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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

UNITED KINGDOM

[22 March 1991]

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CONTENTS (continued)

PART I - INFORMATION OF A GENERAL NATURE

1. Torture was described by the International Committee of the Red Cross as a cancer which attacks the very foundations of civilization. The United Kingdom Government fully supports that assessment and regards torture, no matter where practised or by whom, as an affront to and denial of the inherent dignity and right to respect which is every human being's inalienable birthright.

2. The United Kingdom ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) and it took effect for the United Kingdom, pursuant to article 27, on 7 January 1989.

3. The United Kingdom also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 24 June 1988, and it came into force for the United Kingdom on 1 February 1989. That Convention provides for the appointment of an independent committee with full rights to enter places of detention and interview detained persons in private in order to ensure that torture or inhuman or degrading treatment does not take place. Places of detention include not only penal establishments, but also police stations, detention centres operated by the Immigration Service, places of military detention and places where people are detained under the Mental Health Act. Election of Committee members took place in September 1989 and the United Kingdom was visited in 1990.

4. Section 134 of the Criminal Justice Act 1988, which extends throughout Great Britain and Northern Ireland, makes it an offence to torture a person in the circumstances there described. The section came into force on 29 September 1988.

5. It is also an offence under section 1 of the Geneva Conventions Act 1957 to commit a grave breach of any of the four Geneva Conventions governing armed conflict. One such grave breach is torturing a protected person or subjecting him to inhuman treatment.

6. In addition, it has long been an offence in England and Wales, as a matter of the common law and also in the particular circumstances provided for in the Offences against the Person Act 1861, to assault a person. In Scotland, assault is an offence at common law which can cover a wide variety of conduct and circumstances. Recourse to torture would, in some circumstances, involve the commission of such or other offences, e.g. murder and, in Scotland, culpable homicide. An assault also gives rise to a breach of the civil law and can found a civil action. The conduct prohibited by the criminal or the civil law includes conduct falling short of torture but which may amount to cruel, inhuman or degrading treatment or punishment.

7. The law also ensures that a confession made by an accused person may not be given in evidence against him if it was obtained by oppression (which is defined as including torture, inhuman or degrading treatment or the use or threat of violence).

8. These matters are dealt with in more detail as they arise under the different articles of the Convention in Part II of this report.

9. The United Kingdom is a unitary State and comprises England and Wales, Scotland and Northern Ireland; references in this report to "Great Britain" refer to England and Wales and Scotland taken together. Scotland and to some extent Northern Ireland have separate legal systems from that applying in England and Wales, but similar principles apply throughout the United Kingdom.

10. The Channel Islands and Isle of Man are not part of the United Kingdom but are self-governing dependencies of the British Crown with their own legislatures (the States in Jersey and in Guernsey and the Court of Tynwald in the Isle of Man), executives and judiciaries. Section 134 of the Criminal Justice Act 1988 was extended to the Isle of Man by the Criminal Justice Act 1988 (Torture) (Isle of Man) Order 1989 on 13 July 1989 making statutory provision for the offence of torture. A new law is in preparation for Guernsey which will make provision similar to section 134 of the Criminal Justice Act 1988 for the statutory offence of torture. A new law, the Torture (Jersey) Law 1989 creating a statutory offence of torture, has been passed in Jersey and received Royal Assent on 19 December 1989.

11. A supplementary report describing the position in the United Kingdom's dependent territories is being submitted separately.

12. The United Kingdom has provided information as fully as possible, but inclusion of particular points does not necessarily mean that the United Kingdom considers that they fall within the scope of particular articles of the Convention.

PART II - INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 2

13. Under the United Kingdom law, conduct constituting torture would involve a number of possible serious offences. It would be an offence under section 134 of the 1988 Act. In England and Wales it may also involve the commission of murder or of an offence under the Offences against the Person Act 1861, e.g. causing grievous bodily harm or wounding with intent to do grievous bodily harm contrary to section 20 of that Act, threatening to kill someone (whether the person to whom the threat is made or another) contrary to section 16 and administering poison contrary to section 23. The 1861 Act does not apply in Scotland where murder, culpable homicide, assault (which has a very wide meaning in Scots law) and the making of threats are offences at common law. The position in Northern Ireland is the same as that in England and Wales.

14. A grave breach of any of the Geneva Conventions of 12 August 1949 amounting to torture is also a serious offence under United Kingdom law.

15. Assaults on the person are prohibited as a matter of civil law as well.

16. The United Kingdom is bound by article 7 of the International Covenant on Civil and Political Rights and article 3 of the European Convention on Human Rights and fundamental freedoms, both of which proscribe torture and other forms of ill-treatment, and are among articles from which it is not possible to derogate under article 4 of the Covenant or article 15 of the Convention.

17. No exceptional circumstances nor any superior orders can be invoked in the United Kingdom to justify torture and the domestic law within the United Kingdom makes no such provision.

Article 3

18. Under section 6 of the Extradition Act 1989 a person shall not be returned if it appears to the Secretary of State or a court:

(a) That the Offence of which that person is accused or was convicted is an offence of a political character;

(b) That it is an offence under military law, which is not also an offence under the general criminal law;

(c) That the request for his return (though purporting to be made on account of an extradition crime) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(d) That he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

19. There is also a general discretion to refuse an order for return under Section 12 of the Act whereby the Secretary of State shall not make an order if it appears to him in relation to the offence in respect of which the fugitive's return is sought that:

(a) By reason of its trivial nature; or

(b) By reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or

(c) Because the accusation against him is not made in good faith in the interests of justice it would, having regard to all the circumstances, be unjust or oppressive to return him.

20. This discretion is exercised in accordance with the requirements of article 3.

21. Extradition arrangements with the Republic of Ireland are founded on reciprocal legislation as opposed to international treaty. Our legislation is the Backing of Warrants (Republic of Ireland) Act 1965. Under the terms of the Act there is no formal request for a fugitive's extradition but rather the police send over arrest warrants which are endorsed in the requested State and executed as if they were warrants emanating from the courts of that State. The political offence safeguard applies to this type of case.

22. Under Schedule 2 to the Prevention of Terrorism (Temporary Provisions) Act 1989, the Secretary of State may exclude from the United Kingdom any person whom he is satisfied is or has been concerned in the commission, preparation or instigation of acts of terrorism connected with the affairs of Northern Ireland or is attempting or may attempt to enter the United Kingdom for such a purpose. A British citizen cannot be excluded from the United Kingdom as a whole at all, or from Great Britain or Northern Ireland if he/she has been ordinarily resident there for the previous three years. Exclusion orders last for three years from the date on which they were made, unless revoked earlier.

23. Schedule 2 also makes provision for an excluded person to make representations against his/her exclusion. If a person exercises his or her right to make representations the matter is referred to one of the independent advisers nominated under the Act. The adviser will consider all the circumstances of the case and submit a report to the Secretary of State recommending whether the order should stand.

24. There are powers under the Immigration Act 1971 and Immigration Rules made under it to deport individuals from the United Kingdom and to remove those refused entry or who have entered illegally.

25. The Immigration Rules make clear (paragraph 21) that in their operation full account is to be taken of the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol and state that nothing in the Rules is to be construed as requiring action contrary to the United Kingdom's obligations under these instruments. The result is that no one is deported or removed to a country in which he would have a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" within the terms of the 1951 Convention.

26. Many of those who are protected by article 3 of the Convention Against Torture will also be protected by article 1 of the Refugee Convention. In a range of cases where an individual would face risks outside the scope of article 1 of the Refugee Convention but has not other claim to stay in the United Kingdom, the Home Secretary has discretion to grant exceptional leave to remain. Any claim of likely torture on return to another country would be assessed under both the Refugee Convention and the possible use of exceptional leave.

27. The combination of specific provision for refugees and the option of exceptional leave in a broader category of case ensures that all those at risk under article 3 can be protected from expulsion under Immigration Act powers.

Article 4

28. As indicated above, acts or omissions constituting torture are offences under section 134 of the Criminal Justice Act 1988 and torture is capable of constituting other serious offences as well. Murder, torture contrary to section 134 of the 1988 Act, and offences contrary to section 18 of the 1861 Act carry a maximum sentence of life imprisonment. The offences of threatening to kill and of administering poison carry maximum penalties of 10 years' imprisonment. A grave breach of the Geneva Convention carries with it a maximum penalty of 14 years' imprisonment unless the conduct involves killing, in which case the maximum penalty is life imprisonment.

29. The offences under section 134 of the 1988 Act and the Geneva Conventions apply with the same penalties in Scotland. In Scotland, a person convicted of murder is sentenced to a mandatory period of imprisonment for life. There is no upper limit on the High Court's power to imprison and, in relation to the common law offences of culpable homicide, assault (including administering poison) and the making of threats, sentence may be passed for any fixed period or for life. The offence of assault can also be prosecuted in the Sheriff Court and on conviction on indictment in that court, the maximum period of imprisonment which can be imposed is three years.

30. By virtue of section 1 of the Criminal Attempts Act 1981 it is an offence in England and Wales to attempt to commit torture as defined in section 134 of the Criminal Justice Act 1988 or to attempt to murder a person or to attempt the other offences which might be committed if a person is tortured. In Scotland, attempt to commit any crime is in itself also criminal and can be charged as such. A person may also lawfully be convicted of an attempt to commit a crime notwithstanding that he has been charged with committing the completed crime. (Sections 63 and 312 of the Criminal Procedure (Scotland) Act 1975.) Conviction for attempting to torture or for attempting these other offences carries with it the same maximum sentence as would conviction for torture or the other offences.

31. Conspiracy to torture or to commit the other offences described above is also a serious offence in England and Wales by virtue of section 1 of the Criminal Law Act 1977. In relation to conspiracy to torture contrary to section 134, to murder or to wound or cause grievous bodily harm contrary to section 18 of the 1861 Act, a maximum sentence of life imprisonment may be imposed. In the case of a conspiracy to commit the other offences against the person, the maximum sentence is 10 years, the same as that for the other offence. A person who aids, abets, counsels or procures the commission of an

indictable offence, which includes all the offences referred to above, is, by virtue of section 8 of the Accessories and Abettors Act 1861 liable to be tried, indicted and punished as the principal offender.

32. There is no statutory law of conspiracy in Scotland. Common law charges of conspiracy may be brought in respect of an agreement amongst two or more persons to commit a common law offence. In Scots law those who are "art and part" guilty of a common law offence (including an attempt) are each liable to be convicted for that offence. Sections 216 (2) and 428 (2) of the Criminal Procedure (Scotland) Act 1975 create a statutory offence of aiding, abetting, counselling, procuring or inciting the commission of a statutory offence. Anyone guilty of such an offence is liable to the same penalties as for the substantive offence.

33. Acts of torture committed by members of the armed forces are dealt with in accordance with Service law or civilian law as appropriate. In general jurisdiction in the United Kingdom lies wholly with the Service authorities where the full offence is against Service law only (e.g. a charge of ill-treatment of officers or men of inferior rank contrary to section 65 of the Army Act 1955). Where the offence is against civil law (e.g. an offence of torture contrary to section 70 (1) of the Army Act 1955 and section 134 (1) of the Criminal Justice Act 1988, or an offence of assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861), the offender may be tried by either the Service or the civil authorities. There are detailed arrangements regarding the exercise of jurisdiction. Cases involving serious assaults, etc. would require to be reported to the Chief Officer of Police for the area who would - in consultation with the appropriate commanding officer - decide whether jurisdiction was to be exercised by the Service or by the civilian authorities. In general, offences solely involving assaults, etc. on civilians would be tried by the civilian authorities and cases solely involving assaults on servicemen would be tried by the Service authorities. The investigation of all offences is for the civil or Service police as appropriate; and the decision on bringing criminal proceedings rests with the prosecuting authority, which will be either the Crown Prosecution Service or Procurator Fiscal, or the Service authority having power under the Service Discipline Acts. The standard of evidence required would be the same as in the civil courts, i.e. the prosecuting authority will need to be satisfied that there is prima facie evidence of an offence having been committed.

34. The position in Northern Ireland is broadly similar to that in England and Wales. Section 134 of the Criminal Justice Act 1988 and the relevant provisions of the Offences against the Person Act 1861 apply in Northern Ireland as they do in England and Wales. Attempts and conspiracy to commit such crimes are punishable under the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983. Aiding, abetting, counselling or procuring the commission of such offences, is, as in England and Wales, punishable under section 8 of the Accessories and Abettors Act 1861.

Article 5

35. Under section 134 of the 1988 Act the offence of torture is committed whether the conduct takes place in the United Kingdom or elsewhere. The

nationality of the victim is immaterial in relation to the offence. Section 1 of the Geneva Conventions Act 1957 makes similar provision as regards grave breaches of the Conventions.

36. In the case of murder and the offences under the 1861 Act referred to above the usual rules of jurisdiction prevail, that is to say the offence is committed, and an English court has jurisdiction in respect of it, if the act was carried out in England or Wales. In Scotland, in the case of murder and the other relevant common law offences previously referred to, the Scottish courts have jurisdiction if the offence was committed in Scotland.

37. English courts also have extraterritorial jurisdiction over certain offences and certain offenders. For example, where the accused is a British citizen and his conduct amounts to murder or manslaughter, a court in England or Wales has jurisdiction, even though the act takes place on land abroad, by virtue of section 9 of the Offences Against the Person Act 1861. In Scotland, section 6 (1) of the Criminal Procedure (Scotland) Act 1975 provides that if a British subject commits murder or culpable homicide in a country outside the United Kingdom, he may be tried and convicted in respect of that offence in Scotland and subjected to the same punishment as if the offence had been committed in Scotland.

38. Under section 31 of the Criminal Justice Act 1948, a British subject who is a Crown servant and who, whilst acting or purporting to act in the course of his employment as such, commits any offence which, if committed in England or Wales would be punishable there on indictment is guilty of an offence and subject to the same punishment as if the offence had been committed in England or Wales. Section 6 (2) of the Criminal Procedure (Scotland) Act 1975 makes similar provision to section 31 of the 1948 Act in respect of Scotland.

39. Offences committed on board a British ship or aircraft, or by a British citizen on board a foreign ship, are in certain circumstances within the jurisdiction of the British courts by virtue of sections 686 and 687 of the Merchant Shipping Act 1894 and section 92 of the Civil Aviation Act 1982. Amongst other offences over which the courts exercise extraterritorial jurisdiction is piracy, both under general international law and under the Piracy Acts of 1698, 1721 and 1837.

Article 6

40. Having regard to the existence of the criminal offences and jurisdictional arrangements described above, where a person is present in the United Kingdom, such steps as are available under the ordinary criminal law would be taken to take him into custody or to ensure his presence as necessary. In practice, having regard to the seriousness of the offences involved, a person alleged to have committed torture contrary to section 134 of the Criminal Justice Act 1988 or one of the other serious relevant offences referred to is likely to be taken into custody.

41. In England and Wales power to arrest without warrant a person reasonably suspected of an arrestable offence, that is to say an offence for which a person is liable to be imprisoned on conviction for five years or more, is conferred by section 24 of the Police and Criminal Evidence Act 1984. The police may detain for questioning a person who has been arrested, normally up to 24 hours without charge. In the case of a serious arrestable offence,

however, and upon the authority of a senior officer (superintendent or above) a suspect may be detained for up to 36 hours in order to obtain or secure evidence; and, on the authority of a magistrate, they may hold him for up to a further 36 hours. At the expiry of these periods, they must either charge him and bring him before a magistrates' court as soon as possible or bail him to appear in court, or release him without charge, either on bail or without bail. A person who appears or is brought before a court accused of an offence is entitled to bail except as provided in schedule 1 to the Bail Act 1976, e.g. if, in the case of a charge of torture, there are substantial grounds for believing that he would fail to surrender to custody.

42. These powers are balanced by a number of important rights for the suspect, which are contained in the 1984 Act and elaborated in the Codes of Practice made under the Act. The Police and Criminal Evidence Act 1984 applies only to England and Wales. Nevertheless, similar legislation, together with appropriate Codes of Practice, came into operation in Northern Ireland early in 1990. The powers of the police in dealing with non-terrorist crime in Northern Ireland are similar to those in England and Wales.

43. The general powers available to the police in Scotland are established primarily under common law, supplemented by various statutory provisions. In Scotland, there is a common law power to arrest with or without a warrant granted by a court. The Police may detain for questioning a person in respect of an imprisonable offence but the detention may not last longer than six hours, at the end of which time the suspect must either be charged or released and where released, he may be detained again in connection with the same offence. When he is charged and brought before a court, the question whether he should be remanded in custody or released on bail would be for the court to decide. The court would be entitled to refuse bail if, inter alia, it thought that the accused would fail to surrender to custody.

44. Where a person who is present in the United Kingdom is alleged to have committed torture, to have attempted to torture or to be guilty of complicity in or to have participated in torture, the police, as the responsible authority in the United Kingdom for the prevention and detection of crime, would, upon the matters being brought to their attention, carry out an investigation into the facts.

45. Paragraph 7 of the Code of Practice for the detention, treatment and questioning of persons by police officers issued under section 66 of the Police and Criminal Evidence Act 1984 makes provision for a person in police custody in England and Wales to communicate with his High Commission, embassy or consulate. Specific provision is not made for a stateless person to communicate with "the representative of the State where he usually resides". In practice, if such a person said he normally lived in France the police would approach the French consulate. Whether the French authorities accepted any responsibility would be for them to decide. If he said he normally lived in the United Kingdom there would not normally be a need for the police to contact any official authority, although an interpreter would be provided if it were necessary, and the suspect has a right to consult a solicitor under section 58 of the Police Criminal Evidence Act 1984, and under section 56 of the Act to have someone nominated by him advised of his arrest. Similar procedures apply in Northern Ireland and Scotland.

46. No case has yet arisen in which it has been alleged that a person present in the United Kingdom has, since the Convention took effect for the United Kingdom, committed an offence mentioned in article 4 of the Convention in circumstances in which another State would be obliged to establish jurisdiction under Article 5. However, if such a case were to arise the requirements of article 6 (4) would be complied with.

Article 7

47. Article 7 sets down a practice which accords with the long-standing practice of the relevant authorities in the United Kingdom as regards the investigation of alleged criminal offences and consideration of prosecution for such offences.

48. In England and Wales a combination of statute law and common law, together with the provisions of four of the five codes issued under the Police and Criminal Evidence Act 1984, ensure that all accused persons, irrespective of the charge they face are to be treated fairly at all stages whilst in police custody before charge, on being charged, pending and during the course of the trial and whilst serving any sentence of imprisonment imposed by the trial court.

49. The Police and Criminal Evidence Act and the relevant codes of practice do not extend to Scotland. There are no equivalent statutory provisions governing the particular situation of foreign nationals accused of crimes in Scotland. Case law has, however, established that a person who has been arrested by the police must be treated fairly. He may not be arrested without being charged. He has the right to have a solicitor informed, and to obtain his solicitor's advice prior to his first appearance in court, which must be on the next lawful day after his being taken into custody. He is also entitled to have intimation of the fact and place of his custody sent to one other person. After arrest, an accused person may no longer be questioned by the police in relation to the charge.

50. The Criminal Justice (Scotland) Act 1980 introduced a procedure whereby the police in Scotland may detain and question a person they have reasonable grounds to suspect of committing an offence punishable with imprisonment. Such detention may not last for longer than six hours, after which the suspect must either be formally arrested and charged or released. A person detained under these provisions has the right to have a solicitor and one other person informed of his detention and whereabouts, except in exceptional circumstances.

51. In Northern Ireland, the courts enjoy, under the Criminal Jurisdiction Act 1975, jurisdiction over a range of offences committed in the Republic of Ireland, including murder and relevant offences under the Offences Against the Person Act 1861. (Under parallel legislation existing in the Republic of Ireland, the Republic's courts enjoy a similar jurisdiction over offences committed in Northern Ireland).

52. In Northern Ireland, codes of practice for the treatment of detained persons are however made under the Police and Criminal Evidence (Northern Ireland) Order 1989. In addition, part IV of the Guide to Emergency Legislation sets out separate but similar guidelines in respect of those arrested under emergency legislation in Northern Ireland.

Article 8

53. To satisfy the requirements of article 8 of the Convention, section 136 of the Criminal Justice Act 1988 (the effect of which is preserved by virtue of section 38 (4) of the Extradition Act 1989) ensures that in existing extradition arrangements with a State also party to the Convention, a person is extraditable where the offence for which he is wanted is torture contrary to section 134 of the 1988 Act. That offence would also be an extradition crime for any fresh extradition arrangements to which the United Kingdom may become a party (such as the European Convention on Extradition) by virtue of the definition of "extradition crime" in section 2 of the Extradition Act 1989. Similarly, a person would be extraditable for that offence to a Commonwelath country under the 1989 Act.

54. Section 22 of the Extradition Act 1989 makes provision for extradition in cases where no treaty exists with the other State.

55. Section 22 (6) of the Extradition Act 1989 and paragraph 15 of schedule 1 to that Act reenacts section 136 (2) of the Criminal Justice Act 1988 which provides that any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State with which an extradition treaty has been concluded shall be deemed to be an offence committed within the jurisdiction of that State.

56. Where a person's conduct amounts to murder or one of the offences under the Offences Against the Person Act 1861 referred to above, he would be extraditable under the United Kingdom's existing extradition arrangements to a State with which an extradition treaty had been concluded, under any future extradition treaties with foreign States and under the United Kingdom's existing extradition law to a Commonwealth country or dependent territory.

57. Extradition arrangements with the Republic of Ireland are founded on reciprocal legislation as opposed to international treaty. See article 3 above.

Article 9

58. The United Kingdom is fully able to comply with the provisions of this article. In particular, by virtue of section 5 of the Extradition Act 1873 and section 5 of the Evidence (Proceedings in Other Jurisdictions) Act 1975, it is possible for evidence to be taken in United Kingdom courts for use in proceedings under way in overseas courts. The Criminal Justice (International Co-Operation) Act 1990, will, once implemented later this year, broaden the range of assistance which can be provided to other countries in the investigation and prosecution of criminal offences. Specifically, it will become possible for the United Kingdom to serve summonses on behalf of overseas countries, to take evidence for use in investigations being conducted overseas as well as in proceedings under way there, and to transfer prisoners overseas to give evidence or assist in investigations. Similarly, the United Kingdom will be able to take advantage of such facilities offered by other countries. The Act will enable the United Kingdom to ratify the European Convention on Mutual Assistance in Criminal Matters and to participate fully in arrangements under the related Commonwealth Scheme.

Article 10

59. The prohibition against torture and other forms of cruel, inhuman or degrading treatment or punishment is universally understood throughout the United Kingdom.

60. All training programmes for law enforcement personnel, whether civil or military, and other persons involved in the custody, questioning or treatment of any individual subject to any form of arrest, detention or imprisonment emphasize the need to treat everyone as an individual and with humanity and respect, and to act within the law at all times.

61. In the absence of any previously identified instances of torture in any United Kingdom establishment, no formal training is afforded health care professionals in the identification of signs of torture or in terms of its specific relationship to rehabilitation needs of victims.

62. None the less, all health care professionals, and in particular doctors, nurses, and health visitors, are adequately equipped through their statutory post-registration training and education quickly to recognize any abnormal physical signs of abuse. Both nurses and doctors as a part of their routine duty of care to patients would continuously monitor the physical and mental well-being of patients through formal and informal/discrete examinations.

63. Similarly, general medical practitioners, psychiatrists and psychiatric nurses would be adequately equipped in terms of knowledge and skill to identify any psychological feature which would indicate mental anguish resulting from whatever cause.

Article 11

Police - England and Wales

64. Police powers of arrest, detention and questioning are kept under constant review. The Police and Criminal Evidence Act 1984 clarified and extended police powers in England and Wales and created a new balance between them and those of persons suspected of crime: Under the Act four Codes of Practice together govern police powers of stop and search; search of premises and seizure of property; the detention, treatment and questioning of suspects; and the identification of suspects. These Codes have already been reviewed since their introduction in 1986 and the amended Codes, which come into force on 1 April 1991, have considerably strengthened suspects' rights where they were thought still to be lacking. A fifth Code of Practice governs the tape recording of interviews with suspects and interviews are now widely taped.

Police - Scotland

65. In Scotland, the powers available to the police are established primarily at common law, supplemented by various statutory provisions governing, for example, the detention of suspects before arrest (see above). Police powers of arrest, search and seizure in Scotland normally follow from the grant of a warrant from a court, at the request of the Procurator Fiscal (public prosecutor) who is formally responsible for the investigation of crime. Under the Criminal Justice (Scotland) Act 1987, interviews with

suspects at a police station may be tape-recorded and a transcript of the interview may be accepted in evidence. A programme to implement the tape-recording of such interviews is under way.

Police - Northern Ireland

66. The powers of the police in dealing with non-terrorist crime are similar to those in England and Wales; the Police and Criminal Evidence (Northern Ireland) Order 1989 contains provisions largely equivalent to those in the Police and Criminal Evidence Act. Police procedures are similarly governed by statutory codes of practice: the principal differences concern the right to silence (see below) and the taking of intimate body samples.

67. Since 1974, over 1,950 people have been killed as a result of a campaign of violence and terrorism connected with the affairs of Northern Ireland. This is without parallel elsewhere in Western Europe.

68. The Government is committed to fighting terrorism and has taken steps to ensure that the police (and army, which acts in support of the police) have the special but necessary powers to that end. These are described below, but it is emphasized that they are temporary, emergency measures which provide a full range of safeguards for the rights of suspects and are subject to regular parliamentary scrutiny.

69. The police in all parts of the United Kingdom have additional powers to arrest and detain terrorist suspects under the prevention of Terrorism (Temporary Provisions) Act 1989. Persons arrested under the Act are entitled to rights similar to those of persons arrested under the Police and Criminal Evidence Act 1984, although these are modified in certain respects.

70. The use of the powers provided by the Act is subject to annual review by an independent person appointed for that purpose and, in order that the legislation can be continued in force each year, the appropriate order has to be approved following debate by both Houses of Parliament.

71. In Northern Ireland the Criminal Evidence (Northern Ireland) Order 1988 enables courts to draw whatever inferences would be proper from the fact that an accused remains silent in four situations:

(a) The "ambush" defence, where, having remained silent during police questioning, the accused offers an explanation of his conduct for the first time at his trial when he might reasonably have been expected to offer it when being questioned;

(b) Where the prosecution have established that there is a case to answer, and the accused is warned that he will be called to give evidence and that if he should refuse to do so the court may draw such inferences as would appear proper;

(c) Where the accused fails or refuses to explain to the police certain specified facts such as substances or marks on his clothing;

(d) Where an accused fails or refuses to account to the police for his presence at a particular place.

72. The measures do not remove an accused's right of silence and remaining silent will not be an offence.

73. The Government is currently considering what amendments might be made to the right of silence in England and Wales. A final view has not yet been reached.

The armed services

74. The obligation in this article is met by Service procedures ensuring that there is a regular review and updating of regulations for the treatment of persons under arrest, detention or imprisonment or being questioned. Such regulations include the Code of Practice for the treatment and questioning of persons by the Service police issued under the Police and Criminal Evidence Act 1984. There are, in addition, statutory Imprisonment and Detention Rules in existence for each of the three Services.

Immigration

75. The arrangements for the treatment and custody of persons detained in dedicated immigration accommodation are regularly reviewed. The interview rules and other procedures are reviewed regularly. Supervision of practice and procedure in the conduct of interviews on a daily basis is an important function of management.

Article 12

General

76. It is the duty of the police to investigate any alleged offence impartially, quickly and effectively.

77. In England and Wales, the Police and Criminal Evidence Act 1984 and other statutory and common law provisions give the police all the necessary powers, and anyone who alleges he has been the subject of torture may go to the police with his complaint. Broadly comparable provision and practice exists in Scotland and Northern Ireland.

The armed services

78. Each Service would make every effort to ensure that a prompt and impartial investigation is made into any allegation of torture. In every case, the investigation would be undertaken by independent Service police investigators to ensure impartiality. The Services have different procedures for dealing with allegations of this nature, but all make provision in regulations for putting the case into the hands of an independent in-Service investigator to ensure impartiality.

79. The independent Service Police investigators have received instruction in the law and in the collection, collation and presentation of evidence. They would investigate any allegations of torture. A complaint of torture by a member of the public against a serviceman or the military authority would be investigated in conjuction with the appropriate civil police force. An allegation of torture made by a serviceman to the civil police would also be investigated in conjunction with the civil police. A serviceman who alleges

that he is the victim of torture cannot insist on a charge being preferred under the relevant Service statute, but he is entitled to have his complaint fairly considered and, if he remains dissatisfied, he could apply for redress of grievance under the Service system. If he were injured a Unit Enquiry could be held, or a Board of Inquiry if his injuries were serious. If he died, a Coroner's Inquest would be held in England and Wales in addition to a Board of Inquiry. A serviceman has recourse to the civil courts to pursue a civil action for damages. In practice, such proceedings invariably await the outcome of any disciplinary proceedings.

Prisoners

80. In the United Kingdom, any prisoner who complains of torture or other cruel, inhuman or degrading treatment or punishment while in prison custody has the right to complain to the prison authorities - in practice the Governor or the Secretary of State, the board of visitors or visiting committee of the prison, which is an independent committee overseeing the state of prison premises, its administration and the treatment of prisoners - or may refer the matter to an outside body (including the police and the courts). Prisoners have free access to the courts for the purpose of bringing civil proceedings, and if a prisoner's claim is successful he or she may be awarded damages. A prisoner may also apply to the courts for judicial review of decisions made by the prison authorities concerning his or her detention.

81. Complaints which allege torture or other cruel, inhuman or degrading treatment are investigated by an officer appointed by the Governor, who must be senior in rank to any member of staff against whom the allegation has been made, and who should not, so far as possible, be responsible for the direct management of the officer or for the area of the establishment where the incident occurred. Where there is prima facie evidence of a criminal offence, the Governor, after consulting with headquarters, will call upon the police to investigate. (If the allegation is against a senior member of the prison staff, such as the Governor or his deputy, the complaint is submitted in England and Wales to Prison Service Headquarters and in Scotland to the Director of the Scottish Prison Service and in Northern Ireland to the Secretary of State who will arrange for it to be investigated). When the investigation has been completed a report of the findings is placed before the Governor, who, on the basis of the evidence before him, may decide to take disciplinary action against any member(s) of staff involved. Where the police have investigated a case, any decision to prosecute is taken by the Crown Prosecution Service or the Procurator Fiscal.

Patients detained under mental health legislation

Ethical considerations

82. It cannot be overemphasized that torture, bullying or manipulation of vulnerable persons who may be detained or in receipt of care, whether in the statutory or independent sector, is totally unacceptable, and would be in utter contradiction of professional standards.

Mental Health Act 1983

83. The Mental Health Act 1983 clearly and strongly defines the rights (and protects those rights) of detained patients. The criteria for compulsory

detention which must be met are stringent and must be adhered to. It should be noted that detention under the powers of the Mental Health Act 1983 is only used in those cases where the strict criteria for detention laid down in the Act are met and where (all other means of providing for the patients' care and treatment having been fully considered) detention in hospital is considered the most appropriate means of providing the care and treatment the patient needs. At any one time only about 6 or 7 per cent of all those receiving in-patient care and treatment for mental disorder do so on a compulsory basis, all other patients being in hospital voluntarily.

84. People may only be detained in hospital for assessment or for treatment for mental disorder under the powers of the Mental Health Act 1983 if the criteria laid down in the Act are met. Firstly, the patient must be suffering from a mental disorder as defined by the Mental Health Act 1983. Secondly, the mental disorder must be of a nature or degree which makes admission to hospital appropriate. Thirdly, medical treatment must be necessary for the health or safety of the patient or for the protection of other persons. And, fourthly, unless he is detained following criminal proceedings, the patient cannot be compulsorily admitted to hospital if he is willing to enter hospital voluntarily or if the treatment can be provided in some other way, e.g. on an out-patient basis.

85. These stringent criteria reflect the gravity of depriving a person of his liberty. Whether or not detention is appropriate in an individual case depends upon the judgement of the doctors and other professionals concerned with the care of the patient. Detention, of course, should always be decided upon only as a result of discussion and cooperation between the many people concerned with the patient's welfare, including the patient's nearest relative and an approved social worker.

86. No patient, detained or voluntary, may be given treatment without his consent except in the very specific and controlled circumstances outlined in the Act. A patient's consent can only be accepted as such after his responsible medical officer or the doctor appointed by the Secretary of State has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question; these must be explained to the patient. A patient may withdraw his consent at any time.

87. The Mental Health Act 1983 allows the giving of certain types of treatment to detained patients without the patient's consent in certain circumstances. Drugs may be administered for up to three months from the date of their first administration without the patient's consent being required. Once these three months have passed the patient must give his consent or, if this is not forthcoming, the doctor must obtain a second medical opinion before the treatment may be continued; the patient's consent may be withdrawn at any time. Electro-convulsive therapy may only be administered with the patient's consent or a second medical opinion, whilst all forms of treatment that could be considered to be of an irreversible or hazardous nature, for example psycho-surgery, always require the patient's consent and a second medical opinion. All second opinions are given by doctors appointed especially for that purpose by the Secretary of State. Once again, the type of treatment given to a patient is a matter for the clinical judgement of that patient's responsible medical officer and clinical team.

88. As for patients detained following criminal proceedings, under section 37 of the Mental Health Act 1983, the Court may, where a convicted offender is reported to be suffering from one of the forms of mental disorder defined in that Act, by order authorize admission to, and detention in, a hospital for psychiatric treatment. When such an order, known as a hospital order, is made by a Crown Court or the Court of Appeal, and it appears that there is a risk of the offender committing further offences if set at large, the Court may, for the protection of the public from serious harm, make a further order known as a restriction order. The principal effect of a restriction order is that the patient may not be allowed outside the hospital, or be transferred to another hospital, without the authority of the Home Secretary, and may not be discharged from hospital except by the Home Secretary or a Mental Health Review Tribunal.

89. Under section 47 of the Mental Health Act 1983, the Home Secretary may make a transfer direction authorizing the transfer to hospital for treatment of a mentally disordered prisoner who is serving a sentence of imprisonment. In doing so, he may also make a restriction direction under section 49 of that Act. Under section 48 the Home Secretary may also make a transfer direction in respect of a prisoner who is not serving a sentence of imprisonment: usually this applies to a prisoner who has been remanded in custody awaiting trial or sentence. A transfer direction under section 48 normally carries with it a restriction direction.

90. Under the Criminal Procedure (Insanity) Act 1964, a person charged with an offence before a Crown Court and found unfit to plead to the charge, or not guilty of an offence by reason of insanity, must be admitted to a hospital specified by the Home Secretary and detained there as if he were subject to a hospital order with a restriction order.

91. A restriction order made by a court may be for a specified period, but it is usually made without limit of time. In the case of a transferred prisoner, restrictions last as long as the sentence of imprisonment imposed or other authority for detention, or until the prisoner is remitted to prison. The restrictions applied to a patient found unfit to plead, or not guilty by reason of insanity, are of indefinite duration.

92. Similar procedures apply in Scotland in the case of mentally disordered offenders under sections 175 and 376 of the Criminal Procedure (Scotland) Act 1975.

93. There are important safeguards for detained patients. Patients may apply to have the authority for their detention reviewed by a Mental Health Review Tribunal (MHRT) which is an independent body. As far as detained restricted patients are concerned, certain categories have a right to apply directly to a Tribunal during the period of six months beginning with the date of the order or direction by virtue of which they are detained and thereafter at specified periods. In the generality of cases, however, a detained, restriced patient may apply to have his case heard by a Tribunal approximately once each year. If he does not apply, his case will be referred to a Tribunal by the Home Secretary every three years under section 71 (2) of the Mental Health Act 1983. If a conditionally discharged patient is recalled to hospital, the Home Secretary must also refer the case to the Tribunal within one month of recall. Tribunals have the power to discharge a restricted patient absolutely or conditionally provided certain criteria are met. This power does not apply

to prisoners who have been transferred to hospital under sections 47 and 48 of the Act. In these cases, the Tribunal may only advise the Home Secretary. The Mental Health Act Commission, another independent body, also monitors the use of compulsory detention and has other important duties concerning consent to treatment.

94. The Mental Health Act Commission (MHAC), an independent statutory body appointed by the Secretary of State, keeps the well-being and treatment of detained patients under review. The MHAC is charged with the responsibility of investigating patients' complaints, including allegations of torture or maltreatment. The MHAC also monitors the use of the powers of the Act and has other important duties concerning consent to treatment. Commissioners are respected persons in their field - with particular concern and expertise in mental health matters - and include doctors, nurses, psychologists, lawyers, social workers and lay people.

95. Other relevant points concerning the rights of detained mental patients include the following:

(a) All detained patients must have explained to them their rights under the Mental Health Act, including the avenues of discharge, the conduct of their treatment, how they can make a complaint and all about the MHRTs and MHAC. This information must be given both orally and in writing and, where the patient does not object, copied to the patient's nearest relative;

(b) Like all other people, detained patients are entitled, at their own expense, to seek legal advice or a second opinion. Patients may be entitled to free legal assistance under the Assistance By Way of Representation Scheme. The patient may be represented before an MHRT by anyone he wishes, except another patient;

(c) The patient's nearest relative should be kept fully advised, unless the patient objects, of the rights of the detained patient. Patients cannot be detained under the long-term powers of the 1983 Act (except where a court has ordered detention in hospital) without the nearest relative's agreement; this power may be removed by a court if the court decides that the nearest relative has acted unreasonably or without due regard for the welfare of the patient. In some circumstances the nearest relative has the power to discharge the patient, but this may be overruled if the patient's doctor certifies that, if discharged, the patient is likely to act in a manner dangerous to himself or other persons.

Immigration detainees

96. Any allegation of torture or physical ill-treatment while held in detention would be referred to the police for investigation according to the normal processes of the law.

Article 13

Prisoners

97. As already mentioned prisoners have the right to raise complaints with the Governor, the Board of Visitors, Visiting Committee or the respective Secretary of State.

98. With effect from 1 April 1989 the English and Welsh prison administration abolished the prison rules (formerly Rule 47 (12) and (16), Prison Rules 1964) which made it a disciplinary offence to:

(a) Make any false and malicious allegation against an officer; or

(b) Repeatedly make groundless complaints.

In Scotland, a comprehensive review of the prison rules, which includes consideration of the abolition of the above-mentioned disciplinary offences, is being undertaken.

99. The so-called "simultaneous ventilation rule" - which required prisoners to air their grievances within the internal complaints system at the same time as when writing to persons or services outside the Prison Service - has also recently been abolished in England, Wales and Scotland. The practical consequences of these changes are that prisoners may now make formal complaints in writing to the Governor or to headquarters about ill-treatment by any member of prison staff without facing the risk of disciplinary action and may refer their complaint to an outside body (including the police) without at the same time having to make use of the internal complaints system.

100. When a prisoner makes an allegation against the actions of a member of staff he or she is assured that it will be fully investigated. The complainant and witnesses may be protected against any possible further ill-treatment or intimidation (as a consequence of making a complaint or giving evidence) by a transfer to another part of the prison or to other establishments, or, where it is judged necessary, by the suspension of the member(s) of staff against whom a complaint had been made.

101. Complaints involving matters of prison discipline which are not criminal offences are usually investigated by a senior member of the prison staff appointed by the Governor. Where there is prima facie evidence of a criminal offence the Governor, after consulting with headquarters, will call upon the police to investigate. In such cases any decision to prosecute is taken by the Crown Prosecution Service or Procurator Fiscal.

The armed services

102. Servicemen sentenced to detention have the right of complaint under the Rules appropriate to their Service (Navy: The Naval Quarters Detention Rules 1973; Army: The Imprisonment and Detention (Army) Rules 1979; RAF: The Imprisonment and Detention (RAF) Rules 1980). It is the duty of the commanding officer to investigate any complaint. Should the serviceman not be satisfied, he has the statutory right to have his complaint considered through the chain of command, and ultimately, if he remains dissatisfied, to have it referred to the relevant Service Board of the Defence Council. Impartiality is achieved by the serviceman having an additional right to complain to the Independent Board of Visitors (consisting of non-Service people including Members of Parliament) and the other visiting authorities.

Mental Health Act patients - complaints procedure

103. A patient in a National Health Service facility is entitled to make a complaint about any aspect of his or her treatment. The complaint

will be dealt with according to the Directions on Hospital Complaints Procedures issued under section 17 of the National Health Service Act 1977 or section 2 (5) of the National Health Service (Scotland) Act 1978. Where a complaint involves a possible criminal offence of a serious or substantial nature, health authorities are advised to notify the police immediately.

Immigration detainees

104. Any complaints alleging non-compliance with the rules of procedure but not alleging criminal conduct are investigated by senior officers of the Immigration Service. This process is supervised by the Home Office Minister responsible for immigration. Sanctions against staff who are found to have acted improperly with regard to the detention, treatment or questioning of a detainee could range from an official reprimand to dismissal. In some cases a commercial company may act on behalf of the Immigration Service in respect of the custody and escorting of immigration detainees. Any deviation from the detailed assignment instructions laid down by the Immigration Service in the contract with such a company would be investigated by senior officers of the Immigration Service together with the contractor and could lead to disciplinary action including the dismissal of an employee. Consistent failings or matters deemed sufficiently serious could result in the contract being withdrawn. Where there appears to be prima facie evidence of criminal conduct, the matter would be referred to the police for investigation and any appropriate action.

Police custody

105. See the comments at paragraph 140 et seq. below.

General

106. Anyone in the United Kingdom may complain to the police or institute civil proceedings if he claims that a public official has ill-treated him.

Article 14

107. Under the Powers of Criminal Courts Act 1973, as amended and extended by the Criminal Justice Act 1988, courts in England and Wales have the power to order a convicted offender to pay to the victim compensation either by itself or in addition to other measures. Courts are required to give consideration to the question of compensation in every appropriate case and to give reasons where no order results. Subject to the means of the offender, a compensation order may be made in respect of: pain and suffering, permanent disability or disfigurement, loss of earnings or earning capacity, out of pocket expenses and loss of or damage to property. Where the victim has died as a result of injury, compensation may be ordered for the benefit of the victim's dependants in accordance with the Fatal Accidents Act 1976.

108. Under section 58 of the Criminal Justice (Scotland) Act 1980, courts in Scotland were given the power to order an offender to pay compensation to the victim, either as a sentence in its own right or as an additional penalty. The order may be in respect of personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence. There is, however, no requirement for the court to give reasons where no order is made.

Compensation orders may not be made in respect of injury, loss or damage suffered in consequence of the death of any person, Scottish civil law aspects of compensation are discussed below.

109. There is also provision for compensation for victims of crimes of violence or their dependants under the Criminal Injuries Compensation Scheme. The Scheme applies to physical and psychiatric injuries sustained in Great Britain and is administered by an independent Criminal Injuries Compensation Board which awards compensation for personal injury on the same basis as the civil courts. Conviction of an offender is not a condition of eligibility under the Scheme.

110. In Northern Ireland a similar, but statutory, scheme is in force under the Criminal Injuries (Compensation Northern Ireland) Order 1988. The Scheme provides compensation for victims of crimes of violence and is administered by the Northern Ireland Office on behalf of the Secretary of State for Northern Ireland. There is a statutory right of appeal to the courts in all cases where liability has been denied or where the applicant is dissatisfied with the amount of compensation offered.

111. In both England and Wales, and in Northern Ireland, acts or omissions which constitute torture as defined in article 1 of the Convention constitute civil wrongs for which civil remedies are available in civil proceedings for, notably, trespass to the person. In such proceedings compensation for the pain and suffering and any other damage caused would be available, including exemplary damages where appropriate. Such proceedings stem from the common law. Where in England and Wales a victim of torture dies as a result of his treatment, his dependants can claim in respect of his death by virtue of the Fatal Accidents Act 1976 (a measure consolidating earlier such Acts beginning with the Fatal Accidents Act 1846).

112. In Scotland, the law of delict regulates liability for damages. The law is administered by the Scottish Civil Courts which apply a body of principles and rules together with a number of statutory provisions (for example, the Damages (Scotland) Act 1976). Delictual liability in Scots law can arise either by virtue of negligent acts or omissions causing harm to a person or, more appropriately in present circumstances, by virtue of deliberate or intentional harm such as an assault on the person by another. The person found liable for having committed the delict will thereby be rendered liable to make reparation to his victim in monetary terms.

113. The injured person may claim two kinds of compensation:

(a) Patrimonial loss (i.e. pecuniary loss) including medical and other out of pocket expenses, loss of earnings to the date of action and loss of prospective earnings; and

(b) Solatium which is pecuniary reparation for the pain and suffering inflicted upon the injured person. Where the injured person dies, the executors of his estate inherit the right to continue or to raise a civil action for patrimonial loss up to the date of death but do not inherit the right to recover solatium for injuries. His dependants may claim patrimonial loss but limited only to loss of support and reasonable outlays in connection with the death. They may not claim solatium but are entitled to claim loss of society awards which are designed to acknowledge the non-pecuniary loss

suffered by the husband, wife, parent or child of the deceased. The dependant's right of action is not affected by any action of the executors or vice versa.

114. In view of the existing state of common law and statute law in the United Kingdom with regard to enforceable claims to compensation, no further statutory provision was needed to enable the United Kingdom to implement article 14.

Prisoners

115. A prisoner in the United Kingdom who considers that he or she has been the victim of torture, any other assault or has been subjected to degrading treatment which amounts to a civil wrong may seek damages through the courts. In addition to free access to the courts for the purpose of bringing civil proceedings, a prisoner enjoys uncensored written communication with his or her legal adviser in respect of legal proceedings to which the inmate is a party. Visits to a prisoner by his or her solicitor will normally take place out of hearing, although within sight, of prison staff. A prisoner may apply for Legal Aid under which scheme the State provides financial assistance to pay for legal advice or representation.

Services personnel

116. The question of compensation for harm sustained is covered by the provisions of the civil law and by the State-funded Criminal Injuries Compensation Scheme (or, in Northern Ireland, the Criminal Injuries Compensation (Northern Ireland) Order 1988) which provides the facility for appropriate compensation for incidents occurring in the United Kingdom.

117. Where a member of the armed services becomes a torture victim in a State which is also party to the Convention he may have an enforceable right to compensation under the laws of that State. Overseas, the Service victim will have the benefit of recourse to the Ministry of Defence Criminal Injuries Compensation Scheme under which ex gratia awards may be made at the discretion of the Defence Council. The United Kingdom Government accepts that these arrangements do not technically amount to an enforceable right within the terms of article 14, but believes that they fall well within the spirit of the Convention representing as they do a means whereby the State pays compensation to public servants in respect of harm sustained overseas on duty.

Mental health patients

118. Patients who have sustained harm may have recourse to the courts and to the Criminal Injuries Compensation Scheme or, in Northern Ireland, the Criminal Injuries Compensation (Northern Ireland) Order 1988.

Rehabilitation measures

119. Victims of crime can be provided with both practical help and support by Victim Support which was set up as a charity over 11 years ago. There are now over 350 victims support schemes in England and Wales which help more than 500,000 victims of crime a year. Government provides funding for the headquarters of Victim Support and also contributes to the local schemes. Almost £4.7 million were granted to Victim Support in 1990/91 and most of this

was used by local schemes either to pay for coordinators or to cover running costs. Local schemes are encouraged to undertake fund-raising activities and to obtain financial support from other sources. Similar schemes operate in Scotland and Northern Ireland with Government financial support.

120. Most victims of crime are referred to the local victims support schemes by the police. The Schemes, using primarily volunteers, then contact the victims by telephone, personal visit or letter to offer assistance. Subsequent visits or other follow-up action is then undertaken according to the victim's needs. One of the most valuable roles played by victim support groups is to lend an understanding and sympathetic ear and to offer encouragement; they can also, for example, help victims make claims for criminal injuries compensation, and arrange to have locks replaced or fitted, to provide the victim with a measure of reassurance and decrease the fear of a repetition.

Article 15

121. Section 76 of the Police and Criminal Evidence Act 1984 provides that a confession by an accused person is inadmissible in evidence in criminal proceedings in England and Wales where it appears to the court that the confession was or may have been obtained by oppression. For these purposes section 76 (8) defines oppression as including "torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture)". Where it is represented that a confession was or may have been so obtained, section 76 (2) requires the court not to allow the confession to be used unless it is established by the prosecution, beyond reasonable doubt, that it was not obtained by such means. Under section 76 (3), the court can of its own motion require the prosecution to prove, to that standard, that a confession was not obtained by oppression.

122. The provisions of section 76 of the Police and Criminal Evidence Act 1984 and the Codes of Practice issued under that Act do not apply in Scotland or Northern Ireland. In Northern Ireland, the equivalent provision is article 74 of the Police and Criminal Evidence Order 1989. Separate provision is made by section 8 of the Northern Ireland (Emergency Provisions) Act 1978 in respect of confessions tendered at trials conducted under the Act. This provides that, where prima facie evidence is adduced that an accused was subject to torture, to inhuman or degrading treatment, or to any violence or threat of violence (whether or not amounting to torture) the court may exclude the statement unless the prosecution satisfies the court that the statement was not so obtained.

123. The law in Scotland governing the admissibility of statements made, or information of a self-incriminating character given, by an accused person to police officers whilst a suspect under caution was restated by the Lord Justice General Emslie in Lord Advocate's Reference (No. 1 of 1983) 1984 SCCR 62; 1984 Scots Law Times 337 at page 340. His Lordship observed that the law was well settled and to be found without difficulty in the line of authority beginning with the case of Chalmers v HM Advocate 1954 JC 66; in particular, it was well settled that it is not the law of Scotland that the answers of a suspect, given under caution, to police questioning will never be admissible in evidence. A statement by a suspect in answer to police questioning will be inadmissible in evidence at the subsequent trial of that suspect, unless it has been obtained fairly. For example, any statement made

by a suspect who has not been cautioned is unlikely to be admitted in evidence, and any statement made by a person who has been unlawfully detained may be held to be inadmissible.

Article 16

124. The United Kingdom is already bound by other of its international obligations not to allow acts of ill-treatment of the kind described in this article, for example article 7 of the International Covenant on Civil and Political Rights and article 3 of the European Convention on Human Rights and Individual Freedoms.

125. Some instances of ill-treatment covered by this article would amount to a criminal offence under the common law (common assault) or be contrary to sections of the Offences against the Person Act 1861 already referred to or contrary to section 20 of that Act. In Scotland, they might constitute the common law offence of assault. In addition, or alternatively, the ill-treatment concerned could found the basis of an action at civil law.

126. Any instance of cruel, inhuman or degrading treatment or punishment committed by, at the instigation of, or with the consent or acquiescence of, any public official or anyone acting in an official capacity would give cause for grave concern; the Government would regard such conduct as wholly to be condemned and attended by appropriate criminal and disciplinary sanctions.

127. The Government is concerned that everyone acting in a public capacity shall act according to the rule of law, and has accordingly put in place measures designed to prevent ill-treatment taking place.

Ill-treatment of children

128. Dostoyevsky wrote that all the best ideals of humanity are not worth the tears of an innocent tortured child. The Government fully endorses this sentiment, and regards the protection of children from all forms of ill-treatment as being of the utmost importance.

129. Statutory responsibility for the care and protection of children who may be subject to abuse rests with local authority social services departments, although health services, the probation services, police, education and voluntary organizations may also be involved.

130. There has been a worrying increase in the reported incidence of child abuse and in particular sexual abuse. The Government has taken action to improve the handling of child abuse cases; its programme includes legislative changes, the development of guidance for professionals working with children, training and research.

131. In 1984, the Department of Health began a comprehensive review of guidance in relation to child abuse and arranged a series of meetings aimed at improving coordination between agencies involved in the care and protection of children. Many points raised at these meetings were later incorporated in a consultation document which was published in May 1986. A final version of the guidance was issued in July 1988 under the title "Working Together - A Guide to Arrangements for Inter-Agency Co-operation for the Protection of Children from Abuse" which took account of lessons learned from inquiries, including the Judicial Inquiry

into Child Sexual Abuse in Cleveland in 1987, held since the consultation document was issued. Parallel guidance was issued to the police and schools and professional guidance was issued to doctors, nurses and social workers. Corresponding guidance has been issued or is being prepared for the different authorities and professionals in Scotland and Northern Ireland.

132. In October 1986, the Government launched a central training initiative for the training of managers and practitioners in child abuse work. The initiative consists of seven projects at present. In July 1988, the Government announced a new training support programme to support the training of social services staff involved in child care, including child abuse.

133. Arrangements have also been made for more accurate data about the incidence of child abuse to be provided. In July 1987 the Minister of Health announced arrangements for the collection of annual child abuse statistics from child protection registers held by local authorities in England and Wales. A pilot study sought information for the period ending 31 March 1988 and a national annual return has been introduced from March 1989. The Secretary of State for Scotland has also set in train work which will lead to the production of local and national child abuse statistics. In Northern Ireland statistics on child abuse have been produced annually since 1981.

134. Provisions in the Children Act are intended to improve the powers of local authorities to protect children at risk. The existing duty to investigate circumstances which suggest there may be grounds for care proceedings is replaced by a more active duty to investigate any case where it is suspected that the child is suffering harm or is likely to do so.

135. A new Emergency Protection Order replaces the Place of Safety Order. The new Order enables an authority to gain access to a child and remove him or her to a place of protection where there is reasonable cause to believe that the child's health or well-being would otherwise be damaged. The Order lasts for eight days only; authorities are able in exceptional circumstances to apply for an extension for a further seven days and this is open to challenge by a parent. Parents will also be able to appeal to a court against the making of an Emergency Protection Order after 72 hours.

136. In Scotland the provision and control of residential establishments for children is governed under the Social Work (Scotland) Act 1968 and the Social Work (Residential Establishments - Child Care) (Scotland) Regulations 1987. All residential care for children is subject to local authority inspection and registration except in the case of secure accommodation which is subject to approval and inspection by the Secretary of State for Scotland. The 1987 Regulations, which cover residential care provided by local authorities and voluntary organizations, deal with the conduct of establishments and prescribe minimum requirements in respect of fire precautions, discipline, records, education and health care. Under the Regulations each establishment is required to prepare a statement of functions and objectives setting out the respective responsibilities of managers and persons in charge. Such matters include arrangements within the establishment for formulating procedures in cooperation with the relevant care authority to deal with complaints from children, or their parents or other relatives.

Mental health patients

137. Ill-treatment and/or wilful neglect of patients are criminal offences under the Mental Health Act 1983 as mentioned above.

138. The 1983 Mental Health Act requires the provision, and revision as necessary, of a Code of Practice. The Code is intended to set out guidelines on expected good practice with regard to the care and treatment of detained mental patients. Although the Code will not have the force of law, the Government is confident that the courts will accord it the appropriate weight and will come to regard it as having persuasive authority. The Code of Practice for England and Wales was laid before Parliament on 5 December 1989 and, having been debated in the House of Lords, is available to the public and supplied to all professionals.

139. Institutions where detained patients are kept are subject to inspection by several statutory bodies: the Mental Health Act Commission, the Health Advisory Service, Social Services Inspectorate and the National Development Team for the Mentally Handicapped. The Mental Health Act Commission has specific powers to investigate patients' complaints as has the Health Service Commissioner. People in local authority facilities have the right to complain to their local councillors who have the duty to visit residential establishments; these people may also complain to the local authorities ombudsman. Local authorities are responsible for registering privately run mental nursing homes and must also inspect them. They have the powers to instigate proceedings if necessary.

Police custody

140. All persons detained in police custody in England and Wales have the same rights as all other members of the public under part IX of the Police and Criminal Evidence Act 1984 to lodge a formal complaint if they feel they have been treated unfairly or improperly in any way by a member of a police force. Similar rights extend to members of the public and to persons detained by the police in Northern Ireland under the terms of the Police (Northern Ireland) Order 1987. The Police and Criminal Evidence Act 1984 does not apply to Scotland but, nevertheless, similar rights of complaint apply in Scotland. An explanatory leaflet is available at all police stations and it indicates the various avenues through which a complaint could be made.

Police disciplinary procedures - England and Wales

141. The police disciplinary procedures for England and Wales were revised in 1985, under the terms of the Police and Criminal Evidence Act 1984, and a new police discipline code was introduced as set out in schedule 1 to the Police (Discipline) Regulations 1985. Under the code it is an offence for a police officer to treat any person with whom he may be brought into contact in the execution of his duty in an oppressive manner: this offence covers any instance where an officer without good and sufficient cause conducts a search, or requires a person to submit to any test or procedures, or uses any unnecessary violence towards any prisoner or any other person, or improperly threatens any such person with violence.

142. The essential difference between the previous procedures and the procedures which came into force under the Act is the role played by the independent Police Complaints Authority which comprises one Chairman, two Deputy Chairmen and 11 members. There are no specific qualifications required for membership: the only stipulation, under the Police and Criminal Evidence Act 1984, is that no person who has been a police officer may be a member. The Chairman is appointed by the Sovereign while the members and Deputy Chairmen are appointed by the Home Secretary. These are full-time posts. Appointments are for a three-year term, with the possibility of reappointment at the end of that period. The members are supported by a permanent staff who prepare case papers and assist members in carrying out their functions.

143. The Police Complaints Authority succeeded, and is largely based on, the Police Complaints Board. The Board, whose members were appointed by the Prime Minister and also included no former or serving police officers, was established under the provisions of the Police Act 1976 and was abolished by the introduction of the Police and Criminal Evidence Act 1984. The main differences between the old Board and the Authority lie in the powers which the Authority possess to supervise the investigation of the most serious cases (the Board had no supervisory powers). The Police and Criminal Evidence Act also introduced the informal resolution procedure for dealing with minor complaints (e.g. incivility) whereby complainants, if they chose, could have their complaints dealt with by more informal means which did not involve either the Authority or a formal investigation.

144. The Police Complaints Authority is required to report annually to the Secretary of State on the discharge of its functions during the year. Such annual reports typically include explanations and comments on the Authority's responsibilities, summaries of cases of particular interest, and any matters which may have arisen during the year which in its view deserve attention. The Authority is also required to report to the Secretary of State every three years on the workings of the complaints procedures. The Secretary of State is required to lay before Parliament a copy of every annual report and triennial review report received by him and cause them to be published.

145. Detailed figures of complaints against the police are published each year in the Annual Reports of Her Majesty's Chief Inspector of Constabulary and of the Commissioner of Police of the Metropolis. Although the numbers of complaints made in recent years have been generally rising (there was a total of 17,393 complaints cases received in 1986, 18,828 in 1987, 19,211 in 1988 and 20,956 in 1989; no corresponding figure is yet available for 1990), the number of substantiated complaints has been falling (1,129 in 1986, 924 in 1987, 853 in 1988 and 765 in 1989). Of the complaints substantiated in 1988 and 1989, 33 and 16 respectively were sufficiently serious for the officers to be convicted by the courts of criminal offences.

146. The 1984 Act requires the chief officer to refer to the Authority any complaint alleging that the conduct complained of resulted in the death of, or serious injury to, some other person. Regulations also require reference to the Authority of any complaint alleging conduct which, if shown to have occurred, would constitute assault occasioning actual bodily harm; or an offence under section 1 of the Prevention of Corruption Act 1904; or a serious arrestable offence within the meaning of section 116 of the 1984 Act. Notification of the complaint must be given to the Authority within a

specified time. The Act also provides that the chief officer may refer to the Authority any complaint which is not required to be referred to them, and empowers the Authority to require the submission to it of any complaint not referred to it by the chief officer.

147. Under another provision of the Act any indication that an officer may have committed a criminal or disciplinary offence may be referred to the Authority, even if it is not the subject of a complaint, if it appears to the chief officer that it ought to be referred by reason of its gravity or because of exceptional circumstances.

148. The Police Complaints Authority is required to supervise the investigation of any complaint referred to it under the 1984 Act and of any other complaint or other matter referred to it if it considers that it is desirable in the public interest to do so. If the Authority supervises an investigation it may approve the appointment of the investigating officer.

149. The Act provides that the officer appointed to conduct a formal investigation should be of at least the rank of Chief Inspector and of at least the rank of the officer against whom the complaint is made. He should also be serving in a different sub-division or branch from the officer complained against. In appropriate cases, the chief officer will invite an officer from another force to conduct the investigation.

150. When the investigating officer has completed the investigation, he will submit a report to the chief officer. If the investigation has been supervised by the Police Complaints Authority he will instead submit the report to the Authority and send a copy to the chief officer. At the end of an investigation which it has supervised, the Authority must issue a statement showing whether it is satisfied with the conduct of the investigation, and specifying any respect in which it is not.

151. Under section 90(4) of the 1984 Act, if a chief officer determines that an investigation report submitted to him indicates that a criminal offence may have been committed by a member of his force, and if he considers that the offence indicated is such that the officer ought to be charged with it, then he is required to send a copy of the report to the Director of Public Prosecutions so that consideration may be given to the question of whether a criminal charge should be brought.

152. After any criminal aspects have been considered, the chief officer is required to submit the case to the Police Complaints Authority (together with a copy of the investigation report, where the Authority has not supervised the investigation) setting out his opinion on the question of whether any disciplinary charges should be preferred against the officer concerned. Where the Police Complaints Authority considers that a disciplinary charge should be brought against the officer, it will recommend to the chief officer the charge which it considers should be preferred, giving reasons for its recommendation. Where the chief officer disagrees with the Authority's recommendation to prefer a disciplinary charge, he may enter into discussions with the Authority but in the last resort, if mutual agreement cannot be reached, the Authority has the power to direct the chief officer to bring specified disciplinary charges.

Police disciplinary procedures - Scotland

153. In Scotland, the police discipline code is set out in schedule 1 to the Police (Discipline) (Scotland) Regulations 1967, as amended. The procedures provide that when a report, complaint or allegation is received from which it may reasonably be inferred that a constable may have committed a disciplinary offence, the deputy chief constable - in cases where the constable is of the rank up to and including chief superintendent - sets in hand the necessary investigations and, in the light of the ensuing report from the investigating officer, decides whether the officer in question is to be charged with a disciplinary offence. For more senior ranks the disciplinary authority is the police authority which is the relevant local authority. When a charge is made, the officer appears at a disciplinary hearing before his chief constable who has power, on finding guilt, to impose a punishment ranging from caution to dismissal from the force. The punishment of dismissal, requirement to resign or reduction in rank cannot be awarded by the chief constable unless the officer has been given the opportunity to elect to be legally represented at the hearing by counsel or a solicitor. In 1984, 244 police discipline cases were dealt with; the corresponding figures for 1985, 1986, 1987 and 1988 were 254, 265, 316 and 298.

154. In cases where it may reasonably be inferred that a constable has committed a criminal offence, the deputy chief constable is required to refer the matter as soon as possible for investigation by the Procurator Fiscal who is independent of the police and acts impartially on behalf of the Crown. All these procedures are statutorily prescribed. The Procurator Fiscal will consider all the evidence before him and decide whether or not criminal proceedings should be taken. In reaching his decision he may seek direction from the Lord Advocate or one of his deputies. If the Procurator Fiscal considers the complaint to be of substance he will refer the matter to the Lord Advocate for consideration of criminal proceedings. Thus the independent position and the active investigatory role of the Procurator Fiscal in cases involving possible criminal offences are seen as providing a full safeguard against any suspicion of police partiality in Scotland. A criminal conviction would not affect any decision to proceed with disciplinary proceedings. In circumstances where a case has not proceeded to trial or has resulted in an acquittal it is still open to the deputy chief constable to pursue a disciplinary charge against a constable provided it complies with the terms of the regulations.

Police disciplinary procedures - Northern Ireland

155. In Northern Ireland, the Police Disciplinary Code is set out in schedule 1 of the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1988. These regulations were framed in light of the provisions made by the Police (Northern Ireland) Order 1987 which introduced procedures for handling complaints about the conduct of police officers and which were broadly in line with the new procedures introduced for England and Wales by section IX of the Police and Criminal Evidence Act 1984.

156. The 1987 Order established the Independent Commission for Police Complaints for Northern Ireland whose powers and functions are broadly similar to those of the Police Complaints Authority for England and Wales. However, unlike the PCA in England and Wales the Independent Commission has been given additional powers to reflect the particular circumstances of policing in

Northern Ireland. For example, the Commission automatically receives copies of all complaints requiring formal investigation and can therefore "call-in" those cases in which it may exercise its discretionary power to supervise the investigations; it can monitor the informal resolution of minor complaints; and it can supervise the investigation of any matter, not the subject of a complaint, which is referred to it by the Chief Constable, the Police Authority for Northern Ireland, or the Secretary of State for Northern Ireland.

Penal establishments

157. All staff working in prisons, remand centres and young offender institutions are subject to the criminal law. Where prima facie evidence exists of a criminal offence against an inmate's person or property, the police would be invited to investigate. Conviction for such an offence would lead to disciplinary action being taken, and in addition to any sentence imposed by the court, dismissal could follow.

158. Staff are also subject to internal disciplinary procedures. These provide for a number of offences such as unnecessary exercise of authority, provoking a prisoner, and unnecessary or undue use of force. It would also be possible to take disciplinary action against a member of staff who failed to comply with Prison Rules or Prison Standing Orders. The awards available to the Department include warnings, reprimands, special probation, forfeiture of increments, reduction in rank and dismissal.

Institutional care for children - Procedures for complaints, investigation and inspection

159. Local authorities are responsible for the welfare of children although in some circumstances duties are vested in voluntary organizations. Children may be placed in residential care in local authority, voluntary or private children's homes or a Department of Health Youth Treatment Centre. All such homes are subject to inspection by the Department of Health's Social Services Inspectorate. Children may also be placed in boarding schools which are subject to inspection by Her Majesty's Inspectorate of Schools. New regulations and guidance on the conduct of homes including complaints is being prepared in accordance with the Children Act 1989 and is expected to be implemented in Autumn 1991. This new guidance will emphasize the promotion of the welfare of the child and the guarding against ill-treatment with an accessible complaints system.

Staff selection procedures and disciplinary measures against staff suspected of ill-treatment of children

160. Child-care employers are expected to take all reasonable measures to avoid employing people to work with children if their past conduct suggests that they are unfit to work with children. This would include the following measures:

(a) If staff or volunteers are working with children on behalf of a local authority, the employing authority can check with the police to establish what, if any, criminal convictions they may have;

(b) In England and Wales, the Government has also set up three pilot schemes to introduce similar arrangements covering staff and volunteers working for major voluntary organizations;

(c) Health authorities can also make checks on staff and volunteers working with children;

(d) All child-care employers (including bona fide private child-care employers) may also make checks with the Consultancy Service records held by the Department of Health. These contain records of people whose fitness to work with children is in doubt as a result of a serious criminal conviction (notified to the Department by the police); or as a result of an "adverse report" on the individual's conduct submitted to the Department by a child-care employer;

(e) All child-care employers are expected to follow routine employment procedures such as the checking of references from previous employers.

161. If a member of staff is suspected of ill-treating a child, the employer should investigate to see if the suspicions may be justified. If they may be, the employer should notify the police since a criminal offence may, therefore, have been committed. Prosecution will follow if the police consider that there is a case for the staff member to answer. The employer would usually suspend the staff member at the outset to prevent any further possible ill-treatment. If the staff member is convicted he or she will be sentenced by the court. The employer will also be able to take disciplinary action if a case is proved against the staff member, e.g. by moving him or her to another area of work, downgrading him or dismissing him.

162. In certain cases, an employer, told by the police that proof of the allegations is likely to be impossible, may still consider that the suspicion of ill-treatment merits disciplinary action. The employer may, in such cases, hold a disciplinary hearing and consider the allegations against the staff member and his or her response to them. If satisfied that ill-treatment occurred he may, again, move the staff member to another job, downgrade or dismiss him or her.

163. As mentioned above, if a social worker is convicted of a criminal offence, the police will notify the Department of Health of his conviction, which will then consider whether to place the individual's name on the Consultancy Service records. If the individual is not convicted but is disciplined by an employer for serious misconduct which casts doubts on his or her fitness to work with children, the employer will submit an "adverse report" on the individual to the Department of Health. The Department will, again, consider whether to place his or her name on the Consultancy Service records.

164. Similar measures, as outlined above, operate in Scotland and Northern Ireland.
