PUBLIC OFFICE (ACCOUNTABILITY) BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM

A. Summary of the Bill

1. This memorandum addresses issues arising under the European Convention on Human Rights (**the ECHR**) in relation to the Public Office (Accountability) Bill (**the Bill**). It has been prepared by the Ministry of Justice and the Cabinet Office. On introduction of the Bill in the House of Commons, the Lord Chancellor and Secretary of State for Justice (the Rt. Hon. David Lammy MP) made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in his view, the provisions of the Bill are compatible with Convention rights. On introduction of the Bill in the House of Lords, the Lords Minister for the Bill, the Parliamentary Under Secretary of State for Justice, Baroness Levitt, intends to also make a section 19(1)(a) statement.

2. The purpose of the Bill is to deliver the Government's manifesto commitment to place a legal duty of candour on public servants and authorities and, generally, to take steps to improve standards in public life in the United Kingdom.

3. **Part 1** of the Bill contains a purpose clause summarising the Bill's policy objectives.

4. **Part 2, Chapter 1** of the Bill places a duty of candour and assistance on public authorities and public officials, requiring them to act with candour, transparency and frankness in their dealings with inquiries and investigations; and to assist inquiries and specified investigations to achieve their objectives, with criminal sanctions for non-compliance. The duty applies to the inquiries and investigations set out at **Schedule 1.**

5. **Part 2, Chapter 2** of the Bill places a duty on public authorities to promote and take steps to maintain high standards of ethical behaviour amongst its workforce. This includes an obligation to adopt a code of ethical conduct. A code must set standards of conduct expected of individuals who work for the authority. The Bill sets out various minimum criteria that a code must satisfy. This Chapter also includes a power for the appropriate national authority to issue guidance for the purposes of the Chapter.

6. **Part 2, Chapter 3** of the Bill creates a new criminal offence of misleading the public.

7. **Part 3** of the Bill abolishes the criminal offence of misconduct in public office as it exists in the common law of England and Wales, and of Northern Ireland, and replaces it with two

statutory offences which apply across the UK. This implements the Law Commission's recommendations in their 2020 report, *Misconduct in Public Office* (LC 397).

8. **Part 4** of the Bill aims to ensure that affected persons can fully and effectively participate at inquiries and investigations. It does this by requiring public authorities to have regard to guidance and make proportionate use of legal representation, enabling concerns about the conduct of a public authority or their representatives to be raised, requiring those who run inquests and inquiries to have regard to an overriding objective, and expanding the provision of legal aid in England and Wales for bereaved families at certain inquests. It also amends the Legal Aid (Scotland) Act 1986 to enable regulations to be made to extend legal aid to bereaved family members where a public authority is a participant in an inquiry in Scotland into a fatal accident or sudden death.

9. **Part 5** of the Bill makes necessary provision for Crown application, consequential repeals and provision, interpretation, commencement, extent, and regulations.

10. **Schedule 1** to the Bill sets out which inquests and inquiries the duty of candour and assistance (**Part 2, Chapter 1**) applies to, and makes the necessary changes to other legislation to achieve that. The inquests and inquiries are: statutory inquiries under the Inquiries Act 2005, non-statutory Ministerial inquiries, certain inquiries established by local authorities in England, inquests under the Coroners and Justice Act 2009 (in England and Wales), inquiries under the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (in Scotland), and inquests under the Coroners Act (Northern Ireland) 1959 (in Northern Ireland). **Schedule 1** also provides a delegated power for the appropriate national authority to apply the duty of candour and assistance to other types of investigations and inquiries.

11. **Schedule 2** to the Bill sets out the meaning of "public authority" and "public official" for the purposes of **Part 2** of the Bill.

12. **Schedule 3** to the Bill makes further detailed provision about the criminal offences in **Part 2** of the Bill (at **clause 5** and **clause 12**).

13. **Schedule 4** to the Bill lists the Holders of Public Office subject to the new statutory offences in **Part 3**.

14. **Schedule 5** to the Bill makes changes to other legislation consequential to the Misconduct in Public Office measure in **Part 3** of the Bill.

15. **Schedule 6** to the Bill makes the detailed changes to other legislation needed to achieve the measures set out in **Part 4** of the Bill, specifically:

    a. Amendments to the Inquiries Act 2005 to:

        i. allow the Lord Chancellor to issue guidance to core participants that are public authorities, regarding their conduct at an inquiry;

        ii. set out requirements that core participants that are public authorities must comply with, relating to engaging and instructing legal representatives;

        iii. allow an Inquiry Chair to report conduct by a public authority or its legal representatives; and

        iv. insert an overriding objective into the rules.

    b. Applying the new provisions in the Inquiries Act 2005 to non-statutory Ministerial inquiries.

    c. Making amendments to the Coroners and Justice Act 2009 to make similar provision regarding coroners inquests in England and Wales.

    d. Amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to expand the availability of legal aid in inquests under the Coroners and Justice Act 2009.

    e. Amendments to the Legal Aid (Scotland) Act 1986 to enable regulations to be made to extend legal aid to bereaved family members where a public authority is a participant in an inquiry in Scotland into a fatal accident or sudden death.

16. The Departments consider that the clauses of, and Schedules to, the Bill which are not mentioned further in this memorandum, do not give rise to any human rights issues. The Convention rights the Departments consider are engaged in respect of provisions of this Bill are:

    a. Article 5

    b. Article 6

    c. Article 7

    d. Article 10

B. Convention Article Analysis

Part 2 (Performance of Public Functions)

17. Clause 5, clause 12 and Schedule 3 engage ECHR rights. Clause 5 creates the offence of failing to comply with the duty of candour and assistance in respect of an inquiry or investigation. Clause 12 creates the offence of misleading the public. Schedule 3 makes further provision about the offences, including:

    a. Paragraph 1 – provides for extra-territorial jurisdiction where an offence under clause 5 or clause 12 is committed overseas by a person who is a United Kingdom national, is habitually resident in the United Kingdom or is a body incorporated, or otherwise formed, under the law of any part of the United Kingdom.

    b. Paragraph 2– sets out the prosecutorial consents required to bring proceedings for an offence under clauses 5 and 12.

    c. Paragraph 3 - extends liability for the offences at clause 5 and clause 12 to officers of bodies, where an offence is committed with the consent or connivance of a relevant person in relation to the body (or a person purporting to act in that capacity).

    d. Paragraph 4 – provides that where an offence under clause 5 or clause 12 is alleged to have been committed by an unincorporated body, proceedings must be brought against the body in its own name and not in that of any of its officers or members.

18. The clause 5 offence applies where the duty of candour in relation to inquests and inquiries is breached. The following provisions of Schedule 1 are therefore relevant:

    a. Paragraph 1 - applies the duty of candour and assistance to statutory inquiries.

    b. Paragraph 2 - applies the duty of candour and assistance to non-statutory inquiries.

    c. Paragraph 4 – applies the duty of candour and assistance to certain local authority inquiries.

    d. Paragraph 5 - applies the duty of candour and assistance to investigations under the Coroners and Justice Act 2009.

    e. Paragraph 6 - applies the duty of candour and assistance to investigations under the Inquiries into the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.

f. Paragraph 7 - applies the duty of candour and assistance to investigations under the Coroners Act (Northern Ireland) 1959.

g. Paragraph 8 - provides a delegated power to the “appropriate national authority” to apply the duty of candour and assistance in respect of other investigations.

Article 5 ECHR – Right to Liberty and Security

19. Article 5 ECHR sets out that no one shall be deprived of their liberty other than in accordance with a procedure prescribed in law, and in certain specific scenarios. One such scenario is detention following a conviction by a competent court. The new offences at clause 5 and clause 12 therefore fall within one of the permissible grounds under Article 5(1). The new offences will be set out in primary legislation, therefore meeting the procedural requirement.

20. In principle, matters of sentencing fall outside the scope of the Convention; it is for member states to decide the appropriate sentence for any given offence. However, for detention to be lawful there must not only be a basis in domestic law, but it must not be arbitrary.

21. The clause 5 and clause 12 offences carry the following penalties:

a. on summary conviction, in England and Wales, the maximum penalty for the offence is imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);

b. on summary conviction in Scotland, imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);

c. on summary conviction in Northern Ireland, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both);

d. on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

22. In respect of the clause 5 offence, we consider that the maximum penalties are proportionate to the nature and severity of the offence. They mirror existing offences under section 35 of the Inquiries Act 2005 (failure to comply with a notice to produce evidence) and paragraph 7 of Schedule 6 to the Coroners and Justice Act 2009 (offences relating to the production of evidence).

23. In respect of the clause 12 offence, we consider that the maximum penalties are proportionate to the nature and severity of the offence. They mirror penalties for the offence in clause 5 and the existing offences mentioned above, under section 35 of the Inquiries Act 2005 and paragraph 7 of Schedule 6 to the Coroners and Justice Act 2009. The penalties are also of the same level as the penalties for the offence of providing false or misleading information under section 92 of the Care Act 2014.

24. The offences are therefore compatible with Article 5.

Article 6 – Right to a Fair Trial

25. Article 6 guarantees the right to a fair trial, including certain procedural rights for those charged with a criminal offence. Although not expressly referred to in the ECHR, there is established Strasbourg caselaw confirming that the right to a fair trial under Article 6 includes a right not to self-incriminate.

26. The clause 5 offence is for breach of the duty of candour and assistance in the context of inquiries and investigations. The duty of candour and assistance is applied to statutory inquiries (Schedule 1 paragraph 1), non-statutory inquiries (Schedule 1 paragraph 2), certain local authority inquiries (Schedule 1 paragraph 4) and coroners' investigations and Fatal Accident Inquiries (Schedule 1 paragraphs 5 to 7). Article 6 may be engaged where compliance with the duty requires a person to provide assistance to inquiries or investigations that may breach the privilege against self-incrimination. The provision in the Inquiries Act 2005 (section 22(1)) regarding protections in relation to privileged information is applied to the duty of assistance in relation to statutory inquiries and non-statutory inquiries (including local authority inquiries); and the provision providing the same protection in the Coroners and Justice Act 2009 (Paragraph 2 of Schedule 5) and equivalent provisions in the Scotland and Northern Ireland legislation is applied to the duty of assistance in relation to coroners' investigations.

27. Schedule 1 paragraph 8 enables the appropriate national authority (defined in clause 24(1)) to make regulations enabling the duty of candour and assistance to be applied to a public authority or public official in respect of an investigation specified in the regulations or investigations of a nature specified in the regulations. Regulations must include provision to secure the privilege against self-incrimination (Schedule 1 paragraph 8 (4)).

28. Clause 12 provides for an offence of misleading the public. Clause 12(6) provides that it is a defence for a person:

a. to prove that the act constituting the offence was necessary for the proper exercise of any function of an intelligence service;

b. to show that they otherwise had a reasonable excuse for their act.

29. In respect of the defence set out in clause 12(6)(a), the legal burden of proving the defence is placed on the defendant. This means that the defendant will have to prove on the balance of probabilities that the defence is made out.

30. In respect of the defence set out in clause 12(6)(b) (reasonable excuse) the evidential burden relating to the defence rests with the defendant i.e. the defendant will be required to raise sufficient evidence of reasonable excuse. But the legal burden to disprove that there was a reasonable excuse, then shifts to the prosecution.

31. The authorities provide that reverse burden provisions may be vulnerable to challenge on the ground that they are incompatible with Article 6(2), although such provisions will not inevitably be incompatible (*R v Lambert* [2001] UKHL 37), particularly where the reversal of the evidential burden only (as proposed in relation to the reasonable excuse defence in clause 12(6)(b)), rather than the full legal burden.

32. When assessing compatibility, the court will look at material factors such as the consequence of the reverse burden. A material consideration will be whether the relevant information is solely within the possession of the defendant, and the difficulty the prosecution might therefore have in prosecuting the offence if the normal burden applies (*Sheldrake v Director of Public Prosecutions Attorney General's Reference (No 4 of 2002)* [2003] EWCA Crim 762; *R v Navabi* [2005] EWCA Crim 2865).

33. The proposed reversal in respect of clause 12(6)(a) is of the legal burden. This is appropriate as it relates to the acts of the intelligence services, and the information as to whether the act is necessary for the exercise of intelligence service functions is a matter largely or entirely within the knowledge of the service. If the legal burden lay with the prosecution to disprove the defence, the offence may be extremely difficult to prosecute against the intelligence services or their employees. Imposition of a legal burden is therefore objectively justified.

34. The proposed reversal in respect of clause 12(6)(b) is of the evidential burden only; it does not place an undue burden on the defendant and is, in any event, justified. A defendant need only adduce sufficient evidence to raise the issue – they do not need to prove the defence. Requiring the prosecution to proactively disprove in every case the existence of

a reasonable excuse, would be disproportionate. Whether there is a reasonable excuse for the conduct is information that is known to the defendant, and satisfying the evidential burden should therefore be reasonably straightforward. If a defendant can adduce such evidence, then the prosecution will have to disprove it beyond reasonable doubt, in the usual ay. Imposition of an evidential burden is therefore objectively justified.

35. The offences are therefore compatible with Article 6.

Article 7 – No Punishment without Law

36. Article 7 provides that a punishment cannot be imposed other than where that punishment is prescribed by law at the time the criminal offence was committed.

37. Clause 5 and Schedule 3 set out the offence of failing to comply with the duty of candour and assistance and the penalties. Although the duty of candour and assistance will apply in relation to an inquiry or investigation that is considering events that occurred before commencement, clause 8 (transitional provisions) provides that the duty of candour and assistance only applies in respect of inquiries and inquests that are in progress at the date the Act is passed, or commence after the Act is passed. The duty itself will therefore not have any retrospective effect.

38. Clause 12 provides that a public authority or public official (as defined in Schedule 2 Part 2) commits an offence where (i) they act with the intention of misleading the public, or are reckless as to whether their act will do so, and (ii) they know or ought to know that their act is seriously improper. The clause sets out what is a “seriously improper” act by setting out conditions that must be met and providing that a reasonable person would consider the act to be seriously improper taking account of all the circumstances of the case.

39. The provisions provide a sufficient degree of certainty and foreseeability as regards the offence. The relevant provisions clearly set out the circumstances in which the offences will be committed and what the consequences may be.

40. The offences are therefore compatible with Article 7.

Article 10 – Freedom of Expression

41. Article 10(1) provides that everyone has the right to freedom of expression, which includes the right to hold opinions and to receive and impart information and ideas without interference by public authority. The clause 12 offence engages Article 10, as it has the potential to criminalise conduct that amounts to expression within the meaning of Article

10. For example, the conduct element of the offence could be satisfied by things said by a public official during a press interview.

42. Article 10 is a qualified right. Any interferences with it must be prescribed in law, pursue a legitimate aim and be necessary in a democratic society. The offence satisfies all three criteria:

43. Prescribed by law: The offence will be legislated for in primary legislation which is sufficiently clear and precise to enable individuals to regulate their conduct so as to avoid breaking the law.

44. Legitimate aim: Article 10(2) provides that interference with the Article 10 right can be justified by reference to any of the following policy aims: protection of public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the reputation or rights of others. The offence serves a number of different purposes which fall within these categories. It ensures that public officials who abuse their position to mislead the public in particularly culpable ways face criminal sanction. This protects morals by holding officials to high standards of propriety. This ensures the public retain confidence in government and public officials by deterring this type of behaviour and punishing it where it does occur. The offence also protects the reputation or rights of others by deterring public officials from misleading the public about the actions or omissions of others (e.g. police officers wrongly blaming the Hillsborough disaster on the conduct of football fans). This also promotes public safety, by ensuring that the causes of major incidents are quickly identified and addressed.

45. Necessary in a democratic society: Restrictions on the right in Article 10(1) can only be justified where they are necessary in a democratic society. This requires that there is a "pressing social need" for the restriction. The test of necessity also incorporates a requirement that the measure be proportionate to the legitimate policy aim being pursued; and that it be the least restrictive way of achieving its objective. The national margin of appreciation varies depending upon the types of expression being restricted and the justification. In general, restrictions on statements contributing to debates of general interest reduce the margin of appreciation. The European Court of Human Rights (ECtHR) has consistently held that freedom of expression is especially important for elected representatives.

46. As regards the pressing need for the offence, there have been a number of recent serious incidents involving UK public authorities that have caused significant injury, as well as

undermined the public's faith in government (e.g. Hillsborough, Horizon, Infected Blood). Many of these incidents have been found to have involved public authorities and officials making misleading statements to the public. The creation of this standalone offence will ensure that there is a clear route to imposing criminal sanctions in respect of serious instances of misleading conduct. This is intended to prevent the recurrence of these incidents and help restore the public's trust in statements by public officials.

47. The offence goes no further than is necessary to achieve the policy objective. The offence only penalises the most serious instances of public officials or authorities misleading the public, and is therefore proportionate. This is primarily achieved by the dual requirement for the act to be seriously improper, as well the cumulative conditions in subsection (3) to be met. This means, amongst other things, that the act must have involved significant or repeated dishonesty and at least have had the potential to cause harm. This sets the threshold for the offence high and ensures that the interference with an individual's freedom of expression is as limited as possible. The offence will not be engaged where an official slightly exaggerates or inadvertently gives a misleading impression.

48. In addition to the high threshold, the offence contains a number of important safeguards. First, it is subject to a reasonable excuse defence. Second, there is an exception for acts done for the purposes of journalism. This means that any journalistic activities carried out by Public Service Broadcasters fall outside of the scope of the offence. Third, the maximum sanction of 2 years' imprisonment is proportionate given the nature of the offence. Fourth, the offence does not apply to Members of Parliament (unless they are Ministers). This is significant as it means that it will not apply to opposition MPs (the ECtHR has held that any measure which operates to the disadvantage of the opposition should be particularly carefully scrutinised - *Karácsony and Others v. Hungary, Nos. 42461/13 and 44357/13, ECtHR (Grand Chamber)*).

49. The Government's position is that, given the importance of maintaining public trust in statements made by public officials, the limited incursion into Article 10(1) is necessary and justified.

50. The offence is therefore compatible with Article 10.

Part 3 (Misconduct in Public Office)

51. Part 3 has the following provisions:

a. Clause 13 – creates the offence of 'seriously improper acts' (**the seriously improper acts offence**)

b. Clause 14 – creates the offence of 'breach of duty to prevent death or serious injury' (**the breach of duty offence**)

c. Clause 15 – provides for jurisdiction where either offence is committed in Scotland or Northern Ireland; and extra-territorial jurisdiction where either offence is committed overseas by a person who is a United Kingdom national or is habitually resident in the United Kingdom.

d. Clause 16 – defines who "holds public office" for the purposes of the two new offences. The full list of public offices is set out in Schedule 4 to the Bill.

e. Clause 17 – abolishes the offence of misconduct in public office in the common law of England and Wales, makes the new offences prospective only, and expressly states that the abolition of the offence does not affect liability for other offences, or for civil liability under the tort of misfeasance in public office.

f. Clause 18 – abolishes the offence of misconduct in public office in the common law of Northern Ireland, makes the new offences prospective only, and expressly states that the abolition of the offence does not affect liability for other offences, or for civil liability under the tort of misfeasance in public office.

g. Clause 19 – makes amendments to other legislation consequential to the provisions of Part 3.

Article 5 – Right to Liberty and Security

52. As set out above at paragraph 19, Article 5 ECHR sets out that no one shall be deprived of their liberty other than in accordance with a procedure prescribed in law, and in certain specific scenarios. One such scenario is detention following a conviction by a competent court. The measure therefore falls within one of the permissible grounds under Article 5(1). The new offences will be set out in primary legislation. The measure therefore meets the procedural requirement.

53. As set out above at paragraph 20, for detention to be lawful there must not only be a basis in domestic law, but it must not be arbitrary.

54. The maximum penalties for the new offences are 10 years' imprisonment for the seriously improper acts offence (clause 13), and 14 years' imprisonment for the breach of duty

offence (clause 14). This is a change from the maximum penalty for the common-law offence, which is life imprisonment.

55. We are satisfied that the maximum penalties are proportionate to the nature and severity of the offending, and that any deprivation of liberty resulting from a sentence of imprisonment will not be arbitrary. The penalties are also in line with maximum penalties for similar offences:

    a. Bribery (section 2, Bribery Act 2010): ten years' imprisonment and/or a fine

    b. Fraud (sections 2-4, Fraud Act 2006): ten years' imprisonment and/or a fine

    c. Corrupt/improper exercise of police powers (section 26, Criminal Justice and Courts Act 2015): 14 years' imprisonment

    d. Abuse of position of trust (section 16, Sexual Offences Act 2003): five years' imprisonment.

56. The measures are therefore compatible with Article 5.

<u>Article 6 – Right to a Fair Trial</u>

57. Article 6 guarantees the right to a fair trial, including certain procedural rights for those charged with a criminal offence. The offences have a partial reverse burden in relation to the reasonable excuse defence, which engages the Article 6(2) presumption of innocence.

58. The common-law treats the issue of whether there was a reasonable excuse for the conduct as an element of the offence of misconduct in public office. The Law Commission recommended that, instead, the offence of "corruption in public office" (but not the breach of duty offence) have a public interest defence. The Law Commission recommended that the burden of proof for this defence sit with the defendant.

59. Both the clause 13 and clause 14 offences include a defence of reasonable excuse with the evidential burden relating to the defence on the defendant i.e. the defendant will be required to raise sufficient evidence of a reasonable excuse. The burden to disprove that there was a reasonable excuse then sits with the prosecution. This approach means that the prosecution does not have the burden of proving the lack of a reasonable excuse as an element of the offence; while still ensuring that the defendant can raise the issue in those (limited) cases where it is genuinely relevant.

60. The authorities make clear that although reverse burden provisions may be vulnerable to challenge on the ground that they are incompatible with Article 6(2), such provisions will not inevitably be incompatible (*R v Lambert* [2001] UKHL 37). They are also clear that reversals of the evidential burden only (as proposed here), rather than the full legal burden, are a lesser infringement.

61. When assessing compatibility, the court will look at material factors such as the consequence of the reverse burden; the more serious the consequence, the more compelling the justification likely needs to be (*Johnstone* [2003] UKHL 28). A particularly material consideration is whether the relevant information is solely within the possession of the defendant, and the difficulty the prosecution might therefore have in prosecuting the offence if the normal burden applies (*Sheldrake v Director of Public Prosecutions Attorney General's Reference (No 4 of 2002)* [2003] EWCA Crim 762; *R v Navabi* [2005] EWCA Crim 2865).

62. The offences are relatively serious. However, the proposed reversal is of the evidential burden only; it does not place an undue burden on the defendant and is, in any event, justified. A defendant need only adduce sufficient evidence to raise the issue – they do not need to prove the defence. Requiring the prosecution to proactively disprove in every case the existence of a reasonable excuse, would be disproportionate. Whether there is a reasonable excuse for the conduct is information that is known to the defendant, and satisfying the evidential burden should therefore be reasonably straightforward. If a defendant can adduce such evidence, then the prosecution will have to disprove it beyond reasonable doubt, in the usual way. Imposition of an evidential burden is therefore objectively justified.

63. The reverse burden is therefore compatible with Article 6(2).

Article 7 – No Punishment without Law

64. Article 7 provides that a punishment cannot be imposed other than where that punishment is prescribed by law. A key aspect of the protection is that an accused cannot be punished retrospectively following a change in the law to their disadvantage. Further, the offence and corresponding penalty must be clearly defined in law - the key question is whether the defendant could reasonably have foreseen at the material time (that is, the commission of the offence), if necessary, with the assistance of a lawyer, that they risked being convicted of the offence in question and being sentenced to the penalty that the offence carries.

65. One of the Law Commission's criticisms of the common-law offence was that its scope was unclear, particularly in relation to who was a public office holder for the purposes of the offence. In the common-law offence, this is determined by a test which considers whether the individual is performing a public duty.

66. The new statutory offences will clearly set out both the scope and elements of the offence. Using an exhaustive list to define who will be a public office holder for the purposes of the new offences makes clear who falls within their scope.

67. The maximum penalties for the offences will be clearly defined in statute. The changes will only take effect prospectively. Transitional provision is made to make that clear, and to allow continuing acts, which begin before the new offences come into force, to be charged under the common-law offence as it was at the time the conduct began.

68. The offences are therefore compatible with Article 7.

Ministry of Justice

Cabinet Office

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