INTRODUCTION

In many respects the law of the United Kingdom in the field of culture must appear to be a classic example of Anglo-Saxon disorder and lack of system! It is likely to differ from other Member States in the following ways:-

(1) Although the United Kingdom is not a federal state and Parliament has sole competence to legislate, the executive competences of central government in relation to most aspects of

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culture\(^2\) are assigned to separate ministries in England, Wales, Scotland and Northern Ireland - the Department of Education & Science and the Office of Arts & Libraries (mainly for England), the Welsh Office, the Scottish Office and the Northern Ireland Office\(^3\). For many purposes there are separate Acts of Parliament, or at least separate provisions of secondary legislation, for each jurisdiction.

(2) Cultural matters which do not fall within the competence of central government may fall within the competence of 'local authorities' (the juridically independent organs of local government, separately organised in the four jurisdictions) or of so-called 'quangos' ('quasi-autonomous non-governmental organisations'\(^4\), normally established by Act of Parliament and, again, juridically independent).

(3) Over the years, central government has assumed greater responsibility for the supervision and funding of the system of education. But there has never been a single, centrally organised, 'state' system of education for the United Kingdom as a whole, or for any part of it. The so-called 'public schools' are in fact private schools\(^5\) and the tradition is that the so-called 'state schools' are run by autonomous local education authorities.

\(^2\) "Culture" is used in this Report in the broad sense used in the Questionnaire.

\(^3\) Wales has been a separate jurisdiction for certain administrative purposes since 1964. In Scotland and Northern Ireland, specific functions are exercised by Departments within, or under the control of, the Scottish Office and the Northern Ireland Office.

\(^4\) Also known as NDPBs - Non Departmental Public Bodies.

\(^5\) In Scotland, however, 'public school' normally means 'state school' !
(4) Universities are juridically autonomous self-governing corporations. Some other institutions of tertiary education (polytechnics and technical colleges) are the responsibility of central or local government.

(5) Major national institutions, such as the national libraries, museums and art galleries, are 'Crown' institutions set up by Act of Parliament\(^6\) or Royal Charter and funded by the state. They are usually administered by autonomous Boards of Trustees whose members are, in most cases, appointed by the Government. Other cultural institutions (theatres, concert halls, libraries and museums) are run by local authorities, universities, private foundations or commercial enterprises.

(6) Where central government is responsible for funding educational and other cultural institutions, this is often done indirectly through 'quangos' such as the University Grants Committee, the Research Councils or the Arts Council of Great Britain. These bodies are not necessarily established by Act of Parliament\(^7\).

(7) The relevant powers of organs of central or local government or of 'quangos' will be found set out in the relevant Acts of Parliament or other constituting measures. Although such bodies may have

\(^6\) A recent example of such legislation is the National Heritage (Scotland) Act 1985 which established new Boards of Trustees for the National Museums of Scotland and the Royal Botanic Garden, Edinburgh, and altered the constitution of the Boards of the National Galleries and the National Library of Scotland.

\(^7\) The Arts Council, for example, was established by Royal Charter.
similar functions, their powers will vary considerably depending on their history, function and status.

(8) Historically, the United Kingdom welcomed refugees from other countries and encouraged (or at least did not discourage) them to maintain their own educational and cultural traditions. In general, however, such refugees and their families wanted to become fully integrated in British society. Consequently there was, on the one hand, little or no attempt to diminish or limit the cultural rights of minorities from other countries nor, on the other hand, any strong pressure from such minorities for the grant of additional rights. The cultural claims of the indigenous religious and linguistic minorities in Ireland, Wales and Scotland were treated with less sympathy.

(9) In recent years, substantial minority groups of Asian, African and Caribbean origin have become established in the United Kingdom. In practice the educational and cultural claims of these minorities are of greater political significance in the United Kingdom than those of other EEC nationals whose numbers are, by comparison, very small.

(10) At the time of writing, the United Kingdom government is promoting legislation to carry out very substantial reforms of the educational system at all levels. There is considerable uncertainty as to the outcome of this legislation, both because the attitude of the House of Lords is unpredictable and because, even if the legislation is passed, much will depend on how it is administered.

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8 Thus, the Trustees of the Royal Botanic Garden, Edinburgh, have a general power to 'lend, sell, give, use for exchange or otherwise dispose of any item related to their functions', while the Boards of the National Museums and Galleries of Scotland have strictly limited powers of disposal - National Heritage (Scotland) Act 1985, Sections 8(3), 12(2)(g) and 16(2)4C(3).
A LANGUAGE

There is no rule of law which requires dealings with the public authorities to be conducted in the English language, nor is there any provision of law which gives Community nationals the right to deal with public authorities in their own language. The Welsh language is the only language other than English which enjoys special status in dealings with public authorities.

The United Kingdom Immigrants Advisory Service (UKIAS) has offices at the principal ports and airports of entry and major cities. UKIAS publishes leaflets in all the Community languages about the rights of Community nationals entering the United Kingdom and will assist them in their dealings with public authorities.

2-3 JUDICIAL PROCEEDINGS

In Wales "the Welsh language may be spoken by any party, witness or other person who desires to use it ... and any necessary provision for interpretation shall be made accordingly." In Scotland...

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9 Section 2(1) of the Welsh Language Act 1967 provides that the appropriate Minister may prescribe versions in Welsh of statutory documents or of forms of words which are used for an official or public purpose. On a non-statutory basis the local authority for the Western Isles of Scotland encourages the use of Gaelic for official and public purposes within its jurisdiction.

10 Welsh Language Act 1967, Section 1(1). The earlier Welsh Courts Act of 1942 permitted witnesses to take the oath or affirmation in Welsh, and provided for interpretation at public cost.
Gaelic may in certain circumstances be used in the Scottish Land Court\textsuperscript{11}. Otherwise, the language of judicial proceedings in the United Kingdom is English.

In criminal proceedings an interpreter must be provided for any accused person who cannot understand English unless (a) he is represented by counsel and (b) he agrees to dispense with an interpreter and (c) the presiding judge also agrees\textsuperscript{12}. The evidence of a witness (including the accused) who cannot speak English must be interpreted. The cost of the interpreter is a charge on public funds\textsuperscript{13}.

In civil proceedings, the evidence of witnesses who cannot speak English must be translated into English by an interpreter at the expense of the parties. The use of interpreters by party litigants (parties not represented by lawyers) is subject to the discretion of the judge\textsuperscript{14}.

The relevant practice appears to comply with the Öztürk principles.

\textsuperscript{11} Section 3(3) of the Small Landholders (Scotland) Act 1911 provides that one member of the Scottish Land Court "shall be a person who can speak the Gaelic language".


\textsuperscript{13} Administration of Justice Act 1973, Section 17 (England); Section 18 (Northern Ireland). Equivalent statutory authority is not necessary in Scotland where the system of criminal prosecution is different and the cost of interpretation has always been a charge on public funds.

\textsuperscript{14} In the Estate of Fuld, [1965] 1 W.L.R. 1336; 2 All E.R. 653.
ENCOURAGEMENT OF COMMUNITY CITIZENS TO LEARN ENGLISH

No special steps are taken by central government to encourage the learning of English by nationals of other Member States resident in the United Kingdom. Courses for the learning of English are widely available. Special courses for foreign students are available without cost at many universities.

B. SCHOOLS

Any person or group of persons of any nationality may establish and run an 'independent' (private) school. The school must be registered and will be subject to inspection by Inspectors appointed by central government. In order to be registered the school must meet minimum criteria in relation to the school premises, the quality of teaching, etc. The school may be struck off the register if it ceases to meet the minimum criteria.

Many independent schools enjoy 'charitable' status, which confers substantial fiscal advantages.

A school of the type described in Questions 5 and 6 - namely, one established by nationals of another Member State, or by a cultural establishment of another Member State - would be an independent school and would have the same status, advantages and obligations as any other independent school. It would not be entitled, as of right, to receive any direct grant or subsidy from central or local

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15 Education Act 1944, Secs. 70-75 (England); Education (Scotland) Act 1980, secs. 98-103 (Scotland). There is a right of appeal to an Independent Schools Tribunal.
government, but might benefit, directly or indirectly, from grants for specific purposes.  

No general statement can be made concerning the recognition of certificates or diplomas awarded by such schools. It seems unlikely that such schools would, in the United Kingdom, seek to award their own certificates or diplomas. They would be more likely to prepare pupils either for the relevant British examinations (e.g. the General Certificate of Secondary Education) or for the appropriate national examinations (e.g. the Baccalaureat).

8-9 Children of nationals of other Member States are as fully entitled as the children of United Kingdom nationals to attend the 'state schools' where education is free. There is, at present, no prescribed curriculum for state schools and the responsibility of providing suitable schooling for a foreign child rests on the local education authority. The extent to which it is possible to ensure the integration of a foreign child into the life and work of a school will, of course, depend on the needs of the particular child and the teaching resources available at the school.

C. UNIVERSITIES
10. (1) ADMISSION
Discrimination in the field of university education on grounds of colour, race, nationality or ethnic or national origin is

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For example, the 'assisted places' scheme under which pupils who might not otherwise be able to do so can benefit from education at independent schools - Education Act 1980, Sec. 17 (England); Education (Scotland) Act 1980, Sec. 49 (Scotland).
prohibited\textsuperscript{17}. Subject to that, as explained in the Introduction, the universities of the United Kingdom are autonomous self-governing bodies, so that each university (and frequently each Faculty, College or even, in some cases, Department within a university) determines its own criteria for admission. Consequently, it is not possible to make any general statement as to the extent to which, over the whole range of British universities, children from other Member States are treated more or less favourably than British children.

(2) and (3) TUITION FEES AND SCHOLARSHIPS

These matters are governed principally by the Education (Fees and Awards) Act 1983 and Regulations made thereunder\textsuperscript{18}. The legislation was introduced for the purpose of enabling\textsuperscript{19} universities and other institutions of tertiary education to charge higher fees to 'overseas students' than to 'home students'. Students from other Member States who are 'workers' or who satisfy minimum requirements of residence in the Community are 'excepted students' - that is to say, they are excepted from the liability to pay the higher fees chargeable to overseas students and are therefore treated like home students.

11 Yes, provided that they meet the other criteria. Indeed, there is considerable concern both in the United Kingdom and in Ireland about the number of Irish students seeking admission to universities in the United Kingdom where more generous grants are available.

\textsuperscript{17} Race Relations Act 1976 Section 17.


\textsuperscript{19} De facto, requiring.
The application of the law to grants and scholarships has given rise to litigation\(^{20}\) and one Scottish case is currently pending before the Court of Justice\(^{21}\).

12 The same rules apply.

II MEASURES DESIGNED TO PROMOTE CULTURAL RAPPROCHEMENT

13 French is the foreign language most commonly taught in schools in the United Kingdom. German, Spanish and Italian are also taught fairly widely. Modern Greek is taught in some schools to O and A grades. Dutch is taught at 2 Dutch schools (one in Abingdon and one in Surrey). As far as can be discovered, Danish and Portuguese are not taught regularly at any school, but the Rapporteur knows of one Scottish student who was encouraged at school to study Portuguese alongside Spanish. The Irish language is taught in some schools in Northern Ireland as Welsh is taught in most schools in Wales and Gaelic in a number of schools in Scotland. In some schools these languages are the principal medium of communication between teacher and pupils.

14 No.

15 There is no prescribed curriculum; therefore it is not possible to make any general statement. However, many schools teach Contemporary History, the syllabus for which includes the evolution of the European Community.


\(^{21}\) Case 197/86 Brown v. Secretary of State for Scotland (Opinion of Advocate-General delivered 17 September 1987).
III FREE MOVEMENT OF PERSONS

16 So far as is known, the answer is No.

IV FREE MOVEMENT OF GOODS

17-19 There are various Acts of Parliament protecting national treasures within the United Kingdom. Export from the United Kingdom is governed by Export of Goods (Control) Orders made under the Import, Export and Customs Powers (Defence) Act 1939. In law, the export of virtually all goods manufactured or produced more than 50 years before the date of export is prohibited unless an export licence has been obtained from the Department of Trade & Industry (DTI). In practice, however, many items are covered by the Open General Export Licence (a form of block exemption for items of lesser value) or by 'bulk licences' granted to regular

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23 For example, the Ancient Monuments and Archaeological Areas Act 1979.

24 The Order currently in force is the Export of Goods (Control) Order 1987 which came into force on 1st January 1986.

25 Currently, under £16,000 with some exceptions. Photographs, manuscripts and archaeological material are not covered by this Open General Export Licence. Another Open General Export Licence covers the temporary export of veteran and vintage motorcars over 50 years of age for rallies, exhibitions, etc., or for touring abroad.
exporters\textsuperscript{26}. The system of export licensing has been criticised on the grounds that it is "lamentably inadequate to prevent loss of antiquities because only a small proportion of items destined for export are subject to control"\textsuperscript{27} and that "the effect of the use of Open General Export Licences and bulk licences is such that almost all export activity is automatically licensed"\textsuperscript{28}. However, any closer control would involve a quantum leap in bureaucracy since the volume of exports is currently running at over £1,000m. per annum giving rise to about 162,000 separate applications\textsuperscript{29}.

Where export of an item is not automatically licensed, an application for an export licence must be made to the DTI who will refer it to an Expert Adviser (a senior official in a national institution). If he objects to the proposed export, the matter will be referred to the Reviewing Committee on the Export of Works of Art\textsuperscript{30} who, after hearing both the Expert Adviser and the applicant, decide whether they consider the item to be of such a standard as to warrant retention in the U.K. If they so decide, they will recommend that a decision on the application be deferred for a specified period (usually three or six months) in order to give public collections an opportunity to offer to purchase the item. The Committee also

\textsuperscript{26} For example, a few Bulk Licences have been issued to regular exporters of manuscript material which has no 'heritage' significance.

\textsuperscript{27} Bennett & Brand, supra, page 162.

\textsuperscript{28} ibid, pages 163-164.

\textsuperscript{29} See Export of Works of Art, Cmd. 274, HMSO.

\textsuperscript{30} The Committee makes recommendations to the Minister for the Arts, who in turn makes recommendations to the Secretary of State for Trade & Industry who is responsible for granting or refusing an export licence. Ministers normally act on the Committee's recommendations.
recommend a fair market price at which public collections should make an offer to purchase. If an offer is made but the owner refuses to accept it, the export licence will normally be refused. If no offer has been made, it will normally be granted.

The criteria applied by the Committee in deciding whether to recommend deferral of the decision on the export licence are:

(a) Is the object so closely connected with our history and national life that its departure would be a misfortune?

(b) Is it of outstanding aesthetic importance?

(c) Is it of outstanding importance for the study of some particular branch of art, learning or history?

The original provenance of the item is known to the Committee in making its recommendation, and is particularly relevant in applying the first criterion. The Committee is also aware of the intended destination of the item in question. In a recent case involving the proposed export of an item purchased by a Museum in another Member State the Committee specifically considered whether an adverse recommendation would be justified by Article 36 and concluded that it would.

Special arrangements exist to enable loans from the principal cultural institutions in the United Kingdom (the National Galleries, British Museum, etc.) to institutions in other countries. Other lenders would require to obtain a temporary export licence. Many temporary movements do in fact take place in connection with public exhibitions.

31 Known as 'the Waverley criteria' after Viscount Waverley, the Chairman of a Committee which examined the export of works of art in 1952.

32 Bennett & Brand, supra, pages 168-169.
V COMPETITION LAW

21 Yes. The "Net Book Agreement" between members of the Publishers' Association was considered by the Restrictive Practices Court in 1962 and 1968. The Agreement was declared by the Court not to be contrary to the public interest and therefore escapes the normal U.K. competition rules which forbid restrictive agreements and resale price maintenance 33.

VI TAX LAW

22 TAXATION

Receipts of authors, musicians, performers, actors, etc. can be spread over a number of years for purposes of Income Tax in a limited number of situations.

(1) Copyright and Public Lending Right34: sums received by an author by way of royalty (or public lending right) within the first two years of a book's life, plus sums for the assignment of copyright (or public lending right) and non-returnable advances, may be 'spread back' over the period during which the author was at work on the book, but over a maximum of 3 years. This also applies to dramatic, musical and other artistic works35.


34 'Public Lending Right' is a payment made by the state to authors in respect of borrowings of their works from public libraries. The money is voted by Parliament and paid by the Public Lending Right Office.

(2) Licensing of artistic work: lump sums received for the assignment of copyright ten years or more after first publication may be 'spread forward' over a period of up to six years.

(3) Artists' sales: The price, commission or fee for a work of art can be spread over two to three years.

Otherwise, there is no general averaging procedure in the UK tax system whereby income is averaged over a number of years. The system works on the basis that income tax is an annual tax and therefore taxes only the income arising in that year. Averaging is thus allowed over the year but not beyond it.

23 It is assumed that this question is concerned with taxation of the donor of the grant. Grants are not 'tax deductible' in the sense that the amount of the grant can be deducted from the gross income of the donor in order to determine the net income on which tax will be charged. On the other hand, donations to 'charities' - including arts charities - can qualify for tax relief if they are made in one of the following ways:

36 Ibid, Section 535.
37 Ibid, Section 538.
38 Both the Society of Authors and the Performing Rights Society have campaigned for improvements in this area. They contend that the system of averaging in the United Kingdom is unjust because it is inequitable for those with fluctuating incomes, especially those whose income fluctuates around the bottom of the tax scale; and because it causes injustice to an individual who suddenly receives an exceptional sum which the tax system treats as income.
39 A grant which qualifies as a 'business expense' may be deductible but the payment must be made 'wholly and exclusively' for the purposes of the business, a criterion which it is not easy to satisfy.
(1) Donations under a deed of covenant whereby the donor undertakes to pay a fixed sum at regular intervals over a period of more than three years\(^{40}\): tax at the basic rate is deducted by the donor from each payment and reclaimed by the charity. Thus, under a covenant to pay £100 when the basic rate of tax is 25%, the donor deducts £25 and pays £75 to the charity; the charity then claims repayment of the £25 tax deducted. Similar relief is available where the donor is an individual who is liable to pay tax at the higher rate of 40% or a company paying the full rate of corporation tax (now 35%).

(2) Donations under an approved payroll giving scheme ("Give As You Earn")\(^{41}\): employees of participating employers can authorise regular payments to named charities to be deducted from their pay. The deductions are made before tax so tax relief at the employee's top rate is given at source. The maximum amount for which an employee can get tax relief in this way is £240 a year.

(3) Single donations by companies other than 'close companies' resident in the United Kingdom provided that the payments are made under deduction of tax and do not exceed 3% of the company's dividends in the same accounting period\(^{42}\): the charity can claim repayment of the tax deducted. Since a covenant is not required for this relief to be claimed, the company need not commit itself for more than one year. However, the exclusion of non-resident and close companies greatly limits the scope of this relief.

\(^{40}\) Income and Corporation Taxes Act 1988, Sections 660 and 683.

\(^{41}\) Ibid Section 202.

\(^{42}\) Ibid Section 339.
(i) The following are zero-rated:

Books
- books, booklets, pamphlets, leaflets
- newspapers, journals and periodicals (and related services, such as the drawing of advertisements)
- children's picture and painting books
- sheet music
- maps, charts and topographical plans
- covers and cases, etc.

Protected Buildings
- The grant of a major interest (for example, to a body of trustees) in all or any part of a reconstructed building or its site is zero rated when made by the person who substantially reconstructed it.

International Services:
- cultural, artistic, sporting, scientific, educational and entertainment services; and services ancillary to the performance outside the UK of any of these services.

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43 V.A.T. Act 1983, Section 16(2) and Sch. 5. Zero rating of books, etc., in the United Kingdom is currently a legal and political issue of some sensitivity.

44 Group 3.

45 Group 8.

46 Group 9.
(ii) The following items are exempt from V.A.T.47:

**Education**48

**Works of Art:**
- sales and transfers to 'heritage bodies' of 'heritage objects', e.g. works of art, prints, manuscripts, scientific collections and other objects which are of national scientific, historic or artistic interest and objects historically associated with a building of outstanding historic/architectural interest49.

25 There is no old age pension scheme specifically arranged for freelance artists. Tax law allows the self-employed to charge against income tax 17.5% of net relevant earnings50 in respect of premiums paid under approved Retirement Annuity Contracts or contributions to...

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47 V.A.T. Act 1983, Sec. 17(1) and Sch. 6.
48 Group 6.
49 Group 11.
50 Income and Corporation Taxes Act 1988, Section 640(1). 'Relevant earnings' is income derived from a trade, profession or vocation. It also includes the income from patent rights which is treated as earned income. 'Net relevant earnings' means 'relevant earnings' less certain items which must be specifically deducted therefrom. These include stock relief, losses and capital allowances in respect of activities the profits or gains of which would be included in computing the individual's relevant earnings and business charges.
approved personal pension schemes. For older individuals whose retirement is drawing close, higher limits apply.

26 Citizens of other Member States who pay U.K. income tax will enjoy equality of treatment with U.K. nationals.

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51 'Approved' in this context implies that the contract or scheme meets certain statutory criteria and has been approved by the Inland Revenue.

52 Income and Corporation Taxes Act 1988, Section 640(2). In 1987-88 the scale was based on the age at the beginning of the tax year:

<table>
<thead>
<tr>
<th>Age</th>
<th>Rate</th>
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<tr>
<td>51-55</td>
<td>20%</td>
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<tr>
<td>56-60</td>
<td>22.5%</td>
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<tr>
<td>61 or older</td>
<td>27.5%</td>
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