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## **Introduction**

The Oxford Programme on International Peace and Security (IPS) is a research programme of the University of Oxford's Blavatnik School of Government, housed under the Institute for Ethics, Law, and Armed Conflict. We provide a space for research on the critical challenges facing the law, norms, and institutions affecting the maintenance and enforcement of international peace and global security. We believe the UK has a particularly valuable contribution to help enable the prompt and peaceful resolution of the deepening crisis in Myanmar. For this reason, we leverage our researchers' collective insight on issues of interest to the Parliamentary Inquiry by responding to its call for evidence through this submission.

## **Executive Summary**

- Given its status as UN Security Council Penholder, the UK has both the responsibility and a duty to proactively pursue action to immediately cease violence and resolve the crisis in Myanmar.
- The UK and international partners should work towards reinstating democratically elected officials and make the Myanmar government's respect of human rights and the rule of law the centrepiece of supportive action.
- Unilaterally, the UK should promote measures to establish legal accountability, implement additional targeted economic sanctions, increase humanitarian support and support civil society organisations.
- With international partners and allies, the UK should consider opportunities for mediation and diplomacy.
- More generally, the UK should adopt an integrated atrocity prevention strategy, which is key to preventing further atrocities, including in Myanmar.

## **I. Submission Overview**

1. In light of its historic ties, its long-standing diplomatic presence in Yangon, its friendship with the people of Myanmar, and its status as UN Security Council Penholder, Her Majesty's Government (HMG) has both a duty and a responsibility to play an active role in resolving the current crisis in Myanmar by ensuring the immediate cessation of violence and respect for the rule of law and human rights.
2. In the last several decades, Myanmar has undergone repressive military rule, extreme poverty, and numerous conflicts between ethnic minority groups. In 2011, the dissolution of military rule paved the way for a democratic movement led by the National League for Democracy (NLD), under the leadership of Aung San Suu Kyi.<sup>1</sup> After democratic reforms, the UK increased its economic and political engagement with Myanmar.<sup>2</sup> However, Myanmar continues to face serious human rights and democratic challenges.

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<sup>1</sup> <https://www.cfr.org/backgrounder/myanmar-history-coup-military-rule-ethnic-conflict-rohingya>

<sup>2</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/301731/UK\\_in\\_Burma.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/301731/UK_in_Burma.pdf)

3. A 2018 United Nations (UN) fact-finding mission to investigate conflict-related human rights violations in Rakhine, Chin, Shan, and Kachin States concluded that there was reasonable inference of ‘genocidal intent’ against the Rohingya population.<sup>3</sup> The military seizure of power and removal of democratically elected leaders in February 2021; the ongoing detention of an estimated over 3000 political prisoners; the use of military-grade weaponry against protesting civilians; and the ongoing crises in the border regions including Rakhine State present serious concerns to the UN Security Council and the international community. International observers, civil society organisations (CSOs), and media reports have documented a pernicious system of imprisonment, including arbitrary detention and forms of torture in violation of the UN Convention against Torture.<sup>4</sup> The long-running NGO the Assistance Association for Political Prisoners (Burma) has been closely monitoring arrests (excluding quick releases) and killings connected to the coup. As of 18 May 2021, it counted: 802 killed; 5,210 arrested (including many journalists); 4,120 remaining in detention; and 1,699 warrants for arrest outstanding.<sup>5</sup>
4. The situation in Myanmar is escalating and entrenching. Further escalation will affect the broader region, including India, China, Thailand, and Bangladesh. The National Unity Government, formed in response to the February 2021 military coup, has announced the formation of a People’s Defence Force to protect civilians from military attacks, and armed groups appear to be emerging in opposition to military rule.<sup>6</sup> There are reports of further violence in other border regions, including Chin State and on the border with China.<sup>7</sup> Targeted strikes against ethnic groups in Karen and Kachin States have forced thousands of people to flee their homes, including into Thailand.<sup>8</sup>
5. Given the apparently systematic and widespread nature of detention and punishment to silence opposition, the current military regime may have committed serious human rights violations that could raise to the threshold of international crimes.<sup>9</sup> The people of Myanmar, have demonstrated tenacity and resolve in their long struggle for fragile democratic reform.<sup>10</sup> They are now reliant on the international community for support.
6. In response to the coup, the UK and its allies should work to reinstate the rule of law,<sup>11</sup> support democratic leaders (anchoring support in their respect of human rights), and strengthen the civil society. To meet these goals, the UK must immediately work to stop

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<sup>3</sup> [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A\\_HRC\\_39\\_64.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/A_HRC_39_64.pdf)

<sup>4</sup> <https://www.theguardian.com/world/2021/mar/15/the-death-of-zaw-myat-lynn-allegations-torture-used-on-opposition-activist-in-myanmar>; <https://www.abc.net.au/religion/state-terror-torture-and-anti-politics-in-myanmar/13270932>; <https://www.hrw.org/news/2018/08/21/myanmar-security-forces-torture-rohingya-returnees>

<sup>5</sup> <https://aappb.org>

<sup>6</sup> <https://www.reuters.com/world/asia-pacific/myanmar-anti-coup-fighters-retreat-town-us-makes-appeal-2021-05-16/>

<sup>7</sup> <https://www.usip.org/publications/2021/04/chaos-sparked-myanmar-coup-fuels-chinese-cross-border-crime>

<sup>8</sup> <https://www.reuters.com/world/asia-pacific/thousands-myanmar-villagers-poised-flee-violence-thailand-group-says-2021-04-30/>

<sup>9</sup> <https://news.un.org/en/story/2021/03/1087062>

<sup>10</sup> Including UN and UK Ambassadors Kyaw Moe Tun and Kyaw Zwar Minn, see: <https://www.aljazeera.com/program/talk-to-al-jazeera/2021/5/1/myanmars-un-ambassador-military-coup-must-fail>; <https://www.thetimes.co.uk/article/myanmar-ambassador-describes-coup-in-the-middle-of-london-669cjmnnvf>; <https://www.nytimes.com/article/myanmar-news-protests-coup.html>.

<sup>11</sup> For example, by establishing the return of Parliament, the reinstatement of elected and diplomatic officials, and the revocation of martial law in numerous cities and the nullification of the 2008 constitution.

the violence and ensure humanitarian access through the UN Security Council; support existing CSOs through humanitarian aid; further limit the military regime's access to financial resources; and work with international partners to mediate the crisis. This proposed strategy is compatible with — and indeed supports — a deepening of HMG's presence and investment in the Indo-Pacific region.<sup>12</sup> Importantly, the UK along with like-minded allies in the region should continue to prioritise human rights in Myanmar even after the coup ends.

## II. Recommendations for UK Action at the UN Security Council

7. As the UN Security Council Penholder on Myanmar, it is the UK's responsibility and duty to proactively pursue action.
8. Since the coup began, the UN Security Council has issued a press statement<sup>13</sup> and received briefings from the Secretary-General's Special Envoy on Myanmar and the ASEAN Chairman.<sup>14</sup> Following a meeting on 10 March, the Security Council adopted and issued a Presidential Statement, in which the Council reiterated its calls for the immediate release of individuals detained arbitrarily, for 'safe and unimpeded humanitarian access to all people in need,' and for the Special Envoy of the Secretary-General on Myanmar to engage with all relevant parties and to visit as soon as possible.<sup>15</sup> On 09 April, the UK convened an Arria-formula meeting to brief the Security Council on the current situation.<sup>16</sup>
9. While monitoring is warranted and welcome, meetings and condemnations are inadequate to end the current violence. The immediate imperative is the de-escalation of violence and military offensives. In addition to support and communication with the Special Envoy of the Secretary-General on Myanmar, the UK could lead a visiting mission of Council members to Myanmar. Such a mission could have a chilling effect on current tensions and demonstrate international commitment to supporting the peaceful return to democratic governance. The UK should also continue to support the activities of UN independent experts, including the Special Rapporteur on Myanmar, the Special Rapporteur on the independence of judges and lawyers, and Special Rapporteur on the promotion and protection of freedom of opinion and expression, among others.
10. The UK should also table draft Resolutions for prompt issuance by the Security Council. While some draft Resolutions might encounter resistance from some members of the Council, the potential for a veto is not a reason to avoid substantive action. To maximise the possibility of rapid consensus, it might be diplomatically prudent to table multiple resolutions.
11. Most importantly, the UK Mission to the UN should table a Resolution calling for safe and unimpeded humanitarian access to all those in need, including through the re-

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<sup>12</sup> <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>

<sup>13</sup> <https://www.un.org/press/en/2021/sc14430.doc.htm>

<sup>14</sup> These briefings took place on 02 February, 05 March, 31 March, and 30 April.

<sup>15</sup> [S/PRST/2021/5](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2021_5.pdf); [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_prst\\_2021\\_5.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_prst_2021_5.pdf). These were echoed on 31 March:

<https://reliefweb.int/report/myanmar/un-security-council-press-statements-myanmar-1-april-2021-enmy>

<sup>16</sup> <https://www.securitycouncilreport.org/whatsinblue/2021/04/myanmar-arria-formula-meeting-2.php>

establishment of UN relief flights and UN/ICRC access to those detained in connection with counter-coup activities. Since these terms echo the content of the Presidential Statement issued on 10 March, such a Resolution could gather sufficiently broad consensus. In addition, the UNSC should call for creating and ensuring conditions necessary for the safe, voluntary, sustainable, and dignified return of displaced persons.

12. We also recommend that the UK table a Resolution imposing a global arms embargo, as recommended by the UN Special Rapporteur for Myanmar as well as hundreds of CSOs.<sup>17</sup> The UK has already supported a recent General Assembly draft resolution calling for a global arms embargo.<sup>18</sup> Having previously received military weapons or assistance from countries as diverse as North Korea and Australia,<sup>19</sup> Myanmar manufactures significant volumes of military hardware itself.<sup>20</sup> Nonetheless, a global arms embargo would impose some accountability for the use of military-grade weaponry against civilians.
13. In view of the wholly disproportionate use of violence and the detention of ‘political prisoners,’ we recommend that the tabled resolutions explicitly call for the respect of international law. HMG should also coordinate with other Council members (beyond the P5) regarding the possibility of a referral of the situation in Myanmar to the International Criminal Court, and issue a statement supporting such a measure, as well as supporting the democratic transition.
14. As an absolute minimum, HMG should convene further Arria-formula meetings to encourage open dialogue, momentum, and focus on the current situation. These opportunities for soft diplomacy can give rise to support for stronger action and at the very least ensure that the crisis in Myanmar remains on the Council’s agenda.

### III. Recommendations for Unilateral UK Action

15. The UK should also explore opportunities for accountability through international and domestic legal mechanisms.<sup>21</sup> To begin with, HMG could join the Gambia (and Canada and the Netherlands<sup>22</sup>) in current litigation before the International Court of Justice. This

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<sup>17</sup> A proposed UN Security Council resolution should prohibit the direct or indirect supply, sale or transfer of weapons, ammunition, or equipment, as well as the provision of training, intelligence or any other military assistance. To be effective, the imposition of a global arms embargo will require a robust long-term monitoring and enforcement mechanism. <https://news.un.org/en/story/2021/02/1084512>;

<https://www.hrw.org/news/2021/02/24/un-security-council-impose-arms-embargo-myanmar>;

<https://www.hrw.org/news/2021/05/05/un-security-council-adopt-global-arms-embargo-myanmar>

<sup>18</sup> <https://undocs.org/en/A/75/L.85>

<sup>19</sup> [https://www.smh.com.au/world/asia/fears-myanmar-buying-missiles-from-north-korea-raise-canberra-s-](https://www.smh.com.au/world/asia/fears-myanmar-buying-missiles-from-north-korea-raise-canberra-s-alarm-20180206-p4ygzg.html)

[alarm-20180206-p4ygzg.html](https://www.aseanconomist.com/myanmar-buying-n-korean-arms/); <https://www.aseanconomist.com/myanmar-buying-n-korean-arms/>;

<https://www.abc.net.au/news/2021-03-04/australia-dfat-response-myanmar-military-coup-deadly-protests/13215432>

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[https://www.armyrecognition.com/march\\_2019\\_global\\_defense\\_security\\_army\\_news\\_industry/joint\\_venture\\_to\\_supply\\_ukrainian\\_apcs\\_to\\_myanmar\\_army.html](https://www.armyrecognition.com/march_2019_global_defense_security_army_news_industry/joint_venture_to_supply_ukrainian_apcs_to_myanmar_army.html)

<sup>21</sup> The United Kingdom may consider universal jurisdiction for crimes of torture under domestic law, such as the Criminal Justice Act of 1988. The International Criminal Court Act 2001 may also be applicable for relevant international crimes.

<sup>22</sup> <http://opiniojuris.org/2020/09/03/canada-and-the-netherlands-new-intervention-in-the-gambia-v-myanmar-at-the-international-court-of-justice/>

would show strong condemnation of military action in Rakhine, combat impunity for perpetrators of mass atrocities, and support victimised communities.

16. Another area of leverage is through economic tools. HMG has already sanctioned Myanmar military owned conglomerates and designated specific individuals under its sanctions regime.<sup>23</sup> Additional targeted sanctions should also be considered, including specifically on Myawaddy Bank, Innwa Bank and the Myanma Oil and Gas Enterprise (MOGE), as suggested by the UN special rapporteur on the situation of human rights in Myanmar.<sup>24</sup> These enterprises, in particular the state-owned oil and gas enterprise, represent the largest source of foreign revenue for the military regime.<sup>25</sup> However, it is important to bear in mind that imposing sanctions – no matter how targeted and carefully considered – brings with it the obligation to monitor effectiveness, unintended effects, and negative externalities. The FCDO should consistently scrutinise the effectiveness and real impact of UK sanctions.
17. To be effective, sanctions need to incentivise the desired material change in behaviour rather than merely debilitate and punish.<sup>26</sup> The UK and other sanctioning states must provide clear communication to the sanctioned regime officials and the military leadership about the steps required to ease the sanctions and implement robust and fair enforcement mechanisms.<sup>27</sup> At the same time, given the military leadership's limited financial ties to the Western world, financial sanctions should not be the only approach.<sup>28</sup>
18. Most urgently, HMG should provide emergency aid to support the most vulnerable in Myanmar. While the Foreign Secretary has expressed willingness to provide emergency aid for Myanmar,<sup>29</sup> there has not yet been a concrete proposal, which HMG should advance promptly. The UK should follow the EU in providing humanitarian support to the most vulnerable populations, food, health, and shelter, and funds to address the growing regional implications of the crisis.<sup>30</sup> To ensure rule of law in the long term, the FDCO should reinstate funding that was recently cut in April 2021 for conflict resolution projects in Myanmar.<sup>31</sup>
19. Humanitarian support can and should complement funding for accountability measures. The UK should continue to provide funding for the 'Independent Investigative Mechanism' for Myanmar (IIMM), which was established by the UN Human Rights

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987033/Notice\\_Myanmar\\_170521.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987033/Notice_Myanmar_170521.pdf); <https://www.gov.uk/government/news/uk-announces-further-sanctions-on-myanmar-military-linked-companies>

<sup>24</sup> <https://asia.nikkei.com/Spotlight/Myanmar-Coup/Myanmar-coup-from-Apr.-16-to-May-14-Japan-pledges-food-aid-through-WFP>;

[https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_56.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_56.pdf)

<sup>25</sup> <https://www.irrawaddy.com/news/burma/us-senators-call-for-sanctions-on-myanmar-oil-and-gas-enterprise.html>

<sup>26</sup> <https://www.bbc.com/news/business-56248559>; <https://www.piie.com/bookstore/economic-sanctions-reconsidered-3rd-edition-paper>

<sup>27</sup> For example, conditions for lifting sanctions might include ending the use of military weapons to respond to protests, releasing detainees, and reinstating elected officials.

<sup>28</sup> <https://www.irrawaddy.com/opinion/guest-column/responding-to-myanmars-junta-an-alternative-to-sanctions-and-boycotts.html>; <https://www.lrb.co.uk/blog/2021/march/what-next-for-burma>

<sup>29</sup> <https://www.voanews.com/europe/g-7-us-emphasizes-desire-uphold-international-rules-not-hold-china-down>

<sup>30</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_1768](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1768)

<sup>31</sup> <https://www.devex.com/news/tracking-the-uk-s-controversial-aid-cuts-99883>

Council to collect and preserve evidence of serious human rights violations in Myanmar,<sup>32</sup> and pledge specific material support to democratic institutions including a free press and the development of the criminal legal framework and legal institutions and practitioners. Without this, the rule of law will never prevail in Myanmar.

20. The UK should also lead an international response with respect to populations that have been displaced by the violence. Thousands of refugees have fled to neighbouring states like Thailand and India, but authorities in both countries have attempted to block new arrivals.<sup>33</sup> As party to the Convention Relating to the Status of Refugees, the UK should follow its previous example of relocating Rohingya refugees<sup>34</sup> and offer asylum for vulnerable populations fleeing violence in Myanmar.<sup>35</sup>
21. The UK should also support civil society in Myanmar by supporting journalists, lawyers, and sending diplomatic staff from the FDCO or other sponsor other international observers to attend trials. Members of the FDCO diplomatic staff can meet with civil society groups, monitor protests, and help human rights defenders access telecommunications and digital infrastructure that have been currently blocked by the military regime.<sup>36</sup>

#### **IV. Recommendations for Bilateral and Multilateral UK Action**

22. Further instability in Myanmar will likely threaten the macro-economic stability of ASEAN, which may have implications for the UK-ASEAN trade agreement.<sup>37</sup> Further, the UK's status as an ASEAN Dialogue Partner gives an opportunity for mediation alongside ASEAN member states.
23. The UK, through the UK Ambassador to ASEAN, should continue working with ASEAN to achieve a peaceful resolution to the current crisis. In particular, the UK can leverage its diplomatic and economic ties to Singapore, the largest foreign investor in Myanmar.<sup>38</sup> Specifically, the UK should engage diplomatically with Singapore to apply economic leverage against crucial industries such as Myanmar's oil and gas enterprise.<sup>39</sup> Additional multilateral fora, such as the UK-ASEAN Business Council, can also be used as an opportunity for UK engagement in responding to the current crisis.
24. There may also be opportunities for UK mediation in collaboration with EU and transatlantic partners like the United States.<sup>40</sup> The UK might, for example, consider mediating diplomatically for protection of vulnerable groups and non-refoulement, using soft diplomacy through regional allies including Commonwealth nations like India,

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<sup>32</sup> <https://www.gov.uk/government/news/uk-announces-further-sanctions-on-myanmar-military-linked-companies>

<sup>33</sup> <https://www.theguardian.com/world/2021/apr/03/desperate-burmese-refugees-flee-to-thailand-and-india-to-escape-crisis>

<sup>34</sup> <https://minorityrights.org/trends2018/united-kingdom/>

<sup>35</sup> <https://www.unhcr.org/uk/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk>

<sup>36</sup> [https://www.hrw.org/news/2021/02/18/myanmar-sanctions-and-human-rights#\\_What\\_tools\\_besides;https://graphics.reuters.com/MYANMAR-POLITICS/INTERNET-RESTRICTION/rlgpdbreepo/](https://www.hrw.org/news/2021/02/18/myanmar-sanctions-and-human-rights#_What_tools_besides;https://graphics.reuters.com/MYANMAR-POLITICS/INTERNET-RESTRICTION/rlgpdbreepo/)

<sup>37</sup> <https://asia.nikkei.com/Editor-s-Picks/Interview/UK-makes-ASEAN-high-priority-for-post-Brexit-trade-deals>

<sup>38</sup> <https://www.reuters.com/article/uk-myanmar-politics-singapore-diplomacy-idUKKBN2BN0VK>

<sup>39</sup> <https://newnaratif.com/journalism/how-singaporeans-can-help-the-people-of-myanmar/>

<sup>40</sup> [https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief\\_29\\_Burma.pdf](https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_29_Burma.pdf),

[https://eeas.europa.eu/archives/docs/factsheets/docs/factsheet\\_eu-mediation-support-team\\_en.pdf](https://eeas.europa.eu/archives/docs/factsheets/docs/factsheet_eu-mediation-support-team_en.pdf)

Malaysia, Singapore, and Brunei. Finally, the UK should also engage with alternative multilateral configurations such as ASEAN Plus Three to cooperate with and involve allied nations like Japan and South Korea.

## V. Integrating an Atrocity Prevention Strategy

25. Recent HMG's cuts to foreign aid could impede necessary and important atrocity prevention work, but the UK has an opportunity for leadership regarding the Myanmar crisis in particular.
26. Atrocities crimes have severe consequences for rule of law, global stability, and security in affected regions.<sup>41</sup> The importance of a cross-government strategy for atrocity prevention is demonstrated in the recent Integrated Review, which established a new conflict centre within FCDO to 'develop and lead a strategic conflict agenda.'<sup>42</sup> However, atrocity prevention and conflict prevention should not be conflated, as the two demand unique analysis and approaches and can, sometimes, work at cross-purposes.<sup>43</sup>
27. Establishing a cross-government strategy and interagency process to adopt a whole-of-government approach to the prevention of atrocities would also be beneficial. It could significantly improve the UK's strategic communication and monitoring around mass atrocities, strengthen the process of intelligence gathering and analysis, and institutionalise the UK's commitment to preventing atrocities.<sup>44</sup> However, for such a strategy to be effective, HMG must also integrate it within policy and training and assign dedicated resources within FDCO to support a whole-of-government approach to preventive efforts.<sup>45</sup>
28. The UK may also prioritise maintaining ongoing dialogue with European and transatlantic partners to harmonise and jointly implement atrocity prevention strategies, share lessons learned, and identify additional gaps in the operationalisation of its Responsibility to Protect.<sup>46</sup>

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<sup>41</sup> <https://burmacampaign.org.uk/media/Submission20to20Integrated20Review20of20Internation.pdf>

<sup>42</sup> <https://www.gov.uk/government/publications/global-britain-in-a-competitive-age-the-integrated-review-of-security-defence-development-and-foreign-policy>

<sup>43</sup> <http://www.genocideprevention.eu/files/The-Distinction-between-Conflict-Prevention-and-Mass-Atrocity-Prevention.pdf>

<sup>44</sup> <https://burmacampaign.org.uk/media/Submission20to20Integrated20Review20of20Internation.pdf>, <https://committees.parliament.uk/writtenevidence/13696/pdf/>

<sup>45</sup> <https://committees.parliament.uk/writtenevidence/13696/html/>

<sup>46</sup> Ibid.

*May 2021*