



House of Lords  
House of Commons  
Joint Committee on Human  
Rights

---

**Any of our business? Human  
rights and the UK private  
sector: Government  
Response to the  
Committee's First Report of  
Session 2009–10**

---

**Eleventh Report of Session 2009–10**

*Report, together with written evidence and  
formal minutes*

*Ordered by The House of Commons to be printed 23 February  
2010*

*Ordered by The House of Lords to be printed 23 February 2010*

**HL Paper 66  
HC 401**

Published on 8 March 2010  
by authority of the House of Lords  
and the House of Commons  
London: The Stationery Office Limited  
£0.00

## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders made under Section 10 of and laid under Schedule 2 to the Human Rights Act 1998; and in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in Standing Order No. 73 (Lords)/151 (Commons) (Statutory Instruments (Joint Committee)).

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is three from each House.

### Current membership

#### HOUSE OF LORDS

Lord Bowness  
Lord Dubs  
Baroness Falkner of Margravine  
Lord Morris of Handsworth OJ  
The Earl of Onslow  
Baroness Prashar

#### HOUSE OF COMMONS

Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)  
Dr Evan Harris MP (Liberal Democrat, *Oxford West & Abingdon*)  
Ms Fiona MacTaggart (Labour, *Slough*)  
Mr Virendra Sharma MP (Labour, *Ealing, Southall*)  
Mr Richard Shepherd MP (Conservative, *Aldridge-Brownhills*)  
Mr Edward Timpson MP (Conservative, *Crewe & Nantwich*)

### Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

### Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at [www.parliament.uk/commons/selcom/hrhome.htm](http://www.parliament.uk/commons/selcom/hrhome.htm).

### Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Chloe Mawson (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), John Porter (Committee Assistant), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

### Contacts

All correspondence should be addressed to The Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general inquiries is: 020 7219 2467; the Committee's e-mail address is [jchr@parliament.uk](mailto:jchr@parliament.uk)

# Contents

---

<b>Report</b>	<i>Page</i>
<b>Report</b>	<b>3</b>
<b>Formal Minutes</b>	<b>5</b>
<b>List of written evidence</b>	<b>6</b>
<b>Written Evidence</b>	<b>7</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>57</b>



## Report

---

With this Report we are publishing the Government's reply to our first report of 2009-10, *Any of our business? Human rights and the UK private sector*, which we received under cover of a letter from Michael Wills MP, Minister of State, Ministry of Justice, dated 17 February. We are also publishing a letter we received from Lord Young of Norwood Green, Minister for Postal Affairs and Employment Relations, Department for Business, Innovation and Skills, on the Employment Relations Act 1999 (Blacklists) Regulations 2010, dated 21 January



# Formal Minutes

---

**Tuesday 23 February 2010**

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Dr Evan Harris MP
Baroness Falkner of Margravine	Fiona Mactaggart MP
Lord Morris of Handsworth	Mr Richard Shepherd MP
The Earl of Onslow	

\*\*\*\*\*

Draft Report (*Any of our business? Human rights and the UK private sector: Government Response to the Committee's First Report of Session 2009-10*), proposed by the Chairman, brought up and read the first and second time, and agreed to.

*Resolved*, That the Report be the Eleventh Report of the Committee to each House.

Ordered, That the Chairman make the Report to the House of Commons and that Lord Morris of Handsworth make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 3 February.

\*\*\*\*\*

[Adjourned till Tuesday 2 March at 1.30pm.]

## List of written evidence

---

- 1 Letter from Michael Wills MP, Minister of State, Ministry of Justice, dated 17 February 2010 p 7
- 2 Letter and Memorandum from Lord Young of Norwood Green, Minister for postal affairs and Employment Relations, Department for Business, Innovation and Skills, dated 21 January 2010 p 59

## Written Evidence

---

### Letter from Michael Wills MP, Minister of State, Ministry of Justice, dated 17 February 2010

I am writing in response to the above report, which details the findings of the Committee's Business and Human Rights Inquiry.

The Government's response to the Committee's report is enclosed. Although the response was co-ordinated by the Ministry of Justice, it includes significant contributions from the Department for Business, Innovation and Skills, the Foreign and Commonwealth Office and other relevant Government Departments. In the response, the recommendations are numbered according to the order they appear in pages 93 – 109 of the Committee's report. Some responses are grouped together where they address the same issue.

I am grateful to the Committee for conducting this Inquiry, which has provided a useful contribution to our understanding of how the UK private sector engages with human rights.

### **GOVERNMENT RESPONSE TO JOINT COMMITTEE ON HUMAN RIGHTS REPORT 'ANY OF OUR BUSINESS? HUMAN RIGHTS AND THE UK PRIVATE SECTOR'**

#### ***WHY DO HUMAN RIGHTS MATTER TO UK BUSINESS?***

**1. The principal legal duty to protect human rights will always lie with the state. However, it would be short-sighted to consider that the implications for human rights and the private sector begin and end with this narrow legal construct. The human rights obligations of the UK may impact on the activities of business, just as the activities of UK business may impact on the ability of the UK to meet its obligations. We welcome the Government's recognition that the activities of business may affect the ability of the UK Government to meet its human rights obligations, both positively and negatively. We particularly commend the broad acceptance that certain obligations may require the regulation of business. As we aim to develop a human rights culture within the UK, the importance of understanding human rights principles for all UK residents - both individuals and corporate entities - should grow. There is a strong incentive on the Government to ensure that it has a clear understanding of how its policies on business relate to the human rights obligations of the UK. (Paragraph 20)**

The Government agrees with the Committee that the principal legal duty to respect human rights will always lie with the state. This doctrine of state responsibility means that the activities of businesses do not generally fall directly within the scope of the state's negative human rights responsibilities. However, businesses have an important role to play in promoting human rights, not only when performing public functions, but also in their everyday activities, through their interaction with employees, customers and contractors, as well as through their investment and operational decisions. The Government encourages all organisations, whether public or private, to adopt a human rights-based

approach in its activities. In doing so, businesses can benefit from significant advantages, and can contribute to building a human rights culture within the UK.

Good progress is currently being made on the subject of the UK private sector and human rights. The scoping study commissioned by the Government has added to our understanding of how businesses are currently engaging with human rights, and a constructive dialogue has been established with businesses from across the different parts of the UK private sector, and with representative organisations including the Confederation of British Industry and the Federation of Small Businesses. The Equality and Human Rights Commission has been engaged with the Ministry of Justice's work on the private sector and human rights, and is now considering how the Commission should contribute towards moving this agenda forward.

### ***POLICY REASONS FOR ACTION?***

**2. We recognise that there are complex legal and policy questions which arise around the cross-border operation of UK businesses, particularly where they operate in countries where states have weaker governance mechanisms than the UK for the purpose of protecting human rights in their jurisdiction. The purpose of this inquiry is to consider these complex issues which the UN, major multinational companies and many other states have been grappling with for a decade. We intend to draw attention to the debate, consider the current UK stance on this issue, and put forward our recommendations below. (Paragraph 32)**

**3. Although the UK's international legal obligations are far from clear, in our view there are good policy arguments in favour of action. The UK is a major consumer of internationally produced goods and provides a home to many major multinational companies. It is well placed to benefit from the experiences and activities of these many successful businesses. The UK is particularly vulnerable to impacts on its reputation when these companies are associated with allegations of human rights abuse overseas. If the UK fails to show leadership in this debate, it suggests to other states that it is not important to address the impacts of business on the fundamental rights of individuals. This may create the perception that the UK cares more about economics than human rights obligations. We recommend that the UK should play a leadership role in this global debate to ensure that multinational firms and other corporate entities respect human rights wherever they operate. (Paragraph 33)**

The Government agrees with the Committee that there is considerable scope for joint working internationally on business and human rights. To date the UK has led this debate, and was instrumental both in the establishment of the UN Special Representative's mandate and in the establishment of a number of international initiatives designed to promote higher standards of business accountability and responsibility with regard to human rights, such as the Voluntary Principles on Security and Human Rights.

In this way the Government has sought to show leadership in encouraging multinational firms and other corporate entities to respect human rights wherever they operate. The Government continues to work to strengthen voluntary regimes, raise awareness and encourage wider use of tools such as the OECD (Organisation for Economic Co-operation

and Development) Guidelines for Multinational Enterprises, and to support the UN Special Representative on Business and Human Rights. For example, as the current non-executive chair of the Voluntary Principles, the UK Government will host the next plenary meeting in London in March 2010.

#### ***DO HUMAN RIGHTS MATTER FOR SMALL BUSINESSES?***

**4. Human rights principles are relevant to businesses of any size or type, although their detailed application may differ from case to case. Policy, advice or guidance on human rights should take into account the diverse nature of the UK business community, including small business and consumers of small business services. (Paragraph 37)**

The Government welcomes Professor Ruggie's comments regarding not adopting a 'one size fits all' approach when developing policy advice or guidance for small businesses, given that they are not a homogenous group. The Government already recognises this and now looks at the way that new and existing regulation applies to firms that employ fewer than 20 people.

The Government welcomes the involvement of small businesses and their representatives in any new development of policy or guidance on human rights. The Federation of Small Businesses has been engaged with the Private Sector and Human Rights scoping study, through the Project's Steering Group. It continues to be engaged through the working group established by the Ministry of Justice to take forward the recommendations of the scoping study report, and will represent the needs of small businesses in the development of any guidance or other tools.

#### ***WHAT ABOUT THE RECESSION?***

**5. The current economic climate should not adversely affect the commitment of the UK Government or UK businesses to human rights. The Government has a responsibility to help businesses understand what a human rights responsible approach means and what it can add to business planning and to the global economic recovery. We welcome the Government's statement that despite the economic climate, there is still a strong business case for embedding human rights in business. This sentiment should be consistently reflected across Government during the recession and thereafter. (Paragraph 41)**

As outlined in the Government's memorandum of evidence to the Committee's Inquiry, there is a strong case for companies to see embedding human rights within their practices as an advantage, whereas any association with human rights abuses can damage a company's corporate image.

Companies may also enjoy valuable benefits from protecting the human rights of their employees - in terms of their staff turnover, sickness rates and staff motivation. This is reflected in Reebok's 'Human Rights Production Standards', which say: "Reebok's experience is that the incorporation of internationally recognized human rights standards into its business practice improves worker morale and results in a higher quality working environment and higher quality products."

In the current economic climate it is even more important for companies to assess risk properly, including those associated with human rights issues. Furthermore, in broad terms, businesses should realise that their success is intrinsically linked to a thriving society. As Peter Sutherland, Chairman of BP and Goldman Sachs International said, "Society thrives where business thrives. Business thrives where society thrives. And both thrive where human rights are valued and protected..."<sup>1</sup>

It is important for the Government and the Equality and Human Rights Commission to consider how to build a human rights culture within the UK private sector, whereby companies understand how human rights issues apply to their business practices, and recognise the benefits of respecting the human rights of individuals.

### **POSITIVE AND NEGATIVE IMPACTS**

**6. We do not underestimate the significant and positive contribution that businesses can make to the communities in which they operate. This clearly has the capacity to enhance the protection of the rights of employees, service users and other local people. Businesses can support the state's ability to protect the economic and social rights of individuals, including for example, the right to an adequate standard of living. However, we also believe that businesses can play an important role in ensuring that individual civil and political rights – including, for example, freedom from inhuman treatment, freedom from forced labour and unjustifiable discrimination, the right to privacy, freedom of expression and the right to freedom of association, including the rights of independent trade unions and their members – are respected. (Paragraph 47)**

**7. Our terms of reference do not permit us to conduct a full investigation into any specific allegations against individuals and companies. However, in the light of the seriousness of many of these claims, we are persuaded that further action is necessary and we hope that our conclusions and recommendations will contribute to advancing the debate in the UK, both among parliamentarians and the wider public. (Paragraph 48)**

The Government agrees that UK businesses have a positive impact upon human rights as well as a negative one. The report detailing the findings of the scoping study commissioned by the Government highlights that businesses already do many things that have a positive impact on human rights, from providing employment, to ensuring safe working practices and promoting equal opportunities<sup>2</sup>.

The Government also recognises that businesses by promoting and respecting human rights in their policies and procedures, can play a vital role in building a human rights culture within the UK.

---

<sup>1</sup> Peter Sutherland (08/12/05), Chairman BP and Goldman Sachs International, speech to Business Leaders Initiative on Human Rights Seminar December 2005

<sup>2</sup> *The Private Sector and Human Rights in the UK*, TwentyFifty Limited, October 2009

## **THE OECD GUIDELINES**

**8. It is unacceptable for the Government not to have a strategy in place to deal with companies subject to negative final statements by the UK NCP [National Contact Point]. The credibility of findings of the UK NCP would be enhanced considerably if the Government had a clear and consistent policy on its response to final statements. We recommend that such a policy should be drawn up and disseminated widely. (Paragraph 83)**

**9. There has been significant improvement in the way the UK NCP approaches complaints that UK companies have failed to comply with the OECD Guidelines for Multinational Corporations. The UK NCP can perform only a limited role, however, as a Government-led organisation with few investigative powers and no powers to sanction individual companies. As a non-judicial mechanism for satisfying individuals who may have a complaint against a UK company, it falls far short of the necessary criteria and powers needed by an effective remedial body, including the need for independence from Government and the power to provide an effective remedy. There is little incentive for individuals to use a complaints mechanism which offers no prospect of any sanction against a company, compensation or any guarantee that action will be taken to make the company change its behaviour. (Paragraph 84)**

**10. We recommend that the Government consider options for increasing the independence of the UK NCP from Government and enhance the ability of the NCP to promote the OECD Guidelines, including ensuring that it has the necessary resources and powers to fulfil this part of its role effectively. (Paragraph 85)**

The Government welcomes the Committee's recognition of the significant improvement in the way the UK's National Contact Point (UK NCP) approaches complaints. In the two years since the new complaint procedure fully came into effect in April 2008, the UK NCP has concluded 8 cases (compared to 5 in the period 2000-2008).

The OECD Guidelines for Multinational Enterprises are not intended to be a substitute for local law or other regulation, which may provide for remedies in relation to local abuse of human rights. Rather, they represent supplementary principles and standards of behaviour of a non-legal nature. The Guidelines are not legally binding on multinationals and there appears to be little appetite amongst OECD members or other adhering countries to change the status of the Guidelines in this respect. In spite of this limitation, the UK NCP has made concrete positive changes on the ground through its sponsored conciliation/mediation process, for example in the complaints against G4S (in the Democratic Republic of Congo, Nepal, Malawi and Mozambique) and Unilever (in Pakistan).

Secondly, NCPs, including the UK NCP, are not judicial mechanisms and are not assisted by the investigations or evidence-collecting powers of the police or other domestic or international enforcement agencies, nor do they have the power to impose sanctions or other penalties on multinationals. The UK NCP is however assisted, when undertaking an examination of the complaint against a multinational, by relevant posts of the Foreign & Commonwealth Office and the Department for International Development, and by other relevant Government Departments, namely the Export Credits Guarantee Department and

the Department for Work and Pensions. The UK NCP can also call on the assistance of the Confederation of British Industry, the Trades Union Congress and the NGO community, as they are all represented at the UK NCP's Steering Board.

Beginning with the complaint against Vedanta Resources by Survival International, the Government has introduced a limited follow up to the UK NCP's Final Statements, where a company is found to have acted inconsistently with the Guidelines and the UK NCP has made recommendations as to how its conduct may be brought into line with the Guidelines. In such cases, the UK NCP will ask the parties to provide it with an update on the implementation of the recommendations contained in the Final Statement by the company. The UK NCP will then publish a statement reflecting the parties' responses. This approach forms an integral part of the UK NCP's complaint procedure which is published on the UK NCP's website (a summarised version of the complaint procedure is also included in the widely disseminated UK NCP's leaflet).

The Government considers that the creation of the Steering Board, monitoring the work of the UK NCP and including four external members nominated by the Trades Union Congress, the Confederation of British Industry, the All Party Parliamentary Group on the Great Lakes Region of Africa, and the NGO community, should help in minimising any risk of a conflict of interest should the UK Government become involved in a project subject to a complaint to the UK NCP. It is also important to recognise that the existence of a complaint does not necessarily mean that a company has acted inconsistently with the Guidelines. The Government believes that the UK NCP's good performance combined with the role of the Steering Board make the current structure of the UK NCP fit for purpose. The Government has seen no compelling evidence that a fully independent NCP would increase the efficiency and transparency of the complaint process.

## **REFORM OF THE OECD GUIDELINES**

**11. In the light of the development of the debate on human rights and business over the past decade, the OECD Guidelines are ripe for review and reform. Reform of the Guidelines should reflect the work of the UN Special Representative on human rights and transnational corporations and other business entities. The Government should take a lead in ensuring that the Guidelines are reformed to give clearer direction to business about their responsibilities to respect human rights, especially including operations in states which do not recognise or respect the rights guaranteed by the fundamental UN human rights treaties. (Paragraph 86)**

The Government agrees with the Committee's conclusion that the forthcoming update of the OECD Guidelines for Multinational Enterprises should aim to provide clearer guidance to businesses across the OECD about the need to respect human rights, based on a due diligence process, particularly in weak governance or conflict zones. The Government has publicly consulted on the update of the Guidelines and noted this issue as one of the options under consideration for the UK negotiating position. The Government will actively engage with its OECD partners in the course of the negotiations on the update of the Guidelines, bearing in mind the need to ensure a level playing field to UK businesses.

## ***THE WORK OF THE UN SPECIAL REPRESENTATIVE***

12. The 'protect, respect and remedy' framework proposed by Professor Ruggie, the UN Special Representative, is a valuable and constructive contribution to the debate on business and human rights. The polarised positions previously taken by the proponents of voluntary or regulatory initiatives were unhelpful. While there continue to be many areas of contention over the respective roles and responsibilities of states and individual businesses, this framework provides a solid platform upon which these issues can be debated and, hopefully, resolved. We welcome the renewed commitment to constructive dialogue that the framework appears to have provided and call on states, businesses and civil society to approach any operational recommendations made by the UN Special Representative in a positive way. It would be disappointing if the years of work and careful engagement undertaken by the UN Special Representative and his team were wasted by a return to the stalemate that arose after the UN Norms. (Paragraph 93)

## ***LIMITATIONS ON THE PROTECT, RESPECT AND REMEDY FRAMEWORK***

13. While we recognise the value of the 'protect, respect, remedy' framework, further work is needed to increase its value to individual states and businesses. We look forward to the further recommendations which Professor Ruggie is due to make in 2011. They need to give clear guidance to home and host states and businesses, on how they should meet their obligations under the 'protect, respect, remedy' framework. While the value of consensus in this debate is clear, Professor Ruggie should not be afraid to tell states and business what positive steps must be taken to protect human rights, however difficult or unwelcome his message may be. (Paragraph 95)

14. There is a case for further recognition of the role of communities in the Ruggie framework. The need for consultation and engagement appears to form part of the due diligence process envisaged by Professor Ruggie. However, greater clarity on the role of individuals and civil society could lend greater coherence to the development of the framework. (Paragraph 96)

15. We call on the Government to continue to support the mandate of the UN Special Representative, to encourage UK businesses and civil society to engage with his work, and to respond constructively to his recommendations. (Paragraph 97)

## ***WAITING FOR 2011?***

16. We are disappointed that the Government appears to have ruled out unilateral policy measures to deal with the human rights impacts of UK companies operating overseas while the Special Representative carries out his work, particularly as Professor Ruggie has encouraged states to do more. International debate should not preclude innovative policies at home. (Paragraph 101)

As a consequence of work undertaken by the UN Special Representative on Business and Human Rights, for the first time there is agreement on a framework developed by him, and he is in the process of elaborating guidance on its implementation. The UK Government was instrumental in the establishment of the UN Special Representative's mandate. The

Government continues to support his work and Departments meet regularly with Professor Ruggie and his team. Government officials have also met with a member of Professor Ruggie's team to discuss the work being taken forward domestically by the Government, beginning with the Private Sector and Human Rights scoping study. Professor Ruggie's team has been sent a copy of the report detailing the findings of the scoping study and the Government will keep the Special Representative updated on the work taken forward.

The Government supports all three pillars of Professor Ruggie's framework and is keen to encourage and participate in constructive dialogue around how best to operationalise the framework. The Government welcomes the Committee's recommendation that more attention should be given to how business and civil society can be encouraged to engage with Professor Ruggie's work and will continue to voice the Government's support for his framework.

The Government continues to work to strengthen voluntary regimes, raise awareness and encourage wider use of tools such as the OECD Guidelines, and to support the UN Special Representative. At the same time the Committee has recognised the need for coherence in the approach of different countries. The Government believes that this will be achieved best by allowing the Special Representative time to inform and shape the international community's approach as he operationalises his Protect, Respect and Remedy framework.

### ***AN INTERNATIONAL AGREEMENT ON BUSINESS AND HUMAN RIGHTS?***

**17. An international agreement on business and human rights is unlikely in the near future. However, the impact of business on human rights is a global issue that ultimately requires a global solution. We are concerned that reluctance by states to take unilateral action coupled with failure to commit to an international solution will mean that little progress is made. We believe that an international agreement should be the ultimate aspiration of any debate on business and human rights. There is considerable scope for joint working on a regional level and globally to agree a consistent approach to business and human rights. We recommend that the Government develops such joint-working programmes. (Paragraph 106)**

The question of an international agreement on business and human rights presents certain challenges. The Government does not support a human rights convention regulating business directly. This would fundamentally alter the international human rights framework to introduce obligations on non-state actors, a move that could encourage States to divest themselves of their human rights obligations. The UK has long defended the international human rights framework from attempts by other States to move it in this direction.

Whereas the principal focus of human rights treaties is to impose obligations on States as regards individuals, the Committee refers to treaties in other areas – the UN Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Officials - that require States to regulate the behaviour of other actors. A human rights agreement focused on State regulation of business activity could likewise provide States with an excuse to avoid their own human rights obligations, and any extraterritorial dimension would

pose jurisdictional challenges and encounter resistance from States arguing interference with sovereignty. In the UN, a few States have expressed interest in an agreement regulating business activity directly, but not in a convention that would require extraterritorial regulation of business by States.

The Government also remains to be convinced that an international treaty would have impact. Although treaties can be useful for the purposes of standard setting, there is a risk that the standards States would agree to in a treaty would slip towards a lowest common denominator. In addition, even if all States ratify a treaty, its implementation requires commitment and individual treaties may lack coercive measures to ensure implementation. In particular, a treaty monitoring body similar to those created by the other UN human rights treaties would lack the capacity to monitor the activities of the large number of companies potentially regulated by it.

Notwithstanding our concerns related to extending the international normative framework, the Government would agree with the Committee that international agreement comes in many forms. The Government continues to encourage international consensus around the need to strengthen host state capacity to comply with and implement their human rights obligations and to regulate business behaviour effectively.

#### ***WHAT DOES THE RESPONSIBILITY TO PROTECT HUMAN RIGHTS MEAN?***

**18. We welcome the recognition by Professor Ruggie that the responsibility on businesses to respect human rights is not merely voluntary. However, we share the concerns of the UN Special Representative and others that while this responsibility is clear in theory, its practical implications are uncertain. (Paragraph 110)**

The Government notes the Committee's concerns and through its Private Sector and Human Rights Project, will continue to engage and encourage businesses to use a human rights based approach in their policies and procedures.

#### ***DUE DILIGENCE AND HUMAN RIGHTS IMPACTS***

**19. Many of the steps taken by businesses and their organisations have helped to move the debate on business and human rights forward. Changes in business practice on the ground can have a positive impact on the lives of communities and individuals. We welcome the commitment shown by many companies to respect human rights, wherever their businesses operate. Dealing with the negative impacts of businesses on human rights requires a culture change in the way that businesses think about their responsibilities. We see merit in the argument that business-led initiatives may achieve a credible and lasting change, but this is hampered by the perception that some businesses regard addressing human rights as little more than an exercise in "good PR". Although compliance with the due diligence requirements outlined by the Special Representative - including the need to take action to address identified risks to individual rights - has the potential to benefit more than a business's public image, Professor Ruggie himself recognises that few businesses meet the standards he considers are necessary. (Paragraph 119)**

The Government recognises the importance of companies respecting human rights and is currently working with a group of businesses to assess the UK private sector's requirements for implementing a human rights-based approach.

### **RESPECT FOR HUMAN RIGHTS AND CORPORATE SOCIAL RESPONSIBILITY**

**20. Given the absence of a straightforward legal framework for business responsibilities regarding human rights, it is understandable that these issues are generally dealt with by businesses alongside environmental issues under the 'corporate responsibility' label. (Paragraph 123)**

**21. How businesses describe their activities should not matter, provided that businesses take their responsibility to respect human rights seriously. Greater clarity on the distinction between actions required by the social or moral 'responsibility to respect' (i.e. do no harm) and acts of general philanthropy would go some way to reinforce the baseline responsibility identified by Professor Ruggie. The UK Government could encourage such a distinction by adopting the 'protect, respect and remedy' framework and clearly explaining the responsibility to respect human rights and the associated need for due diligence in their work on corporate responsibility. (Paragraph 124)**

The Government would like to see UK businesses taking account of their economic, social and environmental impacts and acting to address the key sustainable development challenges based on their core competencies whether they operate locally, regionally or internationally. The Government's vision is to create a policy framework with levels of performance in the fields of health and safety, environmental impact and employment practices, whilst also encouraging and enabling wider responsible behaviour that stimulates innovation and application of best practice.

Businesses are conscious of consumer attitudes and recognise that there is a strong correlation between responsible business practice and an improvement in financial performance.

Initial desk research on UK business and human rights carried out by the Ministry of Justice in early 2009 indicated that companies are taking proactive steps to produce their own human rights policies, statements of values, codes of conduct and pledges, but these tend to be broad and aspirational, with a blurring of corporate social responsibility and human rights. The Government recognises that human rights may sit within a company's corporate responsibility arena, but encourages companies to properly understand and consider human rights independently of other corporate responsibility issues such as general acts of philanthropy and sustainability.

The Government supports the Committee's conclusion that there needs to be greater clarity for companies on the distinction between respecting human rights and acts of general philanthropy. The Private Sector and Human Rights scoping study commissioned by the Government in summer 2009 and the subsequent feedback event held in November 2009 found that there is a need for greater clarity on what human rights issues exist within the UK and how they relate to businesses. Many companies are taking human rights into account within their practices, but they are not currently considering them in terms of

'human rights' language. This includes policies on, for example, occupational health and safety, harassment and discrimination.

The findings of the scoping study will inform the programme of work that the Ministry of Justice is taking forward with its working group, as well as that being taken forward by the Equality and Human Rights Commission.

### ***VOLUNTARY ARRANGEMENTS AND MULTILATERAL INTERNATIONAL INITIATIVES***

**22. The array of multi-stakeholder initiatives and sector-specific arrangements that have been agreed in the past decade show that businesses recognise they must take some action to meet the criticism levelled at a number of multinational businesses. Many of the doubts expressed about their effectiveness have merit. While there is no consistent global agreement on the standards to meet, it is difficult to assess the effectiveness of each scheme or for the outsider to accept that business can self-regulate without adequate scrutiny from active consumers, NGOs and others. We have not classified the arguments we heard as pro-'voluntary' or pro-'regulatory', but there is a clear distinction between those who favour business-led initiatives and those who see a far clearer role for home states. We support the view of Professor Ruggie, that a range of responses is necessary. No single solution will be able to address the complex issues which arise in cross-border commercial operations which impact on human rights. This collaborative approach should not involve a race towards the lowest common denominator, as some witnesses fear. We consider the Government can play a role in supporting and reinforcing the social and moral responsibility of business to respect human rights, through due diligence. (Paragraph 129)**

The Government agrees with the Committee's conclusion that the Government can play a role in encouraging UK businesses towards a due diligence approach to respect the human rights of those affected by their activities. The Government will be actively engaging its OECD partners to promote such an approach as part of the review of the OECD Guidelines.

### ***THE APPLICATION OF THE HUMAN RIGHTS ACT 1998 TO THE PRIVATE SECTOR***

**23. We have heard nothing new in this inquiry to suggest that we should change our view that legislative change is necessary to restore the original intention of Parliament, that all private bodies performing public functions should be subject to the duty to act compatibly with human rights. We are concerned that the Government's approach panders to the unjustified concerns of some in the private sector in order to maintain the market for contracted-out services and represents a significant shift from its earlier view that the scope of the HRA 1998 should be clarified. In our view, this apparent change of policy represents a failure of leadership by the Government on such an important human rights issue. (Paragraph 136)**

In its response to the Committee's previous report on this subject, *The Meaning of Public Authority under the Human Rights Act*, the Government said at paragraph 71:

*The Joint Committee asserts that Parliament originally intended that all services that could be provided by a core public authority should be considered functions of a public nature for the purposes of the Human Rights Act even if provided by a private, charitable or voluntary organisation. There is no evidence in the Parliamentary debates to support this assertion, and it was not then, nor is it now, the Government's intention. While there are indeed certain functions that, in the Government's view, remain public in nature even when performed by a private, charitable or voluntary organisation, the assessment of the nature of a function needs to take into account more than just the question whether it is a function that a core public authority would otherwise provide.*

The response further noted, at paragraph 89:

*The Government agrees that some of these concerns [of service providers] are exaggerated and overstated. However, the Government must also take into account the need to maintain a functioning market for the provision of public services, and hence appreciates the importance of providing reassurance to current or potential service providers.*

In any engagement with service providers, the Government will make it clear that companies should not see using a human rights approach as something that may negatively affect their competitiveness, but instead should recognise that there is a strong business case for companies to embed human rights within their practices.

**24. We are particularly concerned to hear evidence from public law solicitors that cases are being litigated over the exercise of compulsory powers in immigration detention. In our previous correspondence with the Government, we understood that the exercise of any compulsory powers associated with detention would be subject to Section 6 of the HRA 1998. This evidence clearly illustrates the need for clarification of the scope of the HRA 1998. Although the Government considers that the legal position in respect of these cases is settled, we maintain that legislation is urgently needed to resolve the existing uncertainty surrounding the meaning of public authority, putting beyond doubt, in statute, Parliament's original intention. In the meantime, we recommend that the Government produce clear and detailed guidance to relevant Government departments and agencies in order to ensure that all public authorities and relevant contractors understand the scope of their duties under the HRA. (Paragraph 142)**

Following the concerns raised in evidence to the Committee, enquiries have been made within Government to identify the cases to which the evidence from Leigh Day & Co solicitors refers. However, we have been unable to find any case in which the Government has argued that the exercise of compulsory powers in the context of detention is not a function of a public nature. Given that the argument as reported to the Committee would appear to conflict with the Government's settled position on the application of section 6 of the Human Rights Act, the Government would be grateful for further particulars of the cases to which Leigh Day & Co refers.

In terms of human rights guidance for public sector contracting, as the Committee is aware, in 2005 the Department for Communities and Local Government, then the Office of the Deputy Prime Minister, produced a guide for public authorities entitled 'Guidance on Contracting for Services in the light of the Human Rights Act 1998'. The Improvement and Development Agency for local government has now commissioned the British Institute of Human Rights to carry out a project looking at the relevance of a human rights approach to local government and service delivery. The Government will consider the need for any revised guidance in light of the outcome of this project.

The Office for Government Commerce is also developing a procurement charter between the Government and private sector suppliers, aimed at promoting wider policy agendas through procurement by placing voluntary commitments on its signatories. While the formal procurement process affords contracting authorities opportunities to address human rights issues, much can also be achieved on a voluntary basis through ongoing supplier relationship management.

**25. The Government's view that the scope of the HRA 1998 is subject only to marginal uncertainty is not correct. We accept its view that in the wider context of the operation of the Act against core public authorities, the application of the HRA 1998 is settled and clear. We also agree that this issue should not detract from the overall success of the HRA 1998. However, we find unacceptable the Government's attempt to dismiss the outstanding problems created by the decision of the House of Lords. (Paragraph 147)**

The Government welcomes the Committee's agreement that the application of the Human Rights Act to core public authorities is clear and that this issue should not be allowed to detract from the success of the Act.

As stated previously, the Government was disappointed that the decision in *YL* did not resolve the issue the way it had hoped. However, as the earlier response to the Committee notes at paragraph 54:

*As illustrated by the paucity of litigation on the subject, service providers and commissioning authorities are usually clear as the position of the function in question under section 6 of the Human Rights Act 1998.*

**26. The Government has broken its promise to consult speedily on the scope of the HRA 1998. It is disappointing that the Government now relies on further litigation to justify its procrastination. In the time since the passage of the Health and Social Care Act 2008, a consultation could have been completed. An interpretative provision could still be inserted in the Constitutional Reform and Governance Bill. Instead, uncertainty continues for both business and the users of public services, who are forced to litigate to seek clarity. (Paragraph 149)**

During the Committee's oral evidence session with Government Ministers in July 2009, the Government explained that it wanted to consider the implications of the case of *Weaver vs. London & Quadrant Housing Trust* before going ahead with any consultation on the scope of the Human Rights Act. It would have been premature for the Government to consult when a case examining this issue was being considered by the Supreme Court, particularly one in which the Government may have intervened. Whilst the Supreme Court refused

permission to appeal, as the Committee will be aware on 19 November 2009 it issued a new order stating that it was keen to consider a case that raised the same issue as *Weaver*, and that a suitable case could potentially leap-frog to the Supreme Court. It is incorrect for the Committee to assert that the Supreme Court is bound by the previous decision of the House of Lords in *YL*: not only does the Supreme Court retain the explicit ability to depart from its previous decisions, but the decision in *YL* was clearly stated by the Lords in the majority on the Appellate Committee to be specific to its facts.

**27. The Government's decision to delay is unacceptable, particularly as it has already published its broad view on the sole issue currently before the courts, and on the wider debate. The litigation in *Weaver* is over. It is inevitable that litigation on other issues will surface. We are not persuaded that any further public consultation on this issue is necessary and call on the Government to bring forward a legislative solution as soon as possible. If the Government insists on publishing a formal consultation document, we recommend that they do so without delay. Any consultation should be short in duration and focus on a proposed legislative solution. (Paragraph 150)**

The Government remains committed to addressing this issue in the most effective way possible, whether through litigation or by consulting on possible legislative approaches, and to encouraging all organisations, whether public or private, to adopt a human rights approach in their policies and practices.

### **OFFENCE OF FORCED LABOUR IN THE UK**

**28. We commend the Government's acceptance that a specific offence of servitude and forced labour was necessary to meet our international obligations to prohibit and prosecute these acts of modern slavery and welcome the provision included at a late stage in the Coroners and Justice Act 2009. (Paragraph 154)**

**29. We welcome the Government's commitment to promote awareness of this offence. We recommend that the Government works with the Association of Chief Police Officers and other relevant stakeholders, including business organisations, to ensure that adequate guidance is produced for both police and the wider community in an accessible way. (Paragraph 155)**

The Government welcomes the Committee's support for the new offence in section 71 of the Coroners and Justice Act 2009, of holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour. Whilst it does not agree that the new offence was necessary in order to meet our international obligations, the Government accepts that a bespoke offence encompassing all of the elements of forced labour and servitude will make the law clearer and may assist effective investigation and prosecution. The new offence will be in addition to existing offences to protect vulnerable workers. These include offences of trafficking for forced labour, false imprisonment and blackmail. There is also a range of offences of violence against the person, or threats of violence, which might apply to particular cases. In addition employment legislation, including on working hours, minimum wages, age limits in employment and health and safety, and the Gangmasters (Licensing) Act 2004, which licences those providing agricultural labour, provide additional safeguards.

The Government is working with the Association of Chief Police Officers and other key stakeholders, including the Crown Prosecution Service, to produce guidance on the new offence. The guidance will be available on the Ministry of Justice website and will be widely disseminated. We will also work with stakeholders to raise awareness of the new offence, especially amongst workers and employers.

## **LABOUR AND UNION RIGHTS**

**30. The right to freedom of association, the associated right to strike, the right to trade union membership and the right to collective bargaining are rights recognised in the international human rights obligations of the UK and overseen by the European Court of Human Rights, the ILO and the UN Committee on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights and the ILO Committee of Experts considers that current domestic law on the right to strike and the right to collective bargaining places undue restrictions on those rights. The UK Government has failed to take the recommendations of those Committees seriously. We reiterate our predecessors' recommendation that the UK Government review the existing law in the light of those recommendations. We note that the European Court of Human Rights is increasingly citing the findings of the UN Committee and the ILO in its interpretation of the right to freedom of association guaranteed by Article 11 ECHR. This jurisprudence may be relied upon in the domestic courts to challenge the compatibility of existing law with Convention rights protected by the HRA 1998. This provides an added incentive to the Government to conduct a review without delay. (Paragraph 159)**

The Government does not accept the proposition that the United Kingdom fails to comply with its international obligations in respect of trade union law. The Government takes these international obligations very seriously, and has responded in detail to the International Labour Organisation (ILO), the United Nations (UN) and other responsible bodies explaining why UK law is compatible with treaty obligations. The UK's standing at the ILO is high, and the UK has not been formally censured by the ILO Governing Body for failure to comply with the ILO Conventions.

On two occasions since 1997, the European Court of Human Rights has concluded that particular aspects of the body of trade union law were incompatible with the European Convention of Human Rights. On both occasions, the Government moved quickly to amend the law, following public consultation, to ensure that full compliance was achieved. These processes each entailed the full involvement of the Committee, and the final implementing legislation was strongly influenced by the Committee's views. The Government would point out that these events underline the importance it attaches to the human rights of trade unionists and others.

In addition, the Government has thoroughly reviewed this body of law, and consulted extensively with interested parties, on two occasions since 1997. On the basis of these reviews, the Government submitted major proposals to Parliament to amend the law, and these proposals were enacted through the provisions of the Employment Relations Act 1999 and the Employment Relations Act 2004. The Government has therefore made a

large number of changes to trade union law, and to employment law more generally, to establish or strengthen decent standards at work.

Among the many measures taken were the establishment of a successful and workable statutory procedure whereby trade unions can gain recognition for collective bargaining purposes, and the right to be accompanied by a union official at grievance and disciplinary hearings. These Acts significantly strengthened the protections against dismissal for those employees taking official and lawfully organised industrial action. Indeed, these statutory protections are now greater than ever before.

Member states which have ratified ILO Conventions and other treaties in this area have widely varying systems and traditions of industrial relations. As the Committee will be aware, the wording of these treaty obligations takes account of these different circumstances and provides scope for member states to shape their implementing legislation in accordance with domestic circumstances. The UK, like other member States, has its own particular approach to industrial relations, which reflects the long-standing voluntarist traditions in this country, where both employers and trade unions generally prefer to limit legal interference in their mutual relations. This country also has a very decentralised system of collective bargaining and industrial relations, with many thousands of separate bargaining units, few of which are sector-wide. The UK has therefore devised a legal framework which reflects these circumstances, in accordance with the latitude for such necessary local variation which the treaty obligations provide. In its regular reporting to the ILO and other institutions, the UK endeavours to explain the national factors which have shaped the way that UK law is framed.

Further, the Government would point out that all member States have laws placing limits on the freedoms of trade unions and their individual members. For example, all countries provide a legislative framework regulating the organisation and taking of industrial action. The treaties are framed in ways which enable some restrictions to be imposed and, as the Committee will be aware, in the context of the European Convention on Human Rights, member States are provided with a necessary margin of appreciation when placing limitations necessary in a democratic society on these trade union freedoms. When judged against this background, the Government considers that the UK's regulation of trade unions and industrial relations more broadly is fully compatible within our treaty obligations.

The Government is ever-vigilant in ensuring that trade union rights are protected in the UK, and monitors how these rights are applied in practice. However, the Government believes there is no compelling case at this stage to undertake a further wide-scale review of this body of law and it therefore has no plans to do so.

**31. The Government said in 2004 that it intended to ratify the Charter. We recommend that it explain why it has not done so. We repeat the recommendation of our predecessor Committee in 2004: the UK should ratify the Revised Social Charter. (Paragraph 161)**

The UK takes its international obligations seriously and there is a continuous review of the state of ratification of international treaties. The reforms taking place at present to social legislation within the UK make this process of review a major consultation exercise.

**32. We doubt the compatibility of the Government's blacklisting proposals with the UK's international human rights obligations. We recommend that the Government provide a full explanation of its argument that the proposals are compatible. This should include a response to the criticism of the Institute of Employment Rights, that these proposals fail to provide an adequate remedy for those individuals who have already been affected by blacklisting. In the light of the Government's explanation, we anticipate revisiting this issue. (Paragraph 163)**

The Committee has based its observations on the version of the draft blacklisting regulations which were published for consultation in July 2009. In response to that consultation, the draft regulations were significantly revised before they were laid in Parliament for approval on 5 January 2010. The Government respectfully disagrees with the Committee's view that the draft regulations to outlaw the blacklisting of trade unionists are inadequate and are not fully compatible with treaty obligations. To help inform the Parliamentary debates on the draft regulations, Lord Young of Norwood Green, Minister for Employment Relations and Postal Affairs (Department for Business, Innovation and Skills), has already written to the Committee explaining the Government's position in some detail. For ease of reference, a copy of Lord Young's letter and the associated memorandum are attached at (see below, page 49).

### **GOVERNMENT CORPORATE RESPONSIBILITY REPORT 2009**

**33. The Government's latest Corporate Responsibility Report presents a positive overview of the steps which the Government is taking to implement its existing policy. While we commend the steps taken by the Government to promote the business case for corporate responsibility, we regret that the Report does not clearly connect this business case to the responsibility to respect human rights recognised by the UN Special Representative in his work. The language of 'encouragement' found in the Corporate Responsibility Report, while positive, seems out of kilter with the conclusion of Professor Ruggie that many of the steps taken by business to address their human rights impacts are incorrectly viewed as purely voluntary measures. Equally, the Report does not clearly identify that existing compliance and regulatory steps required of business – for example in respect of health and safety, the environment and equality – are designed to meet the human rights obligations of the UK. This suggests that the Government's corporate responsibility strategy is unduly focused on voluntary measures and underestimates the extent to which businesses have human rights responsibilities. (Paragraph 171)**

The Government strongly supports the promotion and progression of corporate responsibility activity both domestically and internationally. The Government's vision, as outlined in the Corporate Responsibility Report, is to see businesses take account of their economic, social and environmental impacts both domestically and internationally. The Report is not intended to delineate an overarching corporate responsibility strategy as such

but instead outlines the corporate responsibility activities being undertaken by different Government Departments.

The Government aims to strike the right balance between voluntarism and regulation. A voluntary approach acknowledges that there is a strong business case for companies embedding human rights within their practices, as outlined in the earlier response to the Committee's fifth recommendation.

### ***THE PRIVATE SECTOR AND HUMAN RIGHTS PROJECT***

**34. We commend the decision of the Government to initiate its Private Sector and Human Rights Project. It seeks informed answers to many of the questions posed by this inquiry, including whether there are gaps in existing guidance and legal and regulatory frameworks relating to businesses in the UK which need to be addressed. However, we are concerned that the project appears to have been limited to gathering the views of UK businesses about their domestic activities. It is unfortunate that other Government departments, including BIS, DFID and the FCO, which are more familiar with the Government's corporate responsibility agenda, have not been more heavily involved. Their experience of the international debate on the cross border impacts of companies could have usefully informed the scoping study. We recommend that any policy options pursued as a result of the Private Sector and Human Rights Project are subject to wider consultation with consumers, employees, NGOs and other stakeholders. (Paragraph 179)**

**35. At present, there are no planned next steps for the Government Private Sector and Human Rights Project, other than to recommend action by the Equality and Human Rights Commission. We are concerned that this approach appears to indicate a lack of leadership and commitment to taking this debate forward. We make some positive recommendations for further action, below. (Paragraph 180)**

The Private Sector and Human Rights Project scoping study commissioned by the Government has now been completed, and the report detailing its findings is available online via the website of TwentyFifty Limited, at the following link: <http://www.twentyfifty.co.uk/publications/art/9/The-Private-Sector-and-Human-Rights-in-the-UK.htm>

The scoping study involved an online questionnaire and in-depth interviews, which engaged a total of 167 companies, employing around 2 million people in the UK and 4.5 million people globally. The study found that businesses already do many things that have a positive impact on human rights, although they do not always think of them in terms of human rights language. The research also indicated that businesses would welcome further guidance on human rights within the UK. Guidance on employment issues is already widely available, but beyond this companies are unclear what 'human rights' means in the UK context, the risks and opportunities that human rights present to their business, and the value of using a human rights framework.

As stated in the Government's evidence to the Committee, a Steering Group was established for the Private Sector and Human Rights Project, comprised of the relevant Government Departments, private sector organisations and Race for Opportunity, a third sector organisation that works with employers on equality issues. The following

Government Departments participated in the Steering Group: the Department of Health (joint sponsors of the project), the Department for Business, Innovation and Skills, the Home Office, the Department for Work and Pensions, the Department for Transport, the Government Equalities Office, the Office of Government Commerce, the Foreign and Commonwealth Office, the Department for International Development and the Tenant Services Authority. The Equality and Human Rights Commission and the Audit Commission also participated in the Steering Group. The Welsh Assembly Government, Northern Ireland Executive and Scottish Executive were informed of the project and asked to be kept updated on its progress.

In addition to Government Departments, the Steering Group of the Private Sector and Human Rights Project also included private sector organisations, the Confederation of British Industry (CBI) and Federation of Small Businesses (FSB), as well as Race for Opportunity.

At the evidence session held by the Committee on 14 July 2009 Ministers discussed with the Committee the need to ensure that the Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID) are fully engaged with the work that is taken forward on business and human rights and that the international and domestic dimensions of business engagement with human rights are fully joined up. FCO and DFID have since been actively engaged with the Private Sector and Human Rights Project and the Government will continue to seek opportunities to integrate the work that both Departments are taking forward with that being taken forward by the Ministry of Justice (MoJ).

A feedback event was held on 12 November 2009 to share the findings of the scoping study and to consider the potential next steps for this work on business and human rights. The event was hosted by KPMG and was attended by a number of businesses across a range of sectors, as well as key stakeholders such as the CBI, FSB and relevant Government Departments. The key messages from the event were that businesses would benefit from clarification on what human rights mean to businesses within the UK; how success on respecting human rights could be measured and that a central source of information on human rights would be valuable.

The Government recognises the importance of this work and has committed to taking forward a mapping exercise to clarify the roles of Government and other bodies in business and human rights and to explore what human rights guidance is available to businesses. The Government will also clarify what human rights means for businesses within the UK and will consider whether a central online portal for information on business and human rights could be developed.

The EHRC hosted a stakeholder event on 21 January 2010, to consider the potential remit and areas of focus for a working group on business and human rights. This event was attended by businesses, their representative organisations such as the CBI, and civil society organisations. The Government will be looking to the EHRC to take a leading role in this work on business and human rights, and MoJ will work collaboratively with the Commission to ensure that initiatives are aligned.

### ***THE FCO TOOLKIT ON BUSINESS AND HUMAN RIGHTS***

**36. We welcome the Government's Toolkit on Business and Human Rights and commend the aim of providing accessible information and recommendations to overseas posts on issues which might arise about business and human rights. We particularly welcome the specific directions given to posts about how they might promote human rights and respond to allegations against UK companies. There are, however, limits to what this short document can achieve. Without promotion and adequate training for relevant staff in what human rights mean for business, there is a risk that the Toolkit will gather dust in embassy in-trays. (Paragraph 188)**

**37. We recommend that the FCO monitors the use of the Toolkit in practice to assess its value. At present, the Toolkit does not provide a UK contact for posts to consult for further guidance. We recommend that the Government considers how knowledge and expertise on business and human rights issues can be developed centrally, with a view to ensuring best practice is shared within the FCO and across Whitehall. (Paragraph 189)**

The Government welcomes the Committee's response to the cross-Government Toolkit on Business and Human Rights for overseas staff. The Government has circulated the toolkit to all overseas posts with a request to publicise it on their websites and to host events with the business community to discuss the issues raised; this has already initiated some response. The toolkit does provide contact details of staff dealing with business and human rights issues on pages 19 and 20. The Government is exploring the possibility of providing training on business and human rights to UK Trade and Investment officers as part of their existing pre-posting training.

### ***THE DRAFT BRIBERY BILL***

**38. In the past, the Government has been criticised for a lack of leadership on bribery and corruption issues, facing accusations that the international obligations of the UK suffer at the expense of short term economic interests. We hope that the publication and enactment of the Bribery Bill during this Parliamentary session will mean that such concerns are a thing of the past. We look forward to scrutinising this measure. In so far as it is designed to reduce bribery and corruption in the UK and abroad, we consider that it is a human rights enhancing measure. We recommend that Parliamentary time be made available to allow this Bill to gain Royal Assent before the end of this Parliament. (Paragraph 191)**

The Government introduced a Bribery Bill at the beginning of this session and it has made good progress. The Bill will ensure that the UK has modern and effective bribery legislation in place to deal with bribery, whether committed at home or abroad. The Government is grateful to the Human Rights Committee for its contribution to the scrutiny of the draft Bribery Bill.

The Government does not accept that the UK's international anti-corruption obligations have suffered at the expense of short term economic interests. The UK has implemented the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe Criminal Law Convention on Corruption

and the UN Convention against Corruption. The UK also obtained the first convictions for foreign bribery in 2008, and further successful prosecutions have followed. At an international level, the UK has been active in progressing negotiations towards an effective monitoring mechanism for the UN Convention against Corruption, agreed in Doha in November 2008, and towards a new OECD anti-bribery agreement, launched in Paris on 9 December 2009.

### **THE NEED FOR A UK STRATEGY ON BUSINESS AND HUMAN RIGHTS**

**39. Government policy on business and human rights lacks the coherence called for by the UN Special Representative. We recommend that the Government reviews its approach to business and human rights to develop a more consistent strategy with a clearer message. The forthcoming review of the OECD Guidelines provides a good opportunity for the Government to step back and look not just at the Government position on the Guidelines but at its broader approach to the human rights impacts of business both in the UK and overseas. (Paragraph 194)**

**40. One approach would be to broaden the cross-Government steering group on the UK NCP so that it could inform and coordinate Government strategy on business and human rights issues. While this steering group includes external members, it also provides an example of a coalition of relevant Government departments not currently duplicated on other issues. We recommend that the Government consider this option. (Paragraph 195)**

The subject of human rights is shared between the Ministry of Justice (MoJ), the Foreign and Commonwealth Office (FCO), and the Department for International Development (DFID) depending on whether the issues are mainly domestic, international or related to other countries' international human rights obligations. The Department for Business, Innovation and Skills (BIS) is fully engaged in initiatives taken forward by these departments which have an impact on UK businesses, consumers and employees.

BIS's role in coordinating corporate responsibility across Whitehall effectively draws together work being taken forward within other Government Departments into a coherent and cohesive agenda, with a specific remit to help develop the business case for organisations to adopt and embed corporate responsibility within their operations. Other Government Departments with policy responsibilities for corporate responsibility include: the Department for Environment, Food and Rural Affairs (Defra) with environmental reporting, skills for corporate responsibility and liaison with trade unions in the workplace; DFID with ethical trading, the extractives industry and natural resource conflict issues; the Department for Work and Pensions on ethical pension fund management, UK relations with the International Labour Organisation and socially responsible investment; the Department for Communities and Local Government for business brokerage and neighbourhood renewal; the Cabinet Office with the Prime Minister's Social Action Agenda, City Leader's Challenge and the Prime Minister's award for Social Technology; and the Office of the Third Sector with youth volunteering, community endowments, support for charities and faith-based organisations.

BIS is also responsible for the reporting provisions of the Companies Act 2006; and is the home of the UK National Contact Point (NCP) which leads on the OECD Guidelines on Multinational Enterprises and anti-corruption issues. Business Group's Central Team provides the BIS interface with the Office of the Third Sector. As the Committee is aware, Ian Lucas, Minister for Business and Regulatory Reform, is the Minister responsible for corporate responsibility.

The UK NCP's Steering Board already includes representatives of the Departments most closely involved in promoting corporate social responsibility standards, as reflected in the Guidelines, amongst UK businesses operating in the UK and abroad. These Departments are: the Department for Business, Innovation and Skills; the Department for International Development; the Foreign and Commonwealth Office; the Department for Work and Pensions; and the Export Credits Guarantee Department. In addition, the Steering Board has four external members nominated by the Trades Union Congress, the Confederation of British Industry, the All Party Parliamentary Group on the Great Lakes Region of Africa, and the NGO community. It is open to the Steering Board to ask additional Departments to send a representative (or for other Departments proactively to send a representative), should issues of interest to other Departments arise, on a case by case basis.

However, given the remit of the NCP Steering Board, that is to monitor the work of (and to assist) the UK NCP, there is a risk that, by expanding the remit of the Steering Board to cover the Government's strategy on business and human rights, the Board would fail to fulfil its primary responsibility. Some form of direct accountability to the Government would also need to be established if the Board were to coordinate the Government's policy on business and human rights. For these reasons, the Government does not believe it would be appropriate to change the Steering Board's structure and remit at this stage.

### **EXTRATERRITORIALITY**

**41. We accept that there are legitimate concerns to be addressed in respect of direct application of extraterritorial standards overseas. We are not persuaded that the same degree of concern applies to all forms of regulation which may have some extraterritorial effects. We consider that the application of conditions to a parent company based in the UK, for the purposes of regulating their relationship with the UK Government or its shareholders in the UK, has a very different degree of extraterritorial effect to the direct application of the jurisdiction of the UK courts to breaches of the human rights obligations of the UK overseas. We recommend that the Government considers which standards it expects UK companies to meet in respect of its own contacts with and support for those businesses. (Paragraph 205)**

The Government agrees with the Committee's view that it is not appropriate to apply UK legislation to companies operating overseas, as, amongst other reasons, this potentially infringes upon the sovereignty of other States. As regards 'home state regulation' of the activities of parent companies, whilst the Government acknowledges that these difficulties may be to some extent lessened, they continue to exist. There are a number of difficult questions surrounding the extent to which parent company regulation would impact overseas. These are in terms of whether practical benefit would be delivered (whether monitoring would be possible and therefore effective in practice) and whether, on the other hand, the risks of infringing sovereignty and impacting on social and cultural differences

are sufficiently reduced. These concerns would make such regulation extremely difficult to implement effectively and appropriately in practice.

### ***INTERNATIONAL STANDARDS AND LEGAL CERTAINTY***

**42. The Government should not rule out setting clear standards for business to meet where it considers these standards are necessary to meet its human rights obligations. There is merit in considering whether existing standards supported by both businesses and the UK Government could be used to reinforce the responsibility of business to respect human rights in practice. (Paragraph 206)**

The Government already supports international corporate responsibility tools with human rights implications such as the OECD Guidelines for Multinational Enterprises, the UN Global Compact and the Voluntary Principles on Human Rights and Security. As the Committee is aware, the Government has recently published a business and human rights toolkit (downloadable from the website of the Foreign and Commonwealth Office, and distributed to FCO posts). The toolkit explains the UK human rights commitments and policy, how UK missions can promote good business conduct, which specific human rights are at stake and how the complaint procedure under the UK NCP for the OECD Guidelines works in practice. The Government, like the Confederation of British Industry, also supports the work of Professor John Ruggie in suggesting ways practically to implement Ruggie's three-pillar framework on business and human rights.

### ***COMPETITIVENESS AND THE PLAYING FIELD ARGUMENT***

**43. We are not persuaded that unilateral steps by the UK would undermine the competitiveness of UK businesses. (Paragraph 209)**

Like the Committee, the Government wants UK businesses to respect human rights wherever they operate. However, we do not accept the recommendation that the Government should take unilateral steps to set out standards to reinforce the responsibility of business to respect human rights. The Government believes that a combination of a voluntary approach by UK businesses and the existing legal and regulatory measures provides sufficient incentives and frameworks for private sector bodies to respect human rights wherever they operate.

The Government believes that a distinction needs to be drawn between unilateral action by UK companies and unilateral action by governments. Voluntary action by UK companies can bring significant competitive advantages, as outlined in the Government's earlier response regarding the recession. However, the unilateral imposition of Government-imposed standards, particularly where these depend on reporting requirements, involves administrative costs that could have an anti-competitive effect, particularly for small businesses. Again, the Government believes that a voluntary approach is more likely to bring meaningful results, and encourages all organisations to adopt a human rights approach in their activities.

**44. We recommend that any new Government strategy should build on the work of the Special Representative and the 'protect, respect, remedy' framework. It should also seek to address the criticisms raised by witnesses to this inquiry. In particular, Government policy must be clearer and more coherent. The principal purposes of the strategy should be to meet the Government's duty to protect human rights and to support UK businesses in meeting their responsibility to respect the human rights of others, both within the UK and abroad. Its key aim should be to set out clearly for businesses, consumers and the wider community what the UK expects of UK business. The international human rights obligations of the UK and UK Government policy on human rights should inform its policies for the private sector both within the UK and overseas. The strategy should present a clear and coherent connecting thread between domestic policy, foreign policy and the UK's international diplomacy, including at the EU, the OECD and the UN. (Paragraph 210)**

In addition to cross-Government collaboration through the Private Sector and Human Rights Project, and the work that has followed, Government officials have recently met with representatives from the Corporate Responsibility Coalition (CORE) and Amnesty International, to discuss a potential independent panel of experts on business and human rights, to incorporate the domestic and international dimensions. The Government is considering this proposal.

#### ***CLEARER STANDARDS IN GUIDANCE AND SUPPORT***

**45. We recommend that the Government should ensure that adequate guidance is available on:**

- a) the scope of the HRA 1998, including guidance for private bodies performing public functions on how to meet their duty to act in a Convention compatible way;**
- b) the wider implications of human rights law for business;**
- c) a human rights based approach to business; and**
- d) standards which businesses should apply when doing business at home and abroad.**

**(Paragraph 217)**

**46. We recommend that as part of its Private Sector and Human Rights project, the Government considers how additional guidance should be provided on each of these issues. Ensuring that adequate guidance is available in language which is practical and relevant to business should form part of the Government's strategy on business and human rights. (Paragraph 218)**

**47. The Government should be clear about the human rights standards it expects UK businesses to meet. It should not merely recommend a list of voluntary schemes, but positively advocate for certain standards to be applied. If participation in voluntary or sector specific initiatives is recommended or endorsed, the Government should explain why, and what businesses need to do to participate effectively. Given the need for this direction from Government, we do not consider that this task can be delegated entirely**

**to the Equality and Human Rights Commission or other National Human Rights Institutions. (Paragraph 219)**

The work now being undertaken by the Ministry of Justice on business and human rights will provide clarification for businesses on what is meant by 'human rights' in the UK context, on the application of the Human Rights Act, and on the role of Government Departments and other bodies in the subject of business and human rights. Whilst we accept that it is appropriate for the Government to take a leadership role in providing this kind of clarification, any initiatives building upon this work and seeking to develop a human rights culture within the UK private sector should be led by the Equality and Human Rights Commission, in light of its statutory duty to protect and promote human rights and compliance with the Human Rights Act.

The Commission itself recognises that it should take this lead role. As explained in the Commission's response to the Committee's report, the specific commitments relating to business and human rights made in the Commission's human rights strategy are currently being developed into a detailed programme of work. This programme will include: developing a strategy on the private sector and human rights which takes forward recent work from the Ministry of Justice, the Joint Committee on Human Rights and the UN Special Representative on Business and Human Rights; encouraging and supporting a multi-stakeholder dialogue on business and human rights in the UK with business, civil society and the Government; undertaking research on the key human rights issues on which UK businesses have an impact; and building business and public awareness of the key human rights issues in the private sector. The Commission also intends to hold a high-level summit on the implementation of the work of the UN Special Representative on Business and Human Rights in the UK.

The Ministry of Justice will work collaboratively with the EHRC to ensure that any initiatives taken forward by the Commission are joined up with the work already undertaken by the Government and engage the relevant stakeholders already participating in this work.

***PUBLIC PROCUREMENT***

**48. While we reiterate that contract compliance is no substitute for the direct application of the HRA 1998 to all private bodies performing public functions, there is much wider scope for public procurement to reinforce the responsibility of businesses to respect human rights. The Government has immense power as a purchaser and should take responsibility for human rights impacts in its supply chain. The Government's strategy should include clear and detailed measures to ensure that the UK takes a lead as an ethical consumer. This should include working with the Scottish Government and the devolved assemblies in Wales and Northern Ireland to ensure a consistent approach. (Paragraph 226)**

**49. Vague assertions that public authorities can take steps in their procurement processes to incorporate human rights standards are unlikely to lead to real change. Guidance from central Government will be required to encourage a more proactive approach. This guidance is essential, if public authorities are to have confidence that**

**their responsibility to secure best value fits comfortably with wider social goals under EU public procurement requirements. We recommend that the Government issues guidance on different models, including in particular, use of the OECD Guidelines and negative Final statements by the UK NCP. The UK Government Sustainable Procurement Action Plan provides a valuable precedent, but the Government should not look at ethical procurement only through green tinted glasses. A broader approach is required. (Paragraph 227)**

Article 45 of the EU Procurement Directive contains a mandatory exclusion of suppliers convicted of specific offences, including participation in a criminal organisation, money laundering, fraud and corruption, which applies to public procurement contracts for services, supplies, and works. There is also a similar provision in the Utilities Directive. Previous procurement directives only provided for optional exclusion by procurement authorities for these offences. The current Directives retain the discretionary element for all other offences. It is, however, difficult to see how these could be applied to corporate responsibility tools such as the OECD Guidelines where, because of their voluntary nature, breaches do not constitute a legal offence.

All public procurement spend must comply with the EC Treaty principles of transparency, non-discrimination and the free movement of goods, services and persons across the EU single market. In addition, procurements over certain value thresholds must comply with specific measures contained in the EU Procurement Directives, which are transposed into UK regulations (The Public Contracts Regulations 2006). All public procurement decisions must be based on value for money, which means taking various factors into consideration including cost, quality and reliability. Human rights issues can therefore be taken into account, where they are relevant to the subject matter of the procurement or where they relate to the performance of the contract.

For example, public sector bodies should of course consider the human rights record of companies performing services on their behalf as one important factor in the procurement process. This is particularly the case when the protection of human rights is inherent in the performance of the service being procured, such as care services, when the contract should specify standards for its performance that ensure that human rights of service recipients are protected.

At selection stage, Article 45(2)(D) allows contracting authorities to exclude a supplier from the procurement process if guilty of grave professional misconduct, which could include breaching human rights legislation where the breach is serious enough to constitute grave misconduct. In considering whether to exclude a supplier for breaches of human rights legislation, the contracting authority would need to ensure that exclusion would be relevant and proportionate; in reaching its decision, it should consider the nature of the breach, and the remedial action taken in the meantime by the supplier. The Regulations also list specific offences, where convictions must result in the mandatory exclusion of contractors from tendering. These cover matters such as fraud, bribery and corruption, which can be linked to abuses of human rights and are an important consideration in helping to protect vulnerable groups of people.

Domestically, OGC has taken action to help contracting authorities to address issues that impact on human rights beyond minimum legal requirements in public procurement. In 2008, OGC published a guide which demonstrates, with practical examples, how social issues can be reflected at each stage of the procurement process in a manner consistent with the Procurement Directive and UK Regulations. This complements OGC's existing, more detailed guidance published in 2006 on addressing social issues through public procurement. Also in 2008, OGC published a similar guide 'Make Equality Count', focusing specifically on how to address equality issues in the procurement process. OGC are developing an 'Equality Toolkit', which will build on this guidance.

As explained previously, the Improvement and Development Agency for local government has also now commissioned the British Institute of Human Rights to carry out a project looking at the relevance of a human rights approach to local government and service delivery. The Government will consider the need for any revised human rights guidance for public sector contracting in light of the outcome of this project.

### **PUBLIC INVESTMENTS**

**50. We regret that the Minister chose to describe the proactive public approach to human rights in investment taken by the Norwegian Government as “proselysation”. We accept that individuals responsible for investing taxpayers’ money have a number of important and difficult responsibilities to meet. However, as in issues of public procurement, we consider that there is clear merit in encouraging public authorities to adopt an ethical or socially responsible approach. We recommend that when considering its approach to public procurement, the Government strategy should also address its position as an investor. (Paragraph 229)**

The majority of UK public pension schemes, including those for the Civil Service, the NHS, teachers, police, fire-fighters and the Armed Forces are unfunded pay-as-you-go schemes. They are not therefore backed by a specific fund of monies which are then invested, in contrast to Norway's 'Norwegian Government Pension Fund- Global' to which Ian Lucas was being referred by the Committee in oral evidence.

The Local Government Pension Scheme is a funded scheme comprising of 89 separate local authority controlled pension funds in England and Wales, plus 11 in Scotland and 1 in Northern Ireland which operate on a similar basis. These funds have powers to make investments in the ordinary sense but there are prudential limits as set out by their investment framework which is broadly similar to that set out in 'The Local Government Pension Scheme (Management and Investment of Funds) Regulations 1998' and its subsequent amendments. The regulations require local authorities with responsibilities for pension funds to act prudently, seek proper advice, ensure the suitability and diversification of investments and to publish their policy regarding ethical investments as part of their Statement of Investment Principles.

The Norwegian Government Pension Fund-Global is one of the largest pension funds in the world and derives its financial backing from oil profits rather than pension contributions. As of August 2008, 50% of the fund was invested in the international stock market. The fund referred to is subject to an ethical investment policy which includes measures to exercise ownership rights in order to promote long-term financial rewards,

based on the UN Global Compact and the OECD Guidelines for Corporate Governance and for Multinational Enterprises. As Ian Lucas stated in his evidence, the principles of the OECD Guidelines underpin the work of the UK Government; therefore any action by the Norwegian Government to support them is welcomed by the UK.

Where it has invested in private companies, UK Financial Investments Ltd (UKFI) seeks to ensure that the companies in which it is a shareholder adopt strategies which protect and enhance shareholder value. This is because the primary objective of UKFI's engagement with these companies is to protect the value of taxpayers' shareholding, while paying due regard to financial stability and competition. However, a company's adherence to an appropriate corporate social responsibility policy, including responsible policies with regard to human rights, may impact on the value of the company and its shares. The Institutional Shareholders' Committee's Statement of Principles explains that 'many issues could give rise to concerns about shareholder value' and that among these issues are 'the company's approach to corporate social responsibility'.

The Government has required UKFI to manage the Government's shareholdings in accordance with best institutional practice, thus taking into account the extent to which corporate social responsibility policies will benefit the companies concerned and the value of the Government's holding. If a company in which the Government holds shares does not follow an appropriate corporate social responsibility policy, so as to have a negative effect on the company's value, the Government expects UKFI to use its influence to improve the position. UKFI was established expressly as a body having the necessary commercial expertise to assess such issues.

### **EXPORT CREDIT GUARANTEES**

**51. The Minister told us that the Government wants to create a framework where UK businesses conduct their business with respect for human rights. We find this difficult to square with his assertion that it would be too onerous to require UK companies seeking the support of the Export Credit Guarantee Department to perform due diligence of the human rights impacts of its application. We endorse the many constructive recommendations made by the House of Commons Environmental Audit Committee in its 2008 Report, the Export Credits Guarantee Department and Sustainable Development. The implementation of its proposals on increased transparency and disclosure in the CIAP process would improve the capacity of the ECGD system to incorporate human rights principles into its decision making and to pursue its statutory purpose more consistently with the Government's wider goals and obligations on sustainable development and human rights. (Paragraph 244)**

**52. We regret that the Government has rejected most of these proposals, except for a commitment to raise the issue of transparency during the review of the OECD Common Approaches to the Environment and Officially Supported Export Credits in 2010. This response appears to confirm concerns that the ECGD Business Principles, while 'good on paper', do not play a key role in the ECGD decision making process. It indicates that the UK Government is unwilling to show leadership on human rights issues, where to do so might impact negatively on UK business. (Paragraph 245)**

**53. At a minimum, we recommend that the Government expands its position on the 2010 reviews of both the OECD Common Approaches on the Environment and Officially Supported Export Credits and the OECD Guidelines to ensure that the work of the Special Representative is considered. We recommend that the Government should promote a common position which takes forward Professor Ruggie's recommendation that there should be a logical link between export credit and other forms of support and compliance with the OECD Guidelines. If no common position can be agreed, we recommend that the Government acts unilaterally to ensure that there are clear consequences following a negative final statement of the UK NCP against a UK company, including for any future applications by it for export credit. (Paragraph 246)**

**54. The ECGD decision-making process has been the subject of criticism by parliamentarians and others for many years. While the introduction of the Business Principles in 2000 has improved the framework for decision making on the human rights impacts of business, it is not clear whether this has had any impact on the decisions of the ECGD. Without increased transparency and openness in the assessment of applications, this impression is likely to endure. If the Government does not agree that the assessment process should follow more open and accountable procedures, we recommend that the Business Principles should be incorporated into the ECGD's statutory framework. (Paragraph 247)**

In addressing the Committee's conclusions and recommendations relating to Export Credit Guarantees, the Government first comments on the issues raised in written and oral evidence as recorded in the Committee's report, before responding to the recommendations made.

The Export Credit Guarantee Department (ECGD) is responsible for assisting UK exporters by providing financial guarantees and insurance for export contracts and UK firms investing overseas by providing insurance. Its powers to do so have been established by Parliament. In addition to its primary statutory purpose, the Government has established a number of policies under which ECGD operates, for example that it should complement, and not compete with, the private market or that it should price to risk.

There are also a number of international agreements which apply to ECGD. The relevant international agreements for official Export Credit Agencies in the context of human rights are:

- the OECD Recommendation on the Common Approaches on the Environment and Officially Supported Export Credits (the Common Approaches)
- the OECD Recommendation on Bribery and Officially Supported Export Credits
- OECD Principles and Guidelines to Promote Sustainable Lending Practices in the provision of Official Export Credits to Low Impact Countries

It is an ECGD policy that it does not provide support for exports that fall within the ambit of these international agreements unless the requirements of those agreements are met in all material respects: compliance with these agreements is not 'secondary' to the economic

benefits of any applications for ECGD support' or 'discretionary', as commented in paragraph 235 (a) and (b) of the Committee's Report.

ECGD's Business Principles Unit (BPU) is responsible for the provision of environmental due diligence on projects, including human rights issues where relevant. The BPU provides advice to ECGD's decision-takers on the degree of compliance with the Common Approaches of the environmental and social impacts of each project for which support is sought. A report by the National Audit Office on 'ECGD and Sustainability' stated that the effectiveness of ECGD's environmental due diligence 'depends upon the experience and resources of the BPU'. ECGD has recently increased the staff resources of the BPU by nearly half, with staff who are qualified environmental practitioners.

The Government does not accept the assertions made by Amnesty International in paragraph 234 of the Committee's report, that 'ECGD has facilitated corporate activities that have resulted in human rights abuses abroad through the provision of financial guarantees. Currently, ECGD's consideration of human rights is not sufficient to ensure against such breaches'. Nor does the Government accept the assertions made by The Corner House in paragraph 235 of the Committee's report that 'the degree of due diligence performed by ECGD in respect of the human rights impacts of any application is too limited'. Further, the Government does not agree with Global Witness 'that there had been no indication that the ECGD has become more effective at monitoring or implementing its existing standards, particularly on its anti-bribery measures' (paragraph 237 of the Committee's report). ECGD undertakes all the inquiry that is necessary to fulfil its obligation to comply with the relevant international agreements, its Act and the policies set for it by the Government.

The Government repeats its view that exporters should not be compelled to perform due diligence on human rights impacts in support of the applications they make to ECGD. When environmental and social issues need to be assessed, ECGD may put questions to the exporter, and take into account any human rights assessments it has undertaken on a voluntary basis. But ECGD will require the overseas project sponsor/buyer to furnish ECGD with the information on, amongst other matters, human rights impacts and may make its own investigations directly by visiting the project's location or asking the relevant UK diplomatic mission to do so on its behalf in order to enable ECGD to make a sufficiently informed judgment about whether these comply with the relevant international standards.

The Government has no plans to create an ombudsman to deal with grievances relating to projects that have benefited from ECGD support. Where any interested party considers that ECGD has provided support for projects in contravention of its statute, policies and international commitments, it is open for them to seek to challenge ECGD's decisions through the courts.

As part of its inquiry process, ECGD undertakes 'adverse history' checks so that it can take into account in its decision-making any information related to the behaviour of those parties involved in the transactions it is asked to support. This includes the findings by the National Contact Point (NCP) in respect of breaches of the OECD Multinational Guidelines. ECGD does not operate debarment lists: it cannot automatically debar companies from obtaining its support where, for example, there may have been an adverse

NCP finding. To do so would fetter the discretion given to Ministers by Parliament. Applying a blanket disqualification without consideration of the facts and circumstances would be contrary to UK public law. It is fair, right and proper that all the circumstances should be considered before imposing any form of penalty or disadvantage, and this is what ECGD would do.

The Government will not impose a statutory duty on ECGD to uphold the human rights obligations of the UK any more than it would do so in respect of any other Department of State. The Government has previously stated that it does not intend to amend ECGD's Act to include a statutory responsibility to comply with its Business Principles. In the Committee stage of the passage of the Export and Industry (Financial Support) Bill in 2009, the Government explained that:

*'maintaining the Business Principles as a policy allows them to be adapted to take account of changes in international standards: for example, to reflect new recommendations and common approaches issued by the Organisation for Economic Co-operation and Development on bribery and corruption, sustainable development or the environment. If the business principles or any aspect of them were enshrined in statute, it would be much more difficult for the ECGD to comply with its international undertakings, as primary legislation would be required on each occasion to allow it to adapt the relevant business principles to reflect changes in international agreements. Similarly, primary legislation would be required for any increase in the rigour of the Business Principles.... We want ECGD to maintain high standards, but I do not think that enshrining the business principles in statute and having to pass primary legislation every time we wanted to change them represents a good use of Parliamentary time. Given that – as members will know – the OECD is currently discussing changes in some of these areas, I do not think that would be workable in practice.'*

The Government's position has not changed.

The Committee should note that on 3 December 2009 the Government launched a Public Consultation on Proposed Revisions to ECGD's Business Principles and Ancillary Policies; one proposal in that consultation is that ECGD should adopt a policy in future of complying with OECD agreements related to the environment, sustainable lending and bribery, and not additionally create and separately operate policies which go beyond those agreements. The Government will consider all responses received by the end of the consultation period on 3 March 2010.

The Government will bring the Report of the UN Special Representative to the attention of the OECD so that this can be considered and taken into account in the reviews of the OECD Recommendation on the Common Approaches and the OECD Multinational Guidelines. For the purposes of the review of the Common Approaches by the OECD in 2010, the Government will seek a multilateral agreement to a formal requirement that Export Credit Agencies should take into account in their decision-making whether to provide support for a company that has received a negative final statement from a National Contact Point under the OECD Multinational Guidelines. However, ECGD could not accept a proposal for an automatic disbarment of such companies for a fixed period of time, as this would be contrary to UK public law.

As at present, ECGD will continue to undertake adverse history checks related to the parties involved in transactions for which its support is being sought and take this into account in its decision-taking on whether or not to provide support whether a party had received a negative Final Statement.

ECGD must and does conform to its Act, the policies set for it by the Government and the relevant international agreements. ECGD is accountable to Ministers and Parliament for its actions. As already noted, where a party considers that ECGD has acted outside its powers and policies, it may raise a challenge in Court.

Consistent with the requirements of the Common Approaches, ECGD makes known publicly those projects that it has been asked to support which may have high potential environmental or social impacts and before it makes its decision on whether to give support, in order to provide an opportunity for any interested parties to make representations.

In its response to the Environmental Audit Committee report on 'ECGD and Sustainable Development', ECGD committed itself to report its decisions on high potential impact cases, including details of the international standards against which those cases have been assessed. In the context of the 2010 review of the Common Approaches, ECGD will seek multilateral agreement to a new requirement for greater transparency under which projects classified as having medium potential environmental or social impacts would also be disclosed publicly before a decision on whether to provide support is made.

The Government has no plans to enshrine ECGD's Business Principles in statute for the reasons stated above.

## **COMPANY LAW AND REPORTING STANDARDS**

**55. Although the Companies Act 2006 represented a positive step forward for reporting on human rights impacts in the UK, we reiterate our earlier view that it could have gone much further to promote respect for human rights by UK companies. We welcome the recognition by the CBI that the business review process involves UK companies reporting on the human rights impacts of their operations. However, we share the concerns of a number of witnesses to our inquiry that these reforms have a number of limitations. Inconsistent reporting of human rights impacts in the business review will undermine its value. There is a case for clearer guidance on what reporting standards should apply and what issues should be considered material for the purposes of the review. We recommend that the Government should draw up and publish such guidance by the end of 2010 so that it can be informed by the forthcoming review of the Companies Act 2006. We again recommend that the Government considers amending the Act to require companies to undertake an annual human rights impact assessment as part of the business review, in the light of the recommendation of Professor Ruggie that all responsible companies should conduct such an assessment as part of their human rights due diligence. (Paragraph 254)**

The Accounting Standards Board has issued best practice guidance which companies may find helpful in preparing their business reviews. The essential purpose of the business review is to inform members of the company and help them assess how the directors have

performed their duty to promote the success of the company. It is for the directors of quoted companies to determine what issues – including social and community matters – are necessary for an understanding of the development, performance or position of that particular company and shareholders may challenge directors if they consider that insufficient information is being produced.

The Government is currently evaluating aspects of the Companies Act including the business review, to ensure that the provisions of the Act are achieving their original aims. In the meantime, there are no plans to amend the legislation.

### ***INVESTMENT, LISTING RULES AND SOCIALLY RESPONSIBLE INVESTORS***

**56. Government strategy on business and human rights, including its policy on corporate responsibility, must engage with the important role played by institutional and other investors. While we welcome the recent statement by the Government that pensions fund trustees are legally able to take social, ethical and environmental considerations into account when making investment decisions, we recommend that the Government reviews existing measures and initiatives to support socially responsible investment in the UK and existing measures for the regulation of investment and associated guidance. (Paragraph 262)**

The Government fully supports the highest standards of socially responsible investment, corporate governance and ethical behaviour, and believes it should contribute to better company performance by helping a board discharge its duties in the best interests of shareholders. The Government agrees that a socially responsible investment strategy is a sound choice for institutions with long-term investment horizons, such as pension schemes.

However it would not be appropriate for Government to determine how pension funds should invest their assets. Ultimately, it is for the trustees to balance their fiduciary duty to their beneficiaries against the broader issues that the wider socially responsible investment agenda brings into play. The current legislation does require that an occupational pension scheme's 'Statement of Investment Principles' must include a declaration of the extent to which social, environmental and ethical considerations are taken into account.

The Government has set in place the Investment Governance Group which was established following a National Association of Pension Funds review and Government consultation into the Myners principles. The group, which is a joint industry and government forum, implements an industry-led framework for the application of the principles. Chaired by the Pensions Regulator, the group is made up of leading representatives across the pensions community and its function represents a significant move in the continued development of institutional investment and governance.

The rules and procedures of AIM (Alternative Investment Market) and other listing rules are based on financial considerations and do not contain any other politically based criteria. Weakening this stance could be viewed as political interference and potentially reduce the UK's attractiveness as a global financial centre. The Government feels that there are more appropriate measures to support socially responsible investment. For example, in relation to extractive industries the UK plays a leading role in the Extractive Industries

Transparency Initiative (EITI). The EITI helps resource-rich countries to manage their revenue from extractive sectors in a way that fuels the economy, creating an engine for growth and reducing poverty.

### **CONFLICT, BUSINESS AND HUMAN RIGHTS**

**57. We agree with the UN Special Representative that a particularly firm approach is necessary towards the responsibility of businesses who operate in war zones or areas of conflict. We welcome the Government's participation in Professor Ruggie's working group on business and human rights in conflict zones. We recommend that the Government encourage Professor Ruggie to take a robust approach to his work on business in conflict zones. Further regulation and guidance in this context – whether internationally agreed or otherwise – would be good for both business and the international reputation of the UK. In the meantime, we support the conclusion of the House of Commons International Development Committee, that the operation of UK companies in the DRC illustrates the lack of seriousness with which the UK Government has previously treated the OECD Guidelines. We reiterate our earlier recommendation that the Government should publish a clear policy on following up negative final statements of the UK NCP. We consider that this is particularly important in cases involving operations in conflict zones. We urge the Government to take a strong and proactive approach to UK companies who fail to meet the minimum standards in the OECD Guidelines. Where an appropriate and relevant sanctions regime is in place and a negative final statement by the UK NCP indicates that a UK company is in breach, the Government should report the findings of the UK NCP to the relevant authorities, for example, to the relevant UN Sanctions Committee, or publicly explain why it has failed to make such a report. (Paragraph 268)**

The Government is pleased to be a part of Professor Ruggie's working group on business and human rights in conflict zones, through which the Government hopes to promote international focus on natural resource issues and increased private sector compliance with best practice frameworks such as the Voluntary Principles on Security and Human Rights.

The Government does not accept the Global Witness allegation that the Government has been slow, or has failed to act with regard to UK companies trading in the Democratic Republic of Congo (DRC). The Government considered carefully whether there was merit in recommending the imposition of sanctions against the UK companies concerned, but on the basis of the information available we did not consider there to be sufficient evidence to support a case for imposition of sanctions measures.

The Government will continue to consider reporting UK companies where there is a negative final statement of the UK National Contact Point to the Sanctions Committee under the appropriate and relevant sanctions regime. We will not hesitate to support sanctions against any person or company, including UK-based companies or individuals, where there is sufficient evidence to do so.

The Government agrees that firms need clearer guidance about when and how to operate in DRC. Seeking to address this issue, at UK initiative, the recently renewed UN Security Council Resolution on DRC sanctions includes an invitation for the relevant group of

experts to recommend guidelines on the exercise of due diligence to the Sanctions Committee to prevent indirect support to armed groups through the exploitation and trafficking of natural resources in the DRC. We remain engaged on this issue and will continue to support the Group of Experts' work to develop clear and practical due diligence guidelines in close cooperation with the OECD, industry and other interested parties.

In respect of the OECD Guidelines, the Government refers the Committee to its response to numbers 8-10 of the Committee's recommendations.

### **PRIVATE MILITARY SECURITY**

**58. We welcome the Government's commitment to an international solution and an agreed set of standards for the operation of private military security companies. However we share the concerns of the House of Commons Foreign Affairs Committee, that the Government's approach to consultation on this issue has been "regrettable and disappointing". We are concerned that this exercise provides another example of the Government citing administrative difficulties and business interests as justification for taking the path of least resistance. The Government should endeavour to secure international or EU agreement on a regulatory scheme for this sector to dispel the disappointment at its unacceptably weak approach thus far. (Paragraph 275)**

On 24 April 2009, the Foreign and Commonwealth Office (FCO) launched a 12-week public consultation on the Government's proposed policy to promote high standards of conduct in the Private Military and Security Companies (PMSCs) industry internationally. 25 responses to the consultation were received. On 16 December 2009, FCO published on its website a summary of responses to the consultation, including a Government response to the contributions.

The Government does not accept that the consultation was unduly short or that our proposals are too weak and have been unduly influenced by the PMSC industry. The consultation was conducted in line with the criteria of the Department for Business, Innovation and Skills (BIS) Code of Practice on Consultations. The FCO announced the consultation to Parliament via a Written Ministerial Statement and published the consultation documents on the Department's website. On 24 April 2009, the then Minister responsible, Lord Malloch-Brown, presented to NGOs, academics and representatives of the PMSC industry directly and asked them to contribute. The Government actively encouraged contributions from these sectors during the consultation process and based our analysis on the evidence we received.

The Government has welcomed the work of Professor John Ruggie, the UN Special representative for Business and Human Rights; his framework is broadly compatible with the Government's preferred option for raising the standards of PMSCs internationally. We are considering in detail how far the 'Protect, Respect and Remedy' framework would fit with our preferred option. Within the FCO teams with an interest in Ruggie's work on conflict and human rights and in the UK's PMSCs policy are co-housed in Conflict Group and work closely together. The Government does not agree that the cost savings associated with our preferred option should be a cause for concern. Introducing new legislation is costly and time consuming. The test for our policy is effectiveness; we consider that our

proposals to promote high standards in the PMSC industry would be more effective than legislation. There is a high probability that regulation would impose costs, which would outweigh any benefits and create economic distortions.

The Government notes the Foreign Affairs Committee's concern (shared by the Joint Committee on Human Rights) that the Government's approach to consultation on this issue has been regrettable and disappointing. However, no conclusive evidence was provided to demonstrate that the Government's preferred option of a three part package of a domestic code of conduct agreed with the Government, using our leverage as a key buyer to raise standards and an international approach, was not the best way of meeting the objective of promoting high standards of conduct by the PMSC industry internationally. A number of respondents continued to prefer a legislative route such as licensing and/or a register of approved companies, rather than regulation through a trade association and a code of conduct. However, none of these responses provided sufficient evidence to show how a legislative option would meet the Government's objective of promoting high standards internationally and be enforceable. As a result, we continue to believe that legislation, in the form of a licensing regime, is not a viable option.

The Government remains convinced that its preferred approach is the most viable option, but accepts that further work remains to be done in certain respects. Specifically, the FCO will now lead a multi-stakeholder working group, comprising representatives of Government, relevant trade associations, the industry, civil society and other interested parties, to explore these concerns further and to determine detailed proposals for a way forward. The Government will aim to publish the conclusions of the working group and the key findings of the consultation by March 2010.

In parallel, FCO officials will continue to work with partners for an effective international standard supported by an accountability mechanism. The Government aims to agree these within the next two years.

### ***THE ROLE OF UK NATIONAL HUMAN RIGHTS INSTITUTIONS***

**59. The SHRC appears to be taking a positive approach to business and human rights work and we particularly welcome its involvement in the International Coordinating Committee of National Human Rights Institutions Working Group on National Human Rights Institutions, business and human rights. (Paragraph 279)**

The Government is pleased to note the positive approach being taken to business and human rights work by the Scottish Human Rights Commission.

**60. The private sector work of the Equality and Human Rights Commission [EHRC] has so far been largely limited to the equality stream. We are concerned that this is indicative of a broader failure of the EHRC effectively to integrate its work on equality and its work on human rights. We explored these concerns further in oral evidence with the Chair of the EHRC, Trevor Phillips, on 10 November 2009. We intend to report the broader findings of our inquiry on the work of the EHRC shortly. (Paragraph 280)**

The Equality and Human Rights Commission (EHRC) was established to play an important role in promoting a culture of respect for human rights through providing systemic advice and guidance to public authorities. Creating institutional support for human rights was a major step in helping to advance the underlying aim of the Human Rights Act, to build a culture of respect for human rights in the UK, spearheaded by public authorities.

Under Section 9 of the Equality Act, the Commission has a statutory duty to:

- “promote understanding of the importance of human rights”,
- to “encourage good practice in relation to human rights”, and
- to “promote awareness, understanding and protection of human rights”, and
- “encourage public authorities to comply with section 6 of the Human Rights Act 1998”

Following the publication of its human rights strategy in November 2009, the EHRC is planning to hold a meeting with key stakeholders in February 2010 where the Commission intends to discuss how it plans to implement its strategy, including the recommendations of its Human Rights Inquiry.

The Government is looking to the Commission to take a strategic approach to human rights and to translate the actions recommended by the Inquiry into specific initiatives.

**61. We note the recent commitment in the EHRC Human Rights Strategy and Programme of Action 2009-2012 to build business and public awareness of the key human rights issues in the private sector. We look forward to receiving further information on how it intends to develop this strand of their work. (Paragraph 281)**

The Equality and Human Rights Commission published its human rights strategy in November 2009 which outlines how the Commission plans to use its powers to discharge its human rights duties for the period 2009 – 2012.

The Commission intends to take forward the following work on business and human rights:

- develop a strategy on the private sector and human rights which takes forward the recent work from the Ministry of Justice, the Joint Committee on Human Rights and the UN Special Representative on Business and Human Rights;
- encourage and support a multi-stakeholder dialogue on business and human rights in the UK with business, civil society and government; and
- to undertake research on the key human rights issues on which UK businesses have an impact.

The stakeholder event held by the EHRC on 21 January 2010 featured dialogue with business, representative organisations including the CBI and FSB, Government Departments and other public sector organisations, civil society groups, and some academics on business and human rights. At the event stakeholders recommended that the

Commission needs to set out how it plans to progress its work in the business and human rights arena and to ensure that it is aligned with the work that the Government is taking forward.

**62. In the light of the enforcement elements of its mandate, we consider that it would be inappropriate for the EHRC to charge a fee for formal consultancy services like the Danish Institute for Human Rights. We note that the SHRC has a mandate to charge a fee for advice, guidance, research or training. While it may have the power to take the same approach as the Danish Institute for Human Rights, we accept its view, that charging businesses for consultancy in the UK may not be the right approach. However, we consider that there is far greater scope in the mandate and powers of both of these institutions (and the mandate of the NIHRC) to become involved in the debate around human rights impacts in the private sector. (Paragraph 284)**

Although the appropriateness of a commercial consulting arm for the EHRC would need to be carefully considered, there are other aspects of the work of the Danish Institute of Human Rights that could potentially add value to the EHRC's work on business and human rights. In particular, we understand that EHRC officials have identified the guidance produced by the Danish Institute of Human Rights as something that the Commission may wish to emulate. The work that the Danish Institute carries out with small businesses is another example.

**63. Government should produce such guidance for businesses without delay. We recommend that this is a key area where the expertise of the NHRIs should be used. The content and direction of this guidance should be informed by the outcome of the Ministry of Justice's Private Sector and Human Rights project currently underway and should only be published after consultation with business, business groups, NGOs and other interested parties. (Paragraph 285)**

The Government agrees that the expertise of the UK's NHRIs will be invaluable in developing any human rights guidance for businesses, and that the development of this guidance should be in consultation with the relevant stakeholders.

The Private Sector and Human Rights scoping study commissioned by the Government has established a constructive dialogue with key UK businesses and their representative organisations on the subject of business and human rights. MoJ and the EHRC will maintain this dialogue when considering any potential initiatives arising from the scoping study.

**64. We also recommend that the NHRIs play a role in ensuring that the Government produces guidance on the wider human rights issues facing UK businesses in their operations overseas. In our view, the mandate of the EHRC is broad enough to engage with the Government on these issues. (Paragraph 286)**

The Government notes the Committee's comments. The scope of any initiatives by the EHRC on business and human rights is currently being considered by the Commission, and was one of the subjects discussed at the Commission's stakeholder event on businesses and human rights, held on 21 January 2010.

**65. We recommend that the EHRC and the SHRC work together with the NIHRC to assist the UK Government to adopt a clear, positive and proactive strategy on business and human rights. (Paragraph 287)**

The Government looks to the UK's NHRIs to make a positive contribution to promoting a human rights approach amongst the UK private sector, and to work collaboratively to ensure that any initiatives are joined up.

### **REMEDY: THE RIGHT TO A REMEDY**

**66. Many of the substantive and procedural barriers to litigation against businesses in the UK are generic problems with the domestic civil legal system, which are exacerbated in these cases because they generally involve multiple claimants who are far away and from whom it is difficult to take instructions, a complex series of facts and an uncertain legal background. These problems are not unique to the United Kingdom. Recommending a change would involve trailblazing in order to make it simpler for overseas claimants to pursue a remedy in the UK. We are not persuaded that we have enough evidence to reach a conclusion on whether changes to the law would be appropriate. (Paragraph 293)**

The Government welcomes the Committee's careful and balanced consideration of the evidence and practice on this point. We agree that the evidence currently available does not support changes to the law in this area.

**67. Recent recommendations of the UK Civil Justice Council on opt-out group litigation would meet at least some of the concerns raised about the current complexity of pursuing litigation in the courts in England and Wales. We did not have the opportunity to consider with witnesses the Government's response to these recommendations, which rejects the proposal for a generic approach to opt-out actions, because these were published after the close of our inquiry. The Government intends to examine representative actions on a case-by-case basis and to develop a framework for this purpose. We recommend that the Ministry of Justice considers the evidence provided to this inquiry about barriers to litigation against UK companies, when deciding which types of action may be suitable for representative action. (Paragraph 294)**

The Government has decided that any representative rights of action should be considered and, where appropriate, introduced in respect of specific sectors. To that end the Government is currently working on a framework document which is designed to assist policy makers in assessing whether or not to introduce a right of collective action and to act as a toolkit for policymakers and legislators.

The framework document will set out the criteria which need to be considered when introducing a right of action. These will recommend that policy makers consider issues such as barriers to litigation in a particular sector and whether a collective action would be an efficient way to overcome these. It will also recommend that policymakers assess the economic and other impacts of introducing such a policy, and that regulatory and other alternative options should be considered.

The framework document will not be considering evidence for or against the introduction of a collective action in any specific area, nor will it be making recommendations as to which areas would be suitable for collective actions. Those decisions would be the responsibility of the departments or agencies responsible for a particular sector. For example, HM Treasury has recently decided to put before Parliament a proposal to introduce collective actions for certain types of financial services claim, and the Department for Business, Innovation and Skills has recently consulted on proposals to enable the Consumer Advocate to take forward such actions on the part of consumers.

**68. We recommend that, in its response to the Jackson Review of Civil Litigation Costs, the Government consider the evidence we received that current costs rules and funding limitations undermine the ability to seek redress of alleged victims of breaches of human rights standards as a result of actions or omissions by UK companies. (Paragraph 295)**

The Government will consider, when considering Lord Justice Jackson's Review of Civil Litigation Costs, the points made in evidence to the Joint Committee's enquiry, in relation to the costs and funding of cases brought against UK companies by alleged victims of breaches of human rights standards.

Civil legal aid is currently available, subject to the standard test of means and merits, for cases concerning abuse of human rights brought in the courts of England and Wales.

Legal aid is not however available for business cases (e.g. contract disputes), however there may be alternative sources of funding: for example, business insurance.

The Government has recently consulted on proposals to restrict routine access to civil legal aid to those who are resident in the UK or EU. The consultation, Legal Aid: Refocusing on Priority Cases, closed on 8 October 2009, and we are considering carefully the responses received.

#### ***EXTRATERRITORIAL JURISDICTION: THE ALIEN TORTS CLAIMS ACT MODEL***

**69. The high-profile operation of the Alien Torts Claims Act and the ensuing corporate fear of US litigation have helped to drive forward the debate on business and human rights. While the creation of a similar cause of action in the UK is superficially attractive, we consider that ATCA style cases would be beset by many of the same substantive and procedural difficulties outlined above. We were not persuaded at this stage of the debate that our inquiry should focus on new judicial remedies. In our view, the highest priority is for the Government to make clear to UK business the human rights standards which businesses should meet to avoid human rights abuses arising. (Paragraph 300)**

The Government notes the Committee's views on this subject.

#### ***A UK COMMISSION FOR BUSINESS, HUMAN RIGHTS AND THE ENVIRONMENT***

**70. We are sympathetic to the argument that there should be a Commission for Business, Human Rights and the Environment. We have already identified gaps in the current approach of the Government - - including providing guidance and promoting best practice - which are activities which it is proposed that the Commission could undertake. Without a clear Government strategy on business and human rights, or any clear legal framework or defined boundaries for the responsibility of business to respect human rights, we are concerned that such a Commission would have an impossible task. However, for the reasons outlined in the rest of this Report, we do not agree with the Government that the existing UK framework currently provides adequate protection for the rights of individuals against the potential impact of activities of UK companies. We recommend that the Government works with NGOs, business and business organisations to explore the proposal for a UK Commission for Business, Human Rights and the Environment; in order to consider whether some of the tasks which it might adopt can be performed by Government, the UK NCP or the existing NHRIs. (Paragraph 305)**

**71. We agree that securing a remedy for individuals whose rights are breached is one of the central challenges in the business and human rights debate. In our view, this is also likely to prove the most difficult part of Professor Ruggie's work on which to find a consensus. Witnesses agreed that an international solution would be unlikely in the short-term. We recommend that the UK Government should help develop an international consensus and consider options in the UK for enhancing access to a remedy. In the meantime, the OECD should be encouraged to consider how the OECD Guidelines and the National Contact Point system can be strengthened to give greater specificity on the responsibility of business to respect human rights, greater independence from Government, and the capacity for individuals to secure an effective remedy. (Paragraph 307)**

As the Government explained in the Committee's oral evidence session in July 2009, the Government does not believe that the creation of a new UK Commission for Business, Human Rights and the Environment is necessary at this time. The JCHR is performing a valuable role in scrutinising the issues relating to the UK private sector and human rights, and the Equality and Human Rights Commission (EHRC) already exists to engage with these issues. In light of the progress currently being made and the role that the EHRC is taking, the Government believes that a new commission is not necessary at the present time.

It is likely that additional UK legislation would be required in order to establish a commission with investigatory powers, and the power to offer a remedy or impose penalties in relation to human rights breaches by UK registered companies (or their subsidiaries) operating in the UK and abroad. Equally, it is likely that legislation would be required to give these powers to the UK NCP or NHRIs.

The Government is not convinced that such regulation would be workable. Investigation, obtaining evidence and enforcement abroad would all be likely to prove highly complex and difficult. Each country may have ratified different international human rights instruments and there is a lack of (and scarce support for) a universally-endorsed binding international instrument on business and human rights providing for a shared definition of what constitutes a corporate human rights breach or for inter-state co-operation in

enforcement. Successful enforcement would rely on the level of assistance forthcoming from the host States' investigative and judicial authorities, as well as on the reliability and admissibility of evidence obtained from often-remote places. In addition, if a person alleged to have committed a breach of UK criminal law is not present in the UK, that person would need to be extradited from the State where he or she is present, but whether that would be possible would depend upon the terms of the extradition arrangements, if any, between that State and the UK; and in any event extradition is rarely a straightforward process.

As previously stated in response to the Committee's recommendations regarding review of the OECD Guidelines for Multinational Enterprises, the Government agrees with the Committee's conclusion that the Guidelines should be updated to provide better guidance to businesses on how to respect, through a due diligence process, the human rights of those affected by their activities. However, without a change in the status of the OECD Guidelines, for which there does not appear to be much appetite amongst OECD members or other adhering countries, the National Contact Point system is unlikely to become the quasi-judicial mechanism that the Committee's conclusion implies it should be.

## **CONCLUSION**

**72. Under the Human Rights Act 1998, private sector entities performing a public function are subject to the duty to behave in a Convention compatible way. The Act also has a broader impact on UK businesses: private entities have their own rights guaranteed; human rights arguments arise in business disputes; and the legal and regulatory frameworks in which businesses operate are influenced by the Act. The activities of UK businesses operating abroad also impact on the Government's international human rights obligations. We are therefore disappointed that the Government has no coherent strategy in this area. (Paragraph 308)**

**73. The UK should provide leadership by ensuring that all UK businesses understand their responsibility to respect human rights no matter where they operate. Unfortunately few businesses understand what relevance human rights principles, or the UK's international human rights obligations, have for their operations. Our intention in this Report is to encourage the Government to develop a new strategy on Business and Human Rights which clearly sets out the standards which UK businesses are expected to meet. In doing this the Government should draw on the work of the UN Special Representative and build on his 'protect, respect and remedy' framework. The goal must be international agreement on an approach to Business and Human Rights and the best way to achieve this would be to work with other countries to agree a consistent approach to business and human rights. (Paragraph 309)**

**74. The UK is in a good position to show leadership in this area. This country is a major consumer of internationally produced goods and provides a base for many large multinational companies. The UK's reputation is particularly vulnerable when these companies are associated with allegations of human rights abuses overseas. If the UK takes the international lead in this area it will be beneficial to the competitiveness of UK companies overseas and to the UK's international reputation. By providing consistent leadership the Government can help ensure that human rights are respected more fully. (Paragraph 310)**

The Government agrees with the Committee that businesses can have a significant impact, both positively and negatively, on the human rights of individuals. There is also a strong business case for companies to embed human rights within their practices. The Government encourages all organisations, whether public or private, to adopt a human rights based approach in their activities.

The Government does not accept the Committee's conclusion that there is no coherent strategy on business and human rights. As outlined earlier, the subject of human rights is shared between the Ministry of Justice (MoJ), the Foreign and Commonwealth Office (FCO), and the Department for International Development (DFID) depending on whether the issues are mainly domestic, international or related to other countries' international human rights obligations. The Department for Business, Innovation and Skills (BIS) is fully engaged in initiatives taken forward by these departments which have an impact on UK businesses, consumers and employees.

The Government agrees with the Committee that there is considerable scope for joint working internationally on business and human rights. To date the UK has led this debate, and was instrumental both in the establishment of the UN Special Representative's mandate and in the establishment of a number of international initiatives designed to promote higher standards of business accountability and responsibility with regard to human rights, such as the Voluntary Principles on Security and Human Rights.

As explained earlier, the question of an international agreement on business and human rights presents certain challenges, and the Government does not support a human rights convention regulating business directly. However, the Government would agree with the Committee that international agreement comes in many forms, and continues to encourage international consensus around the need to strengthen host state capacity to comply with and implement their human rights obligations and to regulate business behaviour effectively.

Domestically, the Private Sector and Human Rights scoping study has provided a valuable insight into how UK businesses are currently engaging with human rights, and the Government is now taking forward several actions to provide clarification for businesses on human rights within the UK, and to create a central portal of information for businesses. The Government will work collaboratively with the Equality and Human Rights Commission to ensure that any initiatives are joined up and the dialogue established with businesses and their representative organisations is maintained.

**Letter and Memorandum from Lord Young of Norwood Green, Minister for postal affairs and Employment Relations, Department for Business, Innovation and Skills, dated 21 January 2010**

***THE EMPLOYMENT RELATIONS ACT 1999 (BLACKLISTS) REGULATIONS 2010***

In your Committee's recent report "Any of our business? Human rights and the UK private sector", there is discussion of the Government's proposals to prohibit the blacklisting of trade unionists (Paragraph 32 of the Conclusions and Recommendations chapter of the report). The Government will reply in due course to the many recommendations contained in your wide-ranging report. However, because we have recently laid draft regulations to prohibit blacklisting, which Parliament should consider this month and next, I thought it would help to write specifically on this particular aspect of your report.

In such a wide-ranging enquiry as yours, it was perhaps not possible to explore this particular issue with all witnesses, including Government Ministers, from whom the Committee took evidence. Ministers were not asked about this. Indeed, evidence on the issue appears to have been provided only by trade unions and the Institute of Employment Rights. Of course, the Government received views on this important topic from a wider range of organisations during its own consultations.

There are several limbs to the criticisms your Committee has received about the Government's approach. The enclosed memorandum provides the Government's response to those concerns. However, it might help if I also set out some more general observations.

First, your Committee's observations are apparently based on the draft regulations on which we consulted last summer. As you would expect, the position has moved on since then. The draft regulations were revised in the light of the consultation, and I am enclosing the Government response to the consultation which was issued on 2 December. Draft regulations – the Employment Relations Act 1999 (Blacklists) Regulations 2010 – implementing the policy set out in the response document were laid on 18 January, a copy of which is also enclosed. As you will see, in finalising the draft regulations, we have amended areas of the previous draft including some parts on which trade unions and others had expressed reservations. In this regard, I should mention that the draft regulations now provide for the employment tribunal to award £5,000 as minimum compensation. They also relax the test which the employment tribunal must apply when deciding to extend the time limit for making complaints under the regulations.

Second, the draft regulations do not exist in isolation. In particular, they should be considered alongside other related provisions in existing trade union and data protection law. These protections are important, and it should be remembered that the work of The Consulting Association, which compiled the construction blacklist, were uncovered and penalised under the existing law and in effect it was put out of business under the existing law. Blacklisted individuals have subsequently taken legal action under this existing law to obtain compensation for their loss. The draft blacklisting regulations will usefully complement these existing protections. Together, these various provisions will provide a robust legal framework which will effectively deter future blacklisting and protect the related human rights of both individuals and others.

The Government takes the issue of blacklisting very seriously. It is a totally disreputable activity, which should have no place in our employment relations. We have acted speedily and responsibly to reinforce existing protections to ensure it does not re-surface in future. In so doing, we consider our robust and proportionate approach fully complies with our treaty obligations.

I am also copying this letter to Duncan Maclean MP, the Chair of the Joint Committee on Statutory Instruments. His Committee is due to examine the draft regulations shortly.

## **ANNEX**

### ***HUMAN RIGHTS AND THE BLACKLISTING OF TRADE UNIONISTS***

#### ***MEMORANDUM BY THE DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS***

1. In its report "Any of your business? Human rights and the UK private sector", the Joint Committee on Human Rights make the following observations about the blacklisting of trade unionists:

"We doubt the compatibility of the Government's blacklisting proposals with the UK's international human rights obligations. We recommend that the Government provide a full explanation of its argument that the proposals are compatible. This should include a response to the criticism of the Institute of Employment Rights that these proposals fail to provide an adequate remedy for those individuals who have already been affected by blacklisting. In the light of the Government's explanation, we anticipate revisiting this issue".

(paragraph 32 of Chapter 11 of the report).

2. These observations relate to the version of the draft regulations which were the subject of consultation in the summer of 2009. They have since been revised in the light of that consultation and were laid on 18 January as the draft Employment Relations Act 1999 (Blacklists) Regulations 2010. References to the "draft regulations" in this memorandum therefore mean the version laid on 18 January.

3. The Government recognises that blacklisting raises human rights issues. In particular, rights to freedom of association, rights to privacy, rights to freedom of expression and rights to the protection of property are likely to be relevant. In addition, any laws which are established to combat blacklisting must respect the right to a fair trial and not impose any punishment without due process. These rights apply to those who hold, assemble or use information, as well as the subjects of that information. The Government considers that these human rights considerations on balance require the introduction of additional legislation to prohibit blacklisting, now that evidence that blacklisting of this type has recently occurred. However, when determining the precise shape of the legislation, the Government must respect the rights of all those affected by the measures.

4. The UK has periodically explained its position regarding the blacklisting of trade unionists in its regular reports to the International Labour Organisation and other bodies. They have therefore been aware that the UK's preparedness to prohibit blacklisting was conditional on their being evidence that this practice was actually taking place or likely to

be taking place. This approach has not been criticised by these bodies as incompatible with treaty obligations.

5. The Committee has received evidence from trade unions and the Institute of Employment Rights about the blacklisting of trade unionists and the compatibility of the Government's approach with the UK's human rights obligations. These criticisms are various but they can be summarised in the following terms:

- a) the approach is insufficiently robust to deter blacklisting;
- b) there should be a clear right not to be blacklisted, and everyone who is blacklisted should be entitled to some remedy, including persons who have not suffered any financial loss ;
- c) those who were blacklisted before the draft regulations came into force should receive compensation.

This memorandum deals with each of these areas of criticism in turn.

#### ***(A) THE ROBUSTNESS OF THE DRAFT REGULATIONS***

6. The trade union critics of the Government's approach have argued that the draft Regulations do not contain adequate penalties and deterrents to protect rights such as freedom of association and expression. In particular, they point out that the power in Section 3 of the Employment Relations Act 1999, under which the draft regulations are introduced, provides for the regulations to include criminal offences and sanctions. They therefore consider that the draft regulations should create such new offences and sanctions, backed by a designated public authority which would investigate alleged abuses and prosecute blacklisters.

7. In response, the Government would stress that the draft regulations need to be seen in the context of other closely-related protections. These are found in Part III of the Trade Union and Labour Relations (Consolidation) Act 1992 which protect the rights of individuals to belong to a trade union, and to participate in the activities of their trade union. In general where a person is blacklisted and suffers a detriment as a result, they will simultaneously be discriminated against on trade union grounds under these provisions of the 1992 Act. Because blacklisting must of necessity involve the processing of personal data, the provisions of the Data Protection Act 1998 (OPA 1998) are also very pertinent. Annex A describes the key provisions of these two Acts in greater detail.

8. The OPA 1998 provides criminal offences and assigns an important investigative role to the Information Commissioner. The Government would point out that these powers were important in detecting blacklisting in the construction industry and in successfully prosecuting Mr Ian Kerr, the proprietor of the organisation - The Consulting Organisation (TCA) - which compiled and operated the blacklist. As a result, the TCA has ceased functioning.

9. The Government considers that these protections would remain relevant in future to identify and penalise other blacklisting activity. Indeed, the range of sanctions available to the Information Commissioner will soon increase when, on 6 April this year, he is empowered to impose a monetary penalty of up to £500,000 on a data controller where the data controller has seriously contravened the data protection principles of the OPA 1998. In the Government's view, it would be disproportionate and unnecessary to create additional criminal offences within the draft regulations.

10. Instead, the draft regulations contain rights under civil law which individuals can exercise in the normal way through the employment tribunal. These rights and enforcement mechanisms are closely based on the provisions mentioned above in the current protections for trade union membership. However, these rights are enhanced in several ways to take account of the hidden and egregious nature of blacklisting. First, the employment tribunal can impose a minimum award of £5,000. As blacklisting would typically involve hundreds or, as in the TCA case, thousands of listed workers, the potential liability for user employers and blacklisters is high. Second, the burden of proof is reversed and the employer must prove he has acted lawfully if there are facts from which the tribunal could conclude, in the absence of any other explanation, that the employer has breached the regulations. And, third, the test which the employment tribunal must use to extend the time limit for making complaints is more relaxed.

11. The Government would also point out that persons, including the self-employed and trade unions who usually have very limited access to the employment tribunal, can seek unlimited damages, including compensation for injury to feelings from the county court. They can also seek an order from the court, including interlocutory orders, to stop compilers, users or others from operating or accessing a blacklist where there is an apprehended breach of the regulations.

12. The Government considers that the draft regulations, when they are assessed in combination with these other rights, provide for a wide range of remedies and enforcement mechanisms. Together, they constitute a robust response which should deter blacklisters and ensure that trade union rights are protected.

### ***(B) A RIGHT NOT TO BE BLACKLISTED***

13. Draft Regulation 3 provides a clear prohibition on the compilation, dissemination and use of blacklists. This is termed the "general prohibition" and it is derived from wording used in Section 3 of the Employment Relations Act 1999. This general prohibition in effect provides a overarching right for individuals not to be blacklisted. So, the Government would respectfully reject the claim that such a right does not exist.

14. In addition to the general prohibition, there is also other statutory constraints on the dissemination of information about trade unionists. Information about whether an individual is a union member constitutes "sensitive personal data" for the purposes of the Data Protection Act 1998, and can only be disclosed only in a very limited range of circumstances. There are therefore clear rules prohibiting the covert use of blacklists to discriminate against union members.

15. The draft regulations do more than just create a right not to be blacklisted; they also create effective enforcement mechanisms and remedies to support that right. As described above, those who have suffered a loss, or are likely to suffer a loss, can take legal action, either before the court or the employment tribunal, to seek compensation or remedial action. In most cases, the complainant can also seek compensation for injury to feelings. In common with standard practice in employment law, blacklisted individuals who have not suffered any actual or prospective loss cannot take legal action in search of compensation. In that eventuality, their union could still take its own legal action where, say, it had lost membership or could potentially lose membership because of the blacklist. The union can therefore seek the court orders described above to ensure that blacklists cease to operate.

### **(C) COMPENSATION FOR THOSE PREVIOUSLY BLACKLISTED**

16. The draft regulations would not have retrospective effect. This is the standard approach with legislation, ensuring that parties understand the potential legal consequences of their actions at the time when they undertake those actions. To do otherwise would in fact risk breaching the human rights of those parties.

17. It should however be noted that, under the draft regulations, persons who have only recently discovered that they were blacklisted in the past may still be able to make a claim before the employment tribunal. Under the draft regulations, the employment tribunal has the discretion to extend the normal three month time limit to put in a claim where it is just and equitable to do so. We would expect tribunals to exercise this discretion in favour of claimants where it has only recently come to light that blacklists were used to refuse them employment.

18. Some trade unions have suggested that a special compensation fund, funded by former users of the TCA's services, should be established to compensate those individuals who have been blacklisted by the TCA. They acknowledge that such a fund would need underpinning in primary legislation and therefore take time, perhaps years, to set up. There would be other significant practical difficulties in devising and administering fair and workable rules for the fund, given the age of the TCA's records, the changing corporate identity of the TCA's subscribers, the problems in quantifying the loss of individuals and the varying degrees to which subscribers may have been responsible for those losses. In the Government's view, establishing a special fund to compensate those blacklisted by the TCA would be a mistaken approach which would probably give rise to additional unfairness, arbitrary treatment and legal challenge. Furthermore, there are existing rights to compensation under tried and tested systems which are available.

19. As mentioned above, there are existing remedies available under trade union and data protection law whereby blacklisted individuals can seek compensation for losses incurred before the draft regulations take effect. The Government understands that legal action of this type has already been taken, and complaints will be heard in due course. It is therefore misleading to suggest that no remedies currently exist which protect the human rights of trade unionists. Those remedies have been in place for many years and have an important

role in deterring employers and others from breaching an individual's rights to freedom of association and expression and right to privacy.

## **CONCLUSION**

20. The Government has undertaken two public consultations before laying the draft regulations. It has examined the TCA's approach to vetting construction workers to assure itself that the draft regulations would adequately deal with such unacceptable behaviours. The regulations provide effective remedies for those persons whose human rights have been infringed as a result of blacklisting. It believes that the draft regulations are fit for purpose and represent a robust and fair response which fully complies with the human rights of trade unionists and others. It is confident that the measures complement existing protections and will deter organisations from compiling or accessing blacklists in future.

## **Annex A**

### ***Trade Union Law (Trade Union and Labour Relations (Consolidation) Act 1992)***

1. There are long-standing protections against discrimination on grounds of trade union membership and activities. For example:

- it is unlawful to refuse employment on grounds of trade union membership (section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992);
- it is unlawful to dismiss an employee on grounds of their trade union membership or activities (section 152 of the 1992 Act); and
- it is unlawful for an employer to penalise a worker (short of dismissal) on grounds of trade union membership or activities (section 146 of the 1992 Act).

These rights are all enforced through the employment tribunal.

### ***The Data Protection Act 1998***

2. The DPA sets up a regime to regulate the processing of personal data and sensitive personal data. It establishes principles by which lawful data processing should be conducted, including in some cases the prior approval of the data subject.

3. The following provisions of the DPA are relevant:

(i) in Part III of the DPA, there is a requirement of data controllers to register their data processing with the Information Commissioner (IC) The registration must, inter alia, identify the name and address of the data controller, together with a summary description of the nature and purposes of the processing. A failure to register is an offence under criminal law which could be subject to a maximum fine of £5,000 if tried at a magistrate's court or a higher fine if tried at a higher court.

(ii) the IC is empowered to issue enforcement notices (including so-called "stop now" orders) in order to ensure that organisations comply with the Act and its principles by taking (or refraining from taking) specified steps. A breach of an enforcement notice is a criminal offence subject to fines and enforcement as in (i).

(iii) the IC may serve information notices requiring organisations to provide him with specified information within a specified period (usually 7 days).

(iv) the IC may apply to the court for a search warrant to secure a power of entry to any premises of a data processor where there are reasonable grounds to believe that an offence under the Act is occurring or the data principles are being broken.

(v) individuals may access the personal data which a data controller holds.

(vi) individuals may sue a data controller at a county court for damages and distress resultant on any failure by the data controller to apply the provisions of the DPA. The amount of any award is unlimited.

(vii) from 6 April 2010, the IC can impose a monetary penalty of up to £500,000 on a data controller where the data controller has seriously contravened the data protection principles and the contravention was of a kind likely to cause substantial

---

# List of Reports from the Committee during the current Parliament

---

## Session 2009-10

First Report	Any of our business? Human rights and the UK private sector	HL Paper 5/HC 64
Second Report	Work of the Committee in 2008-09	HL Paper 20/HC 185
Third Report	Legislative Scrutiny: Financial Services Bill and the Pre-Budget Report	HL Paper 184/HC 184
Fourth Report	Legislative Scrutiny: Constitutional Reform and Governance Bill; Video Recordings Bill	HL Paper 33/HC 249
Fifth Report	Legislative Scrutiny: Digital Economy Bill	HL Paper 44/HC 327
Sixth Report	Demonstrating Respect for Rights? Follow Up: Government Response to the Committee's Twenty-second Report of Session 2008-09	HL Paper 45/ HC 328
Seventh Report	Allegation of Contempt: Mr Trevor Phillips	HL Paper 56/HC 371
Eighth Report	Legislative Scrutiny: Children, Schools and Families Bill; Other Bills	HL Paper 57/HC 369
Ninth Report	Counter-Terrorism Policy and Human Rights (Sixteenth Report): Annual Renewal of Control Orders Legislation 2010	HL Paper 64/HC 395
Tenth Report	Children's Rights: Government Response to the Committee's Twenty-fifth Report of Session 2008-09	HL Paper 65/HC 400
Eleventh Report	Any of our business? Government Response to the Committee's First Report of Session 2009-10	HL Paper 66/ HC 401
Twelfth Report	Legislative Scrutiny: Crime and Security Bill; Personal Care at Home Bill; Children, Schools and Families Bill	HL Paper 67/ HC 402

## Session 2008-09

First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter-Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282

Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee's First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
Eighth Report	Legislative Scrutiny: Coroners and Justice Bill	HL Paper 57/HC 362
Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper 62/HC 375
Tenth Report	Legislative Scrutiny: Policing and Crime Bill	HL Paper 68/HC 395
Eleventh Report	Legislative Scrutiny: 1) Health Bill and 2) Marine and Coastal Access Bill	HL Paper 69/HC 396
Twelfth Report	Disability Rights Convention	HL Paper 70/HC 397
Thirteenth Report	Prisoner Transfer Treaty with Libya	HL Paper 71/HC 398
Fourteenth Report	Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill	HL Paper 78/HC 414
Fifteenth Report	Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)	HL Paper 81/HC 441
Sixteenth Report	Legislative Scrutiny: Coroners and Justice Bill (certified inquests)	HL Paper 94/HC 524
Seventeenth Report	Government Replies to the 2 <sup>nd</sup> , 4 <sup>th</sup> , 8 <sup>th</sup> , 9 <sup>th</sup> and 12 <sup>th</sup> reports of Session 2008-09	HL Paper 104/HC 592
Eighteenth Report	Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009	HL Paper 119/HC 726
Nineteenth Report	Legislative Scrutiny: Parliamentary Standards Bill	HL Paper 124/HC 844
Twentieth Report	Legislative Scrutiny: Finance Bill; Government Responses to the Committee's Sixteenth Report of Session 2008-09, Coroners and Justice Bill (certified inquests)	HL Paper 133/ HC 882
Twenty First Report	Legislative Scrutiny: Marine and Coastal Access Bill; Government response to the Committee's Thirteenth Report of Session 2008-09	HL Paper 142/ HC 918
Twenty-second Report	Demonstrating respect for rights? Follow-up	HL Paper 141/ HC 522
Twenty-third Report	Allegations of UK Complicity in Torture	HL Paper 152/HC 230
Twenty-fourth Report	Closing the Impunity Gap: UK law on genocide (and related crimes) and redress for torture victims	HL Paper 153/HC 553
Twenty-fifth Report	Children's Rights	HL Paper 157/HC 338
Twenty-sixth Report	Legislative Scrutiny: Equality Bill	HL Paper 169/HC 736
Twenty-seventh Report	Retention, use and destruction of biometric data: correspondence with Government	HL Paper 182/HC 1113
Twenty-eighth Report	Legislative Scrutiny: Child Poverty Bill	HL Paper 183/HC 1114

**Session 2007-08**

First Report	Government Response to the Committee's Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156

Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee's Twenty-First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378
Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee's First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440
Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455
Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee's Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635
Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights:	HL Paper 127/HC 756

	Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper 172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079