United Kingdom

Great Britain and Northern Ireland together make up the United Kingdom. Great Britain consists of England, Wales and Scotland. Although the United Kingdom as a whole has one government (Her Majesty's Government) and a Parliament, the criminal justice systems in England and Wales, Scotland and Northern Ireland differ. Therefore, pre-trial detention in England and Wales, Scotland and Northern Ireland will be discussed in three separate parts.

A. England and Wales

1. Introduction

The criminal justice system in England and Wales is the first common-law type of legal system.[1] On the one hand, the term "common law" is used to indicate the various legal systems which are based on the English system (e.g. the United States of America). On the other hand, the phrase "common law" is still used to distinguish from statute law, which includes all the laws set out in Acts of Parliaments ("statutes") and legislation made under authority of these Acts.[2]

From around 1875 until 1970, the criminal procedure and the criminal courts of England and Wales remained remarkably stable, but after the seventies a period of change started. The main reason was the complexity of the criminal procedure, caused by the lack of codified rules, making the English criminal procedure a misery for all those who needed to understand it. Since 1980, the criminal procedure has been the subject of two Royal Commissions, of which the first ("the Philips Commission") led to major reforms in the police powers and the creation of the Crown Prosecution Service, and the second ("The Runciman Commission") led to changes in the process of appeal.[3] Furthermore the English system has been subject to an exhaustive inquiry by Lord Justice Auld, who made 328 recommendations to the government.[4] Since those recommendations, the criminal procedure has undergone several changes, like a change of the court management structure after the Courts Act 2003, a radical change in the jury and evidence system in the Criminal Justice Act 2003 ("CJA 2003"), and a first emergent code of criminal procedure since April 2005.[5]

Before discussing the pre-trial stage in England and Wales, it might be useful to give some global background information on the criminal process. In the first place, it is relevant to mention that there are two first-instance criminal courts: the Magistrates' Courts and the Crown Court. Nearly all criminal cases start in the Magistrates' Courts, which have jurisdiction in case of summary offences (e.g. motoring offences), and "either way" offences (e.g. theft and burglary). These "either way" offences are triable in the Crown Court as well if the case is too serious for trial in the Magistrates' Courts. Indictable offences (e.g. murder, robbery) can only be tried in the Crown Court by a judge and a jury.[6] When a case is tried by a Magistrates' Court, a summary trial will take place. A case which has to be judged by a Crown Court will be tried on indictment after the case is transferred for trial by a Magistrates' Court. A defendant can always exercise his right to be tried by a Crown Court, in which case his trial will be transferred as well.[7] In the second place, it is important to emphasise that the English law, as well as the law in Scotland and

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[1] K. Pease and G. Cox, *World Factbook of Criminal Justice Systems England and Wales,* http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjeng.txt
[2] G.C. Barclay, *The Criminal Justice System in England and Wales*, London: Home Office 1995, p. 2-3.
[3] J.R. Spencer, "The English system", in: M. Delmas-Marty and J.R. Spencer (eds), *European Criminal Procedures,* Cambridge: Cambridge University Press 2002, p. 142.
[4] *A review of the criminal courts of England and Wales, by Lord Justice Auld; Final Report*, September 2001, http://www.criminal-courts-review.org.uk/.
[5] P. Darbyshire, "Criminal Procedure in England and Wales" in: R. Vogler and B. Huber (eds), *Criminal Procedure in Europe,* Berlin: Dunker & Humblot 2008, p. 46-47.
[6] J.R. Spencer, p. 157-158.
[7] G.C. Barclay 1995, p. 17.

Northern Ireland, governs a bail system. If a person is granted bail within the pre-trial stage, he is released under duty to appear at the appointed time at the police station or in court.[8] Bail may be granted subject to certain conditions, but must not be confused with bail which can be imposed as a special condition to the adjournment of pre-trial detention. Because the bail system is closely related to pre-trial detention, more information on the system will follow in the next paragraphs.

2. Empirical background information

This paragraph will set apart the national as well as international statistics in relation to the numbers of the total prison population, pre-trial detention/remand imprisonment population etc. in England and Wales. Specific attention will be paid to, *inter alia*, the Council of Europe's SPACE I data, international statistics from the International Centre for Prison Studies of King's College London, the European Sourcebook of Crime and Criminal Justice and relevant national statistics (Tables 1-3). Table 4 indicates the longitudinal total prison population as well as the population in pre-trial detention. After presenting the data, the various statistics will be discussed.

Table 1

Source	Date	Total prison population	Prison density per 100 places	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Total prison population rate per 100,000	Pre-trial detention rate per 100,000
International Centre for Prison Studies (ICfPS)[9]	30 September 2007	81,224	-	13,402	16.5%	151.5	25
SPACE I (CoE)[10]	30 June 2006	77,982[11]	96.7[12]	13,067[13]	16.8%	145.1	24.3
European Sourcebook[14]	30 June 2003	-	-	-	18%	140	25.2
Eurostat	01 September 2006	79,085[15]	-	-	-	144[16]	-
National Statistics[17]	30 June 2006	77,982[18]	110	13,067[19]	16.8%	145.1	24.3

[8] Davies, Croall and Tyrer, *Criminal Justice, An introduction to the Criminal Justice System in England and Wales*, Essex: Longman 2005, p. 247.

[9] International Centre for Prison Studies, *World Pre-trial/Remand imprisonment list January 2008.*

[10] PC-CP (2007)9 revo3 *(SPACE I).*

[11] According to the SPACE I statistics, the total prison population in England and Wales includes pre-trial detainees. It does not include: a. Persons held in facilities that are not dependent on the Prison Administration (police stations, non-Ministry of Justice facilities, police isolators or similar facilities); b. Persons held in institutions for juvenile offenders; c. Persons held in institutions for drug-addicted offenders; d. Mentally ill prisoners held in psychiatric institutions or hospitals; e. Asylum seekers or illegal aliens held for administrative reasons; f. Persons serving their sentence under electronic monitoring.

[12] Density calculated on the basis of the *operational capacity* of penal institutions.

[13] According to the SPACE I statistics, pre-trial detainees are untried prisoners (no court decision yet reached), convicted but not yet sentenced prisoners, and sentenced prisoners who have appealed or who are within the statutory time limit for doing so.

[14] European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition.

Table 2

Source	Date	Pre-Trial detention (numbers) between		Pre-trial detention (percentage) between		Origin of foreigners in pre-trial detention (percentage)	
		Nationals	Foreigners	Nationals	Foreigners	EU nationals	Third-country nationals
ICfPS	30 September 2007	-	-	-	-	-	-
SPACE (CoE)	30 June 2006	11,535	1,532	88.3%	11.7%	-	-
European Sourcebook	30 June 2003	-	-	-	-	-	-
Eurostat	01 September 2006	-	-	-	-	-	-
National statistics	30 June 2007[20]	9,727	2,465	(75.7%)[21]	(19.2%)	-	-

Table 3

Source	Date	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
ICfPS	30 September 2007	-	-	-	-
SPACE (CoE)	30 June 2006	-	-	-	-
European Sourcebook	30 June 2003	-	-	-	-
Eurostat	01 September	-	-	-	-

[15] The total prison population includes pre-trial detainees. It does also include: a. offenders held in Prison Administration facilities; b. other facilities; c. juvenile offenders institutions; d. drug addicts institutions and e. psychiatric or other hospitals. Non-criminal prisoners held for administrative purposes (for example, people held pending investigation into their immigration status) do not form part of the total prison population.

[16] Average per year from 2004 to 2006.

[17] Ministry of Justice, *Population in custody monthly tables June 2006 England and Wales*.

[18] The total prison population included people held in prisons in England and Wales, and the three removal centres in Dover, Haslar and Lindholme. The total prison population differs from the total population in custody though, which includes persons held in prison establishments, police cells under Operation Safeguard, secure training centres (STCs), and secure children's homes (SCHs). The total population in custody was 78,454 on 30 June 2006.

[19] The remand population of 13,067 consists of untried persons and persons who have been convicted but not yet sentenced.

[20] Ministry of Justice, *Offender Management Caseload Statistics 2007 England and Wales.*
Specific data from 30 June 2006 was not available. The total number of pre-trial detainees on 30 June 2007 was 12,844 (untried and convicted unsentenced persons), of which 9,727 persons were nationals and 2,465 were foreigners (1,747 untried and 718 convicted unsentenced foreign nationals). The number of nationals and foreigners in pre-trial detention does not include persons of unknown or unrecorded nationality.

[21] The percentages do not include persons of unknown or unrecorded nationality. Therefore, both percentages are placed between brackets and do not form a percentage of 100% together.

	2006				
National Statistics[22]	30 June 2006	902	6.9%	2,583[23]	19.8%

Table 4[24]

Type of custody	1990	1992	1994	1996	1998	2000	2002	2004	2006	2008
Total prison population	45,466	46,875	48,929	55,256	65,727	65,194	7 1,218	74,488	77,982	79,735
Number of pre-trial detainees	9,744	10,404	12,533	11,568	12,903	11,433	13,081	12,495	13,067	12,288

As we can see in Table 4, the total prison population has grown from 45,000 in 1990 to almost 80,000 in 2008. In 1990, the population remanded in custody was 9,744, which means that 21.4% of the total prison population were kept in pre-trial detention. Although the number of prisoners remanded in custody has increased slightly during the last 18 years, the number of persons in pre-trial detention as a percentage of the total prison population has decreased gradually: from 21.4% in 1990 to 15.4% in 2008. The national statistics given in Tables 1 and 4 indicate that the number of pre-trial detainees was 13,067 on 30 June 2006. This number is equal to the data provided by the SPACE statistics.

When we have a look at the prison density per 100 places on 30 June 2006, the SPACE data shows a rate of 96.7 per 100 places. This rate is calculated on the basis of the operational capacity of penal institutions. However, the rate calculated on the basis of the official capacity is 110 per 100 places, which indicates that penal institutions have to deal with the problem of overcrowding. More detailed information on this subject as well as information on foreigners, women and juveniles will be given in paragraphs 7 and 8.

With this, we will conclude this paragraph on empirical background information and continue with the legal basis of pre-trial detention. The scope and notion of this concept will be discussed in the following paragraph.

3. Legal basis: scope and notion of pre-trial detention

In relation to the scope and notion of pre-trial detention, several aspects will pass in review in this paragraph, such as the definition of pre-trial detention, the primary objective of pre-trial detention, beginning and end of pre-trial detention according to the law, the competent authorities for arrest/further detention, and the procedural rights of the accused at the time of arrest/during detention.

The responsibility for investigating crime and arresting a defendant rests with the police. After his/her arrest, a defendant should be taken to a police station as soon as practicable (PACE s. 30(1)). After a defendant has been arrested, the initial detention can be ordered by a custody officer from the police, who cannot be connected with the enquiry (Police and Criminal Evidence Act 1984, s.34 and 36). His role is to ensure that the defendant is properly treated according to the rules laid down in the PACE and the Codes of Practice. The Codes of Practice consist of five specific Codes, of which Code C is the most important one. Its full name is the Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers, but it is usually

[22] Data from: Ministry of Justice, *Offender Management Caseload Statistics 2006 England and Wales,*
Ministry of Justice, *Population in custody monthly tables June 2006 England and Wales.*

[23] This number includes: young adults (persons aged 18 to 20, but including 21 year old prisoners who were aged 20 or under at conviction and have not been reclassified as part of the adult population) and 15-17 year olds. The number of young adults was 2,009 and 574 were 15-17 year olds.

[24] Data from the national statistics on 30 June. Sources: Ministry of Justice, *Offender Management Caseload Statistics 2005 and 2007 England and Wales;* Ministry of Justice, *Population in custody monthly tables June 2008 England and Wales*.

referred to as "the Code". [25] Taking a defendant in police custody without charge is initially limited to 24 hours, and only allowed if there is not sufficient evidence to charge him/her with a criminal offence and the custody officer believes that detention is necessary in order to secure evidence or to obtain evidence by questioning (PACE 1984, s.37). When a defendant is detained for an indictable offence, the period of 24 hours may be extended by 12 hours by a senior police officer. After 36 hours, the suspect must be either charged or released, unless a Magistrates' Court grants a warrant for further detention for initially up to another 36 hours and on re-application for up to a total period of 96 hours.[26] In Brogan vs. United Kingdom, the European Court of Human rights (the ECtHR), *inter alia*, recognised "that the period of prompt production before a judge or other officer authorised should be no longer than four days, with witch the requirements of PACE 1984 easily comply". With that, PACE itself was not in breach of Art. 5(3) of the Convention, but the European Court held "that four days and six hours, the shortest time that any of applicants had spent in custody, was a violation of Article 5(3) though".[27]

When the custody officer decides that there is sufficient evidence to charge the defendant, police bail can be granted pending the suspect's first court appearance. Under specific criteria, which are laid down in PACE, s.38, police bail may be refused if the custody officer has doubts about the identity or address of the defendant, if he has reasonable grounds to believe that further police detention is necessary to prevent the defendant from committing another offence or interfering with witnesses, or if it is necessary to ensure that the defendant will appear in court at the appointed time. If bail is refused, the defendant will be kept in (overnight) custody and the process must start within 24 hours. If bail is granted, the first appearance in court will take place within two days. More information about police bail and bail granted by a court will be discussed in paragraph 7.

Once charged, a suspect will first appear in a Magistrates' Court no matter what offence he or she has been charged with. Because it is unusual that a court deals with a case on the defendant's first appearance, the magistrates can adjourn it. In graver or more complex cases, adjournment is common practice, because both the prosecution and the defendant will need time to e.g. prepare their case, contact witnesses or seek legal advice. During the adjournment, defendants can be released to await trial, or they can be remanded on bail or in custody. These decisions also have to be made by a judge when the case goes to trial in a Crown Court. In general, less serious cases, like motoring offences, will be adjourned without remanding a defendant. If the case is more serious, the suspect will be remanded either on bail or in custody. In English law, the phrase "remand in custody" is used to indicate the period of pre-trial detention and does not include the time a defendant is kept in police custody. This means that pre-trial detention can start after the defendant's first appearance in a Magistrates' Court. The detention can enclose the time between the first court appearance and the final court appearance, but detention pending the period of appeal against the verdict or sentence is also possible. A defendant who is found guilty (convicted) but not yet sentenced (e.g. because a report on the defendant has to be prepared) can be remanded in custody as well.[28] If remanded in custody, a defendant will be held in a remand centre, situated within a prison service establishment.[29]

After a defendant has been arrested, after arrival at the police station, the custody officer must inform him of the reason of his arrest immediately (PACE, s.28). If he is held in police custody following his arrest, he has several "defensive rights", such as the right to consult a solicitor at any time (PACE, s. 58(1), the right to an interpreter (Code C, para.3.5 and 3.12), the right to inform someone about his arrest (PACE, s. 56) and the right to refuse to answer when questioned. The defendant must always be reminded about his right to silence before the questioning starts (Code C, para.10). Furthermore, he has the right to consult the PACE Codes of Practice. If the suspect is a juvenile, or mentally disordered or mentally vulnerable, the custody officer must arrange that an

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[25] J. Sprack, *Emmins on Criminal Procedure,* Oxford: Oxford University Press 2002, p. 5-11.

[26] According to the Home Office, only a small proportion of defendants are detained without charge for more than 24 hours. Furthermore, it must be noted that applications for a warrant of further detention are nearly always granted. Home Office, "Arrest for Notifiable Offences and the Operation of Certain Powers under PACE", *Home Office Statistical Bulletin 18 2004,* London: Home Office.

[27] Brogan and others vs. United Kingdom, November 29, 1988, 11 EHRR 117 (cited in: N. Corre and D. Wolchover, *Bail in Criminal Proceedings,* Oxford: Oxford University Press 2004, p. 19-20).

[28] A. Ashworth, *the Criminal Process, an evaluative study,* Oxford: Oxford University Press 1998, p. 207.

[29] Davies, Croall and Tyrer 2005, p. 247.

appropriate adult is present at the police interview (Code C, para.11.17). More detailed information on several vulnerable groups (juveniles, women, foreigners and alleged terrorists) will be presented in paragraph 8. In contrast to his "defensive rights", the suspect has almost no "active rights". He has, for instance, no legal right to have his solicitor inspect his dossier before he is questioned. Neither does he have any legal right to request the police to follow any particular line of inquiry.[30] As mentioned before, a suspect remanded in custody by a court will be kept in a remand centre. The principal source of law in relation to remand centres are the Prison Rules, which will be discussed shortly in paragraph 7.

The objective of pre-trial detention and the rules regarding arrest/detention have been discussed above. However, the question remains on which grounds pre-trial detention can be ordered. This question will be dealt with in the following paragraph.

4. Grounds for pre-trial detention

First of all, it is important to emphasise that the threshold for the offence is not a factor that is taken into account when a court has to decide whether to remand a suspect in custody or on (un)conditional bail. Moreover, the law does not mention specific grounds to remand a suspect in custody, but gives grounds to refuse bail. Because of a "presumptive right in favour of bail", which is laid down in s. 4 of the Bail Act 1976, it is common practice to remand a defendant on bail. In other words, (un)conditional bail should be granted, unless it is necessary to remand the person in custody. Bail has to be refused if the circumstances laid down in Schedule 1 of the Bail Act apply.

The provisions for defendants charged with an imprisonable offence are set out in Part I of Schedule 1, which is given below. The provisions for non-imprisonable offences are not listed, because they are quite similar to the provisions for imprisonable offences. Furthermore, bail is very rarely refused if the offence is non-imprisonable.[31]

4.1 Part I of Schedule 1: exceptions to the right of bail for imprisonable offences

a) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that, if released on bail he would:

- fail to surrender to custody;
- commit an offence while on bail;
- interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or some other person;

b) the offence with which he is charged is indictable-only, or triable either way, and he was already on bail at the time of the charged offence;

c) the court is satisfied that he should be kept in custody for his own protection, or if he is a juvenile, for his own welfare;

d) he is already serving a custodial sentence;

e) the court is satisfied that lack of time since the commencement of the proceedings has made it impractible to obtain the information needed to decide properly the questions raised in (a) to (c) above;

f) he has already been bailed during the course of the proceedings, and has been arrested under s. 7 of the Act (absconded defendants);

g) he is aged 18 or over, there is drug test evidence of a specific Class A drug in his body, the offence is a Class A drug offence and he does not agree to undergo an assessment or a follow-up programme as to drug misuse or dependency.

The main provisions are mentioned under Section a of Schedule 1, which says that the court must be satisfied that there are substantial grounds for believing that, if the defendant is granted bail, he would fail to surrender to custody (abscond), commit an offence while on bail, or interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or some other person. In case Section a is applicable, Paragraph 9 of Schedule 1 of the Bail Act provides the

[30] J.R. Spencer 2002, p. 168-169, J. Sprack 2002, p. 34-39.
[31] J. Sprack 2002, p. 89.

court some guidance on how to decide whether to grant bail, by giving a number of considerations to be taken into account:

- the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it);
- the character, antecedents, associations and community ties of the defendant;
- the defendant's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings;
- except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted, as well as to any others which appear to be relevant.[32]

As we can see, the considerations are not limited. One of the factors in deciding whether a defendant should be refused bail or not is the existence of a previous conviction (antecedent). With that, a previous conviction is also a factor in deciding whether a defendant should be remanded in custody. The fact is that a person who is refused bail can only be remanded in custody.

To defendants who are charged with murder, attempted murder, manslaughter, rape, attempted rape or one of the serious sexual offences listed in the Sexual Offences Act 2003 (Schedule 6, paragraph 32), and who have been convicted for any of these offences before, bail may be granted only if there are exceptional circumstances which justify it (s. 25 Criminal Justice and Public Order Act 1994). If the previous conviction was culpable homicide or manslaughter, the provision only applies if the sentence for the offence was imprisonment or long-term detention.[33] The phrase that bail should be granted only if the court is satisfied that "there are exceptional circumstances which justify it" was added by amendment[34] after the ECtHR confirmed in Caballero vs. United Kingdom[35] that the original text of s.25 Criminal Justice and Public Order Act 1994 was in breach of Art. 5(3) of the ECHR. The original text imposed a prohibition of granting bail to persons charged with murder, attempted murder, manslaughter, rape or attempted rape in case of a prior conviction for such offences.

It is common practice to remand a defendant on bail after his first appearance in court; as we have seen in this paragraph, custodial remand can be granted. During the custodial period, there are several reviewing moments, which will be discussed below.

5. Grounds for review of pre-trial detention

During his first appearance in the Magistrates' Court, a defendant can make a fully argued bail application (ask the court to grant bail). If bail is refused and the defendant is remanded in custody after his first appearance in the Magistrates' Court, the custody period prior to a "transfer proceeding" or a summary trial may not exceed eight clear days (s. 128 (6), Magistrates' Court Act 1980). After eight days of custody, the defendant has to appear in court, where he can make a second fully argued bail application. According to Schedule 1, part IIA Bail Act, a defendant is allowed to make two fully argued bail applications (at his first court appearance and at the next remand hearing), unless he can re-open the question of bail with new arguments. Moreover, the court is obliged to consider bail in relation to every person who has been remanded in custody before his first court appearance (Bail Act, Schedule 1, part IIA).

If it takes several weeks or months before the transfer proceeding or summary trial can take place, the limited periods of remand in custody (eight days at a time) are inconvenient. The defendant has to be brought before the Magistrates' Court every week, even though it is almost certain that he will be remanded in custody for another week. Because of the pointlessness of appearing in the Magistrates' Court on a weekly basis just to be told that the period of remand in custody will be prolonged, the defendant can be remanded in custody by the court for up to 28 days without court attendance. On the first and every subsequent occasion when the court proposes to remand the defendant in custody during an adjournment, the defendant has to be informed of the possibility of further remand decisions being made in his absence. Only if the

[32] Ibid, p. 87-88.
[33] Ibid, p. 86.
[34] Section 25 Criminal Justice and Public Order Act 1994 was amended by s. 56 of the Crime and Disorder Act 1998.
[35] Caballero vs. United Kingdom, February 8, 2000, nr. 32819/96.

defendant is legally represented and he consents, the court is able to remand him in custody in absence three times, which is usually a period of 28 or 32 days.[36] On the fourth occasion, the defendant is obliged to appear in court whether he wishes or not. It is not allowed to remand unrepresented persons and juveniles in absence.
Basically, a defendant who does not consent to remand in custody in absence has to be brought to the court for a remand hearing every week. Because of the pressure under which the prison service is working, it was, according to the government, unsatisfactory to let the service bring remanded persons to court on a weekly basis. Therefore, the Criminal Justice Act 1988 added a new subsection (128A) to the MCA, which created the opportunity to remand a defendant in custody for up to 28 clear days, regardless of his consent. Once a Magistrates' Court has set a date for the next stage in the proceedings, s.128A (2) MCA enables the court to remand the defendant in custody till that date, or for a period of 28 days clear, whichever is the less. It is important to emphasise that it can only be applied if, at the second or any subsequent remand, the court decides to refuse bail. This means that a defendant is able to use his two bail applications (during his first court appearance and at the second remand hearing), after which the court may remand him for up to 28 days.[37]

After a first or second bail application has been made, it is a matter of the court to decide to grant or withhold bail in a so-called bail hearing. If the Crown Prosecution does not raise objections against the bail application, it is unlikely that the court withholds bail and remands the defendant in custody. However, if objections have been made, the court will first of all have to hear all the arguments against bail stated by the prosecution. Commonly raised objections are, for instance, that it is likely that the defendant will receive a custodial sentence after he has been convicted, that he has past convictions for failing to appear in court after being granted bail, and that it is likely that he will influence witnesses after his release. Having heard the objections raised by the prosecution, the defence have the opportunity to put forward their arguments for bail, after which the court must decide whether bail is granted or not. In practice, bail hearings are often criticised, because courts do not always treat the question whether to grant or withhold bail thoroughly enough. In his review of the Criminal Courts of England and Wales, Lord Justice Auld found out that the average length of bail hearings at two busy Magistrates' Courts in London was six minutes. Not surprisingly, Auld stated in his report that "magistrates and judges in all courts should take more time to consider matters of bail".[38]

In addition to the possibility to make repeated bail applications to the Magistrates' Court, a defendant can also make a bail application to the Crown Court (s.81, Supreme Court Act 1981) or/and to a High Court judge in chambers (set out in Ord 79, r 9 of the Civil Procedure Rules 1998). The application will be normally made by a defendant whose bail application to the Magistrates' Court has failed, but with the introduction of the CJA 2003 it is also possible to appeal to the Crown Court against the imposition of a specific bail condition. Prior to the introduction of the CJA 2003, an appeal against the imposition of bail conditions had to be made to the High Court.[39]

6. Length of pre-trial detention

During the period from 1975 until 1989, the average time untried male prisoners spent in custody increased from 25 to 57 days.[40] The figures for females show an increase from 15 days in 1975 to 51 days in 1988. These strongly increased custody periods, "led during the period 1976-1989 to the untried prison population rising by 174%, whereas the sentenced prison population only

[36] I. Bing, *Criminal Procedure and Sentencing in the Magistrates' Court*, London: Sweet and Maxwell 1996, p. 57.
[37] J. Sprack, *A Practical Approach to Criminal Procedure,* Oxford: Oxford University Press 2006, p. 99-101, 109-111.
[38] *A review of the criminal courts of England and Wales, by Lord Justice Auld; Final Report*, September 2001, p. 430, http://www.criminal-courts-review.org.uk/
[39] J. Sprack 2006, p. 109-115.
[40] The average time spent in custody by untried prisoners does not include the time spent in custody after their conviction but before being sentenced.

increased by 4.7% during the same period".[41] Because the prolonged pre-trial custody contributed to prison overcrowding, custody time limits were introduced following the creation of the Crown Prosecution Service in 1985.

The time limits, laid down in the Prosecution of Offences Regulations 1987, prescribe that a person is held for no longer than seventy days between his first appearance in the Magistrates' Court and the summary trial or transfer proceeding. The time limit is reduced to 56 days if the decision for summary trial is taken within 56 days. After a defendant has been transferred to the Crown Court by the magistrates, the trial must start within 112 days.[42] This means that the time a suspect may spend in pre-trial detention before the Crown Court trial must commence is limited to 182 days. However, prolongation is possible when the prosecution applies orally or in writing for extension of the time-limit.[43] After 182 days have expired, the defendant has an absolute right to bail. The right is subject to conditions (e.g. residence, reporting conditions, a curfew), but conditions like surety or security, which must be met before release on bail, may not be imposed. Surety means that a third party pledges to pay a certain amount of money set by the court if the defendant does not turn up in court at the appointed time. Surety is often associated with the phrase bail, but it must be underlined that surety is, within the English system, only a condition which can be attached to the grant of bail. A court may also require security, which means that a defendant has to deposit a sum of money or other valuables before he is released.[44]

Instead of granting bail after 182 days, the court can also decide to extend the pre-trial detention. The application for the extension has to be made by the prosecution before the time limit expires. The grounds for prolongation are laid down in s.22(3) of the Prosecution of Offences Act 1985. The court must be satisfied:

a) that the need for the extension is due to:

I. the illness or absence of the accused, a necessary witness, a judge or a magistrate;
II. the ordering by the court for separate trial in the case of two or more accused or two or more offences;
III. some other good or sufficient case and;

b) that the Crown has acted with all due expedition.

Where a Magistrates' Court decides to extend the custody time limit, the defendant may appeal against that decision to the Crown Court (s.22 (7) Prosecution of Offences Act 1985). If the extension is refused, the prosecution is allowed to appeal against that court decision as well.[45] A maximum extension period is not given by the law.

With the introduction of the custody time limits, the average time untried male prisoners spent in custody decreased from 57 days in 1989 to 53 in 1996 and 49 in 2002. The equivalent figures for female prisoners show a decrease from 51 days in 1988 to 41 in 1996 and 37 in 2002.[46] Moreover, it seems certain that "the regime established by the Prosecution of Offences Act 1985 and the Prosecution of Offences Regulations 1987 (custody time limits) would be found to satisfy Article 5(3) of the ECHR". The power of the court to extend the time limit is "also likely to comply with the Convention".[47] Although it seems that the regime in relation to the custody time limits is not in breach of Art. 5(3), various cases show that the ECHR, in particular Art. 3 and 5, were violated by the United Kingdom. Since the majority of these cases are not related to the length of pre-trial detention, they will be mentioned in the paragraph below.

After a suspect has been convicted. sentencing can be adjourned if the court wishes to make further inquiries.[48] According to the law, the time a person may spend in custody on remand may not exceed three weeks (four weeks if the remand is on bail) (s. 10 (3) MCA).[49] There is no specific data available relating to the period convicted but not yet sentenced persons spend in custody on

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[41] R. Morgen, "England and Wales", in F. Dünkel and J. Vagg (eds), *Untersuchungshaft und Untersuchungshaftvollzug, Waiting for Trial,* Freiburg: Max-Planck-Institut 1994, p. 197-199.
[42] Davies, Croall and Tyrer 2005, p. 247.
[43] N. Corre and D. Wolchover 2004, p. 471-475.
[44] S. Seabrooke and J. Sprack, *Criminal evidence and procedure: the essential framework,* London: Blackstone Press 1999, p. 200-201.
[45] N. Corre and D. Wolchover 2004, p. 487.
[46] Home Office, *Prison statistics England and Wales 2002.*
[47] B. Emmerson, A. Ashworth and A. Macdonald, *Human Rights and Criminal Justice,* London: Sweet & Maxwell 2007, p. 475.
[48] It is, for instance, possible that the court orders a pre-sentence report.
[49] I. Bing, p. 68.

remand, nor is there any information on the total average time persons spend in pre-trial detention.

7. Other relevant aspects

Several elements in relation to pre-trial detention have already been discussed in the previous paragraphs. Some of the remaining questions, such as whether the time spent in custody on remand is taken into account in the final sentence, whether there is a mechanism for compensation if the accused is not sentenced, whether there are alternatives to pre-trial detention, and the practice regarding the execution of remand in custody, will be treated in this paragraph. The paragraph will be concluded with an overview of cases in which Art. 3 and 5 ECHR were violated by the United Kingdom.

The time a defendant spent in prison on remand (not including the time spent in police custody) will be deducted from the eventual sentence of imprisonment if the remand was connected to the same offence or a related offence (s.240(3) CJA 2003). The court has the discretion to decide that the time spent in a remand centre shall not be deducted from the sentence if it is in the interest of justice not to do so. Since the CJA 2003 came into force, the credit for remand is not automatic anymore, which means that the representative of a defendant has to be aware of the time his client spent on remand in custody and has to seek a direction under s. 240(3) himself.[50]

The right to be compensated for the time spent in custody on remand by a defendant who is eventually acquitted is given by Art. 5(5) of the ECHR. Several articles, including Art.5, of the Convention are incorporated into the English law by the Human Rights Act 1998 (s.1(3) and Schedule 1 of the Act).[51] In 2005, one in five (19%) of the men and 18% of the women held on remand in custody before trial were acquitted. Despite the right to be compensated, the vast majority of persons did not receive any compensation for the time they spent in custody.[52]

The alternatives to pre-trial detention in England and Wales are governed by the bail system. Both the police (police bail) and the court (remand on bail) can grant bail. Section 4 of the Bail Act 1976 gives the defendant a presumptive right to bail, which means that bail should be granted unless circumstances, laid down in Schedule 1 of the Bail Act, apply (see paragraph 3). If bail is refused, the defendant has to be remanded in custody. Bail can be granted unconditionally or conditionally. If conditional bail is granted by the police custody officer (police bail), the defendant is released subject to certain conditions to ensure that he will be present at his first Magistrates' Court appearance.[53] According to a study of Raine and Wilson (1997),[54] the most commonly imposed conditions were linked to keeping defendants away from specific places or persons. Furthermore, Raine and Wilson noticed that the introduction of conditional police bail in the Criminal Justice and Public Order Act 1994 (amendment of PACE 1984) had led to a small overall reduction of overnight detention, but to a significant drop of cases in which unconditional police bail was granted. In 2003, in the Criminal Justice Act (CJA 2003), "street bail" was introduced by s.4 of the Act. Police officers have powers to release an arrested person on the street, without taking him/her to a police station. The only condition that can be imposed is the obligation to appear at the police station later on.[55] Bail granted by a court (remand on bail) aims to ensure that the defendant appears at the next court hearing and can also be granted subject to conditions. Morgan and Henderson found out that around one-quarter to one-third of defendants granted bail by a court are placed under conditions.[56] In Table 5, the most commonly imposed conditions are set out.

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[50] J. Sprack 2006, p. 440.
[51] S. Seabrooke and J. Sprack, p.470-471.
[52] Prison Reform Trust, *Bromley Briefings Prison Factfile,* June 2008, http://www.prisonreformtrust.org.uk
[53] E. Cape and J. Hodgson, "The investigative Stage of the Criminal Process in England and Wales", in E. Cape, J. Hodgson, T. Prakken and T. Spronken (eds), *Suspects in Europe,* Antwerp-Oxford: Intersentia 2007, p. 62-65.
[54] J.W, Raine and M.J. Willson, "Police bail with Conditions", (1997) 37 *BJ Crim.593.*
[55] A. Ashworth and M. Redmayne, *The Criminal Process,* Oxford: Oxford University Press 2005, p. 217-218.
[56] P. Morgan en P. Henderson, *Remand Decisions and Offending on Bail: Evaluation of the Bail Process Project*, London: Home Office 1998, Ch. 4.

Table 5

The use of conditional bail by the Magistrates' Courts [57]		
Condition	Study: Raine and Willson (1994)* Condition in %	Study: Morgan and Henderson (1998)** Condition in %
Residence	79	72
No contact	46	41
Boundary	28	28
Curfew	21	20
Reporting	17	18
Surety	4	6
Bail hostel	4	-
Others***	6	3
* J.W. Raine en M.J. Willson, *Conditional Bail or Bail with Conditions? The Use and Effectiveness of Bail Conditions*, London: Home Office 1994. ** P. Morgan en P. Henderson, *Remand Decisions and Offending on Bail: Evaluation of the Bail Process Project,* London: Home Office 1998. *** Includes: surrender passport and driving ban (Raine and Wilson); surrender passport (Morgan and Henderson)		

Both studies show that the most common condition is residence at a specified address. Not contacting a specific person as well as the boundary also seem to be conditions frequently imposed, but the use of bail hostels and surety is not frequent. The danger with the possibility to require a surety (a defendant pledges to pay an amount of money to the court in case he does not turn up at the next court hearing) or security (deposit a sum of money), is that these conditions may exclude less-fortuned people from bail. Discrimination against such people is quite wrong.[58] Furthermore, Raine and Willson found that many conditions are proposed by the defence (they hope to deflect the court from remanding the defendant in custody), and not by the magistrates themselves. A condition, which is not mentioned separately in the studies cited above is electronic monitoring/tagging. Tagging is available as a condition of bail in support of a curfew condition. It allows courts to restrict an individual's liberty while he/she is released on bail and brings regularity to what may otherwise be a chaotic lifestyle. When a court has to make a bail decision, it will take account to the impact that electronic monitoring may have on the risk posed by the defendant. The monitoring will ensure that compliance with the curfew can be checked and that if a curfew is breached the police are notified. In case of breached the police are notified within a short period of time and have the responsibility for returning the defendant to court. Table 6 shows that courts have made increasingly use of tagging. The fact is that in 2006 there were 14,234 tagging on bail starts. In 2007 there were 24,613 and in 2008 28,538.[59]

Table 6

Tagging on Bail starts			
Year	Youths	Adults	Total
2006	7,878	6,356	14,234
2007	10,442	14,171	24,613
2008	10,206	18,332	28,538

[57] K. Dhami, "Conditional Bail Decision Making in the Magistrates Court", *The Howard Journal February 2004*, Vol 43 No 1, p. 27-46.
[58] A. Ashworth and M. Redmayne 2005, p. 214-215.
[59] Additional comments made by the UK in response to the EU meeting of experts on pre-trial detention on the 9th of February 2009 in Brussels.

With regard to the execution of pre-trial detention in practice, detainees remanded in custody tend to be placed in the system's most overcrowded prison facilities. The problem of overcrowding within English prisons has received special attention from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), because overcrowded prisons influence the condition of detention in prison. The CPT noticed that "overcrowded prisons entail, inter alia, cramped unhygienic accommodations, a constant lack of privacy, reduced out-of cell activities, due to demand outstripping the staff and facilities available, overburdened health-care services, increased tension and hence more violence between prisoners and between prisoners and staff".[60] These effects were clearly visible within the three English prisons the CPT delegation visited in 2003.[61] The Committee pointed out earlier that "for as long as overcrowding persists, the risk of prisoners being held in inhuman and degrading conditions of detention will remain".[62]

In addition to the overcrowding problem for all prisoners, persons in pre-trial detention are often held in worse conditions than sentenced prisoners. "Because remand prisoners are not in prison as a punishment the regime for remands should be better than that for sentenced prisoners (…) Unhappily, the position is often the reverse." The partial explanation of the authorities is that it is the natural inclination of the prison service to devote proportionately more of its resources to those inmates who have been in custody for the longest period.[63] Furthermore, prisoners in custody on remand are subject to the uncertainty of their legal process and are not able to plan their future. They also have little opportunity for work and recreation.[64] The latter is mentioned by the CPT as well in its 2003 report on the visit to the United Kingdom. During their visit, the CPT delegates found that the majority of remand prisoners were not involved in either work or education. Moreover, it appeared that the out-of-cell time for remand prisoners could be as little as two hours per day. The average out-of-cell time for sentenced prisoners was said to be nine hours per day in Winchester prison, and six to eight hours per day at Liverpool and Pentonville prisons, although in all three facilities it was frequently less, particularly during the weekends. Moreover, the CPT "recommends that steps be taken to increase the number of prisoners taking part in purposeful activities outside their cells, as well as the amount of time spent on such activities. Particular efforts are required in relation to remand and vulnerable prisoners".[65]

As mentioned before in paragraph 3, the most important legislation in relation to prisons is laid down in the Prison Act 1952. The Prison Act empowers the Secretary of State to make delegated legislation (prison rules) for the regulation and management of prisons, but also for the treatment, clarification, employment, discipline and control of persons detained in these facilities. The Prison Rules also apply to remand centres and make specific provisions for prisoners kept in pre-trial detention.[66] For instance, s.7(2) of the Prison Rules 1999 prescribes that:

- "unconvicted prisoners shall be kept out of contact with convicted prisoners as far as the governor considers it can reasonably be done, unless and to the extent that they have consented to share residential accommodation or participate in any activity with convicted prisoners; and
- shall under no circumstances be required to share a cell with a convicted prisoner."

In practice, the provision mentioned above is routinely ignored, primarily because the overcrowding problem in local prisons has made it impractical.[67] In its 2003 report, the CPT also notes that "prisoners were being allocated according to space available, rather than based on the most appropriate allocation for the persons in question, in regard to their status or circumstances (e.g. remand, convicted, life sentenced, undergoing detoxification)".[68]

Furthermore, it must be stated that the problem of suicide under prisoners in pre-trial detention is acute. Every week, almost two prisoners commit suicide, of whom over a third are

[60] CPT/Inf (2000) 1, paragraph 67.
[61] The CPT visited Liverpool Prison, Pentonville Prison-London and Winchester Prison. In all three prisons, both sentenced and remand prisoners were kept.
[62] CPT/Inf (2005) 1, paragraph 16.
[63] Woolf LJ, *Prison Disturbances April 1990: Report of an Inquiry,* Cmnd. 1456, London: HMSO, 1991, p. 246. (cited in N. Corre and D. Wolchover 2004, p. 3).
[64] R. Morgan, 'Remands in custody: Problems and Prospects', [1989] Crim LR 481, p. 485 (cited in N. Corre and D. Wolchover 2004, p. 3).
[65] CPT/Inf (2005) 1, paragraph 33 and 34.
[66] R. Morgen, in F. Dünkel and J. Vagg (eds), p. 202-204.
[67] Ibid, p. 202-203.
[68] CPT/Inf (2005) 1, paragraph 37.

unconvicted.[69] To comply with the right of life, laid down in Art. 2 ECHR, deaths in custody have to be investigated by the government.[70] This has resulted in a new Prison Service Order 1301 (PSO 1301: deaths in prison custody), which has been updated by Prison Service Order 2710 (PSO 2710: follow up to death in custody). Paragraph 6.1 of PSO 2710 prescribes, *inter alia*, that all deaths in custody are subject to:

- a police investigation (on behalf of the Coroner) and, if necessary, a criminal investigation;
- an investigation by the Prisons and Probation Ombudsman;
- a Coroner's inquest before a jury.

In addition to PSO 2710, Prison Service Order 2700 (PSO 2700: suicide prevention and self-harm management) provides instructions on identifying prisoners at risk of suicide and self-harm, and on providing the subsequent care and support for such prisoners, and support for the staff who care for them.[71] The desired outcome of PSO 2700 is to reduce the suicide rate among persons in custody as well as self-harm. With regard to the majority of prisoners in custody, paragraph 4.1.1 PSO 2700 states that "the remand period and the early period of custody is a time of high risk of suicide and self-harm. Therefore it is important to have reception, first night, clinical substance misuse management and induction procedures that provide opportunities to identify and care for those prisoners at heightened risk, and that also provide reassurance to those who – often unknown to staff – may also be at risk." The procedures prescribed by paragraph 4.1.1 PSO 2700 have been elaborated in paragraph 4.2-4.20. For this report, it would be going too far to discuss these paragraphs in detail.

To conclude this paragraph, the overview below enumerates several cases in which the United Kingdom violated Art. 3 and 5 of the ECHR:

Case vs. United Kingdom[72]	**Date**	**Article**	**Judgment**
Ireland	18 January 1978	Art. 3 and 5	Violation
Tyrer	25 April 1978	Art. 3	Violation
Soering	07 July 1989	Art. 3	Violation
Chahal	15 November 1996	Art. 3 and 5 (4)	Violation
D.	02 May 1997	Art. 3	Violation
A.	23 September 1998	Art. 3	Violation
Hilal	06 March 2001	Art. 3	Violation
Keenan	03 April 2001	Art. 3	Violation
Z. and others	10 May 2001	Art. 3	Violation
Price	10 July 2001	Art. 3	Violation
E. and others	26 November 2002	Art. 3	Violation
MCLingey and others	29 April 2003	Art. 3	Violation
NA.	17 July 2008	Art. 3	Violation
Brogan and others	29 November 1988	Art. 5 (3)(5)	Violation
Weeks	02 March 1987	Art. 5 (4)	Violation
X.	05 November 1981	Art. 5 (4)	Violation
Thynne, Wilson and Gunnell	25 October 1990	Art. 5 (4)(5)	Violation
Fox, Campbell and Hartley	30 August 1990	Art. 5 (1)(5)	Violation
Hussain	21 February 1996	Art. 5 (4)	Violation
Singh	21 February 1996	Art. 5 (4)	Violation

[69] *Annual Report of HM Inspectorate of Prisons for England and Wales, 2002/2003*, London: The Stationery Office, 2004. (cited in N. Corre and D. Wolchover 2004, p. 5).
[70] *R v. Secretary of State for the Home Department [2001] ACD 521, QBD.*
[71] Prison Service orders 1301 (24 June 2002), 2710 (2 November 2005) and 2700 (26 October 2007) are available at the website of HM Prison Service:
http://www.hmprisonservice.gov.uk/resourcecentre/psispsos/listpsos/index.asp?startrow=1
[72] The verdicts can be found on the website of the Council of Europe,
http://www.coe.int

Johnson	24 October 1997	Art. 5 (1)	Violation

8. Special groups

This paragraph will consider the special regulations (if any) with respect to pre-trial detention for vulnerable groups in England and Wales. Attention will be paid to juveniles, women, foreigners and alleged terrorists. The particular groups will be dealt with separately.

8.1 Juveniles

When we look at the national statistics dealing with young offenders in pre-trial detention, we can see that 2,583 persons were kept in detention on 30 June 2006 (Table 3). The term "young offenders" is to be understood as persons aged 18 to 20 (young adults[73]) and persons aged 15-17. The majority of these prisoners in pre-trial detention were young adults (2,009 persons), of which 1,896 were young men.[74] In this section, we will focus on young offenders under 18, who will be regarded as juveniles. Before giving more information on juveniles, it has to be stated that in England and Wales the age for criminal responsibility is 10 years.

When a case is adjourned, the court is able to remand the juvenile in custody (a secure remand). However, detention of juveniles before trial shall, according to paragraph 17 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, "be avoided to the extent possible and limited to exceptional circumstances".[75] Moreover, the Youth Justice Board emphasises that "remand in custody has to be made only on the most serious and persistent young offenders".[76] The Youth Justice Board was introduced by the Crime and Disorder Act 1998 and "has a duty to monitor the performance and operation of the youth justice system, by preventing crime and fear of crime, identifying a dealing with young offenders and reducing re-offending".[77]

A juvenile who is charged and not released on (un)conditional bail will usually be remanded to local authority accommodation. In that case, specific conditions, such as a curfew, can be imposed on the juvenile and the authority. Instead of remanding a juvenile to local authority accommodation, the courts have the power to order a secure remand. Secure remand is "used by courts for juveniles whose offences are particularly serious or who have offended frequently".[78] Juveniles under secure remand are usually accommodated in Secure Children's Homes or Secure Training Centres. Secure Children's Homes are purposed for juveniles aged 12 to 14, girls up to 16, and 15-16-year-old boys who are assessed as vulnerable, while Secure Training Centres can hold youngsters up to the age of 17.

8.2 Women

As Table 3 (see paragraph 2) shows, 902 women were remanded in custody on 30 June 2006. On the same date, 3,512 female prisoners were under sentence. This means that around one in five women are remanded in custody. In 1996, 546 women were remanded in custody and 1,732 were under sentence. This means that the total female prison population has more than doubled over a decade. Despite the fact that the population of women remanded in custody has grown from 546 to 902, less women were remanded in custody in 2006 (around one in five) compared to 1995 (around one in three).[79]

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[73] 21 year old prisoners who were 20 years of age or under at the time of their conviction and have not been reclassified as part of the adult population are also considered "young adults" within the national statistics.
[74] Ministry of Justice, *Population in custody monthly tables June 2006 England and Wales.*
[75] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly resolution 45/113 of 14 December 1990,
http://www.ohchr.org
[76] Youth Justice Board, *Bail and Remand*,
http://www.yjb.gov.uk/en-gb/yjs/BailandRemand/
[77] Davies, Croall and Tyrer 2005, p. 222.
[78] Youth Justice Board, *Secure Remand*,
http://www.yjb.gov.uk/en-gb/yjs/BailandRemand/SecureRemand/
[79] Ministry of Justice, *Offender Management Caseload Statistics 2006 England and Wales.*

Of the women remanded in custody, 20% were acquitted or had their cases discontinued, 41% received a custodial sentence and 32% a non-custodial sentence.[80] These figures show that around four out of ten women received a custodial sentence, while around six out of ten were acquitted or received a non-custodial sentence. According to R. Player, the figures "do not necessarily prove that the period spent in custody on remand was unwarranted; they do reveal a level of incongruity between bail en sentencing decisions that warrants some justification".[81]

8.3 Foreigners

The national statistics show that on 30 June 2007, 2,465 persons remanded in custody were foreign nationals, and 9,727 were British nationals (see Table 2).[82] This total number of foreign national prisoners remanded in custody is made up of different ethnic groups, as we can see in Table 7 below:

Table 7

Ethnic groups among foreign national prisoners remanded in custody, 30 June 2007[83]

Foreign national prisoners	Total	White	Mixed	Asian or Asian British	Black or Black British	Chinese or other ethnic group	Not stated	Unrecorded	1991 census ethnic codes
Number	2,465	780	94	460	821	289	12	5	3
Percentage	100%	31.6%	3.8%	18.7%	33.3%	11.7%	0.5%	0.2%	0.1%

The table shows that the majority of foreign prisoners remanded in custody is made up of "White" and "Black or Black British" persons; slightly more than 50% of these persons are "Black or Black British".

Within the English system, prison allocation is not determined by nationality. Therefore, "foreign national prisoners on remand are, like any other prisoner, kept in local prisons until the trial and sentence".[84] With regard to the experience of imprisonment awaiting trial, foreign nationals have particular problems accessing information on the legal system. Many of them are unaware of the criminal justice system, and have trouble understanding prison procedures and rules. [85] Moreover, just 15% of prisons has received legal reference material available in other languages than English. This means that foreign national prisoners, in particular, are disadvantaged when preparing their cases for trial.[86] Furthermore, there are also complaints from foreign national prisoners relating to discriminatory treatment, victimisation and racism.[87] Interviews with foreign national prisoners "have revealed that racism and a lack of respect and understanding from prison staff are not uncommon".[88]

8.4 Alleged terrorists

Detaining a suspect without charge after arrest is subject to strict time limits (see paragraph 3). The fact is that taking a defendant into police custody without charge is initially limited to 24 hours and only allowed if there is not sufficient evidence to charge him with a criminal offence, and the custody officer believes that detention is necessary in order to secure evidence or to obtain evidence by questioning (PACE 1984, s.37). In certain terrorism investigations under the

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[80] *Criminal Statistics England and Wales 2002*. (cited in A. Ashworth and M. Redmayne, p. 220).

[81] R. Player, *Remanding Women in Custody, Concerns for Human Rights,* Modern Law Review, Volume 70, Number 3, May 2007, p. 402-426.

[82] Untried (1,747) and convicted unsentenced (718) prisoners. These numbers include persons of unknown or unrecorded nationality.

[83] Ministry of Justice, *Offender Management Caseload Statistics 2006 England and Wales.*

[84] N. Hammond, *United Kingdom,* in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel (eds), *Foreigners in European Prisons*, Nijmegen: Wolf Legal Publishers 2008, p. 815.

[85] Prison Reform Trust, *Forgotten Prisoners-The Plight of Foreign National Prisoners in England and Wales*, May 2004, http://www.erpho.org.uk/viewResource.aspx?id=14068

[86] Prison Reform Trust, *Remand prisoners denied right to prepare for trial, 2002,* http://www.prisonreformtrust.org.uk/subsection.asp?id=329

[87] N. Hammond, in A.M. van Kalmthout, F. Hofstee-van der Meulen and F. Dünkel (eds), p. 829.

[88] Prison Reform Trust, *Forgotten Prisoners-The Plight of Foreign National Prisoners in England and Wales*, May 2004.

Terrorism Acts of 2000 and 2006, these time limits do not apply.[89] In these terrorism investigations, the police can detain arrested persons on their own authority for a maximum period of 48 hours (Terrorism Act 2000, s. 41). After this period, a warrant for further detention may be obtained from a judicial authority. The pre-charge detention of a terrorism suspect may be initially extended up to seven days, which may be prolonged by periods of seven days repeatedly for up to 28 days. However, a Counter-Terrorism Bill, introduced in Parliament on 24 January 2008, makes provisions for the maximum limit of 28 days to be extended to 42 days under specified circumstances.[90] However, the plans to extend pre-charge detention to 42 days were recently rejected by the House of Lords, which means that the government has to shelve the measure.[91]

In its 2008 report on the visit to the United Kingdom, the CPT stated that "the existing – and a fortiori possible new – provisions regarding the permissible length of pre-charge detention in cases falling under the terrorism legislation are a matter of considerable concern". The CPT furthermore insists that neither the existing nor any new provisions in relation to the length terrorist suspects spend in pre-charge detention should result in criminal suspects spending a prolonged period of time in police custody. The sooner a suspect is turned into the hands of a custodial authority, which is functionally and institutionally separate from the police, the better.[92] Despite the fact that the Code of Practice (Code H) on detention of persons under the Terrorism Act 2000 prescribes where detention beyond 14 days is authorised, "the detainee must be transferred from detention in a police station to detention in a designated prison as soon as is practicable". The CPT notes that there are exceptions to the obligation to transfer a suspect to a prison (if the suspect requests to remain in the police station and if transfer to prison would prevent the investigation from being conducted diligently and expeditiously). In the CPT's opinion, these exceptions are questionable. The CPT recommends that the necessary steps be taken to ensure that:

- "all persons suspected of offences under the terrorism legislation in respect of whom detention beyond 14 days is authorised are transferred forthwith to a prison;
- appropriate arrangements are in place enabling terrorist suspects transferred to prison whilst still in pre-charge detention to make effective use of their rights, including that of access to a lawyer."[93]

Besides the Terrorism Acts 2000 and 2006, the Anti-Terrorism, Crime and Security Act 2001 was introduced to create powers to detain without trial persons suspected of international terrorism, in which a derogation from Art. 5 ECHR was entered. In 2004, the House of Lords decided, *inter alia*, that the derogation from Art. 5 was incompatible with the Convention.[94] Following the ruling by Britain's highest court, the Prevention of Terrorism Act 2005 came into force on 11 March 2005. This Act replaced Part 4 (ss. 21-32) of the Anti-Terrorism, Crime and Security Act 2001, which made provisions for the indefinite detention of foreign terrorism suspects. The Prevention of Terrorism Act 2005 allows for control orders restricting the freedom of persons suspected of terrorist activities.[95] These control orders can include several conditions "such as restrictions on movement and travel, restrictions on associations with named individuals and the use of tagging for purposes of monitoring curfews".[96] Despite the fact that indefinite detention is banned from English law, the new Prevention of Terrorism Act still can count on sharp criticism. Ben Ward, special counsel in the Europe and Central Asia division of Human Right Watch, for instance, remarked: "First we had indefinite detention, now we have curfews and tagging but still without

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[89] D. J. Feldman, "England and Wales", in C. G. Bradley (eds), *Criminal Procedure a Worldwide Study,* Durham: Carolina Academic Press 2007, p. 157.
[90] CPT/Inf (2008) 27, paragraph 5.
[91] Human Right Watch, *UK Shelves 42-day Detention without Charge*, November 9, 2008,
http://www.hrw.org/en/news/2008/11/09/uk-shelves-42-day-detention-without-charge
[92] CPT/Inf (2008) 27, paragraph 6.
[93] CPT/Inf (2008) 27, paragraphs 6 and 7.
[94] A. v. Secretary of State for Home Affairs [2004], *The Times*, 17 December. (cited in A. Ashworth and M. Redmayne, p. 15).
[95] Human Right Watch, *UK: New Terrorism Law Fundamentally Flawed*, March 14, 2005,
http://www.hrw.org/en/news/2005/03/14/uk-new-terrorism-law-fundamentally-flawed
[96] Website of the Security Service MI5, *Legal Framework*,
http://www.mi5.gov.uk/output/legal-framework.html

trial. (…) The government refuses to acknowledge a basic truth: punishment without trial is unacceptable, no matter what."[97]

B. Scotland

1. Introduction

After the extensive discussion on pre-trial detention in England and Wales, the most important aspects in relation to pre-trial detention in Scotland will be treated below.

As well as England and Wales, Scotland does not have a criminal code. Therefore, instead of relying on a single written code, reference must be made to the common law, (especially case-law), the works of certain authoritive "institutional" writers of the eighteenth and nineteenth centuries, and, finally, legislation − in the form of Acts of Parliament, secondary legislation, and also international legislation by which Scotland is bound.[98]

The Criminal Procedure (Scotland) Act 1995 is now the principal statute governing criminal procedure, which in many ways functions as a Code of Criminal Procedure (the 1995 Act). The 1995 Act constitutes a comprehensive statement of the law as regards criminal procedure.

Part I of the Act 1995 sets out the court system, addressing its organisation and the jurisdiction of each of the criminal courts, these being the High Court of Justiciary, Sheriff Courts, and District Courts. The law regarding the organisation of the police is explicated in Part II of the 1995 Act. The main sources of law concerning imprisonment are the Prisons (Scotland) Act 1979, the Prisoners and Criminal Proceedings (Scotland) Act 1993, the Criminal Justice and Public Order Act 1994, and the 1995 Act, Part XI. There is no dedicated probation service in Scotland, the relevant functions being undertaken by generic social workers.[99]

The criminal law of Scotland does not formally classify crimes in terms of severity. However, the nearest Scots law comes to dividing offences in this way, is to recognise two distinct forms of criminal procedure, namely "summary" and "solemn" procedure.[100] The summary procedure is appropriate for less serious crimes; it is more flexible, speedy and relatively informal. If the case goes to trial, it is heard by a judge, either a sheriff or a lay justice, without a jury. Solemn procedure is for more serious offences; it is lengthier and more strictly governed by rules of procedure. Trials of this type are always heard before a jury, with either a sheriff or a High Court judge on the bench.[101]

Criminal responsibility under Scots law requires a minimum age of 8 years. No person under this age may be charged with an offence. Between the ages of 8 and 16 years, it is possible to prosecute the offender before a criminal court, although it is much more common for the juvenile to be referred to a children's hearing. The minimum age at which an offender may be dealt with as an adult is 16 years.

There are three criminal courts in Scotland: the High Court of Justiciary, the Sheriff Court, which may sit in solemn cases or summary cases, and the District Court. Generally, any one of these courts may be a court of first instance, but all appeals are heard by the High Court.[102]

2. Empirical background information

In this part of the report, the numbers will be discussed. But first the sources responsible for the data will be presented. The sets of data are based on the resources of Statistics SPACE I, the International Centre for prison Studies, the European Sourcebook, and Eurostat. The numbers

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[97] Ben Ward cited in: Human Right Watch, *UK: New Terrorism Law Fundamentally Flawed*, March 14, 2005.
[98] A. Gibb & P. Duff in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: Scotland*, Helsinki 2002, p. 6, http://www.heuni.fi/uploads/xzsuca.pdf .
[99] Ibid, p. 16.
[100] Ibid, p. 17.
[101] Ibid, p. 18.
[102] Ibid, p. 42.

have been arranged in the clear figures shown beneath. It must be kept in mind, however, that the information relates to several dates.

Table 8

Source	Date	Total prison populati on	Prison density per 100 places	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Total prison population rate per 100,000	Pre-trial detention rate per 100,000
International Centre for Prison Studies (ICfPS)[103]	26 October 2007	7,292	-	1,422	19.5%	143.6	28
SPACE I (CoE)[104]	30 September 2006	7,192[105]	112.5	1,554[106]	21.6%	140.6	30.4
European Sourcebook[107]	30 June 2003	-	-	-	19%	131	24.9
Eurostat	01 September 2006	7,183[108]	-	-	-	136[109]	-

Table 9

Source	Date	Pre-Trial detention (numbers) between		Pre-trial detention (percentage) between		Origin of foreigners in pre-trial detention (percentage)	
		Nationals	Foreigners	Nationals	Foreigners	EU nationals	Third-country nationals
ICfPS	30 September 2007	-	-	-	-	-	-
SPACE I (CoE)	30 September 2006	1,490	64	95.9%	4.1%	-	-
European Sourcebook	30 June 2003	-	-	-	-	-	-

[103] International Centre for Prison Studies, *World Pre-trial/Remand imprisonment list January 2008.*
[104] PC-CP (2007)9 revo3 *(SPACE I).*
[105] According to the SPACE I statistics, the total prison population in Scotland includes pre-trial detainees. It does not include: a. Persons held in facilities that are not dependent on the Prison Administration (police stations, non-Ministry of Justice facilities, police isolators or similar facilities); b. Persons held in institutions for juvenile offenders; c. Persons held in institutions for drug-addicted offenders; d. Mentally ill prisoners held in psychiatric institutions or hospitals; e. Asylum seekers or illegal aliens held for administrative reasons; f. Persons serving their sentence under electronic monitoring.
[106] According to the SPACE I statistics, pre-trial detainees are untried prisoners (no court decision yet reached), convicted but not yet sentenced prisoners, and sentenced prisoners who have appealed or who are within the statutory time limit for doing so.
[107] European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition.
[108] The total prison population includes pre-trial detainees. It does also include: a. offenders held in Prison Administration facilities; b. other facilities; c. juvenile offenders institutions; d. drug addicts institutions and e. psychiatric or other hospitals. Non-criminal prisoners held for administrative purposes (for example, people held pending investigation into their immigration status) do not form part of the total prison population.
[109] Average per year from 2004-2006.

Eurostat	01 September 2006	-	-	-	-	-	-

Table 10

Source	Date	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
ICfPS	30 September 2007	-	-	-	-
SPACE I (CoE)	30 September 2006	-	-	-	-
European Sourcebook	30 June 2003	-	-	-	-
Eurostat	01 September 2006	-	-	-	-

Firstly, the general numbers and especially the total prison population of Scotland will be discussed. We see that this is between 7,183 and 7,292, which means that the prison population per 100,000 inhabitants is approximately 140 persons. Concerning the prison density per 100 places, a density of 112.5 indicates that overcrowding must be a problem in the Scottish prison system. There is no data available with respect to the share of juveniles, females and foreigners in the total prison population.

After these general numbers and percentages in relation to the prison population, we now come to the legal status of the prison population, especially that of pre-trial detainees. The total number of persons in pre-trial/remand imprisonment in Scotland is 1,422 according to the Centre of International Prison Studies, and 1,554 according to SPACE I.[110] This is 19.5% and 21.6% of the total prison population respectively. Moreover, the pre-trial/remand population rate per 100,000 of the national population is 28 and 30.4. SPACE I also mentions the number of foreign pre-trial detainees, namely 64 (of 1,554).

With this, we will conclude this paragraph on empirical background information and continue with the legal basis of pre-trial detention. The main aspects of pre-trial detention in Scotland will be discussed in the following paragraph.

3. Legal basis: scope and notion of pre-trial detention

In Scotland, all prosecutions are brought by the public prosecution service. Head of the public prosecution service are the Lord Advocate, a government minister, and his deputy, the Solicitor General. The Lord Advocate appoints several members of the Scottish Bar to act as Advocates Depute (the Crown Counsel). Their task is both to prosecute in the High Court, where the most serious cases are heard, and to provide advice to local prosecutors (Procurator Fiscals) on various

[110]According to the SPACE statistics the total prison population in Scotland includes pre-trial detainees. It does not include: a. Persons held in facilities that are not dependent on the Prison Administration (police stations, non-Ministry of Justice facilities, police isolators or similar facilities); b. Persons held in institutions for juvenile offenders; c. Persons held in institutions for drug-addicted offenders; d. Mentally ill prisoners held in
psychiatric institutions or hospitals; e. Asylum seekers or illegal aliens held for administrative reasons; f. Persons serving their sentence under electronic monitoring. Pre-trial detainees are in accordance with the SPACE I statistics untried prisoners (no court decision yet reached), convicted prisoners, but not yet sentenced and sentenced prisoners who have appealed or who are within the statutory time limit for doing so.

other categories of cases.[111] Most prosecutions are instituted locally by procurator fiscals or their "deputes" in the Sheriff Court or District Court. Although it is theoretically possible in Scotland for individuals to initiate private prosecutions in solemn cases, this requires the permission of the Lord Advocate or High Court and, thus, is very rarely undertaken. The procurator fiscal also has the responsibility for the investigation of crime, but in practice this role is handed over to the police. Although the police have much discretion in the investigation of crime, they remain the responsibility of the procurator fiscal, and must obey any instructions that are received from the prosecutor's office. The role of the police is limited to investigation; they have no competence to decide whether the results of the investigation justify a prosecution or otherwise.[112] The evidence to be used in court is gathered by the police throughout the investigative stages of the case.

In a summary case, the judge determines the verdict when all the evidence has been heard. In a solemn case, the judge instructs the jury as to the applicable law. The jury then retires, in seclusion and without the judge, to determine the verdict.[113] It should be noted that the jury has no role in determining or advising upon sentence; their function is simply to determine the guilt or otherwise of the accused.

There is no officially recognised concept of a pre-trial phase in the Scottish criminal justice process. The pre-trial phase covers all activity which occurs before trial. The pre-trial phase is generally adversarial in nature, but it also involves certain forms of procedure which are of a somewhat inquisitorial character.[114] As mentioned earlier, all activity that occurs before trial might be regarded as the pre-trial phase. This includes various stages such as investigation by the police, judicial examination of the accused, pre-trial proceedings like preliminary or first appearances before the court, the bringing up of special defences, and preliminary pleadings. The pre-trial phase ends with the beginning of the trial itself: when the first Crown witness is called. Most cases are concluded well before the trial phase, usually with a plea of guilty by the accused but sometimes with the desertion of the case by the prosecution.[115]

With limited exceptions, powers of apprehension are enjoyed exclusively by the police, acting under the authority of the public prosecutor. At this stage, two specific measures can be distinguished: detention[116] and arrest. Only the police can institute detention. If a police officer has reasonable grounds for suspecting that a person is committing or has committed an offence, he can order that person to provide his name and address, and demand an explanation of the circumstances which have given rise to his suspicion.[117] The police have the power to take the suspect to the police station and detain him or her in custody. At the end of six hours, the detainee must either be set free or arrested. Detention may be followed by arrest but arrest may also occur without detention having taken place. Arrest can take place with or without a warrant. The principle is that the police officer performing the arrest must not go beyond his powers. Following arrest, the accused person must be brought before the court on the next day it sits. At this point, the court will normally commit the accused for trial, although the matter may simply be adjourned. In the latter eventuality, if the accused is in custody, there are slightly different rules in solemn and summary cases.[118] As regards solemn cases, the accused must be brought back before the court within eight days for full committal for trial (or release); as regards summary cases, the accused must be brought back to court in seven days, unless there is special cause, and the case may be adjourned again, subject to an overall time limit of 21 days in total from the first court appearance, after which he must be committed for trial or released.[119] The court must consider the matter of bail at all such appearances. After full committal for trial, on the assumption that the accused has not as yet pled guilty, the court may remand the accused in custody until the trial, or

[111] A. Gibb & P. Duff in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: Scotland*, Helsinki 2002, p. 25.
[112] Ibid, p. 25.
[113] Ibid, p. 27.
[114] Ibid.
[115] A. Gibb & P. Duff in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: Scotland*, Helsinki 2002, p. 28.
[116] Ss. 13 and 14 of the 1995 Act.
[117] A. Gibb & P. Duff in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: Scotland*, Helsinki 2002, p. 29.
[118] Ibid, p. 30.
[119] Ibid.

release him on bail.[120] In practice, the prosecutor has an important role in determining whether the accused is granted bail, because if the prosecutor does not object to a bail application, the court will usually be content to grant bail.[121] There are very strict time limits concerning the length of time an accused may be held in custody prior to the commencement of the trial. The accused is entitled to apply for bail at every court appearance and appeal against the refusal of such an application. The legal prerequisite for detention for up to six hours under the 1995 Act is that the police officer must have reasonable grounds for suspecting that a person has committed, or is in the process of committing, an offence punishable by imprisonment. An accused may be arrested without warrant for similar reasons as regards certain types of crime mentioned in the 1995 Act[122] and, at common law, the police have quite wide and loosely defined competences to arrest suspects for serious crimes or if an offender is fleeing.[123]

Following arrest, the accused must be brought before a court as soon as possible and, at the first appearance of the accused, the court must consider whether the accused should be granted bail. The court may refuse to grant bail for a number of reasons: the accused is likely to interfere with the prosecutor's inquiries, re-offend or abscond, or the offence is of such nature that, in the interests of justice, bail should not be granted.[124] The sheriff decides whether an accused should be placed in pre-trial detention. If the accused applies for bail, the court must handle the application within 24 hours of it being lodged; if it fails to do so, the accused will be set free. Furthermore, the accused is entitled to appeal against the court's refusal to grant bail. The prosecution may appeal against the grant of bail, in which case the accused remains in custody. However, the prosecution's appeal has to be heard by the High Court within 72 hours; if this is not done, the accused must be released.[125] In solemn cases, if the accused is held in custody, the trial must begin within 110 days of the accused being committed for trial.[126] In summary cases, if the accused is in custody, the trial must commence within forty days of his first appearance on the complaint[127]. In both instances, this period may be extended by the court upon the request of either the prosecutor or the accused. However, if the time limits are breached, the accused must be set free and no further proceedings may be brought in respect of the relevant charges. When arrested, the accused must be brought before the relevant court on the next day it sits. Having heard representations of both the prosecution and the defence, the court must then determine whether or not the accused should be released on bail. In solemn cases, full committal for trial must take place within eight days. In summary cases, the accused must be brought back before the court every seven days, with a total limit of 21 days, until he is fully committed for trial.[128] On these appearances, the matter of bail may be reconsidered. Once the accused has been committed for trial, he may make an application for bail to the sheriff. This application must be considered by the sheriff within 24 hours.[129] The accused may appeal to the High Court against any refusal by the sheriff to allow him bail. The prosecutor may appeal against any decision to allow the accused bail. In the latter event, the appeal must be heard within 72 hours; if this is not done, the accused must be released.[130] When passing a custodial sentence on an accused person who has pled or been found guilty, the court is required to have regard to any period of time during which the accused was imprisoned while awaiting trial. Normally, this will mean a deduction of the length of his sentence.

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[120] Part III of the 1995 Act.
[121] A. Gibb & P. Duff in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: Scotland*, Helsinki 2002, p. 30.
[122] S. 21 of the 1995 Act.
[123] A. Gibb & P. Duff in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: Scotland*, Helsinki 2002, p. 31.
[124] Ibid.
[125] Ibid.
[126] S. 65 of the 1995 Act.
[127] S. 147 of the 1995 Act.
[128] A. Gibb & P. Duff in order of HEUNI, The European Institute for Crime Prevention and Control, affiliated with the United Nations, *Criminal Justice System in Europe and North America: Scotland*, Helsinki 2002, p. 32.
[129] S. 23 of the 1995 Act.
[130] S. 32 of the 1995 Act.

C. Northern Ireland

1. Introduction

The legal system in Northern Ireland is largely based on the model of England and Wales, which supplanted the system operating under Celtic Law before the seventeenth century. Established in 1801, the United Kingdom incorporated England, Wales, Scotland and the whole of Ireland.[131] In 1922, the Irish Republic seceded to independent nationhood. The remaining part of Ireland was subject to the 1920 Government of Ireland Act,[132] which was enacted by the Parliament in London and provided a constitution for Northern Ireland. However, many of the criminal justice arrangements in Northern Ireland remain different from those in England and Wales. These differences are caused by the continued political divisions resulting in terrorist acts and paramilitary forces being active within the Province of Northern Ireland.

One of the many striking features of the legal system in Northern Ireland is the recognition of parallel informal justice systems, with paramilitary groups distributing justice among social groupings who would prefer not to have recourse to the official system.

The classification of crimes is similar to that in England and Wales, the one difference being the existence of scheduled offences. These are primarily terrorist offences, which activate distinctive court arrangements.

With regard to the judicial institutions, the Crown Court deals with the serious criminal cases. To the Court of Appeal, appeals from the Crown Court are brought. The administration of the court system is the responsibility of the Lord Chancellor. Substantive law, the police and the application of the penal system are controlled by the Northern Ireland Office, under the authority of the Secretary of State for Northern Ireland.[133]

The Magistrates' Courts are organised into 22 districts. They deal with minor offences. Juvenile Courts and County Courts are also geographically organised. Appeals from Magistrates' Courts against conviction or sentence are heard by a higher court, which is generally the County Court. An appeal on a point of law may be heard by the Northern Ireland Court of Appeal, which also serves as the appellate court for the Crown Court in Northern Ireland. There is a provision for appeal from the Court of Northern Ireland to the House of Lords. Cases involving persons under the age of 17 are dealt with in Juvenile Courts by a resident magistrate sitting with two lay magistrates, one of whom must be a woman.[134]

2. Empirical background information

In this paragraph, the statistics will be discussed. But first the sources responsible for the data will be presented. The sets of data are based on the resources of Statistics SPACE I, the International Centre for prison Studies, the European Sourcebook, and Eurostat. The numbers have been arranged in the clear figures shown beneath. It must be kept in mind, however, that the information relates to several dates.

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[131] K. Pease & G. Cox, *World Factbook of Criminal Justice Systems: Northern Ireland*, 1993, http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjnir.txt.
[132] A. Fionnuala Ni, "Where Hope and History Rhyme – Prospects for Peace in Northern Ireland?", *Journal of International Affairs*; Summer 1996, 50/1, p. 64.
[133] K. Pease & G. Cox, *World Factbook of Criminal Justice Systems: Northern Ireland*, 1993.
[134] Ibid.

Table 11

Source	Date	Total prison populati on	Prison density per 100 places	Number of pre-trial detainees	Pre-trial detainees as a percentage of the total prison population	Total prison populatio n rate per 100,000	Pre-trial detention rate per 100,000
International Centre for Prison Studies (ICfPS) [135]	29 October 2007	1,507	-	576	38.2%	86.4	33
SPACE I (CoE)[136]	30 Septem ber 2006	1,502[137]	99.7	624[138]	41.5%	84.4	35
European Sourcebook [139]	30 June 2003	-	-	-	33%	68	22.4
Eurostat	01 Septem ber 2006	1,501[140]	-	-	-	78[141]	-

Table 12

Source	Date	Pre-Trial detention (numbers) between		Pre-trial detention (percentage) between		Origin of foreigners in pre-trial detention (percentage)	
		Nationals	Foreigners	Nationals	Foreigners	EU nationals	Third-country nationals
ICfPS	30 Septemb er 2007	-	-	-	-	-	-
SPACE I (CoE)	30 Septemb er 2006	579	45	95.7%	4.3%	-	-
European Sourcebook	30 June 2003	-	-	-	-	-	-
Eurostat	01 Septemb er 2006	-	-	-	-	-	-

135 International Centre for Prison Studies, *World Pre-trial/Remand imprisonment list January 2008.*
136 PC-CP (2007)9 revo3 *(SPACE I).*
137 According to the SPACE I statistics, the total prison population in Northern Ireland includes pre-trial detainees. It does not include: a. Persons held in facilities that are not dependent on the Prison Administration (police stations, non-Ministry of Justice facilities, police isolators or similar facilities); b. Persons held in institutions for drug-addicted offenders; c. Mentally ill prisoners held in psychiatric institutions or hospitals; d. Persons serving their sentence under electronic monitoring.
138 According to the SPACE I statistics, pre-trial detainees are untried prisoners (no court decision yet reached), convicted but not yet sentenced prisoners, and sentenced prisoners who have appealed or who are within the statutory time limit for doing so.
139 European Sourcebook of Crime and Criminal Justice Statistics – 2006 Third edition.
140 The total prison population includes pre-trial detainees. It does also include: a. offenders held in Prison Administration facilities; b. other facilities; c. juvenile offenders institutions; d. drug addicts institutions and e. psychiatric or other hospitals. Non-criminal prisoners held for administrative purposes (for example, people held pending investigation into their immigration status) do not form part of the total prison population.
141 Average per year from 2004 to 2006.

Table 13

Source	Date	Females in pre-trial detention (numbers)	Females as a percentage of the total number of pre-trial detainees	Juveniles in pre-trial detention (numbers)	Juveniles as a percentage of the total number of pre-trial detainees
ICfPS	30 September 2007	-	-	-	-
SPACE I (CoE)	30 September 2006	-	-	-	-
European Sourcebook	30 June 2003	-	-	-	-
Eurostat	01 September 2006	-	-	-	-

When we look at the general numbers and in particular at the total prison population of Northern Ireland, we see that this is between 1,501 and 1,507, which means that the prison population per 100,000 inhabitants is approximately 80 persons. Concerning the prison density per 100 places, a density of 99.7 indicates that there is no problem of overcrowding in the prison system of Northern Ireland. There is no data available with respect to the share of juveniles and females in the total prison population.

After these general numbers and percentages in relation to the prison population, we now come to the legal status of the prison population, especially that of pre-trial detainees. The total number of persons in pre-trial/remand imprisonment in Northern Ireland is 576 according to the Centre of International Prison Studies, and 624 according to SPACE I.[142] This is 38.2% and 41.5% of the total prison population respectively. Moreover, the pre-trial/remand population rate per 100,000 of the national population is 33 and 35. SPACE I also mentions the number of foreign pre-trial detainees, namely 45 (of 624).

With this, we will conclude this paragraph on empirical background information. In the next paragraph, we will discuss the legal basis of pre-trial detention in Northern Ireland.

3. Legal basis: scope and notion of pre-trial detention

Remand prisoners include those charged with an offence whom the courts have ruled should be detained in custody pending trial; those whom the courts have permitted to be released on bail pending trial but have not as yet met the conditions (usually financial) of the bail; those who had been released on bail but have subsequently been re-admitted to prison because they breached a condition of bail; and those who have been found guilty by the court but have been ordered to be detained in custody pending sentence. Persons on remand under the age of 17 will normally be detained in a juvenile justice centre.[143]

The Royal Ulster Constabulary is responsible for the investigation of crimes. If an offence other than a terrorist offence, also called "scheduled offence", is involved, uncontested cases are heard by a single judge, and contested cases are adjudicated by a 12-person jury and sentenced by a single judge. Each defendant has the right to challenge a maximum of twelve potential jurors without giving a reason.[144]

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[142] According to the SPACE I statistics, pre-trial detainees are untried prisoners (no court decision yet reached), convicted but not yet sentenced prisoners, and sentenced prisoners who have appealed or who are within the statutory time limit for doing so.

[143] C. O'Loan & M. McKibbin, "The Northern Ireland Prison Population in 2007", *Research and Statistical Bulletin 9/2008*, Statistics and Research Branch of the Northern Ireland Office, 2008, p. 22.

[144] K. Pease & G. Cox, *World Factbook of Criminal Justice Systems: Northern Ireland*, 1993.

Scheduled offences are heard before a single judge without a jury.[145] Before these courts, the safeguards of defendants are minimal. The judge must provide written reasons for a conviction. There is also an automatic right of appeal against conviction and sentence on points regarding the law and/or facts.

Most summary offences are prosecuted by the police. The Director of Public Prosecutions for Northern Ireland prosecutes all offences tried on indictment and has the competence to prosecute other cases as well.[146]

Periods for which suspects are held on suspicion of terrorist offences may exceed the generally applicable limits, which are identical to the limits in England and Wales. Any person who considers the grounds for his or her detention unlawful, may apply for a writ of *habeas corpus*, requiring the official who detained him/her to appear before the court and justify the detention. These *habeas corpus* proceedings take precedence over other proceedings.

Moreover, in regard to the rights of the accused, legal aid is widely available in Northern Ireland. Unlike the situation in England and Wales, it is non-contributory. Application is made to the court pending judicial discretion and the court has the right to defer the decision until the defendant's means have been assessed.

4. Other relevant aspects

The prison estate in Northern Ireland is much younger than elsewhere in the United Kingdom. Another point of difference, particularly in comparison to England and Wales, is that there are no open prisons and the prison population is disproportionately composed of persons who have been convicted of scheduled offences (because of the greater average sentence length in Northern Ireland).[147]

In contrast to England and Wales, there is no overcrowding in the prisons of Northern Ireland.

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[145] Ibid.
[146] Ibid.
[147] K. Pease & G. Cox, *World Factbook of Criminal Justice Systems: Northern Ireland*, 1993.

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