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Response of the United Kingdom Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the United Kingdom

from 2 to 6 December 2007

The United Kingdom Government has requested the publication of this response. The report of the CPT on its December 2007 visit to the United Kingdom is set out in document CPT/Inf (2008) 27.

Strasbourg, 1 October 2008

RESPONSE OF THE UNITED KINGDOM GOVERNMENT TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT) FOLLOWING ITS AD HOC VISIT TO THE UNITED KINGDOM FROM 2 TO 6 DECEMBER 2007

Human Rights Division
Ministry of Justice
22 September 2008

INTRODUCTION

1. The Government of the United Kingdom is pleased to provide this response to the report of the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment following the Committee's visit from 2 to 6 December 2007.

2. The Government welcomes the report and has given its recommendations serious consideration.

3. This response follows in sequence the issues raised in the CPT's report. Extracts from the CPT's report are reproduced in bold typeface with paragraph references.

CO-OPERATION BETWEEN THE CPT AND THE UNITED KINGDOM AUTHORITIES

4. The Government is pleased to learn that the CPT received very good co-operation at all levels during its visit.

ISSUES RAISED BY THE COMMITTEE:

SAFEGUARDS AGAINST ILL TREATMENT

Paragraph 6:

CPT has emphasised in the past, in the interests of the prevention of ill-treatment, the sooner a criminal suspect passes into the hands of a custodial authority which is functionally and institutionally separate from the police, the better. Consequently, the Committee must insist that neither the existing nor any new provisions in this area should result in criminal suspects spending a prolonged period of time in police custody.

5. The Police and Criminal Evidence Act (PACE) 1984 sets out the statutory time limits by which a person may be detained before charge. PACE provides that a custody officer must be appointed for each custody suite. The custody officer must consider and authorise detention irrespective of the status of the detainee. PACE sets a maximum period of detention of up to 96 hours for non-terrorist-related detainees. Detention is subject to periodic review by a senior officer and the detention of a person beyond 36 hours must be authorised by a magistrate. When the investigating officer considers that there is a realistic prospect of conviction, he must inform the custody officer. The custody officer will determine if there are sufficient grounds to refer the case to the Crown Prosecution Service for a charging decision. At that point, the custody officer is required to consider whether the person should be released on bail pending the decision of the prosecutor. Detention pending a decision by the prosecutor should not exceed 3 hours and this time counts towards the authorised time limits set out in PACE. On 28 August 2008, the Government published its final public consultation on PACE. There are no proposals to amend the detention time limits before charge or the requirement to refer to the prosecutor for a charging decision. http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/PACE-Review/

6. Although many of the safeguards and protections for the individual set out in PACE apply to persons detained under terrorism legislation, the periods of detention for terrorist-related detainees are set out separately in the Terrorism Act 2000. A person may be detained up to a period of 28 days. Where a warrant is issued under section 41 of the 2000 Act that authorises detention beyond 14 days, the suspect must be transferred to a prison as soon as it is practicable. There are exceptions, such as if the person specifically requests to remain in detention in the police station, or there are reasonable grounds for believing that transfer to prison would hinder the investigation, or if the transfer to a prison would delay charging the detainee, or delay the detainee's release from custody. The Government believes that there are sufficient safeguards to ensure expeditious transfers to prison, although we believe it is right that the suspect should be able to remain in detention at a police station if that is what they request. Such a request can result from a number of reasons such as the Police Station being more accessible or nearer to the detained persons home and family or friends who may wish to visit.

7. The rules governing the detention, treatment and questioning of persons before charge are set in PACE Code of Practice C (for non-terrorist offences) and PACE Code of Practice H (for terrorist-related detention). Both PACE Code C and H require that all persons in custody must be dealt with expeditiously and released as soon as there is no further need for detention. The Codes set out a clear statement on the rights and safeguards for the detainee, including the right to free independent legal advice and the right to have another person informed of their detention, save for exceptional situations depending on the circumstances of the case. They also set out the detainee's right of access to healthcare; access to interpreters; adequate food, refreshment, sleeps and rest breaks. Where the person is a juvenile or a mentally vulnerable person, an appropriate adult (i.e. parent, guardian or carer or other responsible adult) must be in attendance when any investigative procedures are carried out. The detainee may also have access to an independent custody visitor. Custody visitors are independent members of the community who visit custody suites without prior notice.

Paragraph 6:

The Code of Practice on the detention of persons under the Terrorism Act 2000 (Code H) does expressly provide that where a warrant is issued which authorises detention beyond 14 days, "the detainee must be transferred from detention in a police station to detention in a designated prison as soon as is practicable". However, there are exceptions to the obligation to transfer to a prison (if the detainee specifically requests to remain in detention in a police station; if transfer to a prison would prevent the investigation from being conducted diligently and expeditiously), and the information gathered at Paddington Green High Security Police Station indicates that the exceptions have become very much the rule.

8. All persons held in Police custody must be dealt with expeditiously and released or transferred as soon as the need for detention in Police custody is no longer necessary. However, in very exceptional circumstances in relation to a very small number of individuals held during investigations into the most serious offences, there may be an exception to this obligation. The exceptions to the obligation to transfer a detainee to a prison as soon as practicable under the Terrorism Act 2000 are:

a) if the detainee specifically requests to remain in detention at a police station (rather than in prison) and that request can be accommodated;

b) if there are reasonable grounds to believe that transferring a person to prison could:

(i) significantly hinder a terrorism investigation;

(ii) delay charging of the detainee or his release from custody; or

(iii) otherwise prevent the investigation from being conducted diligently and expeditiously.

9. We believe these are reasonable and proportionate exceptions. If the detention needs to be extended because of any of the exceptions mentioned above the individual should be brought before a judge within 48 hours before the original period of detention expires. Individuals detained in Paddington Green police station are also covered by these Codes. The figures quoted at paragraph 12 below indicate that, in practice, detention beyond 14 days are indeed exceptional, and not the rule.

Paragraph 7:

The Committee states that allowing criminal suspects to "request" to remain in police custody is a fundamentally – flawed approach from the standpoint of the prevention of ill-treatment. Further, the CPT doubts whether there will ever be "reasonable grounds" to believe that transfer to a prison of a person who has already spent 14 days in police custody will jeopardise an ongoing investigation; it should be emphasised in this connection that transfer to a prison does not preclude further questioning of the person concerned by the police.

10. It is only reasonable and fair that an individual who has not yet been charged be allowed to request, if they choose, to continue to be detained in a Police Station and not transferred to a prison. Where such a request can be accommodated it should be allowed. Such a request can result from a number of reasons as set out above (at paragraph 6), such as the Police Station being more accessible or nearer to the detained persons home and family or friends who may wish to visit. The PACE Codes of Practice, Codes C and H provide detailed direction to police officers on the detention, treatment and questioning of suspects in Police Stations.

11. As set out above, persons detained for a prolonged period in Police custody have the right to legal advice; must be held in cells that are adequately heated; cleaned and ventilated; have the opportunity for exercise; may be visited by friends and family; have access to writing materials; are allowed the opportunity to practice religious observance; and are medically examined daily. Lay visitors also have access to detainees without notice. Continued detention is importantly subject to the authorisation of a senior judge at least every seven days. For all these reasons we do not accept that allowing an individual who has not been charged to choose to be detained in a police station rather than a prison is in the Committee's words: 'a fundamentally-flawed approach from the standpoint of the prevention of ill-treatment.'

Paragraph 7:

The CPT recommends that the necessary steps be taken to ensure that:

- **all persons suspected of offences under the terrorism legislation in respect of whom detention beyond 14 days is authorised are transferred forthwith to a prison;**

- **appropriate arrangements are in place enabling terrorist suspects transferred to prison whilst still in pre-charge detention to make effective use of their rights, including that of access to a lawyer.**

As regards further questioning of the detainee by the police after his transfer to prison, the general rule should be that such questioning is to be carried out at the prison, not on police premises.

12. The Government does not believe that the current arrangements need to be changed in this respect. The treatment of terrorist suspects is conducted in line with the PACE Codes of Practice. Code H provides a framework of care and an obligation to respond to the needs of those detained under section 41 of the Terrorism Act 2000. Since the introduction of the power to detain people to 28 days, 11 people have been held for more than 14 days; of those, 9 were transferred to the prison authorities at 14 days. The two remaining suspects remained in police detention throughout, one being charged on day 14, the other being charged on day 27. Stringent safeguards, as set out above in paragraphs 7 and 11, are in place for suspects subject to extended detention.

13. Wherever possible, when detainees have been transferred to prison, and if the investigation requires them to be questioned further, and appropriate facilities exist at the prison (for example, for recording the interviews) they will be questioned in the prison. Suspects who are transferred to prison continue to have access to a lawyer. However, if such facilities are not available, effective investigation may require the detainee to be brought to a police station. Police stations are specifically equipped for interviews that allow individuals' rights to be protected and easy access for lawyers. Interviewing is not a primary function of prisons: they are not always as well equipped as police stations for that purpose, and access for lawyers is less easily arranged.

Paragraph 10:

The CPT calls upon the United Kingdom authorities to ensure that persons detained under terrorism legislation who have not yet been transferred to prison are always brought into the direct physical presence of the judge responsible for deciding the question of the possible extension of their detention.

Further, the CPT considers that for so long as a detained person remains in the custody of the police, the interval between his appearances before a judicial authority should preferably not exceed four days.

The CPT would add that once a detained person has been placed in the custody of the prison service, judicial hearings via a video conference link might be envisaged.

14. We do not accept that it is necessary for a detained person to always be brought within the direct physical presence of a judge. We believe it is possible for judges to consider whether to authorise continued detention through hearings conducted by video link. The decision to undertake a hearing by way of a video-link is made by a district judge who has a right to have the detained person brought before him. Before directing that the hearing be conducted by video link, the judge must allow the detainee, or those acting on his behalf, to make representations for a physical appearance. Should there be any concern over treatment of any particular detainee, it is extremely unlikely that the judge would refuse such representations. The use of video link is cost-effective and expeditious and the Government is not persuaded of the need for a detained person's automatic physical appearance before a judge. If physical appearance before the judge was automatic in each case, that would significantly slow down investigations and require additional resources.

15. If a person needs to be detained for longer than 48 hours, an application must be made to a judge for a warrant of further detention. The period of detention is subject to the decision made by the judge. The maximum period of continued detention that can be authorised by a judge is seven days, although a judge can, of course, authorise a lesser period. The Government believes that appearance before a judicial authority at least every seven days is reasonable.

16. Arrangements are in place for judicial hearings via video-conferencing for persons in the custody of the prison service – as the Committee suggests at paragraph 10 of its report.

Paragraph 12:

The CPT points out that the presence of a lawyer is not guaranteed during "safety interviews" and recommends that "this lacuna should be filled."

The CPT recommends that the necessary steps be taken to guarantee the right of access to a lawyer during such interviews.

17. In CPT's letter of 19 March 2008, a concern was raised about how the delay of access to legal advice in exceptional circumstances does not seem accurately to reflect the Police and Criminal Evidence Code H, 6.1 and Annex B.

18. The PACE Codes of Practice provide the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees. The treatment of all terrorist suspects is conducted in line with the PACE Code of Practice H.

19. PACE Code H, paragraph 6C states that a person has a right to free legal advice and representation, with paragraph 6L indicating that the right to consult or communicate in private is fundamental. The detainee is also made aware of his or her right to free independent legal advice. It is recognised that in the absence of a solicitor there will be a restriction on the ability to draw adverse inferences from silence in the event of a person being charged and brought to court. If, however, a solicitor nominated by the detainee cannot be contacted, does not wish to be contacted, or declines to attend, the detainee will be informed of their right to consult with the duty solicitor. If the detainee declines that option, adverse inferences from silence may be drawn should the person be charged and brought to court. Urgent interviews can be carried out at any stage of the investigation. The police must consider the circumstances of each investigation and the urgency of the situation in determining whether an interview should take place without the detainee accessing legal advice. The seriousness and level of risk may mean that an interview cannot be delayed simply to allow a legal advisor to be present. However, if a legal advisor arrives during the course of such an interview and it is considered that access should not be delayed in accordance with Annex B of PACE Code H, then arrangements will be made to provide access to the detainee. The Government believes that current arrangements to safeguard legal advice are reasonable and adequate, and that there is no significant "lacuna" to be filled.

20. The Government confirms the Committee's reading of PACE Code H, Annex B (as set out in its letter to John Kissane of 19 March 2008) that when the "authority to delay a detainee's right to consult privately a solicitor is given, the detainee must be allowed to choose another solicitor. Thus, while access to a particular solicitor might be delayed in exceptional circumstances, a detained person should always be offered the right of access to another solicitor." This will include access to free independent legal advice from the Duty Solicitor scheme.

CONDITIONS OF DETENTION

Paragraph 13:

The CPT calls upon the United Kingdom authorities to take the necessary measures to improve the conditions of detention at Paddington Green High Security Police Station for persons held under the Terrorism Act 2000 for longer than a few days.

21. The Government and the Police Service are acutely aware of their responsibilities with regard to detained persons and endeavour at all times to ensure that the welfare of detainees is given top priority.

22. The United Kingdom authorities are taking steps to improve the conditions of detention at Paddington Green High Security Police Station for persons held under the Terrorism Act 2000 for longer than a few days, following Lord Carlile's criticisms in June 2007 of the current detention facilities for the detention of suspects in excess of 14 days, and comments by the Joint Committee on Human Rights in its 19th Report for the 2006-07 Parliamentary session.

23. Lord Carlile noted that the conditions of custody facilities must ultimately be equivalent to those found in prisons in terms of the level of comfort, food, provision and exercise. The Metropolitan Police Service have now embarked on a project that will address these recommendations through refurbishments and, ultimately, the construction of new facilities.