



Ministry
of Justice

Responding to human rights judgments

Report to the Joint Committee on Human
Rights on the Government response to
human rights judgments 2012–13

October 2013



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Report to the Joint Committee on Human Rights on the Government
response to human rights judgments 2012–13

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

October 2013

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Introduction

This is the latest in a series of reports to the Joint Committee on Human Rights (the Joint Committee) setting out the Government's position on the implementation of adverse human rights judgments from the European Court of Human Rights (ECtHR) and the domestic courts. The previous report¹ was followed by an evidence session² on 13 February 2013 at which the Lord Chancellor and Secretary of State for Justice, Chris Grayling, was questioned by the Joint Committee on the Government's human rights policy.

Following the approach in previous reports, it is divided into three main sections:

- general introductory comments, including **wider developments in human rights and the process for implementation of adverse judgments**;
- **the UK's record on the implementation of judgments of the European Court of Human Rights (ECtHR)** and an **overview of significant ECtHR judgments** that have become final in the previous twelve months; and
- information about **declarations of incompatibility in domestic cases**.

The aim of the report is to keep the Joint Committee up-to-date with the Government's response to human rights judgments and any significant developments in the field of human rights. The report covers the period 1 August 2012 to 31 July 2013.

On 17 July 2013, the Joint Committee issued a call for evidence on human rights judgments.³ Submissions in response to this call for evidence were requested by 27 September 2013. The call for evidence noted:

The Committee intends to correspond with relevant Ministers where necessary and to ask the Human Rights Minister questions about the Government's response to judgments when he gives oral evidence to the Committee later this year. It intends to report to Parliament on the subject during the current Session.

As noted, this report sets out information about the Government's response to human rights judgments and should assist the Joint Committee with its enquiry. The Government welcomes correspondence from the Joint Committee should it require further information on anything in this report.

¹ <https://www.gov.uk/government/publications/report-to-the-jchr-on-the-government-response-to-human-rights-judgements-2011-12>

² <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/publications/>

A short written statement the Lord Chancellor and Secretary of State for Justice submitted in advance of the evidence session can also be found at the same link.

³ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/human-rights-judgments-call-for-evidence1/>

General Comments

The main focus of this paper is on two particular types of human rights judgments:

- **judgments of the ECtHR** in Strasbourg against the United Kingdom under the European Convention on Human Rights (ECHR); and
- **declarations of incompatibility** by United Kingdom courts under section 4 of the Human Rights Act 1998.

A feature of these judgments is that their implementation may require changes to legislation,⁴ policy or practice, or a combination thereof.

European Court of Human Rights Judgments

Under Article 46(1) of the ECHR, the United Kingdom is obliged to implement judgments of the ECtHR in any case to which it is a party. The implementation or execution of judgments from the ECtHR is overseen by the Committee of Ministers of the Council of Europe (the Committee of Ministers) under Article 46(2).

The Committee of Ministers is a body on which every Member State of the Council of Europe is represented. The Committee of Ministers is advised by a specialist Secretariat⁵ in its work overseeing the implementation of judgments.

There are three parts to the implementation of a Strasbourg judgment:

- the payment of *just satisfaction*, a sum of money awarded by the court to the successful applicant;
- other *individual measures*, required to put the applicant so far as possible in the position they would have been in had the breach not occurred; and
- *general measures*, required to prevent the breach happening again, or to put an end to breaches that still continue.

Declarations of Incompatibility

Under section 3 of the Human Rights Act 1998, legislation must be read and given effect, so far as it is possible to do so, in a way which is compatible with the Convention rights.⁶ If a higher court⁷ finds itself unable to do so in respect of primary legislation,⁸ it may make a declaration of incompatibility under section 4 of the Act. Such declarations constitute a notification to Parliament that an Act of Parliament is incompatible with the Convention rights.

⁴ Whether primary legislation (i.e. Acts of Parliament) or subordinate legislation (e.g. statutory instruments).

⁵ The Department for the Execution of Judgments.

⁶ The rights drawn from the ECHR listed in Schedule 1 of the Human Rights Act 1998.

⁷ Of the level of the High Court or equivalent and above, as listed in section 4(5) of the Act.

⁸ Or secondary legislation in respect of which primary legislation prevents the removal of any incompatibility with the Convention rights other than by revocation.

Since the Human Rights Act came into force on 2 October 2000, 28 declarations of incompatibility have been made, of which 19 have become final (in whole or in part). There has been one new declaration of incompatibility in the period covered by this report, which is still subject to further appeal, although the Government has already made some changes to secondary legislation in response to the Court of Appeal's judgment.⁹

A declaration of incompatibility neither affects the continuing operation or enforcement of the legislation in question, nor binds the parties to the case in which the declaration is made.¹⁰ This respects the supremacy of Parliament in the making of the law. Unlike for judgments of the European Court of Human Rights, there is no legal obligation on the Government to take remedial action following a declaration of incompatibility or upon Parliament to accept any remedial measures the Government may propose.

Remedial measures in respect of both declarations of incompatibility and European Court of Human Rights judgments may, depending on the provisions proposed in any particular case, be brought forward by way of a remedial order under section 10 of the Human Rights Act.

⁹ R (on the application of) T -v- Chief Constable of Greater Manchester and others [2013] EWCA Civ 25.

¹⁰ Section 4(6) of the Human Rights Act.

Wider developments in Human Rights

Commission on a Bill of Rights

In the context of the Coalition Agreement, the Government agreed that the obligations under the ECHR would continue to be enshrined in British law. However, as it also made clear in the Coalition Agreement,¹¹ the Government wanted to look afresh at how human rights are protected in the United Kingdom to see if things could be done better and in a way that reflected our traditions.

A Commission was established in March 2011 to investigate the creation of a Bill of Rights that incorporated and built on all of our obligations under the ECHR, ensured these rights continued to be enshrined in British law, and protected and extended our liberties. The Commission was made up of eight Commissioners selected by the Coalition Partners, with an independent Chair. Further information on its terms of reference, membership and work programme is available on the Commission's website.¹²

The Commission reported to the Lord Chancellor and Secretary of State for Justice and the Deputy Prime Minister in December 2012. The final report is also available on the Commission's website.

In the final report, the Commission revealed it had not reached agreement and the report set out the views of both the majority and the minority.

On balance, the majority recommended that there should be a new UK Bill of Rights, for the following reasons:

- other Council of Europe countries have their own code of rights, not just the rights under the ECHR;
- the Human Rights Act is poorly understood and not 'owned' by the public, therefore the current legal position is unstable and the debate too polarised; and
- there needs to be stronger protection against the possible abuse of power by the State.

The minority, comprising two Commissioners, disagreed, stating:

- the current changes in devolution arrangements made it premature to consider the issue, and a future Constitutional Convention may be required;
- the majority of respondents to the Commission's consultation were against a Bill of Rights; and
- a Bill of Rights is seen by some as a path towards withdrawal from the ECHR.

It is clear from the report that there were fundamental differences of view between the members of the Commission. Some felt the ECHR had been a vital protection for rights that has been wisely developed by the ECtHR. Others felt the ECtHR had gone beyond its authority and jurisdiction when interpreting the Convention.

¹¹ <https://www.gov.uk/government/publications/the-coalition-documentation>

¹² <http://www.justice.gov.uk/about/cbr>

In addition to its main findings, the Commission also considered issues such as:

- whether there should be additional rights;
- whether rights could be re-written in a way that better reflected the United Kingdom's history and heritage;
- how well the mechanisms in the Human Rights Act had worked in practice;
- whether the Human Rights Act definition of "public authority" should be expanded to reflect the outsourcing of public functions;
- devolution and a Bill of Rights; and
- whether "rights" should be contingent on "responsibilities"?

When reporting, the Commission emphasised that its work should not be treated as a final conclusion and there would need to be a full process in developing a Bill of Rights. In particular, a new Bill of Rights would also have to be sensitive to questions about devolution, Scottish independence and a Northern Ireland Bill of Rights. This was one of the major areas where further consideration would be required. Therefore the majority suggested that a Bill of Rights must wait for the result of the Scottish independence referendum and therefore could be considered within or alongside the post-2014 Constitutional Convention that had been suggested by the Prime Minister. The Government agrees with this analysis.

Reform of the European Court of Human Rights

Work is well underway to implement the Brighton Declaration on the future of the ECtHR. The Declaration was agreed on 20 April 2012 at a ministerial conference organised under the UK's chairmanship of the Committee of Ministers of the Council of Europe and represents a substantial package of reforms to the Court.

The Brighton Declaration included agreement in principle to amend the ECHR in five ways:

- to add a reference to the principle of subsidiarity¹³ and the doctrine of the margin of appreciation¹⁴ to the Preamble to the ECtHR, giving visibility to these key concepts that define the boundaries of the ECtHR's role;
- to change the rules on the age of judges of the ECtHR, to ensure that all judges are able to serve a full nine-year term;
- to remove the right of parties to a case before the ECtHR to veto a Chamber's relinquishing jurisdiction to the Grand Chamber, a measure intended to improve the consistency of the Court's case law;

¹³ The principle that national governments, parliaments and courts have the primary responsibility for securing to everyone within their jurisdiction the rights and freedoms defined in the Convention, and for providing an effective remedy before a national authority for everyone whose rights and freedoms are violated. By extension, the role of the Court is to interpret authoritatively the Convention, and to act as a safeguard for individuals whose rights and freedoms are not secured at the national level.

¹⁴ The doctrine that, depending on the circumstances and the rights engaged, national authorities may choose within a range of responses how they implement the Convention.

- to reduce the time limit for applications to the Court from six months to four months; and
- to tighten the admissibility criteria in the ECHR to make it easier for the Court to throw out trivial applications.

Protocol 15 to the ECHR will give legal effect to these changes. The Committee of Ministers adopted Protocol 15 by consensus at its annual ministerial session on 16 May, and it was opened for signature and ratification at a ceremony on 24 June. The UK was among 21 States that signed Protocol 15 that week. Protocol 15 will need to be ratified by all 47 High Contracting Parties to the ECHR before it can come into force. In the UK, this will include its being laid before Parliament for approval this autumn.

On 10 July, the Committee of Ministers also adopted Protocol 16 to the ECHR, which will introduce an optional system of advisory opinions, by which certain senior national courts will be able to seek an advisory opinion of the ECtHR on the interpretation of the rights and freedoms under the Convention. This opened for signature on 2 October, and will come into force for those States that have ratified it once ten States have done so. The UK did not sign or ratify Protocol 16 at this time, but will wait to evaluate the system of advisory opinions as it operates in practice.

Other elements of the Brighton Declaration have also been implemented, including:

- a review of the Court's practice of granting interim measures under Rule 39 of its Rules of Court;
- further examination of how the Court should address repetitive applications, and whether additional judges are required;
- examination of the functioning of the Advisory Panel of experts on candidates for election as judge to the European Court of Human Rights; and
- the preparation of a toolkit to inform public officials about their obligations under the Convention, and a guide to good practice in respect of domestic remedies for violations of the rights under the ECHR.

The Brighton Declaration next mandates consideration of the longer-term future of the Court and the Convention system, "this consideration encompassing future challenges to the enjoyment of the rights and freedoms guaranteed by the Convention and the way in which the Court can best fulfil its twin role of acting as a safeguard for individuals whose rights and freedoms are not secured at the national level and authoritatively interpreting the Convention".¹⁵ The expert bodies of the Council of Europe have been mandated to carry out this work with a deadline of 15 March 2015.

EU Accession to the ECHR

Article 6(2) of the Treaty on European Union requires the EU to accede to the ECHR. The EU's accession to the ECHR will mean that the EU and its institutions are directly bound by the ECHR, and will enable individuals to apply to the ECtHR if they believe that EU legislation or the actions of an EU institution have violated their ECHR rights.

¹⁵ Brighton Declaration, paragraph 35c.

The terms of accession are currently under negotiation between the EU and the 47 Council of Europe States, with agreement in principle reached at negotiator level in April this year on the text of the Accession Agreement and its Explanatory Report.¹⁶ The Accession Agreement adapts the ECHR for the EU as a non-state party and is now subject to a number of political and procedural steps in the Council of Europe, the EU and in individual States.

Review of the Balance of Competences: Fundamental Rights¹⁷

The Foreign Secretary launched the Balance of Competences Review in Parliament on 12 July 2012, taking forward the Coalition commitment to examine the balance of competences between the UK and the EU. The review will provide an analysis of what the UK's membership of the EU means for the UK national interest. It aims to deepen public and Parliamentary understanding of the nature of our EU membership and provide a constructive and serious contribution to the national and wider European debate about modernising, reforming and improving the EU in the face of collective challenges. It will not be tasked with producing specific recommendations or looking at alternative models for Britain's overall relationship with the EU.

The review is broken down into a series of reports on specific areas of EU competence, spread over four semesters between autumn 2012 and autumn 2014. Between autumn 2013 and summer 2014, the Ministry of Justice is leading a review into the balance of competences between the EU and the UK on fundamental rights. The review will cover the EU's framework on fundamental rights including the Treaties, the case law of the Court of Justice of the EU, and the EU's Charter of Fundamental Rights. It will also cover the EU's competence through the Fundamental Rights Agency and its funding programme. This review will not cover the EU's competence with regard to individual rights which are being dealt with under subject-specific reviews.

Reporting to United Nations Treaty Monitoring Bodies

The UK sees the monitoring process carried out by expert UN treaty monitoring bodies as an essential element in the promotion and protection of human rights throughout the world, and a catalyst for achieving positive change. The UK Government values the advice given by expert committees on the implementation of the instruments to which the UK is party and gives serious consideration to that advice in the development of human rights policy in the UK. Furthermore, the Government is committed to constructive engagement with the UK's National Human Rights Institutions and interested NGOs as part of the monitoring process.

Upcoming dates in the monitoring process include:

- January 2014: periodic report on the Convention on the Rights of the Child (DfE lead);
- April 2014: periodic report on the Convention on the Elimination of All Forms of Racial Discrimination (DCLG lead);

¹⁶ [http://www.coe.int/t/dghl/standardsetting/hrpolicy/accession/Meeting_reports/47_1\(2013\)008rev2_EN.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/accession/Meeting_reports/47_1(2013)008rev2_EN.pdf)

¹⁷ Fundamental rights are general principles of EU law, which bind both the EU and, when acting within the scope of EU law, its Member States. Examples of fundamental rights include the right to freedom of expression and the right to protection of personal information.

- June 2014: periodic report on the Covenant on Economic, Social and Cultural Rights in June 2014 (MoJ lead);
- Approximately mid-2014: mid-term report on the Universal Periodic Review (MoJ lead);
- May 2014: follow up information on some of the recommendations of the Committee Against Torture (MoJ lead);
- Date to be confirmed: examination on the Covenant on Civil and Political Rights (no date officially confirmed yet, but there is some indication that it may take place as late as March 2015) (MoJ lead);
- Date to be confirmed: examination on the Convention on the Rights of Persons with Disabilities (DWP lead); and
- July 2017: periodic report on the Convention on the Elimination of All Forms of Discrimination against Women (GEO lead).

Universal Periodic Review

The UK's second Universal Periodic Review (UPR) took place in Geneva on 24 May 2012 and was led by Lord McNally, joint Minister for Human Rights in the Ministry of Justice. At the end of the second review, the Human Rights Council produced 132 recommendations on the UK, of which the UK accepted 91 recommendations in full or in part.

The UK's next UPR examination is not due until 2016, but the Government has committed to providing a mid-term report to the Human Rights Council in 2014 covering progress made. In addition, the Government is committed to following up areas that were not included in the recommendations from 2012, but that civil society felt particularly strongly about.

In order to prepare the mid-term report and to follow up recommendations, the Government is consulting civil society organisations and the National Human Rights Institutions through various stakeholder events and publishing the outcomes online. Any member of the public or civil society organisations also have the opportunity to submit views and comments through the Government's website.

The UK's overall aim for UPR remains to further strengthen this unique mechanism, preserving its universality and constructive spirit.

UN Convention Against Torture (UNCAT)

The UK was examined against its UNCAT obligations on 7 and 8 May 2013 and the Government received the Committee's Concluding Observations at the end of May. The Government takes its obligations under the Convention very seriously and currently is carefully considering each of the Committee's recommendations. Under the terms of the process the United Kingdom has a year to provide a full response to the recommendations.

The Ministry of Justice led the UK's delegation, co-ordinating contributions from a number of other central government departments as well as the Scottish Government and the Northern Ireland Executive.

UN Convention on the elimination of all forms of Discrimination Against Women (CEDAW)

The UK was examined on its seventh periodic report in Geneva on 17 July 2013. The Government received the Committee's Concluding Observations on 25 July 2013.

The Government welcomes the Committee's recommendations and is currently undertaking a programme of stakeholder engagement to promote them. The UN CEDAW Committee has asked the UK to provide a written update on recommendations relating to abortion in Northern Ireland and legal aid and access to justice within one and two years respectively. A response to the other recommendations has been requested in July 2017, with the UK's next examination due in 2018.

The Committee commended the UK for its delegation, led by the Government Equalities Office and including representation from several government departments and the devolved administrations. A large number of other government departments also joined the dialogue from London via video-conference.

The UK's approach to the implementation of human rights judgments

Coordinating the implementation of human rights judgments

There have been no significant changes to the Government's arrangements for co-ordinating the implementation of judgments since the last annual report.¹⁸ Please see page 10 of last year's report.

Access to information on the implementation of judgments

As noted in the last annual report a large amount of information regarding the implementation of judgments is available in the public domain from a number of sources.

Domestically, the Government sets out information on **declarations of incompatibility** in the list annexed to this paper. The department with responsibility for a new declaration of incompatibility is responsible for drawing the Joint Committee's attention to the new declaration. The Ministry of Justice encourages lead departments to update the Joint Committee regularly on their plans for responding to declarations of incompatibility.

The Department for the Execution of Judgments has a dedicated website for the **implementation of judgments**,¹⁹ which provides access to a searchable list of all judgments currently outstanding against all Contracting Parties.

All forthcoming **judgments of the ECtHR** are highlighted a few days in advance on the Court's²⁰ website. The Court's decisions and judgments are available via a comprehensive searchable database²¹ called HUDOC.

The following table was compiled from information held on HUDOC and lists the cases involving the UK where the Court has issued judgments in the last year.

¹⁸ <https://www.gov.uk/government/publications/report-to-the-jchr-on-the-government-response-to-human-rights-judgements-2011-12>

¹⁹ http://www.coe.int/t/dghl/monitoring/execution/default_en.asp

²⁰ http://www.echr.coe.int/ECHR/homepage_en

²¹ <http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/>

ECtHR judgments in cases against the UK between 1 August 2012 and 31 July 2013²²

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ²³	Brief summary/Outcome
1.	JAMES, WELLS AND LEE	Court (Fourth Section) 25119/09 57715/09 57877/09	1. 18/09/2012 2. 11/02/2013	Court found a violation of Article 5(1) (right to liberty) arising from arbitrary deprivation of liberty caused by the failure to provide rehabilitative courses to the applicants, who were all prisoners but no violation in connection with separate claim under Article 5(4) (speed of review of lawfulness of detention) about access to an independent body to review the lawfulness of their detention. The Government sought a referral but this was rejected by the panel to the Grand Chamber.
2.	BUCKLAND	Court (Fourth Section) 40060/08	1. 18/09/2012 2. 18/12/2012	Court found a violation of Article 8 (right to private and family life) because the applicant was evicted from her home on a caravan site and although able to argue for repeated suspensions of the possession order made against her, she was unable to argue that no possession order should have been made at all.

²² Cases in bold found a violation or violations against the United Kingdom.

²³ The circumstances in which a judgment becomes final are set out in Article 44 of the ECHR. Grand Chamber judgments are final on the date they are issued. A Chamber judgment becomes final (a) when the parties to the case declare they will not seek referral to the Grand Chamber; (b) three months from the date of the judgment if no request for referral to the Grand Chamber is made; or (c) when the panel to the Grand Chamber rejects any request for referral.

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ²⁴	Brief summary/Outcome
3.	R.P. AND OTHERS	Court (Fourth Section) 38245/08	1. 09/10/2012 2. 01/01/2013	RP complained about the decision to take her daughter into care and then place her for adoption. RP has significant learning difficulties and was represented in the legal proceedings concerning her daughter by the Official Solicitor. Court found no violation of Article 6(1) (right to a fair hearing) in connection with the appointment of the Official Solicitor and as a consequence no need to examine the application made under Article 8. Claims under Articles 13 (effective remedy) and 14 (discrimination) were found to be manifestly ill-founded.
4.	HODE AND ABDI	Court (Fourth Section) 22341/09	1. 06/11/2012 2. 06/02/2013	Court found a violation of Article 14 (discrimination) and Article 8(1) (right to respect for private and family life) with respect to different treatment accorded to spouses of refugees who married post flight.
5.	BEGGS	Court (Fourth Section) 25133/06	1. 06/11/2012 2. 29/04/2013	Court found a violation of Article 6(1) (right to fair trial within reasonable time in criminal proceedings) with regard to the lengthy delay in concluding appeal proceedings. Mr Beggs sought a referral but this was rejected by the panel to the Grand Chamber.
6.	REDFEARN	Court (Fourth Section) 47335/06	1. 06/11/2012 2. 06/02/2013	Court found violation of Article 11(1) (freedom of association) through failure to protect employees with less than a year's service from dismissal on grounds of political opinion or affiliation.

²⁴ The circumstances in which a judgment becomes final are set out in Article 44 of the ECHR. Grand Chamber judgments are final on the date they are issued. A Chamber judgment becomes final (a) when the parties to the case declare they will not seek referral to the Grand Chamber; (b) three months from the date of the judgment if no request for referral to the Grand Chamber is made; or (c) when the panel to the Grand Chamber rejects any request for referral.

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ²⁴	Brief summary/Outcome
7.	M.M.	Court (Fourth Section) 24029/07	1. 13/11/2012 2. 29/04/2013	Court found violation of Article 8(1) (right to respect for private life) with regard to the policy of retaining data on cautions on a police database for life. The Government sought a referral but this was rejected by the panel to the Grand Chamber.
8.	C.N.	Court (Fourth Section) 4239/08	1. 13/11/2012 2. 13/02/2013	Court found a violation because legislative provisions in force at the relevant time had been inadequate to afford practical and effective protection against treatment contrary to Article 4 (prohibition of slavery and forced labour) leading to an ineffective investigation into the applicant's allegations of domestic servitude.
9.	VAN COLLE	Court (Fourth Section) 7678/09	1. 13/11/2012 2. 29/04/2013	Court found no violation of Article 2 (right to life) nor of Article 8 (right to respect for private and family life) with respect to the murder of the applicants' son who had been murdered by the person he was due to be a witness against. Mr and Mrs Van Colle sought a referral but this was rejected by the panel to the Grand Chamber.
10.	EWEIDA AND OTHERS	Court (Fourth Section) 48420/10 36516/10 51671/10 59842/10	1. 15/01/2013 2. 27/05/2013	Court found a violation of Article 9 (freedom of thought, conscience and religion) in the case of Eweida concerning the ability to openly wear a cross at work. However, with regard to the joined cases of Chaplain, MacFarlane and Ladele, the Court found no violation of Article 9, either on its own or in conjunction with Article 14 (prohibition of discrimination). Chaplain, MacFarlane and Ladele sought referral but this was rejected by the panel to the Grand Chamber.

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ²⁴	Brief summary/Outcome
11.	S.H.H.	Court (Fourth Section) 60367/10	1. 29/01/2013 2. 08/07/2013	Court found no violation of Article 3 (prohibition of torture) in the event that the applicant was removed to Afghanistan. Applicant sought a referral but this was rejected by the panel to the Grand Chamber.
12.	BETTERIDGE	Court (Fourth Section) 1497/10	1. 29/01/2013 2. 29/04/2013	Court found violation of Article 5(4) (speed of review of lawfulness of detention) with respect to delay of over a year in holding a parole hearing
13.	ABDI	Court (Fourth Section) 27770/08	1. 09/04/2013 2. 09/07/2013	Court found violation of Article 5(1) (right to liberty) because detention pending deportation was not in accordance with the law.
14.	H. AND B.	Court (Fourth Section) 70073/10 44539/11	1. 09/04/2013 2. 09/07/2013	Court found no violation of Article 3 (prohibition of torture) in the event of deportation to Afghanistan.
15.	ASWAT	Court (Fourth Section) 17299/12	1. 16/04/2013 2. 09/09/2013	Court found violation of Article 3 (prohibition of torture) in the event of the applicant's extradition to the USA, solely on account of the current severity of his mental illness. The Government sought referral, but this was refused by the panel to the Grand Chamber.
16.	ANIMAL DEFENDERS INTERNATIONAL	Court (Grand Chamber) 48876/08	22/04/2013	Court found no violation of Article 10 (freedom of expression), ruling the ban on paid political advertising on the TV and radio in the United Kingdom was justified.
17.	SHINDLER	Court (Fourth Section) 19840/09	1. 07/05/2013 2. 09/09/2013	Court found no violation of Article 3 of Protocol No. 1 (right to free elections) by election laws that prevent those resident who are outside of the United Kingdom for more than 15 years from voting. Mr Shindler sought referral, but this was refused by the panel to the Grand Chamber.

	Case name	Originating court and application number	1. Original judgment date 2. Date judgment became final ²⁴	Brief summary/Outcome
18.	VINTER AND OTHERS	Court (Grand Chamber) 66069/09 130/10 3896/10	09/07/2013	Court found violation of Article 3 (prohibition of torture, inhuman or degrading treatment) with regard to the imposition of a whole life tariff without the chance of any review of the sentence.
19.	ALLEN	Grand Chamber 25424/09	12/07/2013	Court found no violation of Article 6(2) (presumption of innocence) with regard to the refusal to grant compensation to the applicant following the quashing of her conviction for manslaughter.
20.	COLLETTE AND MICHAEL HEMSWORTH	Court (Fourth Section) 58559/09	1. 16/07/2013 2. 16/10/2013	Court found a violation of Article 2 (right to life – procedural investigation obligations) with regard to the excessive investigative delays into the death of the applicants’ relatives in Northern Ireland.
21.	McCAUGHEY AND OTHERS	Court (Fourth Section) 43098/09	1. 16/07/2013 2. 16/10/2013	Court found a violation of Article 2 (right to life – procedural investigation obligations) with regard to the excessive investigative delays into the death of the applicants’ relatives in Northern Ireland.

The UK at the ECtHR between 1959 and 2012

The following tables use information published on the ECtHR's website to illustrate the number of applications made against the UK at the ECtHR between 1959 and 2012. The tables show the outcomes of the applications, both in terms of the number that were declared inadmissible/struck out and the much smaller number that resulted in a judgment

Applications against the UK allocated to judicial formation²⁵

1959–1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
6197	442	625	479	986	687	744	1003	843	886	1253	1133	2766	1547	1734	21325

Applications against the UK declared inadmissible or struck out

1959–1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
5213	223	466	529	737	863	721	732	963	403	1240	764	1175	1028	2047	17104

Applications against the UK resulting in judgment (judgment finding violation)

1959 – 2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
189 (103)	40 (30)	25 (20)	23 (19)	18 (15)	23 (10)	50 (19)	36 (27)	18 (14)	21 (14)	19 (8)	24 (10)	486 (289) (59%)

²⁵ The Court may sit in various judicial formations: single judge; in three judge Committees; in seven judge Chambers; and seventeen judge Grand Chambers.

Single judges can declare inadmissible/strike out applications where this decision can be taken without further examination. In 2012 nearly 82,000 applications from all States were decided in this way. Any not so decided are referred to a Committee or Chamber.

By unanimity, Committees take similar decisions to single judges but can also declare an application admissible and give a judgment if the underlying question is already well-established in the case-law of the Court. In 2012, Committees declared inadmissible/struck out 3,150 applications and delivered 206 judgments in cases involving all States.

Where neither a single judge nor a Committee has taken a decision or made a judgment, Chambers may decide on admissibility and merits. In 2012, Chambers delivered 861 judgments and the Grand Chamber delivered 26 judgments in cases involving all States.

Applications against the UK in 2012

Figures provided by the ECtHR, indicated that on 28 August 2013 there were 119,650 applications pending before the Court, of which 3,038 (2.5%) were lodged against the UK.

Of the applications pending against the UK, 524 have been deemed to be manifestly inadmissible and allocated to a Single Judge formation following an initial assessment by the Registry. Although the assessment is not final until confirmed by the Single Judge, it is likely these cases will be declared inadmissible in due course.

The remaining 2,514 applications are deemed to raise arguable complaints under the ECHR and therefore are registered as pending before a Committee, Chamber or the Grand Chamber. However, 2,281 of the remainder concern prisoner voting rights. These cases are being checked to ensure they are admissible (e.g. whether they were submitted in time). The ECtHR's consideration of those that are admissible is currently adjourned until 30 September 2013, following the pilot judgment in the case of *Greens and M.T.* and the indication from the Committee of Ministers that it will resume consideration of the implementation of the judgments in *Hirst (No. 2)* and *Greens and M.T.*²⁶ at its September 2013 meeting.

If the prisoner voting cases are excluded from the pending UK cases, there are 233 pending cases that are deemed to be arguable. Of these, about 40 are follow-up cases, deemed to be arguable because there has already been a judgment finding a violation in a similar case (e.g. complaints about retention of DNA data following the Grand Chamber judgment in *S. and Marper*²⁷).

A case deemed to be arguable following an initial assessment by the Registry will not necessarily result in a violation. It may be declared inadmissible when a judge first examines it or, if it reaches the stage where it is communicated to the Government for observations, the ECtHR may find no violation after consideration of the parties' arguments.

In 2012, the ECtHR decided 2,082 applications made against the UK. It declared inadmissible or struck out 2,047 applications, found no violation of the Convention in 14 applications and found a violation of the Convention in 10 applications. This means 0.5% of the cases against the UK decided by the Court in 2012 led to a finding of a violation.

In 2011, approximately 1% of the cases against the UK decided by the Court that year resulted in a violation. In 2010, approximately 1.3% of decided cases led to a finding of a violation.

²⁶ See further detail at page 38 of this report.

²⁷ See further detail at page 34 of this report.

The UK's record on the implementation of ECtHR judgments

At 31 December 2012, according to the statistics in the latest annual report published by the Committee of Ministers of the Council of Europe,²⁸ the UK was responsible for 39 pending judgments before the Committee of Ministers, representing 0.35% of the overall total. This placed the UK twenty fourth of the forty seven States party to the ECHR in terms of pending judgments under the supervision of the Committee of Ministers. By way of comparison with other selected States, Italy was first with 2569 pending judgments, Turkey second with 1861, Germany seventeenth with 103 and Liechtenstein forty seventh with no pending judgments. Further statistics taken from the annual report on the UK's performance and the complete list of pending judgments by State can be found at Annex B.

A number of UK cases have been closed since the publication of the Committee of Ministers' annual report. At 31 July 2013, twenty two judgments remained under the supervision of the Committee of Ministers.

The Committee of Ministers' annual report notes that of the 39 UK cases outstanding at 31 December 2012, 17 were leading cases (2011 figures were 25 leading cases out of 40 outstanding). "Leading cases (or pilot cases)" were defined in the 1st Annual Report of the Committee of Ministers on the "Supervision of the execution of judgments and decisions of the European Court of Human Rights" covering 2007 as "cases evidencing a more systemic problem requiring general measures".

In terms of just satisfaction payments, almost all UK payments are made within the three month deadline. The Ministry of Justice will continue to monitor performance across Government to ensure that this record of prompt payment is maintained.

²⁸ The Committee of Ministers 6th annual report *Supervision of the execution of judgments of the European Court of Human Rights*, published in April 2013 and covering the year 2012: http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2012_en.pdf

Consideration of selected judgments²⁹ that became final in the past twelve months (1 August 2012 – 31 July 2013)

Right to a judicial hearing on proportionality in possession proceedings against Gypsies (Buckland)

*Buckland v UK*³⁰

Court: ECtHR (Grand Chamber)

Case summary: The applicant, a Gypsy, was evicted from her home on a caravan site in Wales. The ECtHR found a breach of Article 8 of the ECHR because although she was able to argue for repeated suspensions of the possession order, she was unable to argue that no possession order should have been made at all.

The case follows *Connors v UK* in which the ECtHR held that the lack of procedural safeguards against eviction from local authority Gypsy and Traveller sites breached Article 8 of the ECHR. Following *Connors*, amendments to the Caravan Sites Act 1968 were enacted enabling courts to suspend, for up to 12 months at a time, the enforcement of a possession order made in respect of local authority Gypsy/Traveller sites and amendments to the Mobile Homes Act 1983 requiring local authorities to demonstrate that a possession order ought to have been made. Amendments to the Mobile Homes Act 1983 had not entered into force in Wales at the time of this judgment.

Government response: Following *Connors* the Housing and Regeneration Act 2008 was enacted. Section 318 makes changes to the definition of “protected site” within section 5(1) of the Mobile Homes Act 1983 so Gypsies/Travellers who reside on local authority sites are now afforded greater security of tenure. In order to evict a Gypsy/Traveller from their sites a local authority will need to satisfy the court that a term of the agreement to occupy a pitch has been breached and that it is reasonable to terminate the agreement. Section 318 has entered into force in England.

The Welsh Government commenced section 318 of the Housing and Regeneration Act 2008 on 10 July 2013, following a public consultation on consequential amendments to the Mobile Homes Act 1983 and the Housing and Regeneration Act 2008. In paragraph 69 of its judgment, the ECtHR expressed the view that once the legislation came into force in Wales, domestic courts would be able to assess the proportionality of a proposed eviction in compliance with the procedural requirements of Article 8.

²⁹ These judgments were all identified in the call for evidence on human rights judgments issued by the Joint Committee on 17 July 2012 (please see page 3 of this report).

³⁰ Application number 40060/08, Chamber judgment dated 18/09/2012, judgment final on 18/12/2012.

State's positive obligation to protect employees against discrimination based on political affiliation or belief (Redfearn)

*Redfearn v UK*³¹

Court: ECtHR (Grand Chamber)

Case summary: The case involved the (then) one year qualifying period of employment which an individual needed to have completed in order to bring a claim for unfair dismissal under section 108(1) of the Employment Rights Act 1996. Mr Redfearn was dismissed by his employer following his election as a British National Party Councillor. He could not take a case of unfair dismissal to the Employment Tribunal as he did not have the required period of service.

The ECtHR held there had been a violation of Article 11 of the ECHR by failing to protect employees with less than one year's service from dismissal on grounds of political opinion or affiliation.

Government response: The Government has made an amendment to the Employment Rights Act 1996, which exempts claimants who allege that their dismissal was on the grounds of political opinion or affiliation from the (now) 2 year qualifying period for claiming unfair dismissal. The relevant provision, section 13 of the Enterprise and Regulatory Reform Act 2013, came into force on 25 June 2013.³²

The measure will prevent any similar violations in the future, as any employee who believes that they were dismissed on the grounds of political opinion or affiliation will be able to bring a claim in the Employment Tribunal irrespective of how long they have worked for their employer.

³¹ Application number 47335/06, Chamber judgment dated 06/11/2012, judgment final on 06/02/2013.

³² <http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted>

Right of “IPP” prisoners (serving indeterminate sentences for public protection) to a speedy review of the lawfulness of their detention and to access rehabilitative courses (James, Wells and Lee)

*James, Wells and Lee v UK*³³

Court: ECtHR (Chamber)

Case Summary: The applicants in this case were prisoners serving an indeterminate sentence (an IPP – imprisonment for public protection). At the expiry of the minimum term (tariff) of the sentence the prisoners were subject to consideration for release by the Parole Board, whose decision is based on risk to the public. The Secretary of State in the domestic courts had admitted a breach of his public law duty in not providing systems and resources on the implementation of the IPP sentence sufficient for the prisoners to demonstrate a reduction in risk. The prisoners were sentenced to IPP sentences with short minimum terms soon after it was introduced. They spent around two and half years post tariff in local prisons with little access to offender behaviour programmes. The applicants claimed breaches of their Article 5(1) rights on the grounds that once the punitive phase of the sentence (the tariff) had expired and detention was solely on the basis of risk then such detention was unlawful and arbitrary where there was no means of reducing, or demonstrating a reduction, in that risk. The applicants also claimed a breach of Article 5(4) in that they were denied any effective mechanism to challenge the legality of their detention for that same period.

The ECtHR held that in the particular circumstances of the cases there had been a violation of Article 5(1) because the detention had become arbitrary and unlawful during the period following the expiry of the tariff period and until steps were taken to progress the prisoners through the system with a view to providing them with appropriate rehabilitative courses, but no violation of Article 5(4).

Government Response: The Government considers no further general measures to be necessary in light of the improvements to the system over the past 5 years as set out below. It was accepted in the judgment that steps had already been put in place to address the problem:

- The indeterminate sentence of Imprisonment for Public Protection (IPP) replaced the automatic life sentence for offences that were committed on or after 4 April 2005 and greatly increased the number of offences for which an indeterminate sentence could be given.
- Under Section 226 of the Criminal Justice Act 2003, a sentence of Detention for Public Protection (DPP) was imposed in the circumstances above when the offender was under 18 years of age at the time the offence was committed.
- The intention behind the IPP sentence was that it would be used for dangerous offenders and not for those requiring short tariffs.

³³ Application numbers 25119/09 57715/09 57877/09, Chamber judgment dated 18/09/2012, judgment final on 11/02/2013.

The following general measures have been undertaken since July 2008 in order to aid this group of prisoners to progress through their sentences.

Legislative changes brought into effect by the Criminal Justice and Immigration Act (CJIA) 2008

- Changes to the sentence were made by sections 13 to 18 of the CJIA 2008.³⁴ The purpose of these changes was to provide greater judicial discretion in dealing with offenders, and to ensure that public protection sentences were focused on the most dangerous offenders where they could have the most value. These legislative changes took effect on 14 July 2008.
- The amendments introduced a minimum tariff of 2 years below which IPPs could not be given, except where offenders had committed extremely serious crimes in the past. The amendments also gave courts more discretion to impose an appropriate sentence to manage the level of risk presented by an offender.
- The introduction of a minimum tariff of 2 years, except in exceptional cases, reduced the number of short tariffs received and so reduced the number of IPP prisoners with inadequate time to address risks within the previous timescales allowed.

Abolition of the IPP sentence

The IPP sentence was abolished by legislative changes brought about by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act on 3 December 2012,³⁵ and was replaced with a new regime of determinate sentences:

- A new mandatory life sentence for cases where the offender has committed, on two consecutive occasions, two very serious sexual/violent offences and each has been serious enough to merit a determinate sentence of 10 years or more.
- The new Extended Determinate Sentence (EDS) – offenders will receive a custodial sentence plus a further long extended period on licence set by the court. Offenders receiving this sentence will serve at least two-thirds of the custodial term. In serious cases offenders will have to apply to the Parole Board for early release at the two-thirds point, but may serve the whole custodial term in prison.
- The new sentence can be given for any sexual or violent offence provided that in the individual case (a) the court thinks the offender presents a risk of causing serious harm through re-offending; and (b) the offence meets the 4 year seriousness threshold which was the position in place for those serving indeterminate sentences of IPP and those serving Extended Sentences for Public Protection (EPP).
- Offenders who complete an EDS must then serve extended licence periods where they will be closely monitored and returned to prison if necessary. The courts have the power to give up to an extra five years of licence for violent offenders and eight years for sexual offenders on top of their prison sentence.
- The abolition of the IPP sentence will mean that fewer prisoners serve indeterminate sentences.

³⁴ Sections 13 to 18 of the CJIA 2008 can be found here:
<http://www.legislation.gov.uk/ukpga/2008/4/part/2/crossheading/custodial-sentences>

³⁵ Sections 122 to 128 of the LASPO Act 2012 can be found here:
<http://www.legislation.gov.uk/ukpga/2012/10/part/3/chapter/5>

Commissioning for IPPs

- IPP prisoners continue to be included amongst priority groups to receive interventions, in order that their risk of harm is addressed and so provide them with the opportunity to demonstrate to the Parole Board that they may be effectively and safely managed in the community.
- The National Offender Management Service (NOMS) is committed to evidence-based commissioning and, as a result, it has refined its targeting criteria for programmes in order to gain the best possible outcomes. Over the last year, it has been emphasised that expensive treatment resources must be focused on indeterminate sentence prisoners (ISPs) and/or prisoners with a medium or higher risk of offending. Over the last two years NOMS has spent £17–£18m per annum on accredited programmes (at 2009–2010 prices). The process for allocating these resources to particular prisons and programmes is determined by negotiations between the Commissioning Directorate of NOMS and its public and private prison providers in advance of each financial year.
- NOMS' commitment to targeting resources on the basis of risk and whether a prisoner is an ISP is provided at Table 4 of the Commissioning Intentions 2013/2014 Negotiation Document. Box 6(c) states:³⁶
'For indeterminate sentence prisoners (ISPs), the completion of interventions remains an important factor in progression and Parole Board decisions on suitability for release. Therefore ISPs should continue to be prioritised for appropriate interventions and services.'

Sentence planning

- All those serving indeterminate sentences must have a sentence plan which is drawn up by prison and probation staff working with prisoners. The sentence plan is a personalised document based around an individual's identified risks and needs and is written with input from the offender. The sentence plan should be structured and targeted appropriately for the individual concerned and must be regularly assessed, when appropriate, to allow for changes in circumstances and progression. Offenders are expected and encouraged to engage fully with the sentence planning process. Effective assessment is essential to ensure that offenders' risks and needs are identified, in order to put an appropriate and effective sentence plan in place, and so that the offender has absolute clarity of the expectations that are placed upon them from the start of the sentence. This enables progress against the sentence plan, in relation to reducing risk and addressing offending behaviour, to be monitored effectively.
- An instruction on sentence planning (Prison Service Instruction 41 of 2012 – effective from 17 December 2012³⁷) was issued to ensure that offender managers identify a variety of interventions to address risk in the sentence plan and do not focus solely on formal accredited offending behaviour programmes.

³⁶ NOMS commissioning Intentions Negotiation Document 2013/2014 can be found here: <http://www.justice.gov.uk/downloads/about/noms/commissioning-intentions-2013-14-oct12.pdf>

³⁷ PSI 41 of 2012: Sentence Planning can be found here: <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-41-2012-sentence-planning.doc>

Indeterminate Sentence Prisoners Coordination Group (ISPCG)

- Established in 2010, the ISPCG is the NOMS Agency's strategic board for the management of all ISPs (both IPP and life). It meets quarterly and is chaired by the Director of National Operational Services (NOS), with senior representatives drawn from across NOMS Head Quarters and from prisons and probation trusts. The Group's purpose is to co-ordinate all work with ISPs, with a view to improving, wherever possible, the progression of this group of prisoners through custody and then, should the Parole Board so direct, into the community. The Group is not responsible for the case management of individual prisoners; rather, its purpose is to develop and promote the most effective means of managing ISPs and to ensure that resources are directed effectively. This includes informing the development and coordination of strategies relating to offender assessment, sentence planning and delivery, access to interventions, parole processes, prison capacity issues and offender management in the community following release.

IPP Management Information (MI) Tool

- On the direction of the ISPCG, a new management information tool for IPPs was developed and released for use across all levels of NOMS. NOMS is now able to draw upon improved and consistent management information covering the end-to-end process of managing IPP offenders in custody and the community. The tool is used throughout all levels in NOMS to track the management of IPP offenders and helps inform managers and commissioners where remedial action needs to be taken if there are particular bottlenecks and delays. For example, valuable information on the numbers of IPP offenders requiring specific interventions is available which helps drive the commissioning strategy for accredited programmes. The tool was released on 12 May 2011 to NOMS Head Quarters, prisons and probation trusts on the NOMS Performance Hub.

Changes to Release on Temporary Licence (ROTL) policy

- Prisoners may access periods of temporary release for undertaking resettlement activities including work or training; rebuilding family ties; attending job interviews; or to attend appointments with probation.
- Ordinarily, ISPs should spend some time in open conditions before being able to apply for ROTL. Effective from 25 June 2012, ISPs in closed conditions may apply for ROTL if they have been approved for transfer to open conditions by the Secretary of State but the transfer has been delayed for practical, as opposed to risk related, reasons. Until 25 June, the policy was applied strictly, with no such exceptions, but has been relaxed in order to enable any remaining ISPs who were experiencing delays in achieving transfer, to progress. Progress/behaviour on ROTL is one of the factors that a Parole Board will want to take in to account when considering whether it is safe to release a prisoner.
- PSI 21 of 2012 – Release on temporary Licence, can be found at:
<http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-21-2012-rotl.doc>

Other NOMS work

- Additional places in the open prison estate and systems have been put in place to ensure that prisoners move quickly and smoothly to open prisons to assist with progressing prisoners through the system towards release. The Parole Process has also been streamlined.³⁸

³⁸ Prison Service Instruction 36 of 2012: Generic Parole Process (GPP) amended to incorporate Electronic Working, can be found here: <http://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-36-2012-pi-18-2012-gpp-e-working.doc>

Detention of foreign national offender (Abdi)

*Abdi v UK*³⁹

Court: ECtHR (Grand Chamber)

Case Summary: Mr Abdi, a Somali national, challenged the Secretary of State's decision to detain him from 3 September 2003 until 17 April 2007. Mr Abdi was convicted of raping a 13 year old girl in July 1998 and sentenced to eight years' imprisonment and to a concurrent 2-year term for gross indecency with a child. It was also ordered that he was to remain on the Sex Offenders Register indefinitely.

On 28 May 2002, the Secretary of State decided to deport him and authorised his detention pursuant to the Immigration Act 1971. However, the custodial part of the Mr Abdi's sentence did not end until 3 September 2003. Since that time, Mr Abdi has been detained under immigration powers pending his deportation to Somalia. Mr Abdi was released from immigration detention on 24 January 2013 with the authority of the Strategic Director.

Judicial Review proceedings were brought on 28 November 2006. On 7 December 2006, the High Court decided that the period of detention between 4 December 2004 and 20 July 2006 had been unlawful, but detention before and after those dates had been lawful.

Both parties appealed to the Court of Appeal. On 30 July 2007, the Court of Appeal held that the **whole** of the Claimant's detention had been lawful. On 27 September 2007, the Claimant petitioned the House of Lords for leave to appeal. On 17 October 2007, the House of Lords dismissed the Claimant's petition.

On 14 April 2009, the claimant made an application to the ECtHR in relation to the lawfulness of the period of detention from December 2004 to April 2007.

The ECtHR noted that a number of monthly reviews had not been carried out correctly. As a matter of domestic law, this would mean that detention during the relevant months was unlawful. However, the detainee would not be entitled to substantive damages unless it could be shown that he would not have been detained if the monthly reviews had been carried out correctly. These points were accepted since they reflect Supreme Court authority in the case of *Kambadzi v SSHD* [2011] UKSC 23. The ECtHR concluded that, because some reviews had not been carried out correctly, the entire period of detention was unlawful and also concluded that Mr Abdi was entitled to more than nominal damages.

Government response: The Government considers no further general measure to be necessary in light of the cases of (WL (CONGO) & KM (JAMAICA)) [2011] UKSC 12 and (SK (ZIMBABWE)) [2011] UKSC 23 which have been exhaustively examined in the domestic courts.

The Government has accepted these judgements. It should also be noted that the period of detention under challenge came at a time when internal procedures were inconsistent and less than robust. The processes since then have been considerably strengthened.

³⁹ Application no. 27770/08, Chamber judgment dated 9/04/2013, judgment final on 9/07/2013.

Right of “IPP” prisoners (serving indeterminate sentences for public protection) to a speedy review of the lawfulness of their detention and to access rehabilitative courses (Betteridge)

*Betteridge v UK*⁴⁰

Court: ECtHR (Grand Chamber)

Case summary: The case involved a prisoner (Samuel Betteridge) who was sentenced to imprisonment for public protection (IPP) seeking a declaration that the delay in the Parole Board reviewing his case from December 2008–September 2009 breached Article 5(4) of the ECHR. Betteridge had previously sought an order from the High Court that the Parole Board hearing should take place on the then next available date. In its judgment of 23 June 2009, the High Court agreed there had been a breach of Article 5(4) but did not make an order expediting a Parole Board hearing. Betteridge subsequently applied to the ECtHR for redress in respect of the continuing violation of his Article 5(4) rights as his case was not heard, by the Parole Board, until January 2010.

The ECtHR held there had been a violation of Article 5(4) because of the delay from 18 December 2008 until Betteridge’s parole hearing took place on 10 January 2010.

Government response: The Government has taken the following general measures:

- In 2009 the Generic Parole Process (GPP) was introduced which established performance targets, supported the parole process with a single IT system and ensured dossiers submitted to the Parole Board were complete and timely.
- A number of steps have been taken to clear the backlog and to ensure that the Parole Board has the capacity to absorb its current workload. These include:
- Changes in the Parole Board Rules which have allowed non-judicial members to chair IPP hearings and give the Parole Board greater discretion in respect of the composition of panels. This has enabled the Board to increase its oral hearing capacity. The change in the Rules also gave the Board greater discretion in determining cases on the papers when it deemed that an oral hearing was not necessary. Nearly 38% of cases are now dealt with on the papers (which is both quicker and more efficient) as opposed to being considered at an oral hearing.
- During 2010, an additional 60 judges were recruited to chair Parole Board oral hearings together with 48 new independent members. In 2011, 12 new psychiatrist members were appointed with recruitment of a further 21 independent members in 2012.
- The Board heard between 330 and 340 indeterminate pre-release cases per month during the final 2 quarters 2012/13 as opposed to approximately 190–220 cases per month during 2009/10.
- There are now much closer working links with NOMS. The proportion of dossiers received in time has risen from 30% to over 90% during 2011/12 and continues to rise.

⁴⁰ Application number 1497/10, Chamber judgment dated 29/01/2013, judgment final on 29/04/2013.

Responding to human rights judgments

- A formal timeframe and tasks involved for all parties involved in the parole review have been introduced, with robust performance monitoring and greater accountability and responsibility for all key players.
- A new central database, known as PPUD, which can be accessed by NOMS and the Parole Board, became operational on 1 April 2009 and has been rolled out to every prison and probation trust, as well as UKBA. This supports the parole process and tracks progression of cases and performance of all agencies more effectively.
- A new case management system linked to PPUD was introduced within the Parole Board in May 2010.
- Progress is being made to achieve a paperless parole process. At present, dossiers can be compiled and shared electronically between prisons, probation, NOMS and Parole Board staff. A new development programme will, subject to funding, digitalise completely the parole process giving key parties such as legal representatives and Parole Board Members electronic access to documents.

A marked improvement became evident as a result of the actions taken. The backlog of cases beyond their tariff expiry date in May 2013 was 1258, reduced from around 2,600 cases in April 2010. The aim is to hear every case on time and to eliminate the backlog. However, as more IPP prisoners reach the expiry of their tariff, achieving this aim will be a challenge as further increases in indeterminate sentence workloads are expected until 2014/15. Anyone convicted after 3 December 2012 cannot be sentenced to an IPP which has been replaced with determinate and extended sentences.

Central to eliminating the backlog is a focus on the wider parole process and how it can be streamlined within the existing legal framework in order to increase maximum capacity and to reduce delays at each stage. Agencies across the parole process are committed to working collaboratively to deliver parole reviews on time.

A revised GPP Board comprising a multi disciplinary membership will oversee a programme of work that will improve the wider parole process. This includes a joint Parole Board/NOMS review, which is intended to identify further efficiencies and improvements, so as to facilitate a higher proportion of cases being reviewed within the appropriate timescales.

The GPP Board meets every two months to monitor and challenge progress towards agreed outcomes based on a key outcome measure of efficiency (i.e. the rate of cases concluded), supported by measures to safeguard quality and fairness and drive forward delivery of the programme work. The intention is to ensure that the bulk of the programme can be completed within the 2013/14 financial year.

State's positive obligation to investigate allegations of slavery, servitude, forced or compulsory labour (CN)

*CN v UK*⁴¹

Court: ECtHR (Grand Chamber)

Case summary: The case involved a Ugandan national who had travelled to the UK and worked for more than 3 years as a live-in carer for an elderly couple. She complained that she had been held in domestic servitude and that the UK breached its positive obligations under Article 4 of the ECHR to protect her from such conduct. Although a specific offence criminalising such conduct is now in place (section 71 of the Coroners and Justice Act 2009) the events giving rise to the complaint occurred before its commencement.

The ECtHR held that there had been a violation of the applicant's rights under Article 4 and relying on its decision in *Siliadin v France* (73316/01), it held that, having regard to the absence of specific legislation criminalising slavery, servitude, or forced or compulsory labour the investigation by the domestic authorities into the applicant's complaints of domestic servitude was ineffective. As a result it found that the criminal law in force in England at the material time did not afford practical and effective protection against treatment falling within the scope of Article 4.

Government response: The Government considers no general measures to be necessary as the law has been changed since the events of this case took place. Section 71 of the Coroners and Justice Act 2009⁴² makes holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour a criminal offence (these references are to be construed in accordance with Article 4 of the ECHR). The offence under section 71, which carries a maximum sentence of 14 years' imprisonment (section 71(3)(b)), came into force in April 2010 (see the Coroners and Justice Act 2009 (Commencement No 4, Transitional and Saving Provisions) Order 2010) and applies in England and Wales, and Northern Ireland.

In Scotland, justice matters are devolved and section 47 of the Criminal Justice and Licensing (Scotland) Act 2010⁴³ makes holding someone in slavery or servitude, or requiring a person to perform forced or compulsory labour a criminal offence (these references are to be construed in accordance with Article 4 of the ECHR). The offence under section 47 carries a maximum sentence of 14 years' imprisonment (section 47(3)(a)) and came into force in March 2011 (see the Criminal Justice and Licensing (Scotland) Act 2010 Commencement No. 8, Transitional and Savings Provisions) Order 2011/No 178).

Therefore this judgment relates to a set of historical facts and no further action is required.

⁴¹ Application number 4239/08, Chamber judgment dated 13/11/2012, judgment final on 13/02/2013.

⁴² <http://www.legislation.gov.uk/ukpga/2009/25/section/71>

⁴³ <http://www.legislation.gov.uk/asp/2010/13/section/47>

State's positive obligation to secure employees' right to manifest their religion or belief (Eweida)

*Eweida v UK*⁴⁴

Court: ECtHR (Chamber)

Case summary: Ms Eweida was a British Airways check-in clerk who wanted to wear a cross visibly while at work. The ECtHR decided her right to manifest her religious belief under Article 9 of the ECHR was infringed by her employer's corporate uniform policy, which prohibited the visible wearing of jewellery.

The ECtHR considered existing domestic equality law (contained in the Equality Act 2010) to be compliant with the ECHR. However, it found the domestic courts had given too much weight to the British Airways position when balancing Ms Eweida's right to manifest her religion against her employer's legitimate aim of projecting a certain corporate image. As a result, Ms Eweida's rights under Article 9 had been breached.

Government response: The Government believes no further general measures are necessary in view of the fact that the ECtHR did not find that existing domestic equality law was non-compliant with the ECHR.

⁴⁴ Application numbers 48420/10 36516/10 51671/10 59842/10, Chamber judgment dated 15/01/2013, judgment final on 27/05/2013. Ms Eweida's case was joined with three others but no violation was found in the other cases.

Right to a review for “whole life tariff” prisoners (Vinter, Bamber and Moore)

*Vinter, Bamber and Moore v UK*⁴⁵

Court: ECtHR (Grand Chamber)

Case summary: Currently, the applicants are all serving sentences of life imprisonment for murder. They have been given whole life orders, meaning they cannot be released other than at the discretion of the Secretary of State on compassionate grounds (for example, if they are terminally ill or seriously incapacitated). Relying on Article 3 (prohibition of inhuman or degrading treatment) of the ECHR, all three applicants complained that their imprisonment without hope of release is cruel and amounts to inhuman and degrading treatment.

The ECtHR found that whole life orders without an effective review or release mechanism amount to an irreducible sentence and therefore a breach of Article 3 of the ECHR. That means essentially there needs to be a review that allows the domestic authorities to consider whether any changes in the whole life order prisoner are so significant, and such progress towards rehabilitation has been made in the course of the sentence, as to mean that continued detention can no longer be justified on legitimate penological grounds.

Government response: The Government vigorously defended the case and was disappointed the Grand Chamber of the ECtHR took a different approach to the ruling of the lower Chamber, which found in the UK’s favour. The judgment does not mean prisoners currently serving a whole life order must now be released or that they must all immediately come before the Parole Board for consideration of release. The ECtHR made clear that there was no prospect of imminent release for the three applicants in the case.

The Government strongly believes whole life tariffs are appropriate for the most heinous crimes and the judgment did not hold that a whole life tariff is in itself in violation of the ECHR and that therefore such a sentence may not be imposed.

Currently, the Government is carefully considering the implications of the judgment and will set out its conclusions and response in due course.

⁴⁵ Application numbers 66069/09 130/10 3896/10, Grand Chamber judgment of 08/07/2013.

Consideration of other significant judgments that became final before 1 August 2012 and which are still under the supervision of the Committee of Ministers

Retention of DNA profiles and cellular samples (S & Marper)

*S & Marper v UK*⁴⁶

Court: ECtHR (Grand Chamber)

Case summary: The applicants, both of whom had been arrested for but not convicted of criminal offences, sought to have their DNA samples and profiles, and their fingerprints, removed from police records. The refusal of the police to delete this information was upheld by all domestic courts up to the House of Lords. However, the ECtHR ruled the blanket policy of retaining this information from all those arrested or charged but not convicted of an offence was disproportionate and therefore unjustifiable under Article 8 (the right to respect for private and family life) of the ECHR.

Government response: The Government brought forward legislative proposals to address the violation in England and Wales, which received Royal Assent in the Protection of Freedoms Act 2012 on 1 May 2012. The legislation adopted the protections of the Scottish model for the retention of DNA and fingerprints.

The Government has confirmed that DNA profiles and fingerprints which can no longer be retained under the provisions of the Protection of Freedoms Act are being removed from the national databases. This will be complete by 31 October, the date on which the Act will be brought into force.

The Department of Justice in Northern Ireland brought forward similar legislative proposals for Northern Ireland, which received Royal Assent in April in the Criminal Justice (Northern Ireland) Act 2013. However, the Department of Justice did not have the legislative competence to take forward certain changes for Northern Ireland which rested in the excepted/reserved field. The Government is now in the process of taking forward these Northern Ireland specific provisions and it is envisaged that they, along with the provisions contained within the Criminal Justice (Northern Ireland) Act 2013, will be commenced in tandem in spring 2014.

⁴⁶ Applications numbers 30562/04 and 30566/04, judgment dated 4 December 2008.

Overseas detention (Al Jedda)

*Al Jedda v UK*⁴⁷

Court: ECtHR (Grand Chamber)

Case summary: Hilal Abdul-Razza Ali Al Jedda was captured by US forces in Baghdad on 10 October 2004 and detained by the UK in the Divisional Theatre Detention Facility until 30 December 2007 for ‘imperative reasons of security’ pursuant to UNSCR 1546.

The ECtHR found the applicant’s detention was attributable to the UK rather than the United Nations. Therefore, during his detention the applicant fell within the jurisdiction of the UK for the purposes of Article 1 of the ECHR. The Court also found that UNSCR 1546 did not require the UK to detain the applicant, so there was no conflict between the UK’s obligations under the Charter of the United Nations and its obligations under Article 5(1) of the Convention.

Consequently the Court found that the applicant’s internment breached Article 5(1) (right to liberty and security) of the ECHR.

Government Response: The just satisfaction award has been made and the UK considers that no further individual measures are necessary in this case.

In terms of general measures concerning similar violations, the Government notes there are a significant number of legal claims pending domestically from former detainees who were interned in Iraq on security grounds during the period of occupation. The Government has entered into settlement negotiations with the claimants’ British legal representatives and a significant number of cases have already been settled. Negotiations continue on the remaining legal claims.

The Government takes the view that the judgment relates to the factual circumstances of the UK’s past operations in Iraq and it has no implications for its current operations elsewhere including detention operations in Afghanistan where the legal basis for UK operations is materially different from that which pertained in Iraq.

⁴⁷ Application 27021/08; judgment final on 7 July 2011.

Extra-territorial effect of the Convention (Al Skeini)

*Al Skeini v UK*⁴⁸

Court: ECtHR (Grand Chamber)

Case summary: After the invasion of Iraq, from 1 May 2003 British forces became an occupying power in the country as part of a United Nations authorised Multi National Force (MNF). This case concerns the deaths of the applicants' five close relatives between May–November 2003 in Basrah, Iraq during that period of occupation. The deaths were either caused by, or involved British soldiers and the key legal issue was whether the applicants were within the jurisdiction of the UK pursuant to Article 1 of the ECHR.

In the first four cases, the applicants' relatives were shot by British soldiers who were on patrol or carrying out checks. The fifth applicant's son was a minor and the ECtHR considered that there was "at least *prima facie*" evidence that he was taken into the custody of British soldiers who were assisting the Iraqi police to take measures to combat looting and that, as a result of his mistreatment by the soldiers, he drowned.

The Grand Chamber concluded that all the applicants were within the UK's jurisdiction. Investigations were carried out in all five cases, but the ECtHR found that they did not satisfy the procedural requirements of Article 2 because they were not sufficiently independent and/or effective.

In respect of the first, second and third applicants, the ECtHR concluded that the investigation process fell short of the requirements of Article 2 as it remained entirely within the military chain of command and was limited to taking statements from the soldiers involved.

In respect of the fourth and fifth applicants, investigations were also carried out by the Special Investigations Branch (SIB) of the Royal Military Police. However, the ECtHR noted the SIB was not operationally independent from the military chain of command during the relevant period and therefore was not sufficiently independent from the soldiers implicated in the events to satisfy the requirements of Article 2. The ECtHR also highlighted the delays in investigating the fourth and fifth applicant's cases.

In respect of the fifth applicant, the ECtHR also criticised the narrow focus of the criminal proceedings that were ultimately brought against the accused soldiers. It found that in the circumstances, the investigation was not sufficiently accessible to the victim's family and to the public and should have investigated the broad issues of State responsibility for the death including instructions, training and supervision given to soldiers undertaking law enforcement tasks in the aftermath of an invasion.

Government Response: The just satisfaction award made by the ECtHR has been paid.

In March 2010 the Ministry of Defence announced the establishment of the Iraq Historic Allegations Team (IHAT). The IHAT was originally established to investigate many alleged violations of Article 3, arising from mistreatment of individuals by British forces in Iraq

⁴⁸ Application 55721/07; judgment final on 7 July 2011.

during the period March 2003–July 2009. However, on 26 March 2012, the Minister for the Armed Forces stated that the judgment in this case obliged the authorities to undertake additional investigations concerning Article 2 and a new team was to be created within IHAT for this. Since then, additional resources have been made available to IHAT for the progression of Article 2 investigations, which includes the five Al Skeini cases.

The IHAT is lead by a civilian, who reports to the Provost Marshal (Navy), the head of the Royal Navy Police (RNP), following recent structural changes. It contains a number of investigations and case review teams staffed by a mix of RNP and civilian staff (§14 of the judgment *R(Ali Zaki Mousa) v Secretary of State for Defence & Anor* [2011] EWCA Civ 1334). In the event of the work of the IHAT leading to prosecution or disciplinary proceedings, decisions on whether to prosecute will be taken by the Director of Services Prosecutions under the Armed Forces Act 2006. A further judgment in *R(Ali Zaka Mousa(No.2)) v Secretary of State for Defence* [2013] EWHC 2941 (Admin) was delivered on 2 October 2013.

The Government takes the view that the Al Skeini judgment relates to the particular circumstances of the past operations in Iraq and it has no implications for its current operations elsewhere, including in Afghanistan where the legal basis for UK operations is materially different from that which pertained in Iraq.

Prisoner voting (*Scoppola v Italy, Hirst and Greens & MT*)

*Scoppola v Italy No 3*⁴⁹

Court: ECtHR (Grand Chamber)

Case summary: The UK intervened in the Italian prisoner voting case of *Scoppola v Italy*. The Attorney General represented the UK at the hearing in November 2011, where he argued that prisoner voting was a matter for national parliaments to decide. The UK was granted an extension until six months from the date of the judgment in *Scoppola* to implement the judgment in *Greens & MT* – i.e. to introduce proposals to remove the blanket ban on prisoner voting.

The ECtHR's judgment in the case of *Scoppola* means the Committee of Ministers resumed its supervision of implementation of the *Hirst* and *Greens & MT* judgments (summaries of which appear below).

*Hirst No.2 v UK*⁵⁰

Court: ECtHR (Grand Chamber)

Case summary: In March 2004, the UK's blanket ban on prisoner voting was declared unlawful as a result of a successful challenge by a prisoner, John Hirst. ECtHR, in the case of *Hirst (No. 2) v UK*, ruled that the UK was in breach of Article 3 of Protocol 1 to the ECHR, the right to free and fair elections. In October 2005 the ECtHR Grand Chamber upheld this ruling. In its judgment, the ECtHR allowed the UK a 'margin of appreciation' in implementing *Hirst (No. 2)* (i.e. a degree of discretion as to how far the right to vote should be restricted in the case of serving prisoners). It also referred to the lack of a substantive debate in Parliament on the continued justification for the ban in light of modern day penal policy and human rights standards.

*Greens v UK & M.T. v UK*⁵¹

Court: ECtHR (Chamber)

Case summary: This pilot case concerned the blanket ban on voting imposed automatically on the applicant due to the applicants' status as a convicted offender detained in prison. The applicants, both prisoners in Scotland, were refused the right to enrol on the electoral register for domestic elections and elections to the European Parliament.

The ECtHR found the blanket ban under section 3 of the Representation of the People Act in violation of Article 3 of Protocol 1 and, pursuant to the judgment in *Hirst No. 2 v UK*, set a deadline of six months from 11 April 2011 for the UK to bring forward legislative

⁴⁹ Application 126/05; judgment final on 22 May 2012.

⁵⁰ Application 74025/01; judgment final on 6 October 2005.

⁵¹ Applications 60041/08 & 60054/08; pilot judgment 23 November 2010, final on 11 April 2011.

proposals to end the current blanket ban on prisoner voting. The Court declined to award compensation to the applicants and stayed all clone cases.

The Government sought deferral of this time limit in order to intervene in the case of *Scoppola v Italy*. Following the ECtHR's judgment in the case of *Scoppola* on 22 May 2012, the time period set on *Greens & M.T v UK* began to run again. The Committee of Ministers has also resumed its supervision of the implementation of both *Hirst* and *Greens & M.T* judgments.

Government response: Further to the *Greens & M.T. v UK* judgment, the Government published the draft *Voting Eligibility (Prisoners) Bill* on 22 November 2012. The Bill set out two potential options for the enfranchisement of certain prisoners (those sentenced to less than four years and those sentenced to six months or less) and a further option restating the current blanket ban. The Government is of the view that both of the two options for enfranchisement would be consistent with the Convention. The Government is unable to say that of the third option but included it to ensure that Parliament has the fullest opportunity to consider the implications of non-compliance with the judgments of the ECtHR.

The draft Bill is being subjected to pre-legislative scrutiny by a Parliamentary Joint Committee, which is taking written and oral evidence and will make recommendations in a report to both Houses. On publication of the draft Bill the Government committed to reflecting on the Joint Committee's recommendations when they are available and continuing the legislative process by introducing a Bill for full debate and scrutiny as soon as possible thereafter.

The UK Supreme Court handed down its judgment on a separate legal challenge relating to prisoner voting rights on 16 October 2013. The two cases, *Chester v Secretary of State for Justice* and *McGeoch v Lord President of the Council*, were heard in June 2013 and were brought under both the Human Rights Act and EU law. Both appeals primarily concerned rights under EU law to vote in European Parliamentary elections, although one raised local elections and elections to the Scottish Parliament. The Supreme Court unanimously dismissed both appeals and there is no further route of appeal from the Supreme Court on these points. With regard to the Human Rights Act arguments, the Court applied the principles in *Hirst (No 2)* and *Scoppola* regarding the UK's blanket ban on voting, but declined to make a further declaration of incompatibility. With regard to the EU law arguments, the Court held that there exists no individual right to vote on which the appellants could rely, as recognised by the ECtHR, in EU law. The Joint Committee will no doubt wish to note the Supreme Court's judgment as they continue their consideration of the draft Bill.

Deportation an interference with right to private life (AA)

*AA v UK*⁵²

Court: ECtHR (Chamber)

Case Summary: AA was a 25 year old Nigerian national, who was convicted on 27 September 2002 of raping a 13 year old girl when he was aged 15. He was sentenced to four years in a Young Offenders Institution and did not appeal against his sentence or conviction. On 7 July 2003, whilst in detention, AA was granted Indefinite Leave to Remain (ILR) following an application made by his mother on behalf of her dependents. A notice of intention of deportation was issued to AA on 8 September 2003, a decision he appealed until his domestic appeal rights against the decision to deport were exhausted on 25 January 2008.

AA made an application to the ECtHR on 15 February 2008 and argued his deportation would constitute a violation of his right to private life under Article 8 of the ECHR. He was born in Nigeria in 1986 and arrived in the UK with valid entry clearance to join his mother when he was 13 years old.

The ECtHR held there had been a violation of Article 8 on private life grounds because AA has made commendable efforts to rehabilitate himself over a seven year period and that, in these circumstances, the UK Government would be required to provide further support for the contention that he would cause future disorder or engage in criminal activities such as to render his deportation necessary. It was determined no such evidence had been put forward to support such a contention.

Government response: Deportation action was discontinued and as AA had been granted ILR in the UK previously he retained that status. The Government did not consider any general measures were necessary because the Court held the interference with Article 8 was in accordance with the law and pursued the legitimate aim of the prevention of disorder or crime. The specific facts of the case led the Court to conclude that deportation to Nigeria would be disproportionate to the legitimate aim of the prevention of disorder and crime.

⁵² Application no. 8000/08; Judgment final on 19/12/2011.

Right to an effective remedy (Reynolds)

*Reynolds v UK*⁵³

Court: ECtHR (Chamber)

Case summary: The applicant, Mrs Patricia Reynolds, was a British national, who died subsequent to lodging her complaint. The case was then pursued by her daughter on her behalf and concerned the death in 2005 of Mrs Reynolds' adult son. He was an informal (voluntarily admitted, not compulsorily detained) mental health patient diagnosed with schizophrenia, who suffered a fatal fall from a mental health unit on the sixth floor of a building, after being placed there by an NHS Trust.

Relying on Article 2 (right to life) alone and in conjunction with Article 13 (right to an effective remedy), Mrs Reynolds complained that no effective mechanism had been available to her whereby civil liability could be determined for the alleged negligent care of her son and by which she could have obtained compensation for her non-pecuniary loss. The court held that there had been a violation of Article 13 in conjunction with Article 2. Just satisfaction of €7,000 was awarded for non-pecuniary damage and €8,000 was awarded for costs and expenses.

Government response: Corrective action in response to the judgment has been taken by the local agencies involved. In the light of the information obtained at the inquest, the Coroner was concerned that a psychiatric facility had been located on the sixth floor of a building and has reported the incident to the NHS Trust under Rule 43 of the Coroner's Rules 1984. The windows have since been reinforced and the longer-term plan is to transfer the Intensive Support Moving on Scheme Unit (ISMOS) to a two-storey building. Therefore the Government feels that no further general measures are needed.

A relevant case was decided by the Supreme Court in March 2012, before the Reynolds' judgment was given, but after the pleadings had been submitted. In the case of *Rabone v Pennine Care NHS Foundation Trust* [2012] UKSC 2⁵⁴ it was held that on the particular facts of the case, the Trust had an operational duty and that Article 2 did apply even though the patient was an adult informal patient. The Supreme Court held that the parents of the deceased had a claim under Article 2 for damages for non-pecuniary loss for bereavement and awarded the parents £5,000 each.

The UK considers that the Supreme Court has now made clear that an action could be brought under Article 2 seeking compensation for non-pecuniary damages. Whether it would be successful would depend on the specific facts of the case.

⁵³ Application 2694/08; judgment final on 13 June 2012.

⁵⁴ The judgment is at: http://www.supremecourt.gov.uk/docs/UKSC_2010_0154_Judgment.pdf

Domestic cases – new declarations of incompatibility in the previous twelve months

There has been one new declaration of incompatibility between August 2012 and July 2013 in:

- R on the application of T, JB and AW v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice

Court of Appeal; [2013] EWCA Civ 25; 29 January 2013

Further details are given in Annex A. This declaration of incompatibility is still subject to further appeal, although the Government has made changes to the Exceptions Order and to the Police Act by secondary legislation in response to the Court of Appeal judgment. The changes came in to force on 29 May 2013.

Annex A: Declarations of incompatibility

Since the Human Rights Act 1998 came into force on 2 October 2000, 28 declarations of incompatibility have been made. Of these:

- 19 have become final (in whole or in part) and are not subject to further appeal;
- 1 is subject to further appeal; and
- 8 have been overturned on appeal.

Of the 19 declarations of incompatibility that have become final:

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

Information about each of the 28 declarations of incompatibility is set out below in chronological order. All references to Articles are to the Convention rights, as defined in the Human Rights Act 1998, unless stated otherwise.

This information was last updated on 31 July 2013, and will not reflect any changes after that date.

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5. International Transport Roth GmbH v Secretary of State for the Home Department
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14. R (on the application of Hooper and others) v Secretary of State for Work and Pensions
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15. R (on the application of MH) v Secretary of State for Health
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16. A and others v Secretary of State for the Home Department
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17. R (on the application of Sylviane Pierrette Morris) v Westminster City Council & First Secretary of State (No. 3)
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25. R (Wayne Thomas Black) v Secretary of State for Justice
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26. R (on the application of (1) F (2) Angus Aubrey Thompson) v Secretary of State for the Home Department
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27. R (on the application of Royal College of Nursing and others) v Secretary of State for Home Department
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28. R on the application of T, JB and AW v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice
(Court of Appeal; [2013] EWCA Civ 25; 29 January 2013)

1. R (on the application of Alconbury Developments Ltd.) v Secretary of State for the Environment, Transport and the Regions

Administrative Court; [2001] HRLR 2; 13 December 2000

The Secretary of State's powers to determine planning applications were challenged on the basis that the dual role of the Secretary of State in formulating policy and taking decisions on applications inevitably resulted in a situation whereby applications could not be disposed of by an independent and impartial tribunal.

The Divisional Court declared that the powers were in breach of Article 6(1), to the extent that the Secretary of State as policy maker was also the decision-maker. A number of provisions were found to be in breach of this principle, including the Town and Country Planning Act 1990, sections 77, 78 and 79.

The House of Lords overturned the declaration on 9 May 2001: [2001] UKHL 23

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2. R (on the application of H) v Mental Health Review Tribunal for the North and East London Region & the Secretary of State for Health

Court of Appeal; [2001] EWCA Civ 415; 28 March 2001

The case concerned a man who was admitted under section 3 of the Mental Health Act 1983 and sought discharge from hospital.

Sections 72 and 73 of the Mental Health Act 1983 were declared incompatible with Articles 5(1) and 5(4) in as much as they did not require a Mental Health Review Tribunal to discharge a patient where it could not be shown that he was suffering from a mental disorder that warranted detention.

The legislation was amended by the Mental Health Act 1983 (Remedial) Order 2001 (SI 2001 No.3712), which came into force on 26 November 2001.

3. Wilson v First County Trust Ltd (No.2)

Court of Appeal; [2001] EWCA Civ 633; 2 May 2001

The case concerned a pawnbroker who entered into a regulated loan agreement but did not properly execute the agreement with the result that it could not be enforced.

Section 127(3) of the Consumer Credit Act 1974 was declared incompatible with Article 6 and Article 1 of the First Protocol by the Court of Appeal to the extent that it caused an unjustified restriction to be placed on a creditor's enjoyment of contractual rights.

The House of Lords overturned the declaration on 10 July 2003: [2003] UKHL 40

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4. McR's Application for Judicial Review

Queen's Bench Division (NI); [2002] NIQB 58; 15 January 2002

The case concerned a man who was charged with the attempted buggery of a woman. He argued that the existence of the offence of attempted buggery was in breach of Article 8.

It was declared that Section 62 of the Offences Against the Person Act 1861 (attempted buggery), which continued to apply in Northern Ireland, was incompatible with Article 8 to the extent that it interfered with consensual sexual behaviour between individuals.

Section 62 was repealed in Northern Ireland by the Sexual Offences Act 2003, section 139, section 140, Schedule 6 paragraph 4, and Schedule 7. These provisions came into force on 1 May 2004.

5. International Transport Roth GmbH v Secretary of State for the Home Department

Court of Appeal; [2002] EWCA Civ 158; 22 February 2002

The case involved a challenge to a penalty regime applied to carriers who unknowingly transported clandestine entrants to the United Kingdom.

The penalty scheme contained in Part II of the Immigration and Asylum Act 1999 was declared incompatible with Article 6 because the fixed nature of the penalties offended the right to have a penalty determined by an independent tribunal. It also violated Article 1 of the First Protocol as it imposed an excessive burden on the carriers.

The legislation was amended by the Nationality, Immigration and Asylum Act 2002, section 125, and Schedule 8, which came into force on 8 December 2002.

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6. Matthews v Ministry of Defence

Queen's Bench Division; [2002] EWHC 13 (QB); 22 January 2002

The case concerned a Navy engineer who came into contact with asbestos lagging on boilers and pipes. As a result he developed pleural plaques and fibrosis. The Secretary of State issued a certificate that stated that the claimant's injury had been attributable to service and made an award of no fault compensation. The effect of the certificate, made under section 10 of the Crown Proceedings Act 1947, was to preclude the engineer from pursuing a personal injury claim for damages from the Navy due to the Crown's immunity in tort during that period. The engineer claimed this was a breach of Article 6.

Section 10 of the Crown Proceedings Act 1947 was declared incompatible with Article 6 in that it was disproportionate to any aim that it had been intended to meet.

The Court of Appeal overturned the declaration, a decision which was upheld by the House of Lords on 13 February 2003: [2003] UKHL 4

7. R (on the application of Anderson) v Secretary of State for the Home Department

House of Lords; [2002] UKHL 46; 25 November 2002

The case involved a challenge to the Secretary of State for the Home Department's power to set the minimum period that must be served by a mandatory life sentence prisoner.

Section 29 of the Crime (Sentences) Act 1997 was incompatible with the right under Article 6 to have a sentence imposed by an independent and impartial tribunal in that the Secretary of State decided on the minimum period which must be served by a mandatory life sentence prisoner before he was considered for release on licence.

The law was repealed by the Criminal Justice Act 2003, sections 303(b)(i) and 332 and Schedule 37, Part 8, with effect from 18 December 2003. Transitional and new sentencing provisions were contained in Chapter 7 and Schedules 21 and 22 of that Act.

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8. R (on the application of D) v Secretary of State for the Home Department

Administrative Court; [2002] EWHC 2805 (Admin); 19 December 2002

The case involved a challenge to the Secretary of State for the Home Department's discretion to allow a discretionary life prisoner to obtain access to a court to challenge their continued detention.

Section 74 of the Mental Health Act 1983 was incompatible with Article 5(4) to the extent that the continued detention of discretionary life prisoners who had served the penal part of their sentence depended on the exercise of a discretionary power by the executive branch of government to grant access to a court.

The law was amended by the Criminal Justice Act 2003 section 295, which came into force on 20 January 2004.

9. Blood and Tarbuck v Secretary of State for Health

Unreported; 28 February 2003

The case concerned the rules preventing a deceased father's name from being entered on the birth certificate of his child.

Section 28(6)(b) of the Human Fertilisation and Embryology Act 1990 was declared incompatible with Article 8, and/or Article 14 taken together with Article 8, to the extent that it did not allow a deceased father's name to be given on the birth certificate of his child.

The law was amended by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003, which came into force on 1 December 2003.

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10. R (on the application of Uttley) v Secretary of State for the Home Department

Administrative Court; [2003] EWHC 950 (Admin); 8 April 2003

The case concerned a prisoner who argued that his release on licence was an additional penalty to which he would not have been subject at the time he was sentenced.

Sections 33(2), 37(4)(a) and 39 of the Criminal Justice Act 1991 were declared incompatible with the claimant's rights under Article 7, insofar as they provided that he would be released at the two-thirds point of his sentence on licence with conditions and be liable to be recalled to prison.

**The House of Lords overturned the declaration on 30 July 2004:
[2004] UKHL 38**

11. *Bellinger v Bellinger*

House of Lords; [2003] UKHL 21; 10 April 2003

A post-operative male to female transsexual appealed against a decision that she was not validly married to her husband, by virtue of the fact that at law she was a man.

Section 11(c) of the Matrimonial Causes Act 1973 was declared incompatible with Articles 8 and 12 in so far as it made no provision for the recognition of gender reassignment.

In *Goodwin v UK* (Application 28957/95; 11 July 2002) the European Court of Human Rights had already identified the absence of any system for legal recognition of gender change as a breach of Articles 8 and 12. This was remedied by the Gender Recognition Act 2004, which came into force on 4 April 2005.

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12. *R (on the application of M) v Secretary of State for Health*

Administrative Court; [2003] EWHC 1094 (Admin); 16 April 2003

The case concerned a patient who lived in hostel accommodation but remained liable to detention under the Mental Health Act 1983. Section 26 of the Act designated her adoptive father as her “nearest relative” even though he had abused her as a child.

Sections 26 and 29 of the Mental Health Act 1983 were declared incompatible with Article 8, in that the claimant had no choice over the appointment or legal means of challenging the appointment of her nearest relative.

The Government published in 2004 a Bill proposing reform of the mental health system, which would have replaced these provisions. Following substantial opposition in Parliament, the Government withdrew the Bill in March 2006, and introduced a new Bill to amend the Mental Health Act 1983 which received Royal Assent on 19 July 2007 as the Mental Health Act 2007. Sections 23 to 26 of this Act amend the relevant provisions to remove the parts declared incompatible. These provisions came into force on 3 November 2008.

13. R (on the application of Wilkinson) v Inland Revenue Commissioners

Court of Appeal; [2003] EWCA Civ 814; 18 June 2003

The case concerned the payment of Widow's Bereavement Allowance to widows but not widowers.

Section 262 of the Income and Corporation Taxes Act 1988 was declared incompatible with Article 14 when read with Article 1 of the First Protocol in that it discriminated against widowers in the provision of Widow's Bereavement Allowance.

The section declared incompatible was no longer in force at the date of the judgment, having already been repealed by the Finance Act 1999 sections 34(1), 139, and Schedule 20. This came into force in relation to deaths occurring on or after 6 April 2000.

* * * * *

14. R (on the application of Hooper and others) v Secretary of State for Work and Pensions

Court of Appeal; [2003] EWCA Civ 875; 18 June 2003

The case concerned Widowed Mother's Allowance which was payable to women only and not to men.

Sections 36 and 37 of the Social Security Contributions and Benefit Act 1992 were found to be in breach of Article 14 in combination with Article 8 and Article 1 of the First Protocol in that benefits were provided to widows but not widowers.

The law had already been amended at the date of the judgment by the Welfare Reform and Pensions Act 1999, section 54(1), which came into force on 9 April 2001.

15. R (on the Application of MH) v Secretary of State for Health

Court of Appeal; [2004] EWCA Civ 1609; 3 December 2004

The case concerned a patient who was detained under section 2 of the Mental Health Act 1983 and was incompetent to apply for discharge from detention. Her detention was extended by operation of provisions in the Mental Health Act 1983.

Section 2 of the Mental Health Act 1983 was declared incompatible with Article 5(4) of the ECHR in so far as:

- (i) it is not attended by provision for the reference to a court of the case of an incompetent patient detained under section 2 in circumstances where a patient has a right to make application to the Mental Health Review Tribunal but the incompetent patient is incapable of exercising that right; and
- (ii) it is not attended by a right for a patient to refer his case to a court when his detention is extended by the operation of section 29(4).

**The House of Lords overturned the declaration on 20 October 2005:
[2005] UKHL 60**

* * * * *

16. A and others v Secretary of State for the Home Department

House of Lords; [2004] UKHL 56; 16 December 2004

The case concerned the detention under the Anti-terrorism, Crime and Security Act 2001 of foreign nationals who had been certified by the Secretary of State as suspected international terrorists, and who could not be deported without breaching Article 3. They were detained without charge or trial in accordance with a derogation from Article 5(1) provided by the Human Rights Act 1998 (Designated Derogation) Order 2001.

The Human Rights Act 1998 (Designated Derogation) Order 2001 was quashed because it was not a proportionate means of achieving the aim sought and could not therefore fall within Article 15. Section 23 of the Anti-terrorism, Crime and Security Act 2001 was declared incompatible with Articles 5 and 14 as it was disproportionate and permitted the detention of suspected international terrorists in a way that discriminated on the ground of nationality or immigration status.

The provisions were repealed by the Prevention of Terrorism Act 2005, which put in place a new regime of control orders; it came into force on 11 March 2005.

* * * * *

17. R (on the application of Sylviane Pierrette Morris) v Westminster City Council & First Secretary of State (No. 3)

Court of Appeal; [2005] EWCA Civ 1184; 14 October 2005

&

18. R (Gabaj) v First Secretary of State

Administrative Court; unreported; 28 March 2006

These two cases concerned applications for local authority accommodation. In *Morris*, the application was by a single mother (a British citizen) whose child was subject to immigration control. Section 185(4) of the Housing Act 1996 was declared incompatible with Article 14 to the extent that it requires a dependent child who is subject to immigration control to be disregarded when determining whether a British citizen has priority need for accommodation.

In *Gabaj*, it was the claimant's pregnant wife, rather than the claimant's child, who was a person from abroad. As this case was a logical extension of the declaration granted in *Morris*, the Government agreed to the making of a further similar declaration that section 185(4) of the Housing Act 1996 is incompatible with Article 14 to the extent that it requires a pregnant member of the household of a British citizen, if both are habitually resident in the United Kingdom, to be disregarded when determining whether the British citizen has a priority need for accommodation or is homeless, when the pregnant member of the household is a person from abroad who is ineligible for housing assistance.

The law was amended by Schedule 15 to the Housing and Regeneration Act 2008. The Act received Royal Assent on 22 July 2008 and Schedule 15 was brought into force on 2 March 2009.

19. R (on the application of Baiai and others) v Secretary of State for the Home Department and another

Administrative Court; [2006] EWHC 823 (Admin); 10 April 2006

The case concerned the procedures put in place to deal with sham marriages, specifically which persons subject to immigration control are required to go through before they can marry in the UK.

Section 19(3) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 was declared incompatible with Articles 12 and 14 in that the effect of this provision is unjustifiably to discriminate on the grounds of nationality and religion, and in that this provision is not proportionate. An equivalent declaration was made in relation to Regulations 7 and 8 of the Immigration (Procedure for Marriage) Regulations 2005 (which imposed a fee for applications). Home Office Immigration Guidance was also held to be unlawful on the grounds it was incompatible with Articles 12 and 14, but this did not involve section 4 of the Human Rights Act.

The House of Lords held that the declaration of incompatibility should be limited to a declaration that section 19(1) of the Act was incompatible with Article 14 taken together with Article 12, insofar as it discriminated between civil marriages and Church of England marriages. In other respects it was possible to read and give effect to section 19 in a way which was compatible with Article 12: [2008] UKHL 53.

The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Remedial) Order 2011 was made on 25th April 2011 and came into force on 9th May 2011. This abolished the Certificate of Approval scheme so that those subject to immigration control who wish to marry in the UK and the Isle of Man will have the freedom to give notice of marriage without having first to seek permission of the Secretary of State.

* * * * *

20. Re MB

Administrative Court; [2006] EWHC 1000 (Admin); 12 April 2006

The case concerned the Secretary of State's decision to make a non-derogating control order under section 2 of the Prevention of Terrorism Act 2005 against MB, who he believed intended to travel to Iraq to fight against coalition forces.

The procedure provided by the 2005 Act for supervision by the court of non-derogating control orders was held incompatible with MB's right to a fair hearing under Article 6.

The Court of Appeal overturned the declaration, a decision which was upheld by the House of Lords on 31 October 2007: [2007] UKHL 46.

21. R (on the application of (1) June Wright (2) Khemraj Jummun (3) Mary Quinn (4) Barbara Gambier) v (1) Secretary of State for Health (2) Secretary of State for Education & Skills

Administrative Court; [2006] EWHC 2886 (Admin); 16 November 2006

This case concerned the Care Standards Act 2000 Part VII procedures in relation to provisional listing of care workers as unsuitable to work with vulnerable adults.

Section 82(4)(b) of the Care Standards Act 2000 was declared incompatible with Articles 6 and 8. The Court of Appeal overturned the declaration of incompatibility on 24 October 2007.

The House of Lords reinstated the declaration of incompatibility on 21 January 2009: [2009] UKHL 3. By the date of the House of Lords' judgment, the transition to a new scheme under the Safeguarding Vulnerable Groups Act 2006 was already underway. The new SVGA scheme does not include the feature of provisional listing which was the focus of challenge in the Wright case. However, the new Act was subject to a subsequent challenge in the Royal College of Nursing case set out below.

* * * * *

22. R (Clift) v Secretary of State for the Home Department; Secretary of State for the Home Department v Hindawi and another

House of Lords; [2006] UKHL 54; 13 December 2006

This was a conjoined appeal in which the appellants were all former or serving prisoners. The issue on appeal was whether the early release provisions, to which each of the appellants was subject, were discriminatory.

Sections 46(1) and 50(2) of the Criminal Justice Act 1991 were declared incompatible with Article 14 taken together with Article 5 on the grounds that they discriminated on grounds of national origin.

The provisions in question had already been repealed and replaced by the Criminal Justice Act 2003, save that they continued to apply on a transitional basis to offences committed before 4 April 2005. Section 27 of the Criminal Justice and Immigration Act 2008 therefore amended the Criminal Justice Act 1991 to remove the incompatibility in the transitional cases. The amendment came into force on 14 July 2008, but reflected administrative arrangements addressing the incompatibility that had been put in place shortly after the declaration was made.

23. Smith v Scott

Registration Appeal Court (Scotland); [2007] CSIH 9; 24 January 2007

This case concerned the incapacity of convicted prisoners to vote under section 3 of the Representation of the People Act 1983.

The Court ruled that it was part of the Court of Session for the purposes of section 4 of the Human Rights Act, and therefore had power to make a declaration of incompatibility under that section. It declared section 3(1) of the Representation of the People Act 1983 incompatible with Article 3 of the First Protocol on the grounds that it imposed a blanket ban on convicted prisoners voting in Parliamentary elections. This declaration was substantially similar to the judgment of the European Court of Human Rights in the earlier case of *Hirst v United Kingdom (No. 2)* (Application 24035/01; 6 August 2005).

The Government has been actively considering the issue of prisoners' voting rights and the outcome of this process will determine the Government's response to the declaration in *Smith* and the European Court of Human Rights decision in *Hirst* and its pilot judgment in *Greens & MT v United Kingdom* (Applications: 60041/08 and 60054/08; 23 November 2010). The Grand Chamber of the European Court of Human Rights considered the case of *Scoppola v Italy* (no. 126/05, judgment of the Second Section of 18 January 2011) and a judgment was issued on 22 May 2012. The legal issues which arise in *Scoppola* under Article 3 of Protocol 1 are analogous to those which arose in *Hirst* and in *Greens & MT*. The Government published the draft *Voting Eligibility (Prisoners) Bill* on 22 November 2012. The draft Bill is being subjected to pre-legislative scrutiny by a Parliamentary Joint Committee.

The UK Supreme Court handed down its judgment on a further legal challenge (Chester and McGeoch) relating to prisoner voting rights on 16 October 2013. The Court applied the principles in *Hirst (No 2)* and *Scoppola* regarding the blanket ban on voting, but declined to make any further declaration of incompatibility. The Court took the view that the incompatibility of the prohibition on prisoner voting in the UK with the Convention is already the subject of a declaration of incompatibility made in *Smith v Scott* and is currently under review by Parliament, and that in these circumstances there is no point in making a further declaration of incompatibility.

Further information about *Scoppola*, *Hirst (No. 2)* and *Greens & MT* and the UK Supreme Court decision in *Chester and McGeoch* can be found at pages 38 to 39 of this report.

24. Nasser v Secretary of State for the Home Department

Administrative Court; [2007] EWHC 1548 (Admin); 2 July 2007

The case concerned a challenge, by a national of Afghanistan, to a decision to remove him to Greece under the terms of the Dublin Regulation. The issue was whether paragraph 3 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 – which requires the listed countries (including Greece) to be treated as countries from which a person will not be sent to another State in contravention of his Convention rights – is compatible with Article 3.

Paragraph 3 of Schedule 3 to the 2004 Act, applied by section 33 of the Act, was declared incompatible with Article 3 on the grounds that it precludes the Secretary of State and the courts from considering any question as to the law and practice on *refoulement* in any of the listed countries.

The Court of Appeal overturned the declaration of incompatibility on 14 May 2008: [2008] EWCA Civ 464.

The claimant appealed to the House of Lords and was unsuccessful. Lord Hoffman said that the presumption in paragraph 3 of Schedule 3 to the 2004 Act did not preclude an inquiry into whether the claimant's article 3 rights would be infringed for the purpose of deciding whether paragraph 3, would be incompatible with his Convention rights. In addition, the House of Lords found there to be no evidence of a real risk of *refoulement* from Greece therefore no violation had occurred in this case.

On declarations of incompatibility more generally, Lord Hoffman said that they would *normally* concern a real Convention right in issue in the proceedings, not a hypothetical Convention right (i.e. a breach should generally be demonstrated on the facts for a declaration to be issued) and that the structure of the Human Rights Act suggests that a declaration of incompatibility should be the last resort."

25. R (Wayne Thomas Black) v Secretary of State for Justice

Court of Appeal; [2008] EWCA Civ 359; 15 April 2008

This case concerned the application of Article 5(4) to the early release of determinate sentence prisoners subject to the release arrangements in the Criminal Justice Act 1991. Under section 35(1) of the Act, the decision whether to release long-term prisoners serving 15 years or more who have reached the halfway point of their sentence, when they become eligible for parole, lies with the Secretary of State rather than the Parole Board. Section 35(1) was repealed and replaced by the Criminal Justice Act 2003. However, it continues to apply on a transitional basis to offences committed before 4 April 2005.

The Court of Appeal found that Article 5(4) requires the review of continuing detention to be undertaken by the Parole Board following the halfway point of such sentences. As a result the Court declared that section 35(1) was incompatible with Article 5(4).

The House of Lords overturned the declaration of incompatibility on 21 January 2009: [2009] UKHL 1.

* * * * *

26. R (on the application of (1) F (2) Angus Aubrey Thompson) v Secretary of State for the Home Department

Court of Appeal; [2009] EWCA Civ 792; 23 July 2009

This case concerned a juvenile and an adult who have been convicted of sexual offences. Under section 82 of the Sexual Offences Act 2003, the nature of the offences they committed and the length of their sentences mean that they are subject to the notification requirements set out in Part 2 of that Act for an indefinite period. At the time, there was no statutory mechanism for reviewing indefinite notification requirements.

Section 82 of the Sexual Offences Act 2003 was declared incompatible with Article 8 by the Court of Appeal on 23 July 2009 and this decision was upheld by the Supreme Court on 21 April 2010: [2010] UKSC17. In doing so, the court concluded that, in so far as the relevant provisions allow for indefinite notification without review, they present a disproportionate interference with the right to respect for private life and are incompatible with Article 8(1) ECHR.

To remedy the incompatibility, the draft Sexual Offences Act 2003 (Remedial) Order 2012 was laid before Parliament on 5 March 2012 in accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998. The remedial order was subsequently approved by Parliament and came into force on 30 July 2012, amending the Sexual Offences Act 2003 to introduce a mechanism which will enable registered sex offenders who are subject to indefinite notification requirements to apply for those requirements to be reviewed.

27. R (on the application of Royal College of Nursing and others) v Secretary of State for Home Department

Administrative Court; [2010] EWHC 2761; 10 November 2010

The case concerned the procedures established by Part 1 of the Safeguarding Vulnerable Groups Act 2006 (“SVGA 2006”), specifically those in Schedule 3 to that Act, which provide for the inclusion of individuals who had committed a specified criminal offence on a list to bar them from working with children or vulnerable adults. It was found that procedures which denied the right of a person to make representations as to why they should not be included on a barred list breached Article 6 and had the potential to give rise to breaches of Article 8.

The legislation which preceded the SVGA 2006 was also declared incompatible, see: at 21 above, R (on the application of (1) June Wright (2) Khemraj Jummun (3) Mary Quinn (4) Barbara Gambier) v (1) Secretary of State for Health (2) Secretary of State for Education & Skills (*House of Lords; [2009] UKHL 3; 21 January 2009*).

Section 67(2) and (6) of the Protection of Freedoms Act 2012 amends Schedule 3 to the SVGA 2006 and gives the person the opportunity to make representations as to why they should not be included in the children’s or adults’ barred list before a barring decision is made. These provisions commence on 10 September 2012.

* * * * *

28. R on the application of T, JB and AW v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice

Court of Appeal; [2013] EWCA Civ 25; 29 January 2013

The applicants argued that the provisions of the Police Act 1997 and Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 with regard to blanket disclosure of convictions and cautions are incompatible with the Article 8 right to private life.

The Court of Appeal found the Police Act 1997 and the Exceptions Order to the Rehabilitation of Offenders Act 1974 (ROA) incompatible with Article 8 on the grounds that blanket disclosure of all cautions and convictions is disproportionate.

The Court did not prescribe any solution, instead stating that it would be “for Parliament to devise a proportionate scheme” and directed that its decision should not take effect until the Supreme Court has determined the Government’s application to appeal.

Changes to the Exceptions Order and to the Police Act, have now been made by secondary legislation in response to the Court of Appeal judgment. The changes came in to force on 29 May 2013.

These changes notwithstanding, the Government has made an application for permission to appeal the Court of Appeal’s decision to the Supreme Court.

Annex B: Statistical information on the implementation of European Court of Human Rights judgments⁵⁵

Table 1: UK Performance

Statistic	UK performance	
	2011	2012
New Cases		
i) Total number of new UK cases	19	13
ii) Leading UK cases	9 of 19	5 of 13
Final Resolutions	2011	2012
i) Total number of cases	48	14
ii) Leading cases among UK cases	33	14
Pending Cases	2011	2012
i) Total number of cases	40	39
ii) Leading cases among UK cases	25	17
Payment of just satisfaction	2011	2012
i) Within deadline	8	15
ii) Payment was late	0	6
iii) Pending cases waiting confirmation of payment at end 2012	10	2
Amount of just satisfaction (€)	2011	2012
Total amount paid by the UK	454, 457	418, 220
Average execution time	2011	2012
Leading UK cases pending <2yrs	16	8
Leading UK cases outstanding 2–5yrs	4	4
Leading UK cases outstanding >5yrs	5	5

⁵⁵ Data in both tables taken from the 6th Annual Report of the Committee of Ministers on the “Supervision of the execution of judgments and decisions of the European Court of Human Rights” and shows the position at 31 December 2012.
http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2012_en.pdf

Table 2: Judgments under supervision of the Committee of Ministers at the end of 2012 by State Party to the Convention

	State	Number of cases pending at end of 2012
1.	Italy	2569
2.	Turkey	1861
3.	Russian Federation	1211
4.	Ukraine	910
5.	Poland	908
6.	Romania	667
7.	Greece	478
8.	Bulgaria	366
9.	Hungary	251
10.	Slovenia	241
11.	Republic of Moldova	233
12.	Portugal	123
13.	Croatia	122
=	Former Yugoslavian Republic of Macedonia	122
15.	Czech Republic	111
16.	Serbia	105
17.	Germany	103
18.	France	64
19.	Azerbaijan	63
20.	Austria	54
=	Finland	54
22.	Belgium	48
=	Slovak Republic	48
24.	United Kingdom	39
25.	Latvia	33
26.	Cyprus	32
27.	Armenia	31
=	Lithuania	31
29.	Albania	29
30.	Spain	26

	State	Number of cases pending at end of 2012
31.	Bosnia and Herzegovina	24
=	Georgia	24
=	Malta	24
34.	Netherlands	14
35.	Ireland	11
=	Luxembourg	11
37.	Montenegro	9
=	Sweden	9
39.	Estonia	8
=	Switzerland	8
41.	Denmark	7
42.	Iceland	6
43.	San Marino	3
44.	Norway	2
45.	Andorra	1
=	Monaco	1
47.	Liechtenstein	0
Total		11,099



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