



House of Lords
House of Commons
Joint Committee on
Human Rights

**The Nationality,
Immigration and
Asylum Act 2002
(Specification of
Particularly Serious
Crimes) Order 2004**

Twenty-second Report of Session
2003–04



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*Report, together with formal minutes and
appendices*

*Ordered by The House of Lords to be printed 27 October 2004
Ordered by the House of Commons to be printed 27 October
2004*

**HL Paper 190
HC 1212**

Published on 3 November 2004 by authority of the House of Lords and
the House of Commons London: The Stationery Office Limited
£0.00

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

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The current staff of the Committee are: Nick Walker (Commons Clerk), Ed Lock (Lords Clerk), Murray Hunt (Legal Adviser), Róisín Pillay (Committee Specialist), Duma Langton (Committee Assistant) and Pam Morris (Committee Secretary).

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Summary

The Joint Committee on Human Rights systematically examines every Bill presented to Parliament for compatibility with the international human rights obligations by which the UK is bound. Although it does not carry out the same systematic scrutiny of all delegated legislation, it does examine statutory instruments in respect of which a significant human rights compatibility issue has been identified.

In this report, the Committee draws the special attention of each House to concerns it has about the human rights compatibility of the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes Order) 2004. The Order is made under s. 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 which states that it applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention. Article 33(2) provides for exceptions to the principle that refugees cannot be returned to persecution (“the principle of non-refoulement”).

One exception is where, having been convicted of a particularly serious crime, the refugee constitutes a danger to the community of the country of refuge. Section 72 creates a presumption that a person has been convicted of a particularly serious crime and constitutes a danger to the community of the UK in certain circumstances, including if convicted of an offence specified by order of the Secretary of State. The Order specifies a wide range of offences for this purpose. The effect of the Order is that anyone convicted of such an offence will have his claim for asylum dismissed unless he can establish that he is not a danger to the community.

The Committee is concerned that the Order as drafted is *ultra vires* the order-making power because it includes within its scope a number of offences which do not amount to “particularly serious crimes” within the meaning of Article 33(2) of the Refugee Convention, properly interpreted. In view of the humanitarian purpose of the Convention, the exceptions to the principle of non-refoulement are to be given a restrictive interpretation. The category of “serious crimes” for the purposes of the Refugee Convention is a narrow category of offences, and the category of “particularly serious crimes” is even narrower. The inclusion of such a wide range of offences in the Order expands the exception and therefore undermines the important principle of non-refoulement. Although Article 3 ECHR, if relied on, may prevent return to persecution in such cases, claimants for asylum still suffer the detriment of being denied refugee status.

The Committee also expresses its concerns about the compatibility of s. 72 itself with the Refugee Convention.

1 Introduction

Background

1. We systematically examine every Bill presented to Parliament for compatibility with the international human rights obligations by which the UK is bound. Although we do not carry out the same systematic scrutiny of all delegated legislation, we do examine statutory instruments in respect of which a significant human rights compatibility issue has been identified.¹

2. *The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004*² (“the Order”) has been made by the Secretary of State under s. 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). The Order was made on 20 July 2004, laid before Parliament on 22 July 2004, and came into force on 12 August 2004. It is subject to annulment in pursuance of a resolution of either House.³ The Joint Committee on Statutory Instruments considered the Order in its Twenty-ninth Report of 2003–04 and determined that the special attention of both Houses did not require to be drawn to it.⁴

3. We have received written representations about the compatibility of the Order with the Refugee Convention⁵ from the Refugee Legal Centre.⁶ The United Nations High Commissioner for Refugees (UNHCR), whose task it is to supervise the application of the provisions of the Convention, has also expressed its concern to some of our members. We consider these to be serious concerns and have therefore decided to scrutinise the Order for compatibility with the UK’s international human rights obligations.⁷

4. Lord Lester has prayed against the Order and it will be debated in the House of Lords on 8 November 2004. A Prayer has been tabled against the Order in the House of Commons by the Liberal Democrats (Early Day Motion 1775).

1 See for example Sixteenth Report of Session 2002–03, *Draft Voluntary Code of Practice on Retention of Communications Data under Part 11 of the Anti-terrorism, Crime and Security Act 2001*, HL Paper 181, HC 1272, scrutinising the draft Code of Practice and draft Order laid before Parliament pursuant to s. 103 of the Anti-terrorism, Crime and Security Act 2001.

2 SI 2004 No. 1910

3 Section 72(5)(b) Nationality, Immigration and Asylum Act 2002

4 Joint Committee on Statutory Instruments, *Twenty-ninth Report of Session 2003–04*, HL Paper 174, HC 82-xxix (15 October 2004).

5 UN Convention Relating to the Status of Refugees, 1951, 189 UNTS 137, UK Treaty Series No. 39 (1954), Cmd. 9171.

6 Appendix 1

7 The representations we have received also raise wider questions about the compatibility of s. 72 of the 2002 Act itself with the UK’s obligations under the Refugee Convention. We consider this briefly below, but this report is mainly confined to the narrower question of whether the Order itself is compatible with the Refugee Convention and therefore within the scope of the Order-making power conferred by s. 72(4)(a) of the 2002 Act, in order to assist each House to decide whether or not to annul the order pursuant to s. 72(5)(b) of the 2001 Act.

The effect of the Order

5. Section 72 of the Nationality, Immigration and Asylum Act 2002 states that it applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention.⁸

6. Article 33(2) provides for an exception to the general prohibition on the expulsion or return (“refoulement”) of a refugee in Article 33(1). Article 33 provides—

Article 33 – Prohibition of expulsion or return (‘refoulement’)

1. No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

7. Section 72 of the 2002 Act provides that a person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the UK in certain circumstances, including, under s. 72(4)(a), if “he is convicted of an offence specified by order of the Secretary of State”.⁹ A presumption that a person constitutes a danger to the community is rebuttable by that person.¹⁰

8. The Secretary of State may issue a certificate that the presumption applies to a person who is appealing to the Immigration Appellate Authority¹¹ or the Special Immigration Appeals Commission on the ground (wholly or partly) that to remove him from or to require him to leave the UK would be in breach of the Refugee Convention.¹² Where such a certificate is issued, the tribunal hearing the appeal must begin substantive deliberation on the appeal by considering the certificate, and if it agrees that the presumption applies (having given the appellant an opportunity to rebut the presumption that he constitutes a danger to the community), must dismiss the appeal in so far as it relies on Refugee Convention grounds.¹³

9. The effect of the s. 72 presumption applying is therefore to exclude substantive consideration of a refugee claim. The Home Office instruction which provides guidance on the application of s. 72 states—

11. ... where an asylum seeker commits a crime that brings them within the scope of section 72, and where they do not rebut the presumption that they are a danger to the

8 Section 72(1)

9 The statutory presumption also applies where a person has been convicted outside the UK of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by the Order: s. 74(2)(b).

10 Section 72(6) of the 2002 Act

11 Or the new single-tier appeal tribunal when the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is brought into force.

12 Section 72(9)

13 Section 72(10)

community their removal from the United Kingdom is not contrary to the Refugee Convention. As such, their asylum claim should be refused on the basis of section 72 alone, without any substantive consideration of the asylum claim.¹⁴

10. The Order specifies that an offence described in any of the six Schedules to it is specified for the purposes of s. 72(4)(a) of the 2002 Act.¹⁵ The Order specifies both a very large number and a very wide range of offences. They include terrorism offences¹⁶ and related offences concerning material which might be used for terrorist purposes¹⁷ or the security of particular modes of transport.¹⁸ They also include, however, a considerable number of lesser offences, including drugs offences, immigration offences, customs and excise offences, offences against the person including a wide range of sexual offences, and offences against property such as theft and criminal damage.

11. The effect of the Order, therefore, is that conviction of any one of these offences will now trigger the statutory presumption that the person concerned has been convicted of a particularly serious crime and is a danger to the community, and can therefore have his Refugee Convention claim or ground of appeal dismissed, unless he can establish to the satisfaction of the decision-maker or appellate tribunal that he is not a danger to the community.

14 Asylum Policy Unit notice 5/2004, available on the Home Office website

15 Para. 2. The schedules to the Order reflect the differing territorial extent of offences: offences that apply throughout the UK (Sched. 1); offences that apply only in England and Wales (Sched. 2); offences that apply only in Scotland (Sched. 3); offences that apply only in Northern Ireland (Sched. 4); offences that apply only in England and Wales and Scotland (Sched. 5); and offences that apply only in England and Wales and Northern Ireland (Sched. 6).

16 Under the Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001, and the Taking of Hostages Act 1982.

17 For example under the Explosive Substances Act 1883, the Biological Weapons Act 1974, the Nuclear Materials (Offences) Act 1983, the Chemical Weapons Act 1996.

18 For example the Aviation Security Act 1982, the Aviation and Maritime Security Act 1990, and the Channel Tunnel (Security) Order 1994.

2 The Human Rights Compatibility of the Order

The compatibility question

12. The human rights compatibility issue which arises is whether the Order as drafted is incompatible with the Refugee Convention because many of the offences specified by the Order do not fall within the exceptional category of “particularly serious crimes” as envisaged by Article 33(2) of the Convention. A further issue which arises is the relationship between the Order and Article 3 ECHR.

13. Section 72 of the 2002 Act states that it applies “for the purpose of the construction and application of Article 33(2) of the Refugee Convention”.¹⁹ It is well established as a matter of domestic law that legislation which is designed to implement or give effect to international obligations must be interpreted compatibly with those international obligations.²⁰

14. The power to make an order under s. 72(4)(a) of the 2002 Act is therefore a power only to make such orders as are compatible with the Refugee Convention. To the extent that an Order made under s. 72(4)(a) of the 2002 Act is incompatible with the Refugee Convention, it is therefore *ultra vires* the enabling power.

15. The simple question which arises is therefore whether an Order which purports to bring such a wide range of offences within the scope of “particularly serious offences” in Article 33(2) of the Refugee Convention is compatible with the proper interpretation of that Article.

The proper interpretation of Refugee Convention Article 33(2)

16. The Order purports to be an implementation of Article 33(2) of the Refugee Convention. That provision allows for an exception to the principle of non-refoulement contained in Article 33(1). The principle of non-refoulement set out in Article 33(1) is the very foundation of the international system for the protection of refugees. It expresses a principle which is now widely regarded as a principle of customary international law. No reservations to the principle are allowed.²¹

19 The Refugee Convention has been given legislative effect in the UK in various ways. Section 2 of the Immigration and Asylum Appeals Act 1993, for example, provides that “Nothing in the Immigration Rules shall lay down any practice which would be contrary to the Geneva Convention.” Section 84(1)(g) of the Nationality, Immigration and Asylum Act 2002 provides that it is a ground of appeal against an immigration decision “that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom’s obligations under the Refugee Convention.”

20 See for example *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116. The House of Lords has since gone further and held that not only implementing legislation but executive action which is expressly taken on the basis of an international obligation must be based on a correct interpretation of that obligation, and will be unlawful to the extent that it is based on a wrong interpretation of that obligation, even where that obligation is not incorporated as such into domestic law: see *R v Secretary of State for the Home Department, ex p. Launder* [1997] 1 WLR 839 at 867 (Lord Hope).

21 Article 42 of the Refugee Convention

17. The only exceptions to the principle are those set out in Article 33(2). The exceptions are twofold: a refugee may be returned to persecution

- (1) if there are reasonable grounds for regarding him as a danger to the security of the country in which he is, or
- (2) if, having been convicted of a particularly serious crime, he constitutes a danger to the community of that country.

18. The Order therefore raises the question of the proper interpretation of the second exception to the principle of non-refoulement. The effect of the Order is to deem any person who has been convicted of any of the offences it contains to have been convicted of a “particularly serious crime” and to be a danger to the community for the purposes of Article 33(2), subject to their proving that they do not constitute a danger to the community.

19. The phrase “particularly serious crimes” in Article 33(2) must be interpreted in the context of the Refugee Convention as a whole. In particular, it must be interpreted in the light of Article 1 of the Convention which contains provisions whereby persons who otherwise have the characteristics of refugees are excluded from refugee status. Article 1F of the Convention sets out the categories of people who are not considered to be deserving of international protection. It provides—

1F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that—

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

20. The most significant exclusion clause for present purposes is that contained in Article 1F(b), which provides for the exclusion from refugee status of persons who have committed a “serious non-political crime” outside the country of refuge. The way in which “serious crime” is interpreted in this context is obviously significant for the proper interpretation of the phrase “particularly serious crimes” in Article 33(2).

21. Guidance on the proper interpretation of both Article 1F(b) and Article 33(2) is available from the UNHCR. The UNHCR is responsible for supervising the application of the provisions of the Refugee Convention, and by Article 35 of the Convention Contracting States have undertaken to co-operate with the Office of the UNHCR in the exercise of its functions. States are therefore expected to pay due regard to the UNHCR’s interpretation of the relevant refugee instruments.

22. The most up to date guidance from the UNHCR in relation to Articles 1F and 33(2) is to be found in its *Guidelines on International Protection: Application of the Exclusion*

*Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*²² and the accompanying *Background Note* which forms an integral part of the Guidelines.

23. The UNHCR Guidelines and Background Note on the application of the exclusion clauses explain that the rationale for the exclusion clauses in Article 1F is that certain acts are so grave as to render their perpetrators undeserving of international protection as refugees.²³ Their purpose is to deprive those guilty of heinous acts, and serious common crimes, of international refugee protection and to ensure that such persons do not abuse the institution of asylum in order to avoid being held legally accountable for serious criminal acts. At the same time, while these underlying purposes must be borne in mind when interpreting the exclusion clauses, they must be viewed in the context of the overriding humanitarian objective of the Refugee Convention. Given the possible serious consequences of exclusion from refugee status, the exclusion clauses should always be interpreted restrictively and used with great caution, and only after a full assessment of the individual circumstances of the case.

24. The Guidelines and the Background Note go on to give some guidance on the meaning of “serious crime” in Article 1F(b).²⁴ The most comprehensive guidance is contained in the Background Note.

38. The term ‘serious crime’ obviously has different connotations in different legal systems. It is evident that the drafters of the 1951 Convention did not intend to exclude individuals in need of international protection simply for committing minor crimes. Moreover the gravity of the crime should be judged against international standards, not simply by its characterisation in the host State or country of origin. ...

39. In determining the seriousness of the crime the following factors are relevant

- the nature of the act;
- the actual harm inflicted;
- the form of procedure used to prosecute the crime;
- the nature of the penalty for such a crime;
- whether most jurisdictions would consider the act in question as a serious crime.

40. The guidance in the Handbook that a ‘serious’ crime refers to a ‘capital crime or a very grave punishable act’ should be read in the light of the factors listed above. Examples of ‘serious’ crimes include murder, rape, arson and armed robbery. Certain other offences could also be deemed serious if they are accompanied by the use of deadly weapons, involve serious injury to persons, or there is evidence of serious habitual criminal conduct and other similar factors. On the other hand, crimes such as petty theft or the possession for personal use of illicit narcotic substances would not meet the seriousness threshold of Article 1F(b).

22 HCR/GIP/03/05, 4 September 2003. The Guidelines complement the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* HCR/IP/4/Eng/REV.1 (re-edited, Geneva, January 1992). This Report refers to the more up to date Guidelines and the Background Note rather than the Handbook.

23 *Guidelines*, para. 2; *Background Note*, paras. 3–4

24 *Guidelines*, para. 14; *Background Note*, paras. 38–40

25. The Guidelines and Background Note also provide some guidance on the relationship between Articles 1F(b) and 33(2) of the Refugee Convention—

10. Article 1F should not be confused with Article 33(2) ... Unlike Article 1F which is concerned with persons who are not eligible for refugee status, Article 33(2) is directed to those who have already been determined to be refugees. Articles 1F and 33(2) are thus distinct legal provisions serving very different purposes. Article 33(2) applies to refugees who become an extremely serious threat to the country of asylum due to the severity of crimes perpetrated by them. It aims to protect the safety of the country of refuge and hinges on the assessment that the refugee in question poses a major actual or future threat. For this reason, Article 33(2) has always been considered as a measure of last resort, taking precedence over and above criminal law sanctions and justified by the exceptional threat posed by the individual—a threat such that it can only be countered by removing the person from the country of asylum.²⁵

...

44. Article 1F(b) also requires the crime to have been committed ‘outside the country of refuge prior to [the individual’s] admission to that country as a refugee’. ... Individuals who commit ‘serious non-political crimes’ within the country of refuge are subject to that country’s criminal law process, and in the case of particularly grave crimes to Articles 32 and 33(2) of the 1951 Convention; they do not fall within the scope of the exclusion clause under Article 1F(b). The logic of the Convention is thus that the type of crimes covered by Article 1F(b) committed after admission would be handled through rigorous domestic criminal law enforcement and/or the application of Article 32 and Article 33(2) where necessary.

26. The UNHCR guidance confirms what to us appears from the wording of Article 33(2) compared to Article 1F(b): that the phrase “particularly serious crimes” in Article 33(2) of the Refugee Convention has a narrower meaning than the phrase “serious crimes”, which can lead to the exclusion from refugee status under Article 1F(b). Where a refugee who has already been recognised as such commits a serious non-political crime in the country of refuge, this should be dealt with through the ordinary criminal law process of that country; it is only in the case of “particularly grave crimes” that Article 33(2) applies.

Assessment of compatibility

27. We therefore have grave concerns about the compatibility of the Order with the Refugee Convention, properly interpreted. In our view, the crimes included in the Order go far beyond what can be regarded as “particularly serious crimes” for the purposes of Article 33(2). The list of crimes which are specified for the purposes of s. 72(4)(a) of the 2002 Act includes a number of crimes which cannot on any view be regarded as “particularly serious crimes” as that phrase is to be interpreted in the context of the Refugee Convention. It includes, for example, theft, entering a building as a trespasser intending to steal, aggravated taking of a vehicle, criminal damage, and possession of controlled drugs. We doubt whether these offences, per se, would amount to “serious crimes” for the purposes of Article 1F(b), and are even more doubtful that they are capable of amounting to “particularly serious crimes” for the purpose of Article 33(2).

²⁵ *Guidelines*, para. 4; *Background Note*, para. 10

28. By specifying such offences, the Order is in effect expanding the exceptions to the important principle of non-refoulement, and thereby weakening the strength of that principle. In our view this is incompatible with the Refugee Convention properly interpreted. In view of the humanitarian purpose of that Convention, the exceptions to the principle of non-refoulement in Article 33(2) should be given a restrictive interpretation, not an interpretation which expands their scope and correspondingly weakens the principle itself. We draw this matter to the attention of each House.

The relationship with Article 3 ECHR

29. We have considered whether, even assuming that the Order would in principle permit refoulement in circumstances which would be in breach of Article 33 of the Refugee Convention, such refoulement would in practice be prevented by the operation of Article 3 ECHR which therefore saves the Order from incompatibility with the Refugee Convention.

30. In our view, although there is as yet no definitive answer to the question whether the scope of protection of Article 3 ECHR is as wide as that of the principle of non-refoulement, it seems most unlikely in practice that the Order will lead to the return of refugees to persecution, because they will continue to be able to rely on human rights grounds even in cases where the machinery of s. 72 of the 2002 Act and the Order operate to preclude consideration of their claim to protection under the Refugee Convention.²⁶ Article 3 ECHR is wider than Article 33 of the Refugee Convention in that it requires states not to deport individuals to jurisdictions where they will be exposed to the risk of treatment contrary to Article 3, even if that individual poses a risk to the national security of the state concerned: *Chahal v UK*. We think it is likely that an individual who is treated as being within the scope of Article 33(2) by operation of the Order and the statutory presumption, would nevertheless still be protected against return by the operation of Article 3 ECHR, provided they are aware of their right to rely on it.. We would like to know how the Government proposes to ensure that individuals whose asylum claims are rejected on s. 72 grounds are aware of their right to rely on the ECHR.

31. Even assuming that such individuals will be informed of this right, this does not mean to say that the Order is compatible with the Refugee Convention merely because it is unlikely to lead to refoulement given the operation of Article 3 ECHR. As explained above, the effect of the provisions of s. 72 of the 2002 Act is to preclude consideration of a claim to refugee status where the statutory presumption applies, as it would in the case of an individual who has committed any of the crimes specified in the Order. It follows that, even if the effect of the Order is not refoulement, it is the deprivation of an opportunity to establish refugee status, and the various concomitant advantages which come with such status. In short, it operates like an exclusion clause, preventing a person who would otherwise qualify for refugee status from being recognised as such because of their having committed certain specified offences. The scope of the Order is such as to go beyond the category of “serious crimes” identified in Article 1F(b). As presently drafted, the Order will therefore exclude persons from the protection of the Convention in more cases than

²⁶ Section 72(10) only operates to preclude consideration of a Refugee Convention ground of appeal, not a ground based on the Human Rights Act 1998.

envisaged by Article 1F, and to the extent that it does so it is incompatible with the UK's obligations under the Convention.

3 The compatibility of s. 72 of the 2002 Act with the Refugee Convention

32. As we noted above, this report is confined to the question whether the Order is compatible with the Refugee Convention and therefore *intra vires* the order-making power in s. 72(4)(a) of the 2001 Act. We have concluded that it is not.

33. In the course of our consideration of this question, however, it has become clear to us that the very scheme of s. 72 itself may be incompatible with the Refugee Convention in a number of respects.²⁷ We have concerns, for example, about the appropriateness of a conclusive presumption in relation to whether a crime is “particularly serious”. It is clear to us that the applicability of the exceptions to the principle of non-refoulement in Article 33(2) must be judged on a case-by-case basis, taking into account all the individual circumstances of the case, including the particular circumstances of the commission of the specified offence.²⁸ There may, for example, have been significant mitigating circumstances surrounding the offence which lessen its seriousness. By the same token, there may be aggravating factors which make an otherwise less serious offence more serious, for example the use of a deadly weapon, or serious injury to people. Section 72 precludes any consideration of such factors, because it provides for a conclusive (i.e. non-rebuttable) presumption that certain offences are “particularly serious crimes” for the purposes of Article 33(2).

34. We are also concerned that s. 72 of the 2001 Act reverses the burden of proof in relation to whether a refugee is a “danger to the community”. Article 33(2) appears to presuppose that the burden is on the State to establish that an individual, having been convicted of a particularly serious crime, is also a danger to the community.²⁹ The effect of section 72 of the 2002 Act, however, is that where an offence of a particular kind has been committed by a refugee or a claimant for refugee status, they are presumed both to have committed a particularly serious offence and to be a danger to the community, unless they can demonstrate that they are not a danger to the community.³⁰

35. We are further concerned that by adopting a rebuttable presumption approach to the applicability of Article 33(2) of the Refugee Convention, s. 72 of the 2002 Act precludes the application of a proper proportionality test to the particular circumstances of an individual case.³¹ In determining whether the exception to the principle of non-refoulement in Article 33(2) applies in a particular case, it is necessary for a balancing exercise to be carried out,

27 In addition to the specific concerns which follow, we have a more general concern that s. 72 confuses exclusion from protection, which is dealt with by Article 1F, with exceptions to the principle of non-refoulement, which is dealt with by Article 33(2). As the UNHCR Guidance makes clear, these are distinct provisions with distinct purposes. Section 72 of the 2002 Act conflates them (see eg. s. 72(1): “This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection)”). ‘Exclusion from protection’ under the Refugee Convention refers to Article 1F not Article 33(2).

28 On the need for a full assessment of the individual circumstances of the case, see *Guidelines*, para. 2.

29 Cf. the burden of proof with regard to exclusion under Article 1F rests with the State, and the applicant for refugee status should be given the benefit of the doubt: *Guidelines*, para. 34.

30 The relevant Home Office Guidance, APU notice 5/2004, states at para. 12: “Where a person seeks to argue that they are not a danger to the community, the burden will be on them (not on the Secretary of State) to show it.”

31 On the importance of a proportionality test to ensure that the gravity of the offence in question is weighed against the consequences of exclusion from refugee status, see the UNHCR *Guidelines*, above, at para. 24.

weighing the nature of the offence and the degree of danger to the community on the one hand against the degree of persecution feared on the other if the individual were to be returned. Section 72 of the 2002 Act gives effect to an approach to the application of Article 33(2) which has no regard to the individual circumstances of each case other than to the extent that the individual can prove that he is not a danger to the community. Even this limited opportunity to consider the individual circumstances of the case is narrowly circumscribed: the seriousness of the offence is not relevant to this inquiry (see above), and the gravity of the fear or threat of persecution is expressly ruled out as a relevant consideration.³² The only question is whether the individual can show that he is not a danger to the community. If he cannot prove this, Article 33(2) is deemed to apply simply by virtue of a particular type of offence having been committed.

36. We do not, however, go any further into the question of the compatibility of s. 72 of the 2002 Act with the Refugee Convention, as no purpose would be served reporting to Parliament on the compatibility of a provision which has already been enacted and which there is no imminent occasion for Parliament to reconsider. **We merely draw to the attention of each House our concerns about the compatibility of s. 72 of the 2002 Act with Article 33(2) of the Refugee Convention.** We may return to this question at an appropriate juncture in the future.

³² Section 72(8), providing that s. 34(1) of the Anti-terrorism, Crime and Security Act 2001 (no need to consider gravity of fear or threat of persecution) applies for the purposes of considering whether the presumption that a person constitutes a danger to the community has been rebutted. The Home Office guidance in APU notice 5/2004 states at para. 18 that in a case where s. 72 applies the refusal of the asylum claim should be made purely on s. 72 grounds and "there should be no consideration of the fear of persecution aspect of the asylum claim within the Reasons for Refusal Letter."

4 Conclusion

37. **We conclude that, on a proper interpretation of Article 33(2) of the Refugee Convention, the Order as drafted is incompatible with that provision because it includes within its scope a number of offences which do not amount to “particularly serious crimes” within the meaning of Article 33(2). In our view the Order is therefore ultra vires the order-making power. We also have concerns about the compatibility of s. 72 of the 2002 Act itself with the Refugee Convention. We draw these matters to the attention of each House.**

38. We have written to the Minister of State at the Home Office asking him a number of questions about the human rights compatibility concerns we have about the Order.³³ We may return to the matter in a future report in light of the Minister’s answer.

Formal Minutes

Wednesday 27 October 2004

Members Present:

Jean Corston MP, in the Chair

Lord Bowness	Mr David Chidgey MP
Lord Campbell of Alloway	Mr Kevin McNamara MP
Lord Judd	Mr Richard Shepherd MP
Lord Lester of Herne Hill	Mr Paul Stinchcombe MP
Lord Plant of Highfield	Mr Shaun Woodward MP
Baroness Prashar	

The Committee deliberated.

* * * * *

Draft Report [The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 38 read and agreed to.

Resolved, That the Report be the Twenty-second Report of the Committee to each House.

Ordered, That certain papers be appended to the Report.

Ordered, That the Chairman do make the Report to the House of Commons and that Baroness Prashar do make the Report to the House of Lords.

[Adjourned till Wednesday 10 November at a quarter past Four o'clock.]

Appendices

Appendix 1: Memorandum from the Refugee Legal Centre

INTRODUCTION

1. This paper is produced to draw the Joint Committee's attention to the Refugee Legal Centre's concerns arising out of section 72 of the Nationality, Immigration and Asylum Act 2002 ("the section") and the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 SI 191 0/2004 ("the Order").

2. Hereafter the section and Order are collectively referred to as "the UK legislation".

HOW SECTION 72 OPERATES

3. In brief, the section operates so as to exclude consideration of a refugee claim. Section 72(2), (3) and (4) establish circumstances in which a person may be presumed to:

- (a) "have been convicted of a particularly serious crime"; and
- (b) "constitute a danger to the community of the United kingdom."

4. If the Secretary of State issues a certificate, under section 72(9)(b) that any of section 72(2), (3) or (4) apply, any appeal before the Immigration Appellate Authority or Special Immigration Appeals Commission shall exclude consideration of Refugee Convention grounds of appeal unless either body disagrees that the presumption applies.

5. The section makes express that its purpose is for "the construction and application of Article 33.2 of the Refugee Convention",¹ by which a refugee may be returned to a country in which he is at risk of persecution if:

"... there are reasonable grounds for regarding [him] as a danger to the security of the country in which he is, or [I having been convicted by a final judgment of a particularly serious crime, [he] constitutes a danger to the community ... "

THE PURPOSE OF THE ORDER

6. The Order now lists several hundred offences, of which conviction in the UK will engage the presumption in the section.

WHO IS NOW CAUGHT BY THE SECTION

7. A person may be certified, and presumed to be precluded from consideration of their claim to be a refugee, if:

- (a) convicted of one of the offences listed in the Order;²
- (b) convicted of any offence in the UK and sentenced to at least two years imprisonment;³

1 Section 72(1)

2 Section 72(4)(a)

3 Section 72(2)

(c) convicted of any offence outside the UK and sentenced to at least two years imprisonment if he could have been sentenced to a period of two years if convicted of a similar offence in the UK;⁴ or

(d) convicted of an offence outside the UK and the Secretary of State certifies that the offence is in his opinion similar to an offence specified by the Order.⁵

THE RELATIONSHIP BETWEEN THE UK LEGISLATION AND THE REFUGEE CONVENTION

8. On its face the UK legislation is simply an implementation of one aspect of the Refugee Convention. However, that impression is simply inaccurate. Consideration of the Convention demonstrates that far from implementing Article 33.2, the UK legislation goes far beyond the scope of the Convention and, indeed, appears to have very little at all to do with the Convention.

9. If implementing Article 33.2, one would expect that the UK legislation would mirror Article 33.2, which is one provision among several with a particular purpose which must be understood by reference to the other Convention provisions.

10. Thus, Article 2 enunciates an obligation upon refugees to respect the laws of the country in which they find refuge. This requirement does not need, and no requirement is stated, that mere failure to abide by such laws will or should lead to loss of status as opposed to prosecution as any other offender would expect.

11. Article 9 recognises that there may be a need for a state to introduce measures in respect of refugees, who have sought or been provided refuge within its borders, that are essential to national security. This provision does not envisage loss or denial of status or refuge.

12. Article 32 sets out a very different regime than Article 33 for refugees lawfully resident in the state. It may be arguable that Article 32 would apply to *sur place* refugees, which if correct indicates certain persons may be subject to the UK legislation, who would not be subject to the Convention provision the legislation purports to implement.

13. The UK legislation, by being so broad, also empowers the Secretary of State to exclude consideration of a claim to refugee status on the grounds of an offence, which constitutes expression of the refugee's political activity at the heart of his refugee claim (consider paragraphs 7(c) and (d) of these notes). Thus, the reason the refugee is at risk of persecution may under the UK legislation provide the reason why he is precluded from establishing his refugee status.

14. Moreover, Article 33.2 is not an exclusion clause. Whereas Articles 1D and 1F provide for exclusion from refugee status, Article 33.2 provides circumstances where the country of refuge may remove a refugee. Thus the effect of the UK legislation is outwith the ambit of the Convention since the UK legislation effectively precludes determination of a refugee's status.⁶ The consequences of this over-reach of the UK legislation are discussed further below.

15. It should also be recalled that the relevant appeal right has always been on grounds that "removal of the appellant from the United Kingdom in consequence of the

4 Section 72(3)

5 Section 72(4)(b)

6 Following *Saad, Diriye and Osorio* [2001] EWCA Civ 2008, the IAA is now firmly established as empowered to determine refugee status

immigration decision would breach the United Kingdom's obligations under the Refugee Convention".⁷ Consideration there is to the whole of the Convention. Accordingly, Article 33.2 was effectively within the scope of the appeals provisions in any event, so no implementing legislation was required.

16. Further fundamental discrepancies between the UK legislation and the Convention provisions are addressed in the following four sections of this paper.

FAILURE TO HAVE ANY REGARD TO PROPORTIONALITY

17. Proportionality is an implicit aspect within human rights legislation, including the Refugee Convention. Thus the concepts of what constitutes a particularly serious crime and when a person constitutes a danger to the community ought to be interpreted in any particular case in such way as is proportionate to the risk entailed in removing a refugee.

18. The principle of proportionality within the Convention was a matter approved by the delegates and appears within the *Travaux Préparatoires*. It is also a concept clearly identified by leading academic writers upon the Convention.⁸

19. That principle finds no expression within the UK legislation. Moreover, the extent of the offences caught by the Order is remarkable and, on its face, manifestly disregards any principle of proportionality.

20. That is further confirmed by considering the effect of the Order in relation to section 72(4)(b), the provisions of which are identified at paragraph 7(d) of this paper. The power of the Secretary of State to apply a certificate to preclude consideration of a person's refugee claim, where that person has committed an offence outside the UK which the Secretary of State considers to be similar to one listed by the Order, is potentially of very wide application. Again, such breadth of potential application is wholly outwith any principle of proportionality.

21. The application of proportionality may be further considered by reference to European Community law⁹ and the European Convention on Human Rights.¹⁰

FAILURE TO ENSURE THAT OFFENCES CAUGHT CONSTITUTE PARTICULARLY SERIOUS CRIMES

22. The Refugee Convention itself recognises a difference between particularly serious crimes and serious crimes. Article 1 F(b) excludes from the Convention persons in respect of whom there are:

"serious reasons for considering that... he has committed a serious non-political crime outside the country of refuge prior to his admission to that country ..."

23. However, the extent of the list introduced by the Order leaves no realistic room for a distinction between crimes, serious crimes and particularly serious crimes. On its face, this

7 Section 84(1)(g) of the Nationality, Immigration and Asylum Act 2002; but it is noted that previous appeal provisions were to the same effect and in very similar terms.

8 See for example, Professor Guy Goodwin-Gill *The Refugee in International Law* (2nd ed.) OUP at p. 140 ("... the application of Article 33(2) ought always to involve the question of proportionality, with account taken of the nature of the consequences likely to befall the refugee on return") and fn 107.

9 See ECJ, Case 36/75 *Rutili* [1975] ECR 1 concerning expulsion of EU citizens on public order grounds: justification for expulsion must at a minimum be that the person constitutes a genuine and sufficiently serious threat to public security; where it may be suggested that EU citizens should be treated differently, it must be recalled that: (a) the UK has an international obligation towards refugees; and (b) the risk of expelling a refugee are likely of a far greater magnitude than returning an EU citizen to his country of nationality.

10 See *Chahal v UK* (1996) 23 EHRR 413

observation indicates that the UK legislation is not, as it purports, simply implementation of Article 33.2.

24. Similarly, the power of the Secretary of State to certify convictions outside the UK as being in his opinion similar to those listed reveals a scope far beyond Article 33.2.

FAILURE TO GIVE EFFECT TO THE APPLICATION OF “DANGER TO THE COMMUNITY”

25. Similar to concerns indicated in the preceding two sections, is the observation that the very wide extent of the Order, and the potential for the Secretary of State to certify offences outside the UK as similar to an offence listed within the Order, allows on its face for inclusion of persons who it is difficult to see could constitute a realistic danger to the community having regard to the particular offence. For example:

- A graffiti artist may be guilty of criminal damage, and caught by the Order, but it is difficult to see how such a person constitutes a *danger* to the community.
- A person guilty of infanticide (where the crime is clearly directed at the offender’s children) will have committed a very serious and appalling crime in the eyes of the community, but having regard to the nature of the crime it is again difficult to see how he constitutes a danger *to the community*.

REVERSAL OF THE BURDEN OF PROOF

26. Article 33.2 (see paragraph 5 of these notes) provides that there must be “reasonable grounds” for believing that the person has committed a particularly serious offence and constitutes a *danger* to the community.

27. However, the operation of presumptions is a blanket response and fails to respect that need for “reasonable grounds”. Effectively, the Secretary of State has reversed the burden of proof because he has evaded his responsibility to have reasonable grounds for believing someone to be a danger, or for believing their offence to be particularly serious and has introduced a presumption, which the refugee claimant must rebut on appeal.¹¹

HUMAN RIGHTS CONSEQUENCES OF THE UK LEGISLATION

28. It is firstly objectionable that the UK legislation, unlawfully by reference to the terms of the Convention, effectively excludes a person from establishing their refugee status. However, it must be recognised that in all, but perhaps the most exceptional of cases, the individual will retain protection against removal by virtue of Article 3 of the Human Rights Convention.¹²

29. However, the exclusion of refugee status determination has further consequences.

30. A refugee caught by the UK legislation will not be recognised as such. This is of importance because other statuses, which may provide protection to a person seeking asylum in the UK, fall outside the Immigration Rules. Thus Humanitarian Protection and Discretionary Leave are not, despite earlier stated intentions, recognised by the Immigration Rules.

¹¹ Section 72(6)

¹² This is, of course, itself heavily ironic because the only action by the country of refugee allowed for under Article 33.2 of the Refugee Convention (which the UK legislation purports to be implementing) is the very thing that Article 3 of the Human Rights Convention will prevent: removal.

31. A person is, therefore, precluded from appealing to an Adjudicator on the grounds that failure to recognise or grant these statuses is “not in accordance with Immigration Rules”.¹³ Even if a person may be able to prevent removal on Article 3 grounds, they may be disadvantaged in not being able to secure a particular status, with the attendant rights and entitlements that go with this (e.g. to work, to study, to claim benefits, if settled to seek family reunion etc.).

32. Moreover, even if status is granted, it would appear from the Asylum Policy Instructions that, once labelled a danger, such a person would be limited to 6 months Discretionary Leave, at the expiry of which a further 6 months could be applied for. No greater degree of settlement could be applied for until 10 years of such 6 months blocks of Discretionary Leave had been completed.

33. This would effectively preclude family reunion.

34. Moreover, it would create a situation for the refugee where his position was so unsettled that seeking to establish or develop an ordinary private life would be very difficult. It would likely interfere with his ability to form settled relationships, start a family, obtain work, undertake study or pursue certain health regimes.

35. These constitute unnecessary and disproportionate interferences with a person’s private and family life (Article 8) rights.

36. Moreover, insofar as the UK legislation is beyond the scope of the Refugee Convention, it is arguable that these interferences are unlawful.

NON-REFUGEES

37. It is noted that the UK legislation has consequences for non-refugees also. In the preceding section the application of Discretionary Leave for those thought to be undesirable by reason of their “character, conduct or associations”¹⁴ is considered. However, if the crimes listed in the Order become established as sufficient to include refugees within such an ‘undesirable’ category, it must be expected that this approach to what is undesirable will extend to others seeking protection on Human Rights grounds.

INTRODUCTION OF ARBITRARINESS

38. Having regard to the very wide, and too wide, extent of the UK legislation, it may be thought unlikely that the Secretary of State will use his powers in many, perhaps even the great majority, of cases potentially falling within the UK legislation’s ambit.

39. That, however, is of no comfort. On the contrary, if correct, it merely speaks of the great potential for arbitrariness in the use of these powers. At worst, it is feared that press headlines in particular cases, or arising out of apparently similar facts to any particular case, would be likely to influence the application of a certificate in the future.

40. Doubtless these fears would be rejected by the Secretary of State. However, having regard to how wide is the extent of the offences listed in the Order and of the UK legislation generally, it is otherwise difficult to see why the Secretary of State should be accruing such power to himself.

13 Appeals on these grounds may be brought under Section 84(1)(a) of the Nationality, Immigration and Asylum Act 2002

14 See API’s on Humanitarian Protection and Discretionary Leave

JUDICIAL PROTECTION/LEGAL SAFEGUARDS

41. It has previously been noted that the introduction of a rebuttable presumption reverses the burden of proof and immediately renders less than adequate ordinary legal safeguards.

42. These concerns are dramatically increased by reason of recent events. The tribunal system through which decisions will be reviewed is shortly to be significantly curtailed. The provision of legal aid, and consequently access to good legal representation, has recently also been curtailed. The effect is that very wide, and unnecessary, powers are being accrued to the Secretary of State to deny a person the opportunity of establishing their refugee status at the very time that the legal safeguards, which might militate against such powers, have been greatly reduced.

43. Moreover, it is right to note that the general tendency in matters of what constitutes “danger to the community” is that a decision-maker will defer to the Secretary of State. Such deference is likely to be all the more the case as regards matters litigated within a tribunal system rather than before the senior judiciary, and where access to the senior judiciary (whether in the High Court or Court of Appeal) has become increasingly restricted.

44. Moreover, given the curtailment of appeal rights, there must be increased scope for inconsistent decision-making as to what are the circumstances, in which a person does or does not constitute a *danger* to the community.

MINIMUM REQUIREMENTS TO ADDRESS THESE CONCERNS

45. Having regard to the concerns outlined previously, we would consider the following to be minimum requirements:

- Reconsideration of what constitutes a particularly serious crime, so as to give proper effect to the terms particularly and indeed serious.
- Clear guidance upon when a person can be considered to constitute a danger to the community, which should reflect European standards ensuring that dangers must be genuine, serious and of proportionate magnitude.
- Preservation of the burden of proof as resting upon the Secretary of State to establish there to be “reasonable grounds” for believing an offence to have been committed, for it to be particularly serious and for the person to constitute a danger to the community requires revision of the legislation.

7 October 2004

Appendix 2: Letter from the Chair to Des Browne MP, Minister of State, Home Office

My Committee has agreed a Report on the above Order, which we expect to publish next week. We carried out an initial examination of the Order which has caused us to have serious concerns that as drafted it is incompatible with the UK's obligations under the Refugee Convention, and is therefore *ultra vires* the order-making power, because it includes within its scope a number of offences which do not amount to "particularly serious crimes" within the meaning of Article 33(2) of the Convention properly interpreted.

The question which concerns the Committee is whether an Order which purports to bring such a wide range of offences within the scope of "particularly serious offences" in Article 33(2) of the Refugee Convention is compatible with the proper interpretation of that Article.

In light of the UNHCR *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*¹⁵ and the accompanying *Background Note* which forms an integral part of the Guidelines, the exceptions to the principle of non-refoulement in Article 33(2) of the Refugee Convention should be interpreted restrictively. Whether a crime is a "serious crime" for the purposes of the Refugee Convention depends on a number of factors, including the nature of the act, the actual harm inflicted, the form of procedure used to prosecute the crime, the nature of the penalty for the crime, and whether most jurisdictions would consider the act in question to be a serious crime. The category of "particularly serious crimes" for the purposes of Article 33(2) is an even narrower category.

The Committee is concerned that, in light of the overall humanitarian purpose of the Refugee Convention, and the UNHCR's Guidance on its interpretation, the Order's specification of such a wide range of offences, including, for example, theft, entering a building as a trespasser intending to steal, aggravated taking of a vehicle, criminal damage, and possession of controlled drugs, is incompatible with the Refugee Convention properly interpreted, because it effectively expands the exceptions to the principle of non-refoulement, and thereby weakens the protection afforded by the principle itself.

In view of these concerns we would be grateful for your response to the following questions:

Question 1: In relation to each of the offences specified in the Order, which of the factors identified in para. 14 of the UNHCR's Guidelines and para. 39 of the Background Note are relied on as indicating that the offence in question amounts to a "serious crime"?

Question 2: What additional criteria have been relied on by the Government to determine that the specified offences are not only "serious crimes" within the meaning of the Refugee Convention, but *particularly* serious crimes within the meaning of Article 33(2)?

Question 3: Which of the specified offences are triable on indictment only?

¹⁵ HCR/GIP/03/05, 4 September 2003. The *Guidelines* complement the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* HCR/IP/4/Eng/REV.1 (re-edited, Geneva, January 1992).

Question 4: Which of the specified offences carry a maximum sentence of life imprisonment?

Question 5: How will the particular circumstances of an offence committed by an individual be taken into account in deciding under the Order whether a “particularly serious crime” has been committed for the purposes of deciding whether Article 33(2) applies?

Question 6: Who will bear the burden of proof on the issue of whether an individual is a danger to the community?

Question 7: How will the gravity of the fear or risk of persecution be taken into account in deciding whether Article 33(2) applies?

Question 8: In light of the clear distinction between Article 1F(b) of the Refugee Convention, which deals with serious crimes committed outside the country of refuge, and Article 33(2) which deals with particularly serious crimes committed within the country of refuge, does the Secretary of State intend to exercise his power under s. 74(2)(b) of the 2002 Act to certify that in his opinion an offence committed outside the UK is similar to an offence specified by the Order?

Question 9: In light of the above, how does the Government consider the Order to be compatible with the UK’s obligations under the Refugee Convention, interpreted in accordance with its object and purpose, and under Article 26 of the Vienna Convention on the Law of Treaties, to perform binding treaty obligations in good faith?

Question 10: In light of the guidance given in Asylum Policy Unit instruction 5/2004 para. 11, that where s. 72 of the 2002 Act applies an asylum claim should be refused without any substantive consideration, how does the Government propose to ensure that the individual concerned is aware of their right to rely on Article 3 ECHR?

The Committee would be grateful for a reply to these questions by 10 November. If you are able to get a response to us sooner than that, if possible before the 8 November debate on a prayer to annul the Order to be held in the House of Lords, that would be extremely helpful.

27 October 2004

Reports from the Joint Committee on Human Rights since 2001

The following reports have been produced

Session 2003–04

First Report	Deaths in Custody: Interim Report	HL Paper 12/HC 134
Second Report	The Government's Response to the Committee's Ninth Report of Session 2002-03 on the Case for a Children's Commissioner for England	HL Paper 13/HC 135
Third Report	Scrutiny of Bills: Progress Report	HL Paper 23/HC 252
Fourth Report	Scrutiny of Bills: Second Progress Report	HL Paper 34/HC 303
Fifth Report	Asylum and Immigration (Treatment of Claimants, etc.) Bill	HL Paper 35/HC 304
Sixth Report	Anti-terrorism, Crime and Security Act 2001: Statutory Review and Continuance of Part 4	HL Paper 38/HC 381
Seventh Report	The Meaning of Public Authority under the Human Rights Act	HL Paper 39/HC 382
Eighth Report	Scrutiny of Bills: Third Progress Report	HL Paper 49/HC 427
Ninth Report	Naval Discipline Act 1957 (Remedial) Order 2004	HL Paper 59/HC 477
Tenth Report	Scrutiny of Bills: Fourth Progress Report	HL Paper 64/HC 503
Eleventh Report	Commission for Equality and Human Rights Structure, Functions and Powers	HL Paper 78/HC 536
Twelfth Report	Scrutiny of Bills: Fifth Progress Report	HL Paper 93/HC 603
Thirteenth Report	Scrutiny of Bills: Sixth Progress Report	HL Paper 102/HC 640
Fourteenth Report	Asylum & Immigration (Treatment of Claimants, etc.) Bill: New Clauses	HL Paper 130/HC 828
Fifteenth Report	Civil Partnership Bill	HL Paper 136/HC 885
Sixteenth Report	Commission for Equality and Human Rights: The Government's White Paper	HL Paper 156/HC 998
Seventeenth Report	Scrutiny of Bills: Seventh Progress Report	HL Paper 157/HC 999
Eighteenth Report	Review of Counter-terrorism Powers	HL Paper 158/HC 713
Nineteenth Report	Children Bill	HL Paper 161/HC 537
Twentieth Report	Scrutiny of Bills: Eighth Progress Report	HL Paper 182/HC 1187

Twenty-first Report	The International Covenant on Economic, Social and Cultural Rights	HL Paper 183, HC 1188
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Session 2002–03

First Report	Scrutiny of Bills: Progress Report	HL Paper 24/HC 191
Second Report	Criminal Justice Bill	HL Paper 40/HC 374
Third Report	Scrutiny of Bills: Further Progress Report	HL Paper 41/HC 375
Fourth Report	Scrutiny of Bills: Further Progress Report	HL Paper 50/HC 397
Fifth Report	Continuance in force of sections 21 to 23 of the Anti-terrorism, Crime and Security Act 2001	HL Paper 59/HC 462
Sixth Report	The Case for a Human Rights Commission: Volume I Report	HL Paper 67-I HC 489-I
Seventh Report	Scrutiny of Bills: Further Progress Report	HL Paper 74/HC 547
Eighth Report	Scrutiny of Bills: Further Progress Report	HL Paper 90/HC 634
Ninth Report	The Case for a Children’s Commissioner for England	HL Paper 96/HC 666
Tenth Report	United Nations Convention on the Rights of the Child	HL Paper 117/HC 81
Eleventh Report	Criminal Justice Bill: Further Report	HL Paper 118/HC 724
Twelfth Report	Scrutiny of Bills: Further Progress Report	HL Paper 119/HC 765
Thirteenth Report	Anti-social Behaviour Bill	HL Paper 120/HC 766
Fourteenth Report	Work of the Northern Ireland Human Rights Commission	HL Paper 132/HC 142
Fifteenth Report	Scrutiny of Bills and Draft Bills: Further Progress Report	HL Paper 149/HC 1005
Sixteenth Report	Draft Voluntary Code of Practice on Retention of Communications Data under Part 11 of the Anti-terrorism, Crime and Security Act 2001	HL Paper 181/HC 1272
Seventeenth Report	Scrutiny of Bills: Final Progress Report	HL Paper 186/HC 1278
Eighteenth Report	The Government’s Response to the Committee’s Tenth Report of Session 2002-03 on the UN Convention on the Rights of the Child	HL Paper 187/HC 1279
Nineteenth Report	Draft Gender Recognition Bill Vol I: Report	HL Paper 188-I/HC 1276-I
Nineteenth Report	Draft Gender Recognition Bill Vol II: Evidence	HL Paper 188-II/HC 1276-II

Session 2001–02

First Report	Homelessness Bill	HL Paper 30/HC 314
Second Report	Anti-terrorism, Crime and Security Bill	HL Paper 37/HC 372
Third Report	Proceeds of Crime Bill	HL Paper 43/HC 405
Fourth Report	Sex Discrimination (Election Candidates) Bill	HL Paper 44/HC 406
Fifth Report	Anti-terrorism, Crime and Security Bill: Further Report	HL Paper 51/HC 420
Sixth Report	The Mental Health Act 1983 (Remedial) Order 2001	HL Paper 57/HC 472
Seventh Report	Making of Remedial Orders	HL Paper 58/HC 473
Eighth Report	Tobacco Advertising and Promotion Bill	HL Paper 59/HC 474
Ninth Report	Scrutiny of Bills: Progress Report	HL Paper 60/HC 475
Tenth Report	Animal Health Bill	HL Paper 67/HC 542
Eleventh Report	Proceeds of Crime: Further Report	HL Paper 75/HC 596
Twelfth Report	Employment Bill	HL Paper 85/HC 645
Thirteenth Report	Police Reform Bill	HL Paper 86/HC 646
Fourteenth Report	Scrutiny of Bills: Private Members' Bills and Private Bills	HL Paper 93/HC 674
Fifteenth Report	Police Reform Bill: Further Report	HL Paper 98/HC 706
Sixteenth Report	Scrutiny of Bills: Further Progress Report	HL Paper 113/ HC 805
Seventeenth Report	Nationality, Immigration and Asylum Bill	HL Paper 132/ HC 961
Eighteenth Report	Scrutiny of Bills: Further Progress Report	HL Paper 133/ HC 962
Nineteenth Report	Draft Communications Bill	HL Paper 149 HC 1102
Twentieth Report	Draft Extradition Bill	HL Paper 158/ HC 1140
Twenty-first Report	Scrutiny of Bills: Further Progress Report	HL Paper 159/ HC 1141

Twenty-second Report	The Case for a Human Rights Commission	HL Paper 160/ HC 1142
Twenty-third Report	Nationality, Immigration and Asylum Bill: Further Report	HL Paper 176/ HC 1255
Twenty-fourth Report	Adoption and children Bill: As amended by the House of Lords on Report	HL Paper 177/ HC 979
Twenty-fifth Report	Draft Mental Health Bill	HL Paper 181/ HC 1294
Twenty-sixth Report	Scrutiny of Bills: Final Progress Report	HL Paper 182/ HC 1295