House of Lords
House of Commons

Joint Committee on Human Rights

Scrutiny of Bills and Draft Bills: Further Progress Report

Fifteenth Report of Session 2002-03

Drawing special attention to:

Anti-social Behaviour Bill
Draft Civil Contingencies Bill
Draft Mental Incapacity Bill
Licensing Act

HL Paper 149
HC 1005

House of Lords
House of Commons

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Fifteenth Report of Session 2002-03

Report, together with formal minutes and appendices

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders; draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is three from each House.

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The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Current Staff

The current staff of the Committee are: Paul Evans (Commons Clerk), Thomas Elias (Lords Clerk), Professor David Feldman (Legal Adviser), Róisín Pillay (Committee Specialist), Duma Langton (Committee Assistant) and Pam Morris (Committee Secretary).

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Summary

The Joint Committee on Human Rights examines every Bill presented to Parliament. With Government Bills its starting point is the statement made by the Minister under section 19 of the Human Rights Act 1998 in respect of its compliance with Convention rights as defined in that Act. However, we also have regard to the provisions of other international human rights instruments which bind the UK.

This Report, in our series of regular progress reports on our scrutiny of Bills, examines the human rights implications of a number of Bills. It gives further consideration to two Government Bills: the Licensing Bill (now the Licensing Act 2003), in the light of a letter received from the Department for Culture, Media and Sport responding to our comments in our Twelfth Report; and the Anti-social Behaviour Bill, in the light of amendments made on Report in the House of Commons.

We also note that the Consolidated Fund (Appropriation) Bill, the Food Colourings and Additives Bill, the Pensioner Trustees and Final Payments Bill, the Telecommunications Masts (Railways) Bill and the Road Safety Bill give rise to no significant risk of incompatibility with Convention rights.

The Report also examines the human rights implications of Draft Bills which have been published for consultation on civil contingencies and mental incapacity.

In relation to the Anti-Social Behaviour Bill

We conclude that the new Part 8 of the Anti-social Behaviour Bill could give rise to a risk of incompatibility with Convention rights in relation to clause 59 (power for senior police officers to impose conditions on 'public assemblies' consisting of two or more people) and clause 61 (power for police officers to direct trespassers to leave land in certain circumstances).

In relation to the Draft Civil Contingencies Bill

In our view, the provisions of Part 1 are likely to enable public authorities to act more effectively to protect the human rights of people in their areas in an emergency. We do not consider that they give rise to a significant threat of a violation of human rights.

In relation to Part 2, we strongly disapprove of any attempt to extend the range of instruments which have to be treated as primary legislation so as to make them exempt from the need to comply with Convention rights. It provides a way of allowing the executive to legislate, before seeking parliamentary approval, in ways which are known or believed to be incompatible with Convention rights, while denying victims of violations the right to obtain an effective remedy from a court or tribunal. In our view, regardless of the context, the effect of this legislative technique is objectionable on human rights grounds.

We conclude that the provisions of Part 2 of the Draft Bill would, if enacted, give rise to a significant risk that regulations could be made which would violate, or authorise a violation of, Convention rights, without any judicial remedy being available for a victim of the

violation. As the Bill makes no provision for any other effective remedy before a national authority, it would also be likely to lead to a violation of the right to an effective remedy before a national authority for any violation of a Convention right, under ECHR Article 13 (which does not form part of national law, but binds the United Kingdom in international law and is enforceable before the European Court of Human Rights).

In relation to the Draft Mental Incapacity Bill

We note that its provisions engage a wide range of rights, including the right to respect for private life, the right to property, and the right to be free of degrading treatment. In our view, however, the safeguards built into the Draft Bill are sufficient to ensure that there is no significant risk of the implementation of the Draft Bill leading to an incompatibility with any of them.

In relation to the Licensing Act 2003

We accept that places of public religious worship play an important part in the development and performance of secular as well as religious music and other artistic activities of considerable cultural value. It is arguable whether these considerations mark those places out sufficiently from other artistic and musical venues to justify, in an objective and rational way, the different treatment afforded to them in relation to entertainment licensing. However, the Human Rights Act 1998 preserves the power of Parliament to legislate as it sees fit. Parliament has now concluded its consideration of the Bill, which has received the Royal Assent.

Government Bills

Bills drawn to the special attention of each House

1 Anti-social Behaviour Bill

Date introduced to the House of Commons	27 March 2003
Date introduced to the House of Lords	24 June 2003
Current Bill Number	House of Lords 84
Previous Reports	13th

1.1 We reported on the Anti-social Behaviour Bill in our Thirteenth Report of this Session.[1] Since then, a new Part 8 of the Bill was introduced by way of Government amendment at the Report Stage in the House of Commons. The Home Secretary has written to our Chair explaining the new provisions. His letter is printed as an appendix to this Report.[2]

1.2 The provisions in new Part 8 of the Bill (clauses 59 to 65) would amend the Public Order Act 1986 and the Criminal Justice and Public Order Act 1994 in the following respects.

1.3 First, clause 59 would amend section 16 of the Public Order Act 1986 to make it possible for the police to impose conditions on "public assemblies" in certain circumstances if the assembly consists of only two people, instead of (as at present) 20 people. Such conditions would have to meet the requirements of ECHR Articles 10 (freedom of expression) and 11 (freedom of peaceful assembly) if they were to be lawful.

1.4 It is distinctly odd to speak of two people as a "public assembly". The purpose of the power to impose conditions on public assemblies under section 14 of the 1986 Act is to allow the police to prevent serious public disorder, serious damage to property, serious disruption to the life of the community, or intimidation of people going lawfully about their activities, caused by large groups of people. Part of this rationale would be lost if conditions could be imposed on only two people. We are concerned that the reduction in the minimum number of people on whom conditions could be imposed might well tend to undermine the claim that the conditions were being imposed for a legitimate purpose under ECHR Articles 10.2 (freedom of expression) and 11.2 (freedom of peaceful assembly), and would also tend to give rise to a significant risk that the powers would be used in a disproportionate way. This could lead to a violation of those Convention rights. We note that a number of important safeguards for rights would remain in place under section 14 of the 1986 Act. In particular:

a) conditions can be imposed only if a senior police officer reasonably believes that the the assembly may result in serious public disorder, serious damage to property, or serious disruption to the life of the community, or that the purpose of the persons organising it

1 HL Paper 120, HC 766.

2 See p 22

is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do;

b) the officer is empowered to give directions to the organizers of or participants in the assembly only in relation to the place at which the assembly may take place, its maximum duration, or the maximum number of persons who may participate, so there is no power to ban an assembly;

c) the directions may only be given so far as they appear to the senior officer to be necessary to prevent the disorder, damage, disruption or intimidation mentioned in (a) above; and

d) any direction given in advance of an assembly by a chief officer of police in respect of intimidation must be given in writing.

1.5 These safeguards would help to ensure that the decision to give directions would be taken within the framework of considerations which are relevant to justifying an interference with a Convention right under ECHR Articles 10 and 11 on the facts of each individual case. Those considerations include the legitimacy of the purpose for which the directions can be imposed, the necessity for them, the need to ensure that the directions do not take away the very essence of the right, and the ability of those affected to assert their rights in legal proceedings. Nevertheless, we are concerned about the potentially chilling effect on the freedom of association and expression of small gatherings of private individuals if the power to impose conditions were to apply to groups of two or more people, who are inherently far less likely than groups of 20 or more to cause serious public disorder and so on.

1.6 We recommend that the Government should clarify the mischief at which this extension of the power to impose conditions is aimed, and should explain why existing powers (such as those at common law to combat breaches of the peace, and statutory provisions such as those under the Public Order Act 1986, the Criminal Justice and Public Order Act 1994, and the Protection from Harassment Act 1997) cannot adequately address the mischief.[3] This would allow each House to assess the legitimacy of the aim of the amendment, the general necessity for allowing the police to exercise the powers over very small groups of people, and the proportionality of doing so.

3 At common law, a constable may take any reasonable steps if necessary to prevent a reasonably anticipated and imminent breach of the peace (which involves use or threat of force against a person, or damage to property in the presence of its owner), or to stop a breach of the peace which is in progress. Under the Public Order Act 1986, it is an offence knowingly to use threatening, abusive or insulting words or behaviour towards someone else, or to display a threatening, abusive or insulting sign or representation, where the words, etc., are intended or likely to cause the other person to fear immediate unlawful violence or to provoke such violence. There is a power of arrest for this offence. (See s. 4 of the Act.) It is also an offence, under s. 4A, to use threatening, abusive or insulting words or behaviour, or disorderly behaviour, with the intention of causing harassment, alarm or distress (with a power of arrest attached), and, under s. 5, to use such words or behaviour where it is likely to cause harassment, alarm or distress. The latter offence has been used against people conducting a protest against the building of a road. Where the words or conduct are used on land to which the people (currently 20, but reduced to 2 if the amendments contained in the Bill are enacted) concerned do not have a right of access, and the intention is to intimidate others so that they do not do something they have a right to do, or do something they are not required to do, it may constitute the offence of aggravated trespass under section 68 of the Criminal Justice and Public Order Act 1994. Such behaviour may also constitute the offence of watching and besetting contrary to the Conspiracy and Protection of Property Act 1875, or one of the offences of harassment under the Protection from Harassment Act 1997, ss. 1, 2 and 4. In addition, a court may grant an injunction under the 1997 Act to restrain further harassment. Finally, protests on highways may amount to obstruction of the highway, for which a person may be arrested. It might seem that there is no shortage of powers and penal provisions to deal with the problem of harassment by small groups of people, and that the solution is to use the existing powers rather than to create new ones.

1.7 Secondly, clause 60 would amend sections 68 and 69 of the 1994 Act so as to extend the reach of the offence of "aggravated trespass". This is an offence committed by people who trespass on land in the open air, and while trespassing do anything intended to intimidate people who are engaging or about to engage in a lawful activity on the land so as to deter them from engaging in that activity. It is also an offence for the trespassers to do anything intended to obstruct or disrupt such an activity. The offence was originally aimed at hunt saboteurs. It has clearly been found to have an application to other circumstances. As a result, clause 60 of the Bill would make it an offence to do any of those things while trespassing whether or not the trespassing takes place in the open air. Such provisions engage the right to freedom of expression under ECHR Article 10, but are likely to be justified as a proportionate response to the pressing social need to prevent harassment of people going about their lawful activities, protecting their rights under Article 10.2.

1.8 Thirdly, clause 61 would insert a new section 62A in the 1994 Act. This would allow the senior police officer present to direct a trespasser who is on land with at least one other person and a vehicle or vehicles, to leave the land, removing any vehicle or other property of theirs, if (a) the trespassers have the common purpose of residing there for any period, (b) where the people have a caravan with them, it appears to the officer that the there is a council-run caravan site in the area to which the people could move, and (c) the occupier has asked the police to remove the trespassers from the land. It would be an offence to refuse to comply with a direction given by the officer.[4] This engages the right to respect for private life and the home under ECHR Article 8.1. The right of the occupier of the land to peaceful enjoyment of his or her possessions, under Article 1 of Protocol No. 1 to the ECHR (hereafter 'P1/1'), is also engaged, together with the rights of adjacent occupiers to respect for their private lives and homes and enjoyment of possessions. Balancing these rights is difficult.[5] Factors which might influence a decision as to whether these powers are being exercised compatibly would include whether the police officer has reasonable grounds for his or her belief that there is a council-provided site nearby to which the person could move.

1.9 We conclude that the provisions of the new Part 8 of the Anti-social Behaviour Bill could give rise to a significant risk of incompatibility with Convention rights.

4 New section 62B of the 1994 Act as added by clause 62 of the Bill.

5 On the complex balance between these rights when local authorities are deciding whether to enforce planning controls on travellers, see Wrexham County Borough Council v. Berry, South Bucks District Council v. Porter, Chichester District Council v. Searle [2003] UKHL 26, affirming the decision of the CA [2002] 1 WLR 1359.

Private Members' Bills

2 Private Members' Bills not raising significant questions

2.1 We have considered the following Bills, which, as private Members' Bills, do not carry a statement under section 19 of the Human Rights Act 1998:

— Food Colourings and Additives Bill[6]

— Pensioner Trustees and Final Payments Bill[7]

— Telecommunications Masts (Railways) Bill[8]

— Road Safety Bill[9]

In our view, none of these Bills gives rise to any significant risk of incompatibility with human rights.

6 House of Commons Bill 54, Mr Charles Hendry MP.

7 House of Commons Bill 77, Mr Jim Cunningham MP.

8 House of Commons Bill 107, Mrs Patsy Calton MP.

9 House of Commons Bill 132, Mr Mark Lazarowicz MP.

Draft Bills

3 Draft Civil Contingencies Bill

Date Presented	19 June 2003
Reference Number	Cm 5843
Department	Cabinet Office
Date Consultation ends	31 October 2003
Previous Reports	None

3.1 This Draft Bill was published in June 2003 with explanatory notes, regulatory impact assessments, and a consultation document.[10] It is the subject of pre-legislative scrutiny by a Joint Committee of both Houses. Here, we simply draw attention to the human rights issues which seem to us to arise.

3.2 The Draft Bill is in three Parts. Of these, only Parts 1 and 2 contain provisions of substantive significance.

Part 1: Local arrangements for civil protection

3.3 Part 1 (clauses 1 to 16) would apply only in England and Wales. It would impose obligations, or authorise a Minister to impose obligations, on local bodies to prepare plans for dealing with a wide range of civil emergencies (defined in clause 1). There would also be obligations to give advice to businesses, and to take preventative and remedial measures in relation to emergencies, exchanging information between agencies for this purpose.

3.4 In our view, the provisions of Part 1 are likely to enable public authorities to act more effectively to protect the human rights of people in their areas in an emergency. We do not consider that they give rise to a significant threat of a violation of human rights.

Part 2: Emergency powers

3.5 Part 2 of the Bill (clauses 17 to 30) would apply to the whole of the United Kingdom. It would confer extensive powers to respond to emergencies.

10 Cm. 5843 (London: TSO, 2003).

The meaning of 'emergency'

3.6 For the purpose of Part 2, an emergency is defined as—

> … an event or situation which presents a serious threat to—
>
> (a) the welfare of all or part of the population of the United Kingdom or of a Part or region,
>
> (b) the environment of the United Kingdom or of a Part or region,
>
> (c) the political, administrative or economic stability of the United Kingdom or of a Part or region, or
>
> (d) the security of the United Kingdom or of a Part or region.[11]

3.7 The Bill offers a partial definition of the nature of these threats. Each of the four threats listed above is separately defined. An event or situation presents a threat to welfare—

> … if, in particular, it involves, causes or may cause—
>
> (a) loss or human life,
>
> (b) human illness or injury,
>
> (c) homelessness,
>
> (d) damage to property,
>
> (e) disruption of a supply of food, water, energy, fuel or other essential commodity,
>
> (f) disruption of an electronic or other system of communication,
>
> (g) disruption of facilities for transport, or
>
> (h) disruption of medical, educational or other essential services.[12]

3.8 An event or situation would present a threat to the environment—

> … if, in particular, it involves, causes or may cause—
>
> (a) contamination of land, water or air with—
>
> (i) harmful biological, chemical or radio-active matter, or
>
> (ii) fuel oils,
>
> (b) flooding, or
>
> (c) disruption or destruction of plant life or animal life.[13]

11 Cl. 17(1).
12 Cl. 17(2).
13 Cl. 17(3).

3.9 An event or situation would present a threat to political, administrative or economic stability:

> … if, in particular, it causes or may cause disruption of—
>
> (a) the activities of Her Majesty's Government,
>
> (b) the performance of public functions,[14] or
>
> (c) the activities or banks or other financial institutions.[15]

3.10 An event or situation may be a particular threat to security if it amounts to war or armed conflict, or terrorism within the very broad meaning given to that term by section 1 of the Terrorism Act 2000.[16]

3.11 It follows that a vast range of events or situations may give rise to a threat within the meaning of Part 2 of the draft Bill. To fall within Part 2, a threat would need to be "serious". If that test is satisfied, the powers could be deployed in response to strikes or works to rule (particularly in medical, educational or other essential services), political protests, computer hacking, a campaign against banking practices, interference with the statutory functions of any person or body, an outbreak of communicable disease, or protests against genetically modified crops, among many other events.

Official declaration of the emergency

3.12 Clauses 20 and 21 of the Draft Bill confer power to make regulations to deal with the emergency. First, however, there must be a formal declaration of the emergency. It would be possible to do this in either of two ways.

3.13 The normal method, under clause 18, would be for Her Majesty, by proclamation, to declare herself satisfied that an emergency has occurred, is occurring or is about to occur, and that it is necessary to make regulations under clause 21 for the purpose of preventing, controlling or mitigating an aspect or effect of the emergency. The proclamation would have to state the nature of the emergency and the Parts or regions of the United Kingdom in which the regulations may have effect.

3.14 If the Secretary of State is satisfied that it would not be possible to arrange for a proclamation without serious delay, clause 19 provides that he or she may by order make a declaration of equivalent effect to a proclamation under clause 18.

3.15 The Bill contains no requirement for Her Majesty or the Secretary of State to have reasonable grounds for the conclusion.

3.16 A proclamation or declaration would lapse at the end of 30 days beginning with the date on which it is made, but it could be renewed by a further proclamation or declaration.[17]

14 "Public functions" are defined in clause 17(6).

15 Cl. 17(4).

16 Cl. 17(5).

3.17 The Speaker of the House of Commons and the Lord Chancellor (or, presumably, whoever in due course takes responsibility for acting as Speaker of the House of Lords) would have to be notified of any proclamation or declaration as soon as reasonably practicable, and if Parliament stands prorogued at the time it would have to be summoned to meet.[18] However, Parliament would have no control over the decision to make a proclamation or declaration under clause 18 or clause 19.

The power to make regulations

3.18 Following a proclamation or declaration, clause 20 provides for regulations to be made by Order in Council or, if the Secretary of State is satisfied that it would not be possible to arrange for an Order in Council without serious delay, by the Secretary of State. In either case, the regulations are to be made by statutory instrument.[19] It would therefore be necessary to lay them before each House of Parliament in accordance with the requirements of the Statutory Instruments Act 1946 and clause 24(6) of the Draft Bill. There would be no requirement for them to be laid before the two Houses before they come into force, but the regulations would lapse if not approved by resolution of each House within seven days of the date of laying.[20]

3.19 Under clause 21(1), the regulations would be able make any provision which the person making them thinks necessary for the purpose of preventing, controlling or mitigating a serious aspect or serious effect of the emergency specified in the proclamation or declaration.[21] Subject to that limitation, the regulations would be able to do anything that could be done by Act of Parliament or under the Royal Prerogative,[22] except:

a) require a person, or enable a person to be required, to provide military or industrial service;

b) prohibit, or enable the prohibition of, a strike or other industrial action;

c) create any criminal offence other than one of failing to comply with the regulations, or with a direction or order given or made under the regulations, or obstructing a person in the performance of a function under or by virtue of the regulations;

d) create an offence punishable with imprisonment for more than three months, or a fine exceeding the statutory maximum or level 5 on the standard scale, or without trial before a magistrates' court, the Crown Court, the district court or the sheriff;

e) make provision which the person making the regulations believes is made by, or could be made by virtue of, a subsisting legislative provision, unless he or she also believes

17 Cl. 23.

18 Cl. 24.

19 Cl. 27.

20 Cl. 24(7).

21 Cl. 21(1) refers only to a proclamation under clause 18, but would presumably be extended to cover a declaration under clause 19 as well.

22 Cl. 21(3). The statutory power to take action which could otherwise be taken under the Royal Prerogative would appear to mean that the Royal Prerogative would be superseded by the statutory powers for the period during which the proclamation or declaration is in force.

that the use of that subsisting provision would be insufficient to achieve the purpose or would occasion a serious delay; or

f) make provision in relation to anything in, or done in, a Part or region of the United Kingdom not specified in the proclamation or declaration of the emergency.[23]

Human rights implications

3.20 The Government tentatively proposes that an instrument containing regulations made under clause 21 would "be treated as if it were an Act of Parliament" for the purposes of the Human Rights Act 1998.[24] In the Consultation Document published alongside the Draft Bill, the Government recognises that this would be a departure from normal practice in the protection of human rights against incompatible statutory instruments. As a result, the Government "believes that the case for its inclusion in the final Bill is by no means certain".[25] We offer the following comments by way of a contribution to the consultation process.

3.21 The effect of treating an instrument containing regulations as an Act of Parliament for the purposes of the Human Rights Act 1998 would be to make such an instrument primary legislation for those purposes. It is generally impossible for a court or tribunal in the United Kingdom to hold primary legislation to be invalid, or anything done in reliance on it to be unlawful, by reason only of an incompatibility with any of the Convention rights which became part of national law by virtue of the Human Rights Act.[26]

3.22 In theory, it would be possible for a court to hold a provision in such an instrument to be invalid if it breaches general principles of administrative law, being outside the scope of the delegated legislative power, or irrational, or made without complying with procedural preconditions. In judicial review proceedings, it would be possible for a court strike down regulations on the first of those grounds if they purported to create a criminal offence of a type excluded from the scope of clause 21. Alternatively, a regulation made under clauses 20 and 21 might be struck down on the last of those grounds if, for example, they had been made without a proclamation or declaration of an emergency having been made under clauses 18 and 19 covering the area of the United Kingdom to which they relate. However, the scope of the power to make regulations is so wide as to make it virtually impossible for any regulation to fall outside the scope of the delegated legislative power, and there is little likelihood of a court holding irrational a regulation made by a Minister in response to a properly declared emergency.

3.23 The limits placed by the Draft Bill on the effectiveness of judicial review as a control over unlawful or arbitrary law-making or executive action are matters of general constitutional significance. Our concern relates specifically to the impact on human rights. We recognise that exceptional measures may be called for in an emergency. Nevertheless, we have to ask whether there would be adequate protection for human rights, and particularly Convention rights under the ECHR and the Human Rights Act 1998, in the

23 Cl. 21(4).

24 Cl. 25.

25 Consultation Document, ch. 5, para. 36, p. 30.

26 Human Rights Act 1998, ss. 3(2)(b) and 6(2)(b).

face of regulations which would be valid and effective notwithstanding any incompatibility with a Convention right, and immune to judicial review on the ground of such an incompatibility.

3.24 We know of no precedent in any Act passed since the Human Rights Act 1998 was passed for a provision deeming subordinate legislation to be an Act of Parliament for the purposes of the Human Rights Act. Section 21 of the 1998 Act deemed certain pieces of subordinate legislation, including commencement orders and any provision which amends primary legislation, to be primary legislation. Legislation made since then has fallen to be classified as primary or subordinate in accordance with the terms of section 21. It is clear that clauses 20 and 21 of the Bill would permit subordinate legislation to have the effect of primary legislation for the purposes of the Human Rights Act even the application of section 21 of the Act would lead to its being regarded as subordinate.

3.25 We also note that the Defence Committee of the House of Commons recently reported on the draft Bill. In that report the committee concluded, in respect of the clause 25, that—

> … this new provision should not be included in the bill unless the Government can demonstrate a clear and compelling need for the additional powers which it provides.[27]

We agree.

3.26 We strongly disapprove of any attempt to extend the range of instruments which have to be treated as primary legislation so as to make them exempt from the need to comply with Convention rights. It provides a way of allowing the executive to legislate, before seeking parliamentary approval, in ways which are known or believed to be incompatible with Convention rights, while denying victims of violations the right to obtain an effective remedy from a court or tribunal. In our view, regardless of the context, the effect of this legislative technique is objectionable on human rights grounds.

3.27 Moving from that general point to more particular considerations, we have to consider what practical effect the provision would have on the protection available for particular rights. Essentially the available protection is of three kinds.

3.28 First, it would remain possible for a victim of a violation of a Convention right, who had been unable to obtain a remedy before a court or tribunal in the United Kingdom, to apply to the European Court of Human Rights for a remedy. This would be likely to be a long drawn out process, as the victim would first have to exhaust all national remedies and then wait his or her turn for the case to be heard in Strasbourg.

3.29 Secondly, a court which is unable to read and give effect to the regulations in a manner compatible with Convention rights would be able to make a declaration of incompatibility under section 4 of the Human Rights Act 1998. This would not affect the validity or effectiveness of the regulations. As a remedy, therefore, it is of little value to the victim of a violation.

27 Seventh Report from the Defence Committee, Session 2002—03, *Draft Civil Contingencies Bill*, HC 557, para 68.

3.30 Thirdly, clause 21(4) of the Draft Bill would prohibit the making of certain types of regulations. Of particular importance for Convention rights are the following.

a) No regulation would be able to require a person, or enable a person to be required, to provide military or industrial service.[28] This would safeguard the right under ECHR Article 4 to be free of forced labour.

b) No regulation would be able to prohibit, or to enable the prohibition of, a strike or other industrial action.[29] This would safeguard the right to strike so far as it is an incident of the right to form and join a trade union for the protection of one's interests, under ECHR Article 11.

c) No regulation would be able to establish a special court or tribunal to try offences.[30] This would safeguard the right to a fair and public hearing before an independent and impartial tribunal in the determination of criminal charges, under ECHR Article 6.1.

3.31 While these are worthwhile safeguards, they do not protect people against suffering interference with other Convention rights, without being able to obtain effective legal remedies. For example, there would be no legal protection in national courts or tribunals against an interference by the regulations with the right to life (ECHR Article 2), the right to be free of inhuman or degrading treatment (Article 3), the right to freedom from detention without trial (Article 5), the right to respect for private and family life and the home (Article 8), the right to freedom of expression (Article 10), freedom of peaceful assembly (Article 11, as to which the Draft Bill expressly contemplates interference in clause 21(3)(f)), or the right to the peaceful enjoyment of possessions (Article 1 of Protocol No. 1, in relation to which clause 21(3)(b) and (c) contemplate regulations authorising the requisition, confiscation or destruction of property, and the destruction of animal or plant life, with or without compensation).

3.32 Nothing in the Draft Bill, the Explanatory Notes attached to it, or the Consultation Document published alongside it, explains how compatibility of regulations with these rights would be reliably secured.[31] The Consultation Document asserts that the Draft Bill is compatible with the ECHR. It continues—

> During serious emergencies, the balance between individual rights and the need for action to mitigate the emergency can be difficult to achieve. That is why a procedure already exists to allow the Government to derogate from the Convention, and to make immediate adjustments to the Human Rights Act to reflect the derogation, in the event of a serious emergency.[32]

3.33 We accept that it might be difficult to settle on the right balance between individual rights and the public interest when an emergency occurs. Nevertheless, even in an emergency we cannot approve of an approach to legislating (particularly granting delegated legislative powers) which would deprive people of important safeguards for their

28 Cl. 21(4)(a).

29 Cl. 21(4)(b).

30 Cl. 21(4)(d)(iii).

31 Consultation Document, ch. 5, para. 30, p. 30.

32 ibid., para. 31, p. 30.

fundamental rights, and even remove the legal necessity for the legislator to give proper consideration to those rights when making delegated legislation. The special status of an Act of Parliament would attach (for Human Rights Act purposes) to any Statutory Instrument made under clause 21 regardless of the circumstances and of the Convention right or rights affected by it. There are some Convention rights from which it is not permitted to derogate. These include the right to life (ECHR Article 2), freedom from torture and inhuman or degrading treatment (Article 3), and the right not to suffer criminal penalties for conduct which did not constitute a crime at the time of its commission (Article 7).[33] A legislative provision which would permit delegated legislation to be made authorising interference with a non-derogable right would, in our view, be difficult to justify.

3.34 It is true that section 3(2) of the Human Rights Act 1998 itself preserves the freedom of Parliament to legislate in a manner incompatible with Convention rights. In this way, the legislative sovereignty of Parliament is maintained. But it is a very different matter to confer power on a Minister of the Crown to legislate in a manner incompatible with Convention rights. It would come close to substituting the sovereignty of the Crown for the sovereignty of Parliament, without even the requirement that Parliament should first have considered and approved the terms of the incompatible regulations to be made.

3.35 We conclude that the provisions of Part 2 of the Draft Bill would, if enacted, give rise to a significant risk that regulations could be made which would violate, or authorise a violation of, Convention rights, without any judicial remedy being available for a victim of the violation. As the Bill makes no provision for any other effective remedy before a national authority, it would also be likely to lead to a violation of the right to an effective remedy before a national authority for any violation of a Convention right, under ECHR Article 13 (which does not form part of national law, but binds the United Kingdom in international law and is enforceable before the European Court of Human Rights).

33 See ECHR Article 15.

4 Draft Mental Incapacity Bill

Date Presented	27 June 2003
Reference Number	Cm 5859
Department	Constitutional Affairs
Date Consultation ends	
Previous Reports	None

4.1 The Draft Mental Incapacity Bill was published in June 2003 in two volumes.[34] It would put in place a new regime for respecting decisions made by people who have capacity to make them, and for making decisions on behalf of those who do not have capacity. The Draft Bill also makes provision for giving effect to decisions about their future treatment, made by people who had capacity to decide the matters at the time when they made the decisions but who have lost that capacity when the time comes to decide whether to administer treatment.

4.2 The Draft Bill is the latest stage in a long process of consideration of, and consultation on, the best way to respect the autonomy of people who have some degree of mental incapacity while ensuring that they are protected against exploitation. The process began with a Law Commission Report on Mental Incapacity in 1995.[35] This was followed by two consultation papers issued by the Government: *Who Decides? Making Decisions on behalf of Mentally Incapacitated Adults* (December 1997); and *Making Decisions* (October 1999). The Draft Bill is intended to be a vehicle for further consultation. It will be considered by a Joint Committee of both Houses of Parliament, which is expected to report later this year.

4.3 Here, we report our views of the human rights implications of the Bill.

The provisions of the Draft Bill

4.4 Part 1 of the Draft Bill deals with decision-making on behalf of people of the age of 16 or over who lack capacity at a given time. Clause 2 introduces a presumption against lack of capacity. Clause 3 provides that any decision made for or on behalf of the person must be in the person's best interests, taking account of his previously expressed views and the views of his carers and other people who represent him or are likely to know his wishes. Clause 6 provides carers and others with general authority to take action, but this is subject to duties of respect for autonomous decisions made by the person about his or her future treatment when he had capacity to make such decisions. Clauses 8 to 13 and Schedules 1 and 2 would replace the procedure for making an "enduring power of attorney" (that is, a power of attorney that can continue to empower the donee to act on behalf of the donor even after the donor becomes incapable of managing his or her own affairs) with a "lasting power of attorney", and Schedule 3 would make provision for the operation after the Bill comes into force of enduring powers of attorney made under the previous law.

34 *Draft Mental Incapacity Bill*, Cm. 5859-I, and *Making Decisions* (Commentary and Explanatory Notes), Cm. 5859-II (London: TSO, 2003).

35 Law Com. No 231.

4.5 Clauses 23 to 29 give statutory recognition and regulation, for the first time, to advance decisions about future medical treatment taken by people who later become incapable. The general principle is that an advance decision is to be given effect, subject to a number of caveats to ensure the reliability and applicability of the advance decision in particular circumstances, and to protect people who act in good faith in ignorance of the decision or wrongly but reasonably believing themselves bound by an advance decision which for some reason is inapplicable.

4.6 Part 2 of the Draft Bill establishes the Court of Protection on a new statutory basis, together with an official known as the Public Guardian. Their combined role is to be to safeguard the interests of people who become incapable.

4.7 These provisions engage a wide range of rights, including the right to respect for private life, the right to property, and the right to be free of degrading treatment. In our view, however, the safeguards built into the Draft Bill are sufficient to ensure that there is no significant risk of the implementation of the Draft Bill leading to an incompatibility with any of them.

Acts

5 Licensing Act 2003

Date introduced to the House of Lords	14 November 2003
Date introduced to the House of Commons	12 March 2003
Date given Royal Assent	10 July 2003
Previous Reports	1st, 4th, 7th and 12th

5.1 The Licensing Act 2003 received the royal assent on 10 July. We reported on the Licensing Bill on several occasions during its progress through each House.[36] In our Twelfth Report, we drew the attention of each House to our view that the proposals for exempting places used for public worship from the requirements of the licensing regime, and allowing certain other places associated with places of public worship to obtain licenses without paying the usual fee, might be regarded as discriminating against the occupiers and users of purely secular premises. We were concerned that these exemptions might give rise to a significant risk of violating the right to be free of discrimination under ECHR Article 14, taken together with ECHR Articles 9 (right to freedom of religion, conscience and belief) and 10 (freedom of expression). We were also concerned that there was a risk that the exemptions might—

> … leave a patchwork of different licensing requirements without a coherent rationale, calling in question the existence of a pressing social need for the restriction on freedom of expression through a licensing regime for public entertainment, and so undermining the Government's claim that such a licensing regime is a justifiable interference with the right to freedom of expression under ECHR Article 10.2.[37]

5.2 The Department for Culture, Media and Sport subsequently expressed concern about our apparent failure to take account of a letter from the Minister to the Committee, sent in April 2003, explaining that the exemptions for premises used for public worship would simply extend to London the system which, under existing licensing law, applies in the rest of England and Wales, and stating that the Government takes the view that such a move would have a rational and objective justification for the purposes of ECHR Article 14.

5.3 That letter (which is published as an annex to this Report)[38] did not explain why the Government considered that there was an objective and rational explanation for distinguishing, for the purpose of entertainment licensing law, between places used for public worship and other places. The distinction was introduced to the law before the Human Rights Act 1998, and with it ECHR Article 14, took effect in the domestic law of the United Kingdom. It is now necessary to test the special treatment of such premises by reference to the standards of the ECHR. A proposal to extend the differential treatment to new parts of the United Kingdom merely makes the need for that assessment more pressing. The Minister of State for Sport provided further clarification in a letter received

36 See our First, Fourth, Seventh and Twelfth Reports of 2002-03.

37 Twelfth Report of 2002-02, *Scrutiny of Bills: Further Progress Report*, HL Paper 119, HC 765, para. 3.4.

38 See p 23.

on 2 July 2003. (This letter, too, is published as an Annex to this Report.)[39] So far as is relevant to this issue, the Department pointed out that the exemption for places of public religious worship from the requirements of entertainment licensing law would benefit people who were using the premises for the enjoyment of secular entertainment there. Those people might be of any religious affiliation or of none. In addition, the exemption for religious venues is a recognition of the—

> … distinct pastoral role in the community played by many of the faiths and the wider responsibility that, for example, the church has in bringing the community together.

5.4 The Minister also drew attention to the central role of the churches to the development of music in this country, particularly because churches provide venues large enough for the performance of many pieces of music requiring large forces. For these reasons, the Government argued that Articles 9, 10 and 14 are not engaged, but that, if they were engaged, there is a rational and objective justification for the exemption which does not call into question the pressing social need to regulate public entertainment in general.

5.5 Places of public religious worship play an important part in the development and performance of secular as well as religious music and other artistic activities of considerable cultural value. However, it is arguable whether these considerations mark those places out sufficiently from other artistic and musical venues to justify, in an objective and rational way, the different treatment afforded to them in relation to entertainment licensing. A large number of correspondents wrote to us just prior to the Commons' consideration of Lords Amendments to the Licensing Bill on 8 July, arguing the case for further intervention before the Bill became law.[40] A number of these were under the misapprehension that the Government would be required to make a "section 19 statement" on the face of the Act, guaranteeing compliance with Convention rights. In fact, of course, the Human Rights Act expressly preserves the right of Parliament to legislate as it thinks fit, having due regard to Convention rights, and to the opinion of the Minister on these matters, which is stated only when a Bill is first introduced into either House. In the case of the Licensing Act, Parliament has now legislated.

5.6 Before leaving this measure, we wish to take an opportunity to correct a misleading comment made in our earlier discussions of the Licensing Bill. In our Fourth Report, we suggested that the regime for public entertainment licensing in the Bill would not cover the use of amplification equipment for recorded music, but only electronic amplification of live music.[41] The Department has pointed out that this suggestion was based on a misconception. We accept that the Act covers performances of live and recorded, amplified and unamplified music in the same way, as the description of entertainment to which the Bill applies, contained in Schedule 1 to the Act, makes clear.

39 See p 24.

40 At a late stage, certain amendments were made to the Bill, including an exemption for Morris dancers which, some correspondents feared, was discriminatory and did not accord with the principles underlying the Bill as a whole.

41 Fourth Report of 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 50/HC 397, para. 18.

6 Appropriation (No. 2) Act 2003

Date introduced to the House of Commons	19 June 2003
Date introduced to the House of Lords	24 June 2003
Date given Royal Assent	10 July 2003
Previous Reports	None

6.1 We considered the Consolidated Fund (Appropriation) (No. 2) Bill, which was accompanied by a statements of compatibility by the responsible Minister under section 19(1)(a) of the Human Rights Act 1998.[42] In our view, the Bill (now the Appropriation (No. 2) Act 2003) gave rise to no significant risk of incompatibility with human rights.

42 House of Commons Bill 123.

Appendices

Appendix 1: The Anti-social Behaviour Bill

Letter from Rt Hon David Blunkett, Home Secretary, to the Chairman

Anti-social Behaviour Bill

As you are no doubt aware, the Anti-social Behaviour Bill completed its Commons stages on Tuesday. At Report stage a number of new provisions were added to the Bill. I thought that it might be helpful to the JCHR to specifically highlight those in new Part 8.

The new Part 8 of the Bill contains a new power to deal with trespassory encampments, including those on land forming part of a highway, without any of the existing preconditions. This power could only used by police when a local authority has made adequate site provision. The offence of aggravated trespass has also been amended to cover buildings as well as land in the open air. This would apply where a person trespasses and does anything that is intended to intimidate or deter persons from engaging in that activity, obstructing or disrupting the lawful activity of others.

As with the rest of the Bill I believe that the provisions in Part 8 are wholly compatible with human rights legislation. A more detailed assessment is contained in the new version of the Explanatory Notes that accompany the Bill; I attach the relevant extract for information.[43]

I am copying this letter to Lord Sainsbury at the Department for Trade and Industry.

26 June 2003

43 See HL Bill 84-EN, paras 201 to 212

Appendix 2: The Licensing Bill

Letter from Dr Kim Howells MP, Minister for Tourism, Film and Broadcasting, Department for Culture, Media and Sport, to the Chairman

Joint Committee on Human Rights: Seventh Report

I am writing in response to the points that you raised in your Seventh Report, regarding the compatibility of the Licensing Bill with the European Convention on Human Rights ("the Convention").

In relation to the point previously raised in your Fourth Report, regarding the compatibility of clause 134 of the Bill with Article 10 of the Convention, I am pleased to note that the amendments we made to that clause on Report in the House of Lords overcome your concerns.

I note, however, that you have drawn to the attention of each House the matter raised in paragraph 35 of your Seventh Report ("the Report"), namely that exempting from the requirements of the licensing regime the provision of regulated entertainment in places of public religious worship may give rise to issues of discrimination under Article 14 of the Convention. I hope the Committee will find it helpful if I set out in a little more detail our reasoning behind this policy.

As you note in paragraph 34 of the Report, the licensing regime serves legitimate aims, namely the protection of public safety, the protection of the rights of others and the prevention of crime and disorder. Indeed, these aims are enshrined as key licensing objectives in the Licensing Bill as the prevention of crime and disorder, public safety, the prevention of public nuisance (it is the Government's intention to restore this as the third licensing objective) and the protection of children from harm. As you also note, there is a pressing social need for regulation owing to the importance of these public interest issues. The question of the extent of that regulations for the purposes of compatibility with the Convention, therefore becomes a question of proportionality.

In practice, addressing the concerns that you raise in paragraph 35 of the Report presents us with very little choice beyond maintaining the provisions in the Bill as they currently stand. It appears to us that we could either provide a wholesale deregulation of the provision of regulated entertainment, or impose a blanket requirement for all premises to be licensed before the provision of any public entertainment may take place. We believe that neither approach would represent a proportionate response. The former approach, of course, would remove the essential protections contained in the licensing regime that are necessary in the interests of public safety, for the protection of the rights of others and for the prevention of crime and disorder. The latter approach would engage other Convention rights, particularly the right to freedom of expression set out in Article 10 of the Convention. Walking the correct line between these competing Convention rights, as noted above, is achieved by ensuring the proportionality of the regime.

We believe that the approach to the regulation of entertainment set out in the Licensing Bill represents a proportionate response, a fair balance and has an objective and reasonable justification. In all places outside Greater London, the current licensing regime treats the provision of music at places of public religious worship differently from that provided at secular venues—the former is exempt from the requirement for a public entertainment licence (Local Government (Miscellaneous Provisions) Act 1982, Sch 1, para 1(3)(a)(i)) whereas secular venues currently are the subject of control. The approach set out in the Licensing Bill reflects the current exemption for places of public religious worship in

relation to the provision of music outside Greater London, and at the same time brings Greater London within this exemption, thereby removing the artificial geographical distinction currently drawn in this aspect of the licensing regime. To remove this exemption without any evidence of a public interest reason to do so would, in our view, raise issues concerning the compatibility of the provisions with the right to freedom of expression under Article 10 of the Convention and would appear to be contrary to the public interest. Further, you will note that there is a power in paragraph 4 of Schedule 1 to the Bill to add to, vary or remove any description of entertainment. Accordingly, if in the future, evidence was received suggesting the need, in the public interest, to remove or modify the exemption in relation to places of public religious worship, we would be empowered to do so.

On the issue of proportionality, I should also mention that Guidance issued in conjunction with the Bill will play a vital role in ensuring that a proportionate approach is taken to those venues which *do* form the subject of the licensing regime. We acknowledge that certain venues which are currently licensed, and which will fall within the scope of regulation under the Bill, have a recognised role to play in the community. We will be making it clear in Guidance that in relation to such venues, eg village and community halls, licences should only be subject to conditions that are necessary and proportionate. Further we have announced that such venues having a community role eg village, parish or community halls or other similar buildings should be exempt from the fees associated with the provision of regulated entertainment or entertainment facilities, thereby alleviating the financial burden associated with the provision of regulated entertainment. We believe that these factors will combine to ensure a proportionate approach to the regulation of entertainment and a fair balance.

I am copying this letter to Members of Commons Standing Committee D.

10 April 2003

Letter from Rt Hon Richard Caborn MP, Minister for Sport, Department for Culture, Media and Sport, to the Chairman

Joint Committee on Human Rights: Twelfth Report

I am writing in response to the points that you raised in your Twelfth Report, regarding the compatibility with the ECHR of the exemption in the Licensing Bill for places of public religious worship providing secular entertainment, and the fee exemption for church and chapel halls, parish and community halls and other similar buildings.

Your concerns echo those set out in paragraph 35 of your Seventh Report. Dr Kim Howells previously responded in considerable detail to those concerns, in his letter of 10 April 2003, but I have since learned that this letter was regrettably not put before the Committee in advance of the issuing of your Twelfth Report. For ease of reference, I attach a copy of that letter and would ask the Committee, when considering its contents, to also kindly take into account the following more general additional points.

First, in paragraph 3.1 of your Twelfth Report you refer to the large number of communications that you have received from individuals who are concerned about the impact that the Bill may have on the ability to mount performances of various descriptions. Although I realise that, as you said in paragraph 18 of your Fourth Report, very strong feelings are held on the subject of the provision of regulated entertainment, in itself, the number of letters received from lobbying groups in relation to certain provisions in a Bill

does not indicate the compatibility or otherwise of those provisions with the European Convention on Human Rights, nor indeed whether the genuine concerns of those lobbying are based upon an accurate understanding of the system that the Bill will introduce as a whole.

In paragraph 3.1 of your Twelfth Report you indicate that a large volume of letters that you have received are from those who are concerned about the impact that the Bill may have on the ability to mount performances by folk singers, Morris dancers and other kinds of performers, as well as concerts in a variety of venues. As the correspondence that we have received on this subject has revealed a considerable amount of misunderstanding regarding the changes that the Bill will introduce, I wanted to take this opportunity to clarify that, far from being more restrictive than the current system of regulation, the Bill will generally lead to a greater promotion of Article 10 rights. When compared with the current system of regulation, the new system is streamlined, coherent, cheap and simple and, if industry makes full use of the reforms, should encourage a significant opening up of the opportunities for performing a huge variety of regulated entertainment.

This is not an area of law where we are moving from non-regulation to regulation and, generally speaking, what the Bill requires to be licensed in any event already requires a licence under current law. In terms of its general impact, the Bill will therefore not present increased regulation but wilt instead involve a significant move towards greater simplicity, transparency and a reduction in costs. For example, under existing legislation all public performances of music in a building (except for a place of public religious worship or where performed as an incident to a religious service or meeting) require a public entertainment licence. The only disapplication of this requirement is very narrow and applies where a justices' licence under the Licensing Act 1964 exists in relation to the premises and where the performance is by no more than two performers in any single night. Anything beyond that—including the performers combining live music with recorded music—requires an additional public entertainment licence. The perverse effect of this rule in practice has been that many types of music and other forms of entertainment are discouraged by reliance on the existence of the rule. Under the new licensing regime, any premises will continue to need a licence to sell alcohol but will be free to apply simultaneously for permission, to be set out in the premises licence, to put on music or dancing or other entertainment whenever they wish. The bureaucracy of the current system of separate licences, which acts as a deterrent in many cases, will accordingly be significantly reduced, leading to a greater freedom to exercise Article 10 rights. The financial burden imposed by the current system will also be reduced, as the fee for a premises licence will remain the same whether or not it contains a permission to provide entertainment and the licence will not have to be re-applied for regularly, which is the current position. In addition, by moving from a system where fees are set by local authorities to one where they are set centrally by the Secretary of State, the Bill will have a harmonising effect by removing the huge regional variations in fee levels that currently exist in practice.

Turning now specifically to the exemption for places of public religious worship, in addition to the points that I made in my letter of 10 April 2003 on this matter, I would like to add the following. From paragraph 3.4 of your Report, your concern that the exemption might be incompatible with Articles 9 and 14 is based on two related reasons. The first of these is that the exemption is afforded to premises used principally for religious purposes, or occupied by people or organisations on account of their religious beliefs or practices. On this point I would like to emphasise that, while the exemption indeed attaches to places of public religious worship, attendance at entertainment held at such premises is in no way confined to, nor in any way distinguishes between, those of any religious belief. Further, the exemption places no restriction on the type of entertainment that may be enjoyed at such venues and there is no requirement for the entertainment to have any

religious content The second reason for your concern is that the exemption is denied to premises used principally for secular purposes, or occupied by people or organisations without a religious affiliation. Whilst it is indeed true that the exemption is not afforded to secular venues, the creation of this exemption was prompted by a recognition, after discussion with representatives from various faiths, of the distinct pastoral role in the community played by many of the faiths and the wider responsibility that, for example, the church has in bringing the community together. By way of contrast, secular venues are run solely for commercial purposes and have no equivalent pastoral role in our society. Further, churches have a central role to the development of music in this country, particularly because the premises are large enough to stage performances, particularly classical pieces. For these reasons, it would not appear to me as though either Article 9 or 14 are engaged. However, if I am wrong about this, it is my view that there is an objective and reasonable justification for this exemption and that its existence in no way calls into question the pressing social need for the general regulation of public entertainment.

As a final point, I would like to draw the Committee's attention to the fact that we have responded to and addressed any points in relation to the Bill that have been raised in either House during its passage through Parliament, and the decision to exempt places of public religious worship was one reached by both Houses—indeed, no Member of either House spoke against the Amendment that created this exemption.

30 June 2003

Formal minutes

Monday 14 July 2003

Members present:

Jean Corston MP, in the Chair

Lord Bowness	Mr David Chidgey MP
Lord Lester of Herne Hill	Mr Kevin McNamara MP
Lord Parekh	Mr Richard Shepherd MP
Baroness Prashar	
Baroness Whitaker	

The Committee deliberated.

* * * * *

Draft Report [Scrutiny of Bills and Draft Bills: Further Progress Report], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 1.7 read and agreed to.

Paragraph 1.8 read as follows:

"Thirdly, clause 61 would insert a new section 62A in the 1994 Act. This would allow the senior police officer present to direct a trespasser who is on land with at least one other person and a vehicle or vehicles, to leave the land, removing any vehicle or other property of theirs, if (a) the trespassers have the common purpose of residing there for any period, (b) where the people have a caravan with them, it appears to the officer that the there is a council-run caravan site in the area to which the people could move, and (c) the occupier has asked the police to remove the trespassers from the land. It would be an offence to refuse to comply with a direction given by the officer. This engages the right to respect for private life and the home under ECHR Article 8.1, but the interference with that right is likely to be justified under Article 8.2 as protecting the rights of the landowner, and as being a proportionate response to the need to do so as long as there is another site available in the area."

Amendment proposed, in line 8, to leave out ", but the interference with that right is likely to be justified under Article 8.2 as protecting the rights of the landowner, and as being a proportionate response to the need to do so as long as there is another site available in the area", and insert "The right of the occupier of the land to peaceful enjoyment of his or her possessions, under Article 1 of Protocol No. 1 to the ECHR, is also engaged, together with the rights of adjacent occupiers to respect for their private lives and homes and enjoyment of possessions. Balancing these rights is difficult. Factors which might influence a decision

as to whether these powers are being exercised compatibly would include whether the police officer has reasonable grounds for his or her belief that there is a council-provided site nearby to which the person could move."—(*Mr Kevin McNamara*.)

Question proposed, That the Amendment be made.

Amendment proposed to the proposed Amendment, to leave out the words "Factors which might influence a decision as to whether these powers are being exercised compatibly would include whether the police officer has reasonable grounds for his or her belief that there is a council-provided site nearby to which the person could move."—(*Mr David Chidgey*.)

Question put, That the Amendment to the proposed Amendment be made.

The Committee divided:

Content, 4	Not Content, 4
The Chairman	Baroness Prashar
Lord Bowness	Lord Lester of Herne Hill
Mr David Chidgey	Mr Kevin McNamara
Mr Richard Shepherd	Baroness Whitaker

There being an equality of votes, in accordance with Standing Order 57 of the House of Lords, which provides that the Question shall be resolved in the negative unless there is a majority in its favour, the Chairman declared the Amendment to the Amendment disagreed to.

Question put, That the Amendment be made.

The Committee divided:

Content, 4	Not Content, 3
Baroness Prashar	The Chairman
Lord Lester of Herne Hill	Lord Bowness
Mr Kevin McNamara	Mr David Chidgey
Baroness Whitaker	

Paragraph 1.8, as amended, agreed to.

Paragraphs 1.9 to 6.1 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fifteenth Report of the Committee to each House.

Ordered, That certain papers be appended to the Report.

Ordered, That the Chairman do make the Report to the House of Commons and that Baroness Prashar do make the Report to the House of Lords.

* * * * *

[Adjourned till Monday 15 September 2003 at half past Four o'clock.

Public Bills Reported on by the Committee (Session 2002-03)

* indicates a Government Bill
Bills which engage human rights and on which the Committee has commented substantively are in bold

BILL TITLE	*Report No.*
Animals (Electric Shock Collars)	7th
Anti-social Behaviour*	**12th**
Arms Control & Disarmament [Lords]*	1st
Aviation (Offences)	4th
Communication*	**1st and 4th**
Community Care (Delayed Discharges)*	1st, 3rd, 7th and 8th
Company Directors (Health and Safety)	12th
Consolidated Fund*	4th
Consolidated Fund (Appropriation)*	1st
Consolidated Fund (No. 2)*	7th
Consolidated Fund (Appropriation)(No. 2)*	15th
Co-operatives & Community Benefit Societies	4th
Courts [Lords]*	**1st & 4th**
Crime (International Co-operation) [Lords]*	**1st, 3rd & 7th**
Criminal Justice*	**1st, 2nd, 7th & 11th**
Crown Employment (Nationality)	4th
Dealing in Cultural Objects (Offences)	4th
Disabled People (Duties of Public Authorities)	**8th**
Electricity (Miscellaneous Provisions)*	4th
Endangered Species (Illegal Trade)	4th
Equality [Lords]	4th
Equine Welfare (Ragwort Control)	7th
European Parliament (Representation)*	1st
European Union (Accessions)	12th
European Union (Implications of Withdrawal) [Lords]	1st
Extradition*	1st
Female Genital Mutilation	**8th**
Fireworks	7th
Fire Services	**8th & 12th**
Food Colouring and Additives Bill	15th
Food Justice Strategies	12th
Food Labelling	8th
Government Powers (Limitation)	8th
Greater London Authority Act 1999 (Repeal) [Lords]	3rd
Greenbelt Protection	**8th**
Harbours	8th
Health (Wales)	1st

Health and Safety at Work (Offences)	4th
Health and Social Care (Community Health & Standards)*	8th
High Hedges [Lords]	**1st**
High Hedges (No. 2)	**8th**
House of Lords (Amendment) [Lords]	7th
Housing (Overcrowding)	**8th**
Human Fertilisation & Embryology (Amendment)	7th
Human Fertilisation & Embryology (Deceased Fathers)	**8th**
Hunting*	**3rd & 7th**
Income Tax (Earnings & Pensions)*	4th
Industrial Development (Financial Assistance)*	1st
Legal Deposit Libraries	8th
Licensing [Lords]*	**1st, 4th, 7th , 12th & 15th**
Litter & Fouling of Land by Dogs	7th
Local Communities Sustainability	12th
Marine Safety	7th
Ministerial and other Salaries (Amendment) [Lords]	7th
Municipal Waste Recycling	7th
National Lottery (Funding of Endowments)	7th
National Minimum Wage (Enforcement Notices) [Lords]*	1st
Needle Stick Injury	12th
Northern Ireland Assembly Elections*	7th
Northern Ireland Assembly Elections and Periods of Suspension	12th
Patient (Assisted Dying) [Lords]	**7th**
Patients' Protection [Lords]	**1st**
Pensioner Trustees and Final Payments	15th
Pensions (Winding-up)	7th
Planning & Compulsory Purchase*	**3rd**
Police (Northern Ireland) [Lords]*	**3rd**
Prevention of Driving under the Influence of Drugs [Lords]	8th
Prevention of Driving under the Influence of Drugs (Road Traffic Amendment)	8th
Public Services (Disruption) [Lords]	**3rd**
Railways & Transport Safety*	4th
Regional Assemblies (Preparations)*	1st
Regulation of Child Care Providers	12th
Retirement Income Reform	7th
Road Safety	15th
Road and Street Works (Notice and Compensation)	12th
Road Traffic (Amendment) [Lords]	1st
Sex Discrimination (Clubs and Private Associations)	**8th**
Sexual Offences [Lords]*	**7th & 12th**
Sunday Working (Scotland)	4th
Sustainable Energy	8th
Telecommunications Masts (Railways)	15th
Traveller Law Reform	12th
Voting Age (Reduction to 16) [Lords]	1st
Waste & Emissions Trading [Lords]*	1st

Reports from the Joint Committee on Human Rights since 2001

The following reports have been produced

Session 2002–03

First Report	Scrutiny of Bills: Progress Report	HL Paper 24/HC 191
Second Report	Criminal Justice Bill	HL Paper 40/HC 374
Third Report	Scrutiny of Bills: Further Progress Report	HL Paper 41/HC 375
Fourth Report	Scrutiny of Bills: Further Progress Report	HL Paper 50/HC 397
Fifth Report	Continuance in force of sections 21 to 23 of the Anti-terrorism, Crime and Security Act 2001	HL Paper 59/HC 462
Sixth Report	The Case for a Human Rights Commission: Volume I Report	HL Paper 67-I HC 489-I
Seventh Report	Scrutiny of Bills: Further Progress Report	HL Paper 74/HC 547
Eighth Report	Scrutiny of Bills: Further Progress Report	HL Paper 90/HC 634
Ninth Report	The Case for a Children's Commissioner for England	HL Paper 96/HC 666
Tenth Report	United Nations Convention on the Rights of the Child	HL Paper 117/HC 81
Eleventh Report	Criminal Justice Bill: Further Report	HL Paper 118/HC 724
Twelfth Report	Scrutiny of Bills: Further Progress Report	HL Paper 119/HC 765
Thirteenth Report	Anti-social Behaviour Bill	HL Paper 120/HC 766
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