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**Racism, racial discrimination, xenophobia and related  
forms of intolerance, follow-up to and implementation  
of the Durban Declaration and Programme of Action**

### **Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his visit to the United Kingdom of Great Britain and Northern Ireland**

**Comments by the State\***

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\* The present document is being issued without formal editing.



1. The UK would like to thank the UN Special Rapporteur (SR) on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance for the opportunity to comment on her report following her visit to United Kingdom of Great Britain and Northern Ireland between 30th April - 11th May 2018.
2. We are pleased to see the SR note that the UK Government has shown leadership in key areas regarding the achievement of racial equality, especially within the legislative framework that prohibits racial discrimination and intolerance. During her visit, the SR learnt about various policy documents that are relevant for the promotion of human rights, equality, non-discrimination and tolerance, including the Integrated Communities Action Plan; the Hate Crime Action Plan 2016-2020; the Crown Prosecution Hate Crime Strategy 2017-2020.
3. We also appreciate the SR's acknowledgement of the achievement of The Racial Disparity Audit, highlighting its potential to move the UK forward in fulfilling its legal obligations to substantive racial equality under international and domestic law.
4. We have noted the SR's recommendations and are pleased to state work that is already taking place on a number of these findings. This includes the publication of a refreshed Hate Crime Action Plan in October 2018 (outlined in recommendation D). Furthermore, in response to the Race Disparity Audit, we have made an announcement to tackle ethnic disparities in the criminal justice system, through Department of Work and Pension (DWP) in challenging areas, through reviews of school exclusions and the Mental Health Act and through support for a £90m fund aimed at tackling youth unemployment (outlined in recommendation H). The Government has also responded comprehensively to the Lammy review (outlined in recommendation N), increasing diversity of new prison officers, funding education programmes to prepare lawyers from a range of backgrounds, working with police partners to develop deferred prosecution pilots aimed to rehabilitate offenders but still ensure redress from crime. The Government response to a range of the SR's recommendations is covered in substantive detail in the response below.

## **I. Introduction**

5. **Para 2:** The Government regrets that the SR did not consider that the conditions for her visit to Harmondsworth to be acceptable. Unfortunately, the SR did not communicate her concerns at the time of the visit, to enable any issues to be remedied. Working to a tight schedule, initial plans were made to facilitate the SR's visit to Colnbrook Immigration Removal Centre (IRC) to provide as varied an experience of an immigration removal centre as possible. When a venue change was requested to the adjacent centre, Harmondsworth, this was facilitated without delay; the SR was given assistance to observe the facilities unfettered and was able to converse freely with detainees. A request to speak with case owners was not communicated to the IRC in advance; case owners are not located on site, so it was therefore logistically not possible to make arrangements for a meeting within the programme timetable.

## **II. The Law and Policy Governing Racial Equality in the UK**

### **A. Legal Framework**

6. **Para 8:** The report states that the s.149 Public Sector Equality Duty does not apply to immigration law and policy and its enforcement, which is not the case. The exemption in schedule 18, para 2 of the duty provides an exemption from the Public Sector Equality Duty in relation to immigration and nationality functions but only in relation to the second limb (s.149(1)(b)) – the duty to advance equality of opportunity between those who share a protected characteristic and those who do not. Further, the exemption is only in relation to the protected characteristics of age, religion or belief, and race (limited to include nationality and ethnic origin but not colour). The remaining two limbs of the Public Sector Equality Duty (s.149 (1)(a) and (c) - the need to eliminate discrimination and to foster good relation), plus anything not covered by this carve out in relation to (b), still apply in relation to immigration law. This error may also have an impact on the conclusions at paragraph 74 (c).

7. Para 10: Under UK legislation, all races have equal protection and all faiths have equal protection. While there is not complete parity between race and faith, in the hate crime legislation framework with regard to incitement offences, these are used very infrequently. They require Attorney-General approval to prosecute, so in practice there is little legislative difference between race and faith. Furthermore, as announced in October 2018 the Law Commission will be reviewing the adequacy of protection offered by hate crime legislation. This project is underway, and a consultation paper will be published in early 2020. Parts 3/3A of the Public Order Act 1986, covering stirring up offences, sets out the nature of offending behaviour. The key elements are summarised below. This distinction was established by parliament following a debate on free-speech and in consideration of representation from civil society.

### **Stirring up hatred on the grounds of: Race, Religion and Sexual Orientation**

#### *Race*

- Threatening, insulting or abusive
- Intended to or is likely to stir up hatred

#### *Religion and Sexual Orientation*

- Threatening
- Intended to stir up hatred

8. This aspect of the law is one of many which the current law Commission review will be taking views on and making detailed proposals in its 2020 public consultation.

## **B. The Race Disparity Audit**

9. Para 18: The Race Disparity Audit (RDA) is an evolving tool, so disparities not included in the initial analysis may be included in future updates. The RDA also still has data to publish. Data that will soon be available on the website includes hate crime data. Data on issues such as prisoner violence and use of force on young offenders are already published.

10. Para 19: The Race Disparity Unit is working with the Office for National Statistics and Departments to enhance the consistency of ethnicity data collection. As demonstrated by the launch of the Race Disparity Audit and the Ethnicity Facts and Figures website, the Government remains committed to 'explain or change' ethnic disparities across all areas of society.

11. Currently the Ethnicity Facts and Figures website details data by ethnic group, which includes data on the serious disparities faced by Gypsy, Roma and Traveller communities, particularly in health and education. In addition, from 2021 Government proposes to introduce a census category of 'Roma' alongside the existing 'Gypsy or Irish Traveller' category.

12. The Race Disparity Audit are working with Government departments to highlight data gaps and harmonise data on ethnicity. The Crown Prosecution Service (CPS) established a National Scrutiny Panel (NSP) on hate crime facing Gypsy, Roma and Traveller communities in 2016. The NSP comprised members of community organisations engaged in supporting victims of hate crime to report incidents. The meeting agreed an action plan that included the commitment to develop specific guidance for prosecutors to ensure that there was support on recognising and handling prosecution of hate crime motivated by hostility towards Gypsy, Roma and Traveller. In addition, the CPS has provided a workshop on the legal framework provided to organisations who provide practical support to the victims of hate crime to better understand the law and how it operates and to improve the support given to victims.

13. The Scottish Government is committed to strengthening data and evidence to support equality analysis and assessment. Its four-year Equality Evidence Strategy is aimed at filling gaps in the equality evidence base. The Equality Evidence Finder has recently been modernised and is a key resource for government, public authorities and other organisations

to inform policy and decision-making. Every year, alongside the Scottish Budget, the Scottish Government publishes an Equality Budget Statement that demonstrates how equality considerations influence spending plans. In line with Scottish Regulations, the Scottish Government Equality Outcomes and Mainstreaming Report 2019 provides a breakdown of the composition of its workforce and the recruitment, development and retention of employees with respect to relevant protected characteristics. The report also details progress in gathering and using that information to enable it to better perform the public sector equality duty. Under Regulation 5 of the Scottish-specific duties, listed public authorities, including the Scottish Government, are required to assess and review policies and practices, and in doing so to consider evidence relating to persons who share a relevant protected characteristic. The Scottish Government has adopted a mainstreaming approach to equality to deliver this obligation and to ensure that the impact of its policies, programmes and legislation on groups of people who share a protected characteristic are assessed by all areas and at all levels of government. In Scotland, equality impact assessments to consider the impact of different policies on people who share one or more of the protected characteristics remains a legal obligation. In January 2018, Scotland's First Minister established an Advisory Group on Human Rights Leadership to examine the human rights impacts of UK withdrawal from the EU and how best to protect and promote all human rights across all potential scenarios. The First Minister endorsed the group's overall vision of a new "Human Rights Framework" for Scotland, to be delivered by a new Act of the Scottish Parliament. The Scottish Government will work with partners to establish a National Task Force to take forward the group's key recommendations.

### **C. Racial Equality in the UK: Lived Experiences**

14. Para 20-21 - In October 2018, the UK Government announced a series of measures to tackle the barriers facing ethnic minorities in the workplace including: a consultation on ethnicity pay reporting in response to the Race Disparity Audit's (2017) Ethnicity facts and figures website data; and the new Race at Work Charter developed jointly by the Government and Business in the Community.

15. £1.2m from the £90m Dormant Accounts Youth funding was released by the Big Lottery Fund (BLF) under the banner of the Youth Capacity Fund, to develop the capacity of local, frontline grassroots organisations who help young people facing barriers to work.

16. The latest ethnic minority employment rate is 66.2% (4 quarter average to December 2018) - up 1.5 percentage points from the same point the previous year - the highest since the series began in 2001.

17. The employment rate gap (between the employment rates of the ethnic minority population and the overall population) has fallen by 0.9 percentage points on the year to 9.5 percentage points – a record low.

18. Ethnic minority employment has risen by 556,000 since 2015, taking us 84% of the way towards meeting our target of increasing ethnic minority employment by 20% by 2020.

19. While employment powers, including around flexible working, are reserved to the UK Government, the Scottish Government is funding the Family Friendly Working Scotland Partnership to support and promote the development of flexible and agile workplaces across Scotland. It is also funding a pilot project concerning the recognition of prior qualifications, skills and learning to help refugees and asylum seekers coming to Scotland. In March, the Scottish Government published a gender pay gap action plan to tackle the causes of gender inequality in the labour market, including that faced by minority ethnic women. Actions within the plan include investing £5 million over the next three years to support around 2,000 women to return to work. The Scottish Government's Fair Work Action Plan aims to help employers embed fairer working practices. It will help deliver fair work to a diverse and inclusive workforce and embed fair work across government. In addition, Scotland's Workplace Equality Fund provides funding to employers and their business partners to improve workplace practices and reduce employment inequalities, discrimination and barriers for people from minority ethnic communities. The Scottish Government has set in statute ambitious targets to reduce levels of child poverty through the Child Poverty

(Scotland) Act. Given the high rates of poverty amongst black and minority ethnic families, they are one of the priority groups identified in the first Tackling Child Poverty Delivery Plan, Every child, every chance. A key component of the strategy to meet these targets is to increase parental incomes from work and earnings, and the Scottish Government has committed to a range of actions to support parents to enter and progress within the labour market.

20. Para 22 –There is evidence that people from Black and Minority Ethnic (BAME) backgrounds in the UK are more likely to live in poor quality housing, regardless of tenure. However, in the social sector specifically, there are no significant differences between ethnicities on the proportions living in non-decent homes.

21. In England, the Planning Policy for Traveller Sites (PPTS) was published alongside the National Planning Policy Framework (the Framework) in 2012. The policy recognises the differing needs and land use of travelling communities and encourages improved site provision. The overarching aim is to ensure fair and equal treatment for Travellers in a way that facilitates their nomadic way of life, while respecting the interests of the settled community. The policy asks local planning authorities to produce their own assessment of needs for traveller sites in their area and use this evidence base to set pitch targets in the Local Plan and to identify and update annually a supply of deliverable sites to provide 5 years' worth of sites against local targets.

22. In terms of wider Government support for the provision of traveller sites across England, the New Homes Bonus provides an incentive for local authorities to encourage housing growth in their areas, and rewards net increases in effective housing stock, including the provision of authorised traveller pitches. In addition, the £9 billion Affordable Homes Programme 2016-22 will deliver £250,000 new affordable homes. This includes funding for new traveller pitches.

23. In England, local planning authorities are responsible for ensuring that traveller sites are sustainable economically, socially and environmentally. They should ensure that their policies provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development. Local authorities should not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans. Where local authorities are not discharging these responsibilities, the Local Government ombudsman is responsible for redress. If this is not successful then the courts should be used.

24. The Scottish Government shares the SR's concerns regarding the experiences of Gypsy/Travellers in many areas of their lives. A Ministerial Working Group has been established and will publish an action plan this Summer, which will focus on improving outcomes in the four key areas of accommodation, education, health and tackling poverty. The Scottish Government has already taken decisive action to improve the delivery of education to Gypsy/Traveller communities, underpinned by new investment of £775,000. In 2018 it also published guidance on improving educational outcomes for children and young people from travelling cultures. The Scottish Government-funded community link workers programme aims to support general practice patients with complex needs to live well through strengthening connections between community resources and primary care, and to mitigate the impact of the social determinants of health in people that live in areas of high socioeconomic deprivation (top 15% Scottish Index of Multiple Deprivation). As part of wider evaluation, learning from delivering the service to the Roma community in Glasgow will be highlighted. In addition, e-learning modules for healthcare workers in National Health Service (NHS) Scotland are being updated to address issues of culture (including Roma culture), discrimination and GP Practice registration, with access (preferably open access to other professional groups working with Gypsy/Travellers) through the NHS Education for Scotland's Turas Learn platform. Planning Aid Scotland has been funded to pilot the Place Standards with Gypsy/Traveller communities living on public and private sites, to increase understanding of the barriers and enablers of health and wellbeing.

25. The report states that the SR's own consultations with Gypsy, Roma and Traveller Communities reveals that access to adequate housing solutions that respect ancestral nomadic

traditions remain a major challenge across all the nations of the UK, but especially in Wales. The Welsh Government recognises that Gypsies, Roma and Travellers are amongst the most marginalised groups in our society who often experience discrimination, inequality and a lack of opportunities. The Welsh Government is determined to ensure that members of these communities are supported to fulfil their potential and make a full contribution to society and have been working actively to achieve this in recent years. Since the introduction of the Act in 2014, 77 new council pitches have been created across Wales in addition to the refurbishment of other local authority sites. This compares to only a handful of new pitches created between 1997-2014. Since the approval of Gypsy and Roma Traveller Accommodation Assessments (GTAAAs) in 2016, 98 pitches have been created across Wales, equating to 32 council and 66 private pitches. In effect, this means that just over two thirds of the overall total figure of pitches provided thus far, has been through private development. Taken together, the progress made between both public and private site development illustrates that at the halfway point (end 2018), Welsh Government are just over 40% target to meet the overall GTAA need identified at the outset. This follows the second review of GTAAAs following completion, carried out in November 2018. The Welsh Government is also funding the Travelling Ahead project at TGP Cymru to provide support to Gypsies and Travellers under three themes: advice and advocacy; rights and participation; and tackling discrimination. Although progress has been slower in some areas, genuine progress is being made and Welsh Government will continue to drive this forward. Welsh Government feels the progress made is a remarkable achievement and cannot be underestimated.

26. Para 23-27 - With respect to education following on from the serious disparities highlighted by the Race Disparity Audit, Government has provided £200,000 of funding between six projects across England which aim to improve outcomes in the areas of educational attainment, health and social integration to support Gypsy, Roma and Traveller communities. Government has also funded 22 projects which support Roma communities across England through the Controlling Migration Fund. Interventions include improving access to services, improving health outcomes, outreach, supporting children and young people, and English language learning. It should be noted that the underlying data uses 2001 census ethnicity classifications, which did not include a Gypsy Roma Traveller option, meaning that there is as yet no data on the number of Gypsy/Traveller teachers. There is a possibility that the National Audit figure was assumed to be a small number.

27. The recently published Timpson Review of Exclusions made 30 recommendations to Government as it highlighted variation in exclusions practice across different schools, local authorities and certain groups of children. The report concluded that while there was no optimal number of exclusions, action was needed to ensure permanent exclusions were only used as a last resort. Government welcomed the review and agreed to all 30 recommendations in principle, committing to act to make sure no child misses out on a quality education.

28. Regarding the SR's findings on racially motivated bullying in schools, schools should be safe and disciplined environments in which pupils, whatever their ethnic background, feel happy and able to fulfil their potential. No child should suffer the fear of prejudice or bullying. Department of Education expect schools to take a strong stand against all forms of prejudice or bullying, and schools should tackle issues at the earliest opportunity to prevent them from escalating. In England, all schools are legally required to have a behaviour policy with measures to prevent all forms of bullying. They have the freedom to develop their own anti-bullying strategies appropriate to their environment and are held to account by Ofsted.

29. In England, Government has provided over £2.8 million of funding between September 2016 and March 2020, to four anti-bullying organisations to support schools to tackle bullying. This includes the Anne Frank Trust, who are funded by MHCLG, to develop and deliver their 'Free to Be' debate programme which encourages young people to think about the importance of tackling prejudice, discrimination and bullying.

30. Last year the Department of Education published Respectful School Communities - a self-review and signposting tool to support schools to develop a whole-school approach which promotes respect and discipline. This can combat bullying, harassment and prejudice of any kind.

31. Department of Education have also published a research report which details common strategies that specific schools have found to be effective for combating bullying along with more detailed case studies to show the practical actions taken by the schools. This includes an example of a school in England who have undertaken work to increase understanding of Gypsy, Roma and Traveller communities in order to challenge stereotypes and support pupils to understand and respect those from different backgrounds and communities.

32. Since the SR's visit a suite of policies have been announced and Government will continue to work to identify new policies to tackle ethnic disparities. Policies announced since the SR's visit last summer include: a consultation on mandatory ethnicity pay reporting, increasing ethnic minority senior leadership levels, working with the higher education sector to tackle ethnic disparities in higher education entry and attainment, and to increase ethnic diversity of the academic workforce.

33. In 2017, the Scottish Government published updated anti-bullying guidance, *Respect for All: The National Approach to Anti-bullying for Scotland's Children and Young People*. Subsequently, a working group was established to develop a consistent and uniform approach to recording and monitoring incidents of bullying in schools. This will be fully implemented by August 2019. The bullying and equalities module on SEEMiS, the schools management information system, has been updated to reflect the new approach. The list of characteristics that can be reported on within SEEMiS includes bullying based on race, religion or belief. Scotland's anti-bullying service, *respectme*, continues to provide direct support to local authorities, youth groups and all those working with children and young people to build confidence and capacity to address all types of bullying effectively, aligned to *Respect for All*. The Scottish Government funded the Coalition for Racial Equality and Rights to work collaboratively with *respectme* to produce guidance, in line with *Respect for All*, for schools to address bullying based on race. *Addressing Inclusion: effectively challenging racism in schools* was published in January 2019. In addition, the Scottish Traveller Education Programme has produced a bullying resource for Traveller children and young people – *Let's talk about bullying*. In relation to further and higher education, the Scottish Funding Council conducts analysis in access and equality for black and minority ethnic groups and has committed in the Scottish Government Race Equality Action Plan to use this to influence other partners in this area, specifically in relation to employment outcomes, and to develop the evidence base in order to inform Scotland's Race Equality Framework.

34. Para 28- 29 - The SR notes concerns in regard to racial disparities that are prevalent in healthcare context. Government have a strong framework of anti-discrimination legislation in place in England to ensure equitable access to health services for all. The Equality Act 2010 protects people from discrimination on grounds of nine protected characteristics including race. In addition, all public authorities, including National Health Service organisations, are required to have due regard to the aims of the public sector equality duty of the Equality Act 2010 in exercising their functions. The Health and Social Care Act 2012 introduced additional legal duties on health inequalities on National Health Service commissioners and the Secretary of State for Health requiring them to have regard to the need to reduce inequalities between patients in access to health services and the outcomes achieved. However, Government recognises that there are inequalities in the access to health and mental health care services in Black, Asian and Minority Ethnic (BAME) communities, and Government is committed to addressing them. The independent Mental Health Taskforce in the Five Year Forward View recommended that the Department of Health address race equality as a priority and appoint a new equalities champion to drive change. National Health Service England are working with BAME groups to understand some of the reasons behind them not accessing services.

35. The NHS Long Term Plan sets out that more can be done through, for example, the NHS's employment of local people and through local procurement decisions by better use of the Social Value Act. The new health inequalities challenge is how to prevent life expectancy from declining among poorer and more disadvantaged groups, such as people who are homeless and rough sleepers, Gypsy, Roma and Traveller communities, vulnerable migrants and sex workers; and groups with protected characteristics – Black and Minority Ethnic groups and people living in deprived areas.

36. NHS England will provide a range of support to local healthcare systems to help them meet their LTP health inequalities commitments. This includes:

- The development of a Menu of Evidence Based Interventions: NHS England is currently working with a range of stakeholders to develop the menu including Public Health England, Local Government Association, and Health and Wellbeing Alliance partners (which includes Friends, Family and Travellers who represent the Gypsy, Roma and Traveller communities). The approach, content and evidence outlined in the menu will look to ensure that local healthcare systems effectively outline their key priorities with a focus on how they will narrow health inequalities over the next 5 years, with specific targets on specific groups including Gypsy, Roma and Traveller people living in the most deprived areas, BAME groups and other protected groups.
- Development of Primary Care Networks (PCNs): NHS England is developing health inequalities learning resources which support the PCNs to address health inequalities. Part of this work will be linked to the menu of evidence-based interventions and through joint working with Public Health England and the development of its Health Inequalities Joint Strategic Framework.
- Embedding health inequalities in Vaccinations and Immunisation programmes: NHS England is working with the national programme to ensure screening and vaccination programmes are designed to support a narrowing of health inequalities and to ensure the focus on inclusion health groups such as Gypsy, Roma and Traveller communities is embedded in all the work areas.

37. The NHS Long Term Plan sets out actions that maternity services will take to help drive down health inequalities. NHS England will implement an enhanced and targeted continuity of carer model to help improve outcomes for the most vulnerable mothers and babies. By 2024, 75% of women from BAME communities and a similar percentage of women from the most deprived groups will receive continuity of care from their midwife throughout pregnancy, labour and the postnatal period. This will help reduce pre-term births, hospital admissions, the need for intervention during labour, and women's experience of care. Women from the most deprived communities are 12 times more likely to smoke during pregnancy than women from more affluent areas. In addition to the enhanced midwife model, the NHS will offer all women who smoke during their pregnancy, specialist smoking cessation support to help them quit.

38. Para 30 - The NHS is a comprehensive public health service, free at the point of delivery for those who are ordinarily resident in the UK and operated on a devolved basis by the four UK nations. Overseas visitors who are visiting rather than residing in the UK and those without lawful status have been subject to NHS treatment charges for accessing secondary care services since 1982 and it is right that the UK has appropriate arrangements in place to protect such an important national tax-payer funded resource.

39. The report does not mention the important safeguards inherent in the NHS charging regime which protect the vulnerable. It suggests that women with refugee status have been deterred from seeking maternity care for fear of immigration enforcement action, but UK law is clear that refugees have lawful immigration status in the UK and enjoy the same access right to the NHS as other lawful UK residents. UK law and policy are also equally clear that medical treatment which is urgent or immediately necessary, including maternity services for expectant mothers, should never be withheld irrespective of the patient's chargeable status. There are no restrictions on who can access GP or accident and emergency services.

40. In administering the charging regime, NHS staff are not involved in immigration enforcement but are operating in accordance with NHS legislation. A recent Department of Health and Social Care review into the impact of regulation changes made in 2017 (including the requirement to obtain payment in advance of non-urgent treatment) did not find significant evidence that changes to the regulations have themselves led to overseas visitors being deterred from treatment. However, Government is doing more to ensure the Charging Regulations are applied properly and fairly and have already updated guidance to emphasize that the longer a chargeable overseas visitor is likely to remain in the UK, the more of their needs are expected to be classed as urgent and provided regardless of advance payment.



41. UK immigration rules provide that persons subject to immigration control who do incur unpaid debts to the NHS in respect of NHS treatment charges may have this taken into account by the Home Office if they apply to re-enter or extend their stay in the UK, and this arrangement has been upheld by the Court of Appeal. Other comparable countries have controls in place to regulate access to their public health services, or otherwise operate insurance-based schemes in which patients pay directly for the health services that they use.

42. The SR also mentions the previous memorandum of understanding (MOU) which permitted the Home Office to trace missing immigration offenders through address data held by the NHS as a last resort, to enable the Home Office to re-establish contact in the interests of resolving the person's case. The Government has agreed that this MOU should be replaced with a narrower agreement focusing on the locating of foreign criminals subject to deportation action and persons where there are welfare concerns. Public Health England are reviewing whether there is any evidence to support to concern that the MOU influenced health-seeking behaviours by migrants. But the report's implication that there should be no checks or controls on who can access the full range of NHS services does not command a consensus of support in the UK. In fact, recent public polling by YouGov in April 2018 found high levels of support amongst respondents for the system of eligibility checks for accessing work, benefits and services.

## **D. Racial Impact of Criminal Justice Law and Policy**

43. Para 35 –44 The SR also mention her experiences meeting with many communities and organisations who communicated the devastating racial impact of the criminal justice law and policy in the UK. No one should face discrimination in the criminal justice system and Government have welcomed David Lammy's extensive review into the treatment of black and minority ethnic individuals in the criminal justice system. Government remains committed to taking every recommendation forward in some way. We recognise there is more to do, and are committed to tackling disproportionality which is why Government have employed senior officials across all 4 parts of the business (Custody, Probation, Wales & HQ) to oversee progress in this area. Transparency is key to achieving these complex reforms. Government have held regular roundtables with partners and stakeholders to keep them informed and seek expertise.

44. The Race Disparity Unit is working with the Office for National Statistics and Departments to enhance the consistency of ethnicity data collection. Progress Government has made in a wide range of areas, and new work going above and beyond Lammy's recommendations includes:

- Increased diversity of our new prison officer intake (20% BAME applicants and 11% BAME hired between January 2017 and June 2018)
- Funding an education programme to prepare lawyers from a range of backgrounds to apply for judicial office
- Extending the range of data Government publish that includes an ethnicity break down
- Working with newly-selected local police partners to develop deferred prosecution pilots, which aim to rehabilitate offenders but still ensure redress from crime

45. Government are also prioritising tackling race disproportionality in the Youth Justice System. That is why Government have established a dedicated team within the Youth Justice Policy Unit working across government on disproportionality. Government is establishing a broader youth justice approach, looking at the journey of the child throughout the system and the key points where disparity can impact in a child's life. There have been small improvements in BAME representation in our judiciary in recent years but it remains a complex picture and there is more to be done. Government recognise the need for our world class judiciary to be more diverse. We know that there are many talented potential candidates from a diverse range of backgrounds and we want to support even more of them to apply for judicial office. We announced funding for the pre-application judicial education programme (PAJE), a joint initiative of the Judicial Diversity Forum. This will provide information to those considering a judicial role and will target those from under-represented groups.

46. Para 42 - Data quoted in the report on stop and search and arrests is accurate but does not quote the most recent data. Government reforms have led to stop and search being more intelligence-led and targeted. The arrest rate from stop and search one indicator of its effective use is at historic highs at 17% and 30% of searches lead to a positive outcome. It is clear that nobody should be stopped and searched on the basis of their race or ethnicity and the use of these powers should be fair, proportionate and legal. Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) continues, as part of its annual inspections, to inspect the fair use of said powers by police forces. The Government's Best Use of Stop and Search scheme, to which all police forces in England and Wales are signed up, requires forces to have in place policies to allow local communities to observe the use of stop and search and to have a complaint policy requiring the police to explain to local community scrutiny groups how the powers are being used where there is a large volume of complaints.

47. In Scotland, An independent review of the first six months of the Code of Practice on Stop and Search concluded that the rate of searches declined across all ethnic groups. The positive detection rate of searches increased across all ethnic groups, which suggests that Police Scotland is focusing searches more effectively. A fuller 12 month review is being undertaken and will look at (among other things) any concerns about how stop and search powers are being used on people from minority ethnic groups. Police Scotland's Management Information, which is published on its website, covers robust data on stop and searches of persons not under arrest. These data are broken down by ethnicity/national origin, including Gypsy/Travellers. The publication of these data makes stop and search more open and transparent to the public.

48. The SR notes concerns about deaths of ethnic minorities in police custody. The Ministerial Board on Deaths in Custody has been overseeing a far-reaching work programme to implement the Government response to Dame Elish's Independent Review of Deaths and Serious Incidents in Police Custody, published in 2017. The Government is clear that all detainees, regardless of ethnicity, should have their rights and welfare protected in police custody. The research report commissioned by Dame Elish to support her review did not find evidence of racial disproportionality for the number of deaths in police custody or the number of deaths in which restraint was a cause of death over the time periods considered.

49. The UK Government rejects any suggestion that deaths in custody are not investigated properly. By law, all deaths or serious injuries that occur in police custody, during or immediately following contact with the police in England and Wales must be referred to the IOPC and there are clear processes in place for independent investigations, as well as due processes for consideration by the Coroner and the courts, as appropriate. Further, the Home Office has legislated to strengthen the Independent Office for Police Conduct and the police discipline regime and is working to implement further reforms this year.

50. A review of the International Evidence on Deaths in Police Custody was commissioned to examine any international patterns that may be emerging or of assistance to the review. International evidence (2017) found that police use of restraint against detainees was identified as a cause of death by post-mortem reports in 10 per cent of deaths in police custody between 2004/05 and 2014/15. The proportion of deaths in police custody in which restraint was a cause of death was similar across White and BAME backgrounds (10% and 11% respectively). The report also notes that around 9 out of 10 (87% of 238) of those who died in police custody between 2004/05 and 2015/16 were from a White ethnic background. Those from a Black background, the next largest ethnic group, made up 6 per cent of deaths (14 out of 238).

51. As noted in the report, from 1 April 2017, all police forces across England and Wales commenced recording a broad range of use of force data including the reason force was used, injury data, the gender, ethnicity and age of the subject involved, and the location and outcome of the incident. The publication of data on officers' use of force provides unprecedented transparency and accountability. It is important in ensuring police forces are held to account and that the public are better informed about the types of force being used and the context in which it occurs. In the longer term, it will also provide an evidence base to support the development of tactics, training and equipment to enhance the safety of all. It

is clear that all force used by the police – including restraint - must be necessary, proportionate and reasonable in the circumstances.

52. Information previously released by the Home Office in response to a Freedom of Information request, there have been 23 deaths, in Immigration Removal Centres (IRC) or whilst under escort, between 1991 and 2014. Only one of those deaths was found to have been due to the use of restraint by Detainee Custody Officers.

53. As part of the UK Government's commitment to increase transparency around immigration detention, we are reviewing the publication of immigration detention data. This includes data relating to deaths in immigration detention. This data was published for the first time in the Government's November 2018 online statistics release and, moving forward, will be published annually.

54. Deaths in immigration detention are a relatively rare occurrence and form only a very small proportion of the detention estate throughput, which is around 24,000 people detained per year solely under immigration powers. All deaths in immigration detention are independently investigated. Every death in immigration detention is subject to investigation (where appropriate) by the police, the coroner (or Procurator Fiscal in Scotland) and the independent Prisons and Probation Ombudsman (PPO). Any recommendations made as a result of these investigations are thoroughly examined to see how they can be used to help prevent further deaths. Fatal incident investigation reports are published on the PPO website.

55. Para 43: The reference to "2011 report by the Independent Office for Police Conduct (IOPC) on deaths in custody is incorrect. The report was by the Independent Police Complaints Commission (IPCC), which was reformed and renamed as the IOPC in January 2018.

## **E. Racial Impact of Counterterrorism and Counter extremism Law and Policy**

### **Prevent Strategy**

56. Para 47-51: The Government rejects much of the characterisation portrayed in Section C of the report, particularly that in response to recent terrorist attacks 'leading politicians' have portrayed Muslims as 'inherently dangerous, inherently opposed to Britain's prosperity, and inherently foreign'. The report cites no evidence for this. It is also particularly disappointing that the report states misinterpretations about the Prevent Strategy, which it inaccurately seeks to represent as having been directly drawn from Government publications. The report states in a number of instances that Prevent 'disproportionately' targets Muslims without providing any evidence of disproportionality, and without making any examination of the nature of the terrorist threat to the UK which the Prevent Strategy seeks to counter. Indeed, the report makes no mention that the Prevent Strategy addresses all forms of terrorism, including right wing terrorism, or that figures from 2017/18 show that those receiving support from the Channel programme (part of Prevent, which provides voluntary, confidential support to those who are vulnerable to being drawn into terrorism) were just as likely to be inspired by right wing extremism as Islamist extremism.

57. Referral figures into Prevent also demonstrate that the report's characterisation that Prevent has 'transformed public institutions such as hospitals, schools, universities, and even police' is extremely misleading: by way of example, despite the NHS dealing with over 1m people every 36 hours, just 464 people were referred to Prevent by the health sector in the year 2017/18. The report repeats myths that Prevent forces frontline workers to report people and does not mention that the crucial fact that Prevent is a non-criminal, supportive programme, and that the 'life-altering judgments' which it refers to exist to support vulnerable people away from the influence of terrorist recruiters, and have an overwhelmingly positive effect. The Government announced in January 2019 that it would create an independent review of Prevent, which will report back to Parliament before August 2020.

58. National Security is reserved to the UK Government. Whilst delivery of the Prevent Strategy in Scotland shares the same strategic objectives as the rest of the UK, it also reflects

the specific circumstances, risks and threats faced by Scottish communities. Delivery of Prevent in Scotland is grounded in safeguarding vulnerable individuals and early intervention, and forms part of wider efforts to build more cohesive, resilient communities where extremist and terrorist narratives do not resonate. The Scottish Government takes particular care to emphasise that its approach looks across the spectrum of threat, reflecting that the risk to vulnerable individuals in Scotland comes from all forms of divisive ideology.

59. Para 52-57 - This section of the SR's report addresses the development of policies designed to deter illegal immigration and secure compliance through operating effective eligibility checks for accessing work and services, and comments on the impact of these policies. These assertions do not adequately reference the challenge the UK faces, in common with other comparable countries, in tackling the risks posed by illegal immigration, including the harms suffered by individuals who place their safety at risk in the hands of unscrupulous people smugglers or experience exploitation and modern slavery at the hands of rogue employers and landlords. Neither does the report, in criticising the system of right to work checks provided in the Immigration Asylum and Nationality Act 2006, acknowledge that all EU member states are required under EU law (the EU Directive on sanctions against employers of illegally staying third country nationals) to have such arrangements in place and similar systems of control operate in other comparable countries. The UK is far from being the only country which seeks to regulate access to housing by placing responsibilities on landlords, and far from being the only country which provides that those without lawful status should lose access to banking facilities.

60. The Immigration Acts 2014 and 2016 did not in fact criminalise "those who find themselves without status" as the report suggests. It has been a criminal offence to enter or remain in the UK unlawfully since the Immigration Act 1971 was introduced, but the UK deals with immigration offences through administrative removal rather than criminal prosecution to avoid placing people in the penal system unnecessarily; other comparable countries make greater use of criminal sanctions for immigration offences which the UK deals with administratively using civil law powers.

61. The introduction of measures in the Immigration Acts 2006, 2014 and 2016 were the subject of detailed and careful debate in Parliament during the passage of the relevant legislation, and some measures were the subject to General Election manifesto commitments to the electorate made by UK Governments (such as the system of civil penalties for employers of illegal workers). The report is incorrect in attributing this direction in policy development to the current Prime Minister. The term "hostile environment" to describe the UK Government's efforts to tackle illegal immigration was first used in the strategy document "Protecting our Border, Protecting the Public: The UK Border Agency's five-year strategy for enforcing our immigration rules and addressing immigration and cross border crime" which was published by a previous administration in February 2010. The document states "This strategy sets out how we will continue our efforts to cut crime and make the UK a hostile environment for those that seek to break our laws or abuse our hospitality."

62. The report also conflates the UK's general policy of deterring illegal immigration through operating fair rules on access to work, benefits and services on the one hand with the specific operation in 2013 to promote voluntary returns by illegally resident non-EEA nationals through use of advertisements on vans carrying information on how to contact the Home Office for assistance on the other. The two issues are separate; the use of the advertisement vans has already been the subject of extensive debate in the UK.

63. The report expresses concern that asylum seekers and victims of modern slavery have been impacted by the system of right to rent checks introduced by the Immigration Act 2014. However, the report does not reflect that many asylum seekers and victims of slavery/trafficking are directly accommodated and supported by the state, rather than having to seek accommodation in the private rented sector. Those who do require accommodation are granted permission to rent which can be confirmed through the Home Office landlord checking service.

64. The report also does not acknowledge that UK law is clear that discrimination on grounds of race is unlawful, including by those such as employers, landlords and public service providers responsible for conducting eligibility checks. A careful Home Office

evaluation of the first phase of the operation of the right to rent scheme in the West Midlands, referenced in the report, found no evidence of systematic discrimination; a further programme of evaluation is planned following the roll-out of the scheme to England. The Government has provided clear guidance to these groups on how to establish the lawful status of persons undergoing checks, including the documents which may be accepted and the Home Office support services available. The Home Office is in the process of simplifying and modernising these checking systems through the development and delivery of on-line services.

65. The report states that the Government's underlying immigration enforcement strategy relies on private citizens undertaking frontline enforcement work which is not precise. The Home Office's Immigration Enforcement Directorate is responsible for enforcement action against those who commit immigration offences in the UK; measures to regulate access to work, benefits and services complement this by encouraging compliance with immigration laws and reducing the range of individuals against whom direct immigration enforcement action needs to be undertaken by the Home Office.

66. The Government has acknowledged the errors made in the treatment of members of the Windrush generation and has taken immediate steps to put matters right, through establishing a taskforce to assist individuals to secure status and the documents they need to evidence it and by launching a compensation scheme for those wrongly affected by those affected by policies designed to tackle illegal immigration. In addition, the Government has made a £500,000 annual Windrush Day Grant available for charities, communities and local authorities to bid into. The aims of the scheme are to celebrate, commemorate and educate about the Windrush generation, their descendants, and their contribution to national life. Activities will focus on 22 June, the anniversary of the disembarking of MV Empire Windrush at Tilbury Docks in 1948. Planning is also underway for the creation of a permanent tribute to the Windrush Generation, with the creation of the Windrush Commemoration Committee announced in June 2018.

67. Paragraph 54 – Regarding the 'Go Home or fast arrest campaign' - A pilot operation took place between 22 July and 22 August 2013 in six London Boroughs to test whether different communications could encourage increases in voluntary departures. The proactive communications phase ceased on 22 August 2013. It included a number of communications techniques, such as mobile billboards on Ad-vans highlighting the risk of arrest, postcards in shop windows, adverts in newspapers and magazines, leaflets and posters advertising immigration surgeries in faith/charity group buildings. The campaign was not targeted at particular racial or ethnic groups and was about encouraging people who have broken the law to leave the country voluntarily.

68. Immigration Enforcement's evaluation of the operation identified that the most efficient use of communications expenditure was on the adverts, leaflets and posters that advertised immigration surgeries in faith and charity groups, rather than the Ad-vans or other forms of advertising used in the operation. The Home Secretary announced to the House of Commons in October 2013, that the use of the Ad-vans was too blunt an instrument to be effective across a nationwide campaign and that the scheme would not be rolled out further. The Advertising Standards Agency (ASA) investigated complaints about the advert and published a judgement on 9 October 2013. The ASA dismissed complaints regarding the pilot being racist, finding that the claim 'go home or face arrest' would be interpreted as a message regarding the immigration status of those in the country illegally, which was not related to their race or ethnicity and was unlikely to cause serious or widespread offence or distress.

69. Para 55: Government also have a number of existing policies to combat discrimination and unfair practices within the Private Rented Sector (PRS) which include:

- Ending 'No Department for Social Security' adverts
- How to Guides – helping landlords and tenants know the law and their rights
- Rogue landlord database – taking the worst landlords out of the Private Rented Sector (PRS)
- Selective licensing – allowing local authorities to target local problems

70. The Government are working to ensure that all homes within the PRS are decent. The number of homes in the PRS failing to meet the Decent Homes standard is at a record low but we want to do more. Local authorities have strong powers under the Housing Act 2004 to require landlords in the PRS to make necessary improvements to their property. Where a property contains potentially serious risks to the health and safety of the occupants, the local authority must take appropriate action requiring the landlord to take immediate action. The Government have recently gone even further by empowering tenants through the Homes, Fitness for Human Habitation Act, to take their landlords to court for failing to provide decent accommodation.

71. Para 59: The SR notes the New Scots Refugee Integration Strategy as demonstrative of Scotland's welcoming and human rights-based approach to integration. The strategy is clear that everyone who is resident in Scotland is entitled to access healthcare on the same basis. This includes all refugees, asylum seekers and people whose claim for asylum has been refused. The Public Sector Equality Duty requires all public health services to ensure that the services provided are fit for purpose and meet the needs of all members of society. In 2018 guidance was provided to General Practitioner (GP) Practices and Health Boards to clarify that no documentation is necessary to be registered. This was emphasised by communication sent to Primary Care Leads in Health Boards in February 2019.

72. Para 61: The Integrated Communities Action Plan published in February 2019 sets out a range of action to deliver the Government's vision for building strong integrated communities is one where people – whatever their background – live, work, learn and socialise together, based on shared rights, responsibilities and opportunities. The Government want all those who come from outside the UK and wish to settle lawfully to play a full part in society, to understand their rights and responsibilities, and to make the most of economic and social opportunities available. However, Government is also clear that integration is a two-way street, and everyone has a role to play in supporting strong, integrated communities. Local resident communities share a responsibility for the effective integration of recent migrants, by providing the environment and opportunities for them to take part in community life. We will continue to work with civil society to develop solutions and good practice in this area.

## **F. Brexit and racial equality in the United Kingdom**

73. Para 62-70: The UK has some of the most robust legislation anywhere for tackling hate crime and through our Hate Crime Action Plan. Government have worked hard to encourage victims of hate crime to report incidents so that we can bring perpetrators who commit these crimes to justice. In October 2018, the Ministry of Housing Communities and Local Government published a refreshed Hate Crime Action Plan. This outlines the work we are doing to challenge hate crime in all its forms from prevention, to working with communities to ensuring a robust criminal justice response.

74. The Government cannot be clearer that Britain leaving the EU cannot be a reason to target groups or individuals because of their faith or background. We will not tolerate efforts to create division in our communities, against EU citizens or people of any other race, faith or background. Journalists and media are subject to the same hate crime legislation as other citizens. There are several actions in the Hate Crime Action Plan that seek to work with the media industry to reduce the harm caused by hate speech whilst respecting the right to free speech and the importance of a free media as an integral part of a democratic society. Examples of the actions we have taken include working with the Society of Editors, the Media Trust and the Independent Press Standards Organisation to improve journalists' understanding of minority groups, including working with the Independent Press Standards Organisation to devise training to help journalists develop better understanding of Islam.

75. The public order offences of "stirring up hatred" focus both on hatred itself and the intention or likely effect of the action in question. The number of prosecutions for the stirring up of hatred is much lower than for other hate related offences, due to higher evidential thresholds and the need to consider an individual's right to freedom of expression. Potential cases are referred to the Special Crime and Counter Terrorism Division by CPS. Areas in line

with the CPS Legal Guidance on Prosecuting Cases of Racist or Religious Crime and on Stirring up Hatred on the Grounds of Sexual Orientation.

76. Police-recorded religiously motivated hate crime has increased in recent years despite a backdrop of a longer-term downward trend in the experience of hate crime overall according to the Crime Survey of England and Wales. The Government recognises that there have been trigger events for increases in hate crime, such as the EU Referendum and the terror attacks in 2017, though data shows that these have been temporary. The biggest driver for this overall increase has been general improvements in police recording; through our work with the National Police Chiefs' Council and third-party services such as the Community Security Trust and Tell MAMA, police are better at identifying whether a crime is a hate crime and victims may be more willing to come forward.

77. There is no evidence to suggest an increase in hate crime in Scotland following the referendum on UK withdrawal from the European Union. In June 2017, the Scottish Government published Tackling Prejudice and Building Connected Communities - an ambitious programme of work to tackle hate crime and build community cohesion. An Action Group has been established, chaired by the Cabinet Secretary for Communities, with key stakeholders, to take forward work to support victims, encourage reporting and collect better data. Following a review of hate crime legislation in Scotland undertaken by Lord Bracadale, the Scottish Government launched a 14-week public consultation on 14 November 2019, seeking views on the detail of what should be included in a new hate crime bill. An analysis of responses will be published in June 2019.

78. Para 71: The SR raised concerns about the adverse impact of immigration and border enforcement policies on racial equality particularly prominent in Northern Ireland. The land border with the Republic of Ireland presents serious operational challenges to law enforcement agencies on both of its sides and there are signs that knowledge of its vulnerabilities is increasing. Immigration Enforcement Immigration Officers (IOs) conduct periodic document checks at these ports to intercept illegal migrants travelling between NI, Great Britain and Ireland by way of the land border (known as Operation Gull).

79. Operation Gull focuses on domestic travel routes where intelligence has shown they are used by immigration offenders and other foreign national criminals and when intelligence suggests that a route is being used by immigration offenders, everyone is spoken to regardless of nationality or appearance. A consensual request for photographic ID can form part of that initial conversation.

80. When intelligence suggests that a particular flight or boat is being used by immigration offenders everyone is spoken to regardless of race. Additional immigration questions are asked only when an IO has reason to suspect that a person may be using the domestic routes in NI to avoid UK border controls - ie. the IO has established reasonable grounds to suspect that a person is not legally entitled to reside in the UK.

81. Immigration decisions are taken by reference to immigration status and by reference to the person's past conduct. All persons are treated in the same way, save that a British Citizen may be able to establish their nationality more swiftly and once this has happened will not (and could not) be the subject of any immigration enforcement action.

82. All Operation Gull IOs are expected to carry out their duties in line with the training and guidance they have received, ensuring that their actions and treatment of the individuals that they encounter is in line with the three aims of the public sector equality duty. Guidance on the conduct of Operation Gull is set out in chapter 31 of the Enforcement, Instructions and Guidance (EIG). The guidance provides safeguards around e.g. level of seniority of the person approving the operation (Assistant Director/G7); that the IO must have reasonable suspicion that an immigration offence has been committed; and emphasises obligations under the Equality Act 2010.

83. The mandatory training that IOs undergo clearly outlines the provisions of the Equality Act, including the protected characteristics. IOs also receive supplementary training focusing on the prevention of bullying and harassment, which provides them with examples and case law relating to harassment on the basis of the protected characteristics and early resolution training.

84. Operation Gull aims to detect and remove (where appropriate and lawful) immigration offenders, including FNOs. Those removed will be persons who have no legal right to remain in the UK (including cases where it is the intention to remove any existing legal basis to remain, as part of the removal process).

85. Any enforcement action is based upon objective information taken from Home Office databases to confirm the nationality or evidence provided by the individual. All foreign nationals are treated in the same way, regardless of whether they are an EEA national or a non-EEA national. Once it is decided that a person is an immigration offender under the Immigration Act 1971 or an EEA national not exercising treaty rights, then Schedule 2 of the Immigration Act 1971 and the relevant Home Office immigration policies in force at the time are applied. The criteria for High Harm are based on objective factors such as the type or severity of the offence and not nationality or race.

86. If an immigration offender cannot be removed from the UK for any reason, additional sanctions may be considered and implemented, but these will not differ from the approach adopted across the wider IE area.

87. An interpreter is made available for those individuals that do not speak or understand English. This ensures that foreign nationals that do not speak or understand English are not placed at a disadvantage to those that do.

#### Northern Ireland

88. Since the elections to the Northern Ireland Assembly held in March 2017, the political parties in Northern Ireland have been unable to form an Executive Committee in accordance with the Northern Ireland Act 1998. As Government departments in Northern Ireland operate in law under the direction and control of Ministers, the failure to appoint Ministers has meant that departments have been constrained in the range of decisions they can take. While the Executive Formation and Exercise of Functions Act 2018 has permitted decision taking by Government officials in accordance with guidelines issued by the Secretary of State for Northern Ireland, it is considered that responses from this administration to the recommendations in the Report would require consultation with, and decisions by, future Northern Ireland Ministers. The Report will be reviewed following the return of a functioning Northern Ireland Executive and a response may be made at that time.

### **III. Conclusion**

89. In conclusion, we would like to thank Ms Achiume for her visit and her report and we would like to assure her of the United Kingdom's continued support for her mandate.

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