listed candidates, and conduct interviews:
  - Senior officials from the Ministry of Justice and the Foreign and Commonwealth Office (normally the Legal Advisers to those departments);
  - Senior judge – England & Wales;
  - Senior judge – Scotland (or Northern Ireland);
  - Lay member – JAC Commissioner or JAC lay panel member – either from the JAC England and Wales, Northern Ireland or Judicial Appointments Board for Scotland).

[33] Interights' 2003 report: 'Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights'

- The panel then draw up a list of three candidates as required under the Convention, and to submit it for approval to the Lord Chancellor and Secretary of State for Justice and the Foreign Secretary.

During the current selection process to find the candidates to be the next UK judge at the European Court of Human Rights, applicants' attention was drawn to Article 21(1) of the European Convention on Human Rights, which stipulates "judges shall be of high moral character and either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence". In addition, the key criteria against which all applicants for the post were required to provide evidence were:

- A proven and consistently high level of achievement in the areas of law in which candidates have been engaged, and experience relevant to the post
- The capacity to learn and understand quickly other legal, constitutional and political systems
- The ability to communicate effectively both orally and on paper, particularly in the role of judge rapporteur, and to work well in a chamber of international judges
- Commitment to the principles of the European Convention on Human Rights
- An operational working knowledge of French

The UK is required to pass its list of three candidates to the Council of Europe in spring 2012 for consideration by the Parliamentary Assembly.

Question 4

Please indicate whether your authorities have held or are planning to hold consultations with civil society on effective means to implement the Interlaken Declaration Action Plan, as called for in the Declaration itself.

While not undertaking a formalised process, the UK Government has engaged with civil society in the run up to the Izmir Declaration and will continue to engage in the build up to the declaration under the UK Chairmanship. The UK is planning a further series of seminars in early 2012 to gauge views on aspects of national implementation of the Convention.

Question 5

Please indicate whether your authorities would wish to benefit from the technical or financial assistance of the Council of Europe in fulfilling the calls set out in the Interlaken Declaration.

The UK will not require technical or financial assistance from the Council of Europe in order to implement the Interlaken Declaration. However the UK is always open to learning from others' experience and also continues to be happy to provide advice and support to others so far as we can.

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