House of Lords
House of Commons

Joint Committee on
Human Rights

Legislative Scrutiny: Finance Bill; Government Response to the Committee's Sixteenth Report of Session 2008-09, Coroners and Justice Bill (certified inquests)

Twentieth Report of Session 2008-09

Report, together with formal minutes and written evidence

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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 two from each House.

Current membership

HOUSE OF LORDS	HOUSE OF COMMONS
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Lord Dubs	Mr Andrew Dismore MP (Labour, *Hendon*) (Chairman)
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Baroness Prashar	Mr Edward Timpson MP (Conservative, *Crewe & Nantwich)*

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The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publications

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.

Current Staff

The current staff of the Committee are: Mark Egan (Commons Clerk), Rebecca Neal (Lords Clerk), Murray Hunt (Legal Adviser), Angela Patrick and Joanne Sawyer (Assistant Legal Advisers), James Clarke (Senior Committee Assistant), Emily Gregory and John Porter (Committee Assistants), Joanna Griffin (Lords Committee Assistant) and Keith Pryke (Office Support Assistant).

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Summary

The Joint Committee has previously pointed out that retrospective taxation requires careful scrutiny to ensure that it is compliant with the right to peaceful enjoyment of possessions in Article 1 Protocol 1 of the European Convention on Human Rights (ECHR), but can be justified by sufficiently strong arguments.

We received representations that clause 67 of the Finance Bill, which seeks to close down a tax avoidance scheme, contravened human rights law. We have considered the reasons for the clause put forward by the Government and concluded that the provision is justifiable and does not contravene the ECHR.

We have also received representations about section 58 of the Finance Act 2008, another taxation measure which has retrospective effect. We are told that it has led to tax demands which may require many individuals to sell their family homes. We are writing to the Treasury to ask for its detailed justification for this provision.

Finance Bills are long and complex and it is difficult for us to identify clauses with retrospective effect which may engage the ECHR. Consequently, we recommend that the Government should in future provide us with a memorandum accompanying the Finance Bill, identifying any provisions in the Bill which have retrospective effect, together with an assessment of the impact of the retrospective provision and a detailed explanation of the justification for retrospectivity.

We also publish with this report the Government response to our report on the certified inquests provisions in the Coroners and Justice Bill and a letter from the Government on our report on the Welfare Reform Bill.

Government Bills

Bills drawn to the special attention of each House

1 Finance Bill

Date introduced to first House	28 April 2009
Date introduced to second House	
Current Bill Number	HC Bill 122

Background

1.1 The Bill[1] was introduced in the House of Commons on 28 April 2009 and completed its Committee Stage on 25 June. Report Stage is scheduled for 7 July.

The human rights issue

1.2 Members of our Committee have received representations from a firm of tax advisers, NT Advisors, to the effect that certain anti tax-avoidance provisions in the Bill,[2] closing down a tax loophole, are in breach of human rights laws because they are retrospective in effect and are unwarranted and inappropriate.

1.3 Tax avoidance schemes must be notified to Her Majesty's Revenue and Customs ("HMRC") under the Disclosure of Tax Avoidance Schemes rules. Where HMRC decides to close down an avoidance scheme, it makes an announcement that it intends to do so and the scheme is then closed down prospectively, i.e. from the date of the announcement.

1.4 On 12 January 2009 HMRC announced that it was to take action to "prevent deductions being allowed where liabilities relating to an employment are incurred by employees and former employees with a main purpose of avoiding tax" and where the scheme came within any one of 3 specified sections of the Income Tax (Earnings and Pensions) Act ("ITEPA") 2003.[3] The changes were the subject of a Written Ministerial Statement tabled by the Financial Secretary to the Treasury on 13 January 2009.

1.5 On 1 April 2009 HMRC made a further announcement that a tax loophole would be closed, which was of a wider scope than the 12 January announcement, extending to schemes which came under a different section of ITEPA.[4] The changes were the subject of a Written Ministerial Statement tabled by the Financial Secretary to the Treasury on 1 April 2009.

1.6 The Finance Bill gives effect to both of these announcements, with effect from 12 January 2009, the date of the first announcement. The representations made to us argue that the provision which makes the 1 April announcement take effect from 12 January[5] is in breach of human rights law because it is unjustifiably retrospective. It is said that the

[1] HC Bill 122

[2] Clauses 66 and 67.

[3] ITEPA 2003 ss. 346, 348 and/or 555.

[4] ITEPA s. 11.

[5] Clause 67.

avoidance scheme closed down by the 1 April announcement was "substantively different" from those closed down on 12 January, and that there is therefore no justification from departing from the usual rule that changes to taxation should be prospective not retrospective. They argue that "*ex post fact* legislation is bad legislation no matter what the issue since it is a fundamental requirement that legal frameworks provide certainty for individual behaviour at the point of that behaviour and not retrospectively."

1.7 Our predecessor Committee set out the approach which human rights law requires to be taken to retrospective taxation in its Twelfth Report of 2003-04[6]:

> it is well established in Convention case-law that taxation is an interference with the rights guaranteed under [Article 1 Protocol 1 ECHR].
>
> 1.46 However, taxation is *prima facie* justified under the second paragraph of Article 1 of Protocol No. 1, which expressly reserves the right of States to enforce such laws as they may deem necessary to secure the payment of taxes. The Court of Human Rights has accorded States a very wide degree of latitude in relation to taxation under the second paragraph of Article 1 of Protocol No. 1, but it is not unlimited: the second paragraph must be construed in the light of the principle laid down in the first sentence of the Article. To be lawful under Article 1 of Protocol No. 1, therefore, even a taxing measure … must satisfy the requirements of legal certainty and proportionality.
>
> 1.47 For an interference to be lawful under the second paragraph of Article 1 of Protocol No. 1, it must satisfy the qualitative requirements of accessibility and foreseeability: the law which imposes the tax must be published, intelligible and generally available in a form which enables the individual to organise their affairs knowing with reasonable certainty the consequences of acting in different ways.
>
> …
>
> Such a [retrospective] tax would require very careful scrutiny for compatibility with the requirement of accessibility and foreseeability.

1.8 However, retrospective taxation is not automatically in breach of Article 1 Protocol 1, as our predecessor Committee pointed out in the same report:

> … the requirement of legal certainty in Article 1 of Protocol No. 1 does not amount to an outright prohibition on retrospective taxation. In *National Provincial Building Society v UK*, for example, the Court held that a taxation measure which had been enacted with retroactive effect did not violate Article 1 of Protocol No. 1 because the interference was justified.

1.9 **We agree with our predecessor Committee's analysis of the position under human rights law, that retrospective taxation requires carefully scrutiny for its justification, but it is capable of being justified by sufficiently strong arguments.**

[6] Twelfth Report of 2003-04, *Scrutiny of Bills: Fifth Progress Report*, HL Paper 93/HC 603, at paras 1.43-1.50.

The Government's justification

1.10 The Explanatory Notes to the Bill do not include a section dealing with the Bill's compatibility with the ECHR. This was the subject of adverse comment by our predecessor Committee in its 2004 Report on the Finance Bill cited above, in which it said:[7]

> We remind Ministers that statements of compatibility under s. 19(1)(a) of the Human Rights Act 1998 should only be made after careful consideration of the human rights implications of the Bill, and that the Explanatory Notes to the Bill should record the reasoning behind the conclusion that the provisions of the Bill are compatible with the Convention rights. The Treasury is not exempt from the need to explain itself in such a way.

1.11 We agree and we repeat the recommendation that the Treasury include an analysis of human rights compatibility in the Explanatory Notes accompanying Finance Bills.

1.12 The Explanatory Notes on the relevant clauses state that the clause giving effect to the changes announced on 12 January 2009 "counters avoidance involving the abusive use of deductions for employment-related liabilities and is introduced in response to arrangements that involve the creation of a contrived liability through deliberate default."[8] The clause giving effect to the changes announced on 1 April 2009 is explained as being intended to "counter avoidance involving the abusive use of reliefs available for losses associated with employment. They are introduced in response to arrangements that involve the creation of a loss through deliberate default and are a variant of tax avoidance arrangements using relief for employment-related liabilities, for which counter-measures were announced on 13 January 2009."[9]

1.13 The Government's justification for backdating the 1 April changes to 12 January was explained in greater detail by the Financial Secretary to the Treasury, Rt Hon Stephen Timms MP, in Public Bill Committee.[10] He explained that early in 2009 HMRC received information about "a particularly abusive avoidance scheme, which relied on deliberate default to generate artificial liabilities, which are then set against the otherwise taxable income of the individual concerned at a potential cost to the Exchequer of about £200 million." On 12 January he therefore announced the closure of the scheme "to head off this threat to the public finances." Following the January announcement, HMRC received further information that a variant of the scheme, this time involving the legislation on employment-related losses, was being used to similar effect at a potential loss to the public purse of £200 million. So the Minister announced on 1 April that this variant of the scheme would also be closed down, but with effect from 12 January. That the second scheme was very similar to the first and was also "particularly abusive", involving the artificial creation of contrived losses to avoid tax, was expressly accepted by Mr. Gauke MP who moved an amendment in Public Bill Committee to remove the Bill's retrospective effect.[11]

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[7] Twelfth Report of Session 2003-04, above, at para. 1.39.

[8] Explanatory Note to Clause 66, para. 7.

[9] Explanatory Note to Clause 67, para. 6.

[10] PBC (Bill 090), 16 June 2009, cols 420 and 426-432.

[11] PBC 16 June 2009, cols 428, 432

1.14 The Minister explained that the variant scheme that was closed down in April was "a highly similar scheme set up by the same provider, using the same approach and aimed at exactly the same people." He accepts that the fine detail of the second scheme was somewhat different from that of the first, and that there is therefore a degree of retrospection, but he argues that retrospective effect was justified in the circumstances by the striking similarity between the two schemes. The underlying approach of both schemes is the same: the individual seeking tax relief against genuine income for a contrived loss that the individual never actually suffered. The second loophole was a variant on the one closed down in January, featuring the same individuals who therefore would have known exactly what they were entering into when they decided to do so.

1.15 The backdating of the clause is also said by the Government to be essential to preserve the intent and effect of the January announcement: if it were not backdated, it would put at risk the £200 million saving to the Exchequer, because all those individuals whose had moved to the variant scheme prior to 1 April would have been able to crystallise the artificial losses to claim against their taxable income. Without backdating, there would therefore have been a loss to revenue of £200 million, because the 600 individuals involved would have been able to claim that amount in tax relief. In the words of the Financial Secretary to the Treasury in Public Bill Committee:

> "That is unfair. That is what honest taxpayers are worried about. They are worried that people who know exactly what they are doing and who employ the services of highly paid advisers to devise those ingenious schemes are, by that route, avoiding paying tax like the rest of us."

Assessment of compatibility

1.16 In view of the close similarity of the two schemes, the fact that it is not in dispute that it was a particularly abusive scheme involving tax relief for contrived losses, the fact that the individuals entering into the scheme were aware of the closure of the earlier scheme and of the nature of what they were entering into, the substantial cost to the Exchequer, the limited degree of retrospectivity and the absence of any evidence of personal hardship caused by the retrospectivity of the relevant provision, **we consider that the Government has discharged the burden of demonstrating that the limited degree of retrospectivity involved in clause 67 of the Bill is, in the circumstances, justified. We therefore do not propose to subject these provisions to any further scrutiny.**

1.17 We find it regrettable, however, that the Government did not provide a more detailed explanation of its justification for making the clause retrospective in the Explanatory Notes to the Bill, or, even better, in a separate Memorandum dealing specifically with any retrospective taxation provisions. We take this opportunity to draw to Parliament's attention that we have also received large numbers of representations complaining about the retrospective effect of a taxation provision in last year's Finance Bill,[12] now section 58 of the Finance Act 2008.

[12] Clause 55.

Section 58 of the Finance Act 2008

1.18 The Explanatory Notes accompanying the 2008 Finance Bill explain that the relevant clause is intended to counter a tax-avoidance scheme purporting to exempt from UK tax income received by UK resident individuals by using certain provisions in the UK's bilateral Double Taxation Treaties. Legislation was introduced in the Finance (No. 2) Act 1987 which provided that a Double Taxation Treaty did not affect UK residents' liability to UK tax on their share of income or gains from a foreign partnership. The avoidance scheme targeted by the 2008 provision purports to get round the 1987 legislation. The Government says that the 2008 provision was intended merely to put beyond doubt that the effect of the legislation has always been that where UK residents are members of foreign partnerships nothing in any Double Taxation Treaty affects their tax liability, and that the UK individuals "remain liable to UK tax despite the elaborate, artificial structure designed to exempt them."[13] The purpose, the Government says, was merely to make clear that none of those schemes had ever had the effect of avoiding tax that was claimed for them. It would appear to be the case, however, that such schemes have been in existence for a number of years, with HMRC's knowledge, but HMRC had not sought to close them down until the 2008 Finance Bill.

1.19 We have received evidence to the effect that, as a result of this provision, more than 2000 people are now facing tax demands going back up to 7 years, along with punitive interest charged for late payment. Most of these people are freelance workers, such as IT contractors, project managers, and oil and gas engineers. The impact on many of these individuals and their families appears to be severe. According to a survey of those affected,[14] conducted between 1st and 5th June 2009, 57 said they could not meet the tax demand, even if they sold all of their assets including their family home, and a further 29 could only settle by selling or remortgaging their family home. A number of people face personal bankruptcy. The related financial worry is causing mental health problems and marital breakdown.

1.20 In a Written Answer dated 20 May 2009, the Financial Secretary to the Treasury, Stephen Timms MP, states that the 1987 Act "retrospectively restored the principle" that double taxation treaties do not affect a UK resident's liability to UK tax on their income or gains, and that s. 58 of the Finance Act 2008 was designed to put beyond doubt that none of the avoidance schemes relying on double taxation treaties in fact circumvented that principle.[15] Asked what impact assessment HMRC had made of the effect of the closure of the schemes by s. 58, he said that "formal impact assessments are not published in respect of measures where the impact is only on those who are avoiding tax and thus one was not published for this particular measure." He estimated that the tax at stake on these schemes was around £200 million.

1.21 The representations we have received argue that the changes made by s. 58 of the 2008 Act are in breach of Article 1 Protocol 1 ECHR because they are retrospective in effect and no adequate justification for such retrospectivity has been provided.

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[13] Explanatory Notes to clause 55 of Finance Bill 2008, para. 17.

[14] Survey of those affected by s. 58 Finance Act 2008 by Mr Nigel Jagger: see summary in written evidence. A copy of the survey will be deposited in the Parliamentary Archives.

[15] HC Deb 20 May 2009 col 1400W.

1.22 Applying the approach set out above, these representations raise the question whether the Government has provided a sufficient justification for closing down this tax avoidance scheme with what amounts to retrospective effect. The evidence of the hardship caused to a number of individuals, taken at face value, suggests that the Government failed to carry out the necessary assessment of the impact that such a retrospective taxation measure would have on the individuals affected. In the absence of a satisfactory justification for retrospection, there is therefore at least an arguable breach of Article 1 Protocol 1. Indeed, it appears that some of those affected have been granted permission for a judicial review by the High Court. **We have therefore written to the Minister asking for a memorandum setting out a detailed assessment of the impact of the measure on those affected, and the Government's detailed justification for the retrospective effect of s. 58 of the Finance Act 2008.**

1.23 We cleared last year's Finance Bill from scrutiny without raising any human rights concerns with the Government. No representations were received at the time about the retrospectivity of the relevant provision and nothing was received from the Government identifying the provision as having retrospective effect and explaining the Government's justification for such retrospectivity. Finance Bills are invariably lengthy and highly technical in nature. In the absence of a memorandum or representations from those directly affected, it is almost impossible to identify provisions which raise human rights questions in such bills in the time available.

1.24 **We recommend that in future the Government provide our Committee with a Memorandum accompanying the Finance Bill, identifying any provisions in the Bill which have retrospective effect, together with an assessment of the impact of the retrospective provision and a detailed explanation of the justification for the retrospectivity**.

2 Government Response to the Committee's Sixteenth Report of Session 2008-09, Coroners and Justice Bill (certified inquests)

2.1 With this Report, we are also publishing the Government's reply to our sixteenth report of 2008-09, *Legislative Scrutiny: Coroners and Justice Bill (certified inquests)*, which we received under cover of a letter from Bridget Prentice MP, Parliamentary Under-Secretary of State, Ministry of Justice, dated 1 July; as well as a letter we received from Lord McKenzie of Luton, Parliamentary Under-Secretary of State, Department of Work and Pensions, dated 4 June, in relation to the Committee's Fourteenth Report of 2008-09 on the Welfare Reform Bill.

Conclusions and recommendations

1. We agree with our predecessor Committee's analysis of the position under human rights law, that retrospective taxation requires carefully scrutiny for its justification, but it is capable of being justified by sufficiently strong arguments. (Paragraph 1.9)

2. we consider that the Government has discharged the burden of demonstrating that the limited degree of retrospectivity involved in clause 67 of the Bill is, in the circumstances, justified. We therefore do not propose to subject these provisions to any further scrutiny. (Paragraph 1.16)

3. We have therefore written to the Minister asking for a memorandum setting out a detailed assessment of the impact of the measure on those affected, and the Government's detailed justification for the retrospective effect of s. 58 of the Finance Act 2008. (Paragraph 1.22)

4. We recommend that in future the Government provide our Committee with a Memorandum accompanying the Finance Bill, identifying any provisions in the Bill which have retrospective effect, together with an assessment of the impact of the retrospective provision and a detailed explanation of the justification for the retrospectivity (Paragraph 1.24)

Formal Minutes

Tuesday 7 July 2009

Members present:

Lord Bowness Lord Dubs Lord Lester of Herne Hill The Earl of Onslow Baroness Prashar	John Austin MP Dr Evan Harris MP Mr Virendra Sharma MP Mr Edward Timpson MP

In the absence of the Chairman, Baroness Prashar was called to the Chair for the meeting.

****

Draft Report (*Legislative Scrutiny: Finance Bill; Government Response to the Committee's Sixteenth Report of 2008-09, Coroners and Justice Bill (certified inquests)*), proposed by Baroness Prashar, brought up and read.

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

Paragraphs 1.1 to 2.1 read and agreed to.

Summary read and agreed to.

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

Ordered, That John Austin MP make the Report to the House of Commons and that Lord Dubs make the Report to the House of Lords.

Written evidence was ordered to be reported to the House for printing with the report.

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Adjourned till Tuesday 14 July at 1.30pm.

Written Evidence

Letter to Stephen Timms MP, Financial Secretary to the Treasury, dated 7 July 2009

Section 58 Finance Act 2008

I am writing to you about a human rights issue which has been raised with my Committee by a significant number of people, concerning the retrospective effect of a taxation provision in last year's Finance Bill, now s. 58 of the Finance Act 2008.

We have received evidence to the effect that, as a result of this provision, more than 2000 people are now facing tax demands going back up to 7 years, along with punitive interest charged for late payment. Most of these people are freelance workers, such as IT contractors, project managers, and oil and gas engineers. The impact on many of these individuals and their families appears to be severe. According to a survey of those affected, provided to us by Mr Nigel Jagger, conducted between 1st and 5th June 2009, 57 said they could not meet the tax demand, even if they sold all of their assets including their family home, and a further 29 could only settle by selling or remortgaging their family home. A number of people say they are facing personal bankruptcy. The related financial worry is described as causing mental health problems and marital breakdown.

We note that in a Written Answer dated 20 May 2009, you stated that the Finance (no. 2) Act 1987 "retrospectively restored the principle" that double taxation treaties do not affect a UK resident's liability to UK tax on their income or gains, and that s. 58 of the Finance Act 2008 was designed to put beyond doubt that none of the avoidance schemes relying on double taxation treaties in fact circumvented that principle.[16] Asked what impact assessment HMRC had made of the effect of the closure of the schemes by s. 58, you said that "formal impact assessments are not published in respect of measures where the impact is only on those who are avoiding tax and thus one was not published for this particular measure." You estimated that the tax at stake on these schemes was around £200 million.

The representations we have received argue that the changes made by s. 58 of the 2008 Act are in breach of the right to peaceful enjoyment of possessions in Article 1 Protocol 1 ECHR because they are retrospective in effect and no adequate justification for such retrospectivity has been provided.

These representations raise the question whether the Government has provided a sufficient justification for closing down this tax avoidance scheme with what amounts to retrospective effect. The evidence of the hardship caused to a number of individuals, taken at face value, suggests that the Government failed to carry out the necessary assessment of the impact that such a retrospective taxation measure would have on the individuals affected. In the absence of a satisfactory justification for retrospection, there is therefore at least an arguable breach of Article 1 Protocol 1. We note that some of those affected have been granted permission to proceed with a judicial review by the High Court.

[16] HC Deb 20 May 2009 col 1400W.

I would therefore be grateful if you could provide my Committee with a memorandum setting out a detailed assessment of the impact of s. 58 Finance Act 2008 on those affected, and explaining the Government's detailed justification for the provision having retrospective effect. Please include in your memorandum evidence that, throughout the entire period 1987 to 2008, HMRC has consistently made the case that the avoidance scheme in question does not work.

I would be grateful if you could reply by 21 July 2009 and if an electronic copy of your reply, in Word, could be emailed to jchr@parliament.uk.

Summary from Nigel Jagger of people affected by Section 58 of the Finance Act 2008, dated 6 June 2009

Introduction

Section 58 imposes a retrospective tax on people who used a scheme based on the UK/Isle of Man double taxation treaty. The tax is also subject to retrospective interest. According to HMRC, around 2000 people used the scheme between 2001 and 2008.

A survey was carried out, between 1st June and 5th June 2009, to assess the impact this tax would have on people who used the scheme, and 92 individuals responded. All of these were self-employed freelance workers eg. IT contractors, Project Managers, Oil & Gas engineers.

Financial Impact

48 people provided a detailed breakdown of their liability to tax and interest, and these averages out at approximately:

Tax - £113,000
Interest - £27,000
Total - £140,000

Of the 92 who responded:

- 57 (62%) said they could not meet the tax demand, even if they sold all of their assets including their family home.
- 29 (31%) could only settle by selling or, where possible, remortgaging their home
- 6 (7%) could cover the liability from savings/investments or by delaying retirement

Many people indicated that, whilst bankruptcy might be their only option, it would prevent them from continuing in their current line of work due to solvency requirements imposed by many organisations eg. Financial institutions, government agencies.

Human Cost

The majority of those who responded have families with children. The fear of financial ruin has placed a terrible strain on many relationships, and some marriages have already broken down.

- 44 (48%) people said they were under severe stress
- 14 (15%) reported problems sleeping
- 7 (8%) said they were suffering from depression

Selected Quotes

Below are a selection of quotes from the survey responses.

"It is such a large sum it would be very difficult to pay back even over many years; especially with HMRC's high interest rates…"

"For the last year, it feels as if I have been standing in the middle of a cell with no windows, doors or other exits. The walls have been gradually moving inwards towards me and eventually they will crush me."

"The situation is causing great stress especially for my wife who is pregnant. They pregnancy is already complicated by a number of medical conditions and this additional stress is only making the situation worse."

"This is causing great stress on our relationship and both of us suffer from periods of stress and unhappiness as a result. Although the biggest losers in all of this are the kids due to the pressure on me and my wife we are often less than patient with them and they are not having the fun time that youngsters should be having. I am finding the prospect of all this very difficult to handle and I am struggling to sleep at night, sometimes resorting to alcohol to both help sleep and forget, whilst it is not out of control I am aware that this is the slippery slope."

"I have a stressful job and having this occur in my private life means I cannot concentrate/focus on my job, often I am stressed as a result of both my job and because of this which sometimes is really hard to deal with, to the point where the worry has pushed to the point of breakdown and I have felt I cannot take no more I just want it all to go away. The thing that makes my situation worse is that my children who are 6 and 4 do not know what is going on and sometimes when it is hard for me to deal with they don't see a happy dad and I take it out on them, my relationship with my wife has also suffered as a result of which on most occasions leads to arguments."

"This has been a black cloud hanging over my wife and children for 6 years because HMRC taken this long to take action. Caused untold strain on marriage and family life."

"The stress at times has been horrendous. My wife has cried herself to sleep many times. It has put strain on our marriage, made much worse by HMRC dragging it out for so many years. If they had fought and won years ago, we would be left with something, and would have had time to plan. Now we don't."

"My wife and I came close to splitting up last year when all of this blew up. We had constant rows about money, and this was not nice for our three children to listen to."

"Selling the house is not an option as the wife would then want a divorce, don't even want to think about bankruptcy – what about prison?"

"The stress of the situation topped by unfair and unreasonable demands from HMRC has resulted in divorce proceedings and I am having to sell my house in order to meet this obligation."

"It is no exaggeration to say this I have had nightmares about the potential impact of this on us, and I worry about this issue many times a day. My wife who is also currently undergoing IVF treatment has point-blank refused to discuss this matter because she finds it too worrying to talk about."

"Black deep depression at times. I worry for our old age; my wife worries if I will survive to 'enjoy' it."

"It has affected me in that I can't sleep (DR prescribed sleeping pills but they don't really help) which is making me feel really unwell most of the time. I also have back problems (had surgery) and the strain is really beginning to tell. My back is the worst it has been for 8 years (since the surgery). My wife handles it well on the surface but it is eating away at her. She has been ill for 8 out of the last 12 months."

Government response to the Sixteenth Report of Session 2008-09 from the Joint Committee on Human Rights, dated 1 July 2009

Certified or Secret Inquests

Judicial oversight

1. The Secretary of State retains the power to certify that certain information must not be made public nor disclosed unlawfully, subject to judicial review. The Secretary of State must now be "satisfied" that the inquest will involve matters which should not be made public and that in his opinion, it is "necessary" to hold the inquest without a jury in order to prevent those matters becoming public. In our view, this is largely a cosmetic change which is unlikely to lead to a higher degree of scrutiny than the original test of whether certification is necessary in the Secretary of State's "opinion". In any event, the change is not sufficiently significant to override the Committee's original concern that these provisions are deliberately framed in a subjective way in order to avoid the scrutiny to which the Secretary of State would be subject on an application for public interest immunity (or an application for any other special measures currently available). (Paragraph 1.8)

2. The introduction of a degree of judicial discretion is an improvement on the earlier proposals. However, the power of the Secretary of State to issue a certificate remains very broad and the effect of certification will be to bind a judge to ensure that that protected information does not come into the public domain. This is a far cry from the PII process, where the Secretary of State must make an application for protection, then

persuade the coroner, or the relevant judge, that it is necessary to prevent publication in the public interest. (Paragraph 1.12)

Participation of bereaved families

3. In our view, nothing in the amendments introduced by the Government meets our concern about how the effective participation of bereaved families might be secured in a certified inquest. (Paragraph 1.14)

Are these provisions necessary?

4. We are not persuaded that these proposals are necessary or accompanied by adequate safeguards to protect the right to life, as guaranteed by Article 2 ECHR. We recommend that Clauses 11-12, and the equivalent provisions relating to Northern Ireland in Clause 40 and Schedule 9, are deleted from the Bill. (Paragraph 1.17)

Intercept evidence and inquests

The provisions on certified inquests were removed from the Bill at Lords Committee stage on 10 June.

5. We recommend that the Government provide a clear explanation of its view that the proposal for certification is necessary in order to protect information gathered through intercept and subject to the Regulation of Investigatory Powers Act 2000, including why the operation of public interest immunity and other options currently open to coroners are considered inadequate. We recommend that this explanation should be supported, where possible, by evidence. (Paragraph 1.23)

A number of solutions have previously been used in case such as the de Menezes inquest in order to permit an inquest to proceed in accordance with existing arrangements – and these measures will continue to be used wherever possible. For example, documents may be disclosed to the family's legal representatives under legal undertakings as to their confidentiality; the gists of evidence may be provided to families, and redacted evidence to juries; witness anonymity (whether by way of witnesses being identified by code letters/numbers, and/or giving evidence from behind screens); police checks on family members, clearing them to see/hear officers giving evidence; and specific warnings to the media that attempts to identify publicly the police witnesses would be regarded as contempt of court.

However, while measures such as these will continue to be available in the reformed coroner system, they will not provide a solution in those very rare cases where a coroner is obliged to summon a jury and there is sensitive material which is relevant to ascertaining the circumstances of the death but which should not be disclosed publicly, including to the jury (who are the finders of fact in such cases).

PII is often cited as a solution to this problem. But PII *prevents* the disclosure of evidence to the finder of fact. We need to find a solution that enables such evidence to be disclosed to the finder of fact in order that a verdict can properly be reached on the cause of death. If it is accepted that there will be circumstances where sensitive evidence cannot be disclosed to

a coroner's jury it necessarily follows that, in such cases, the jury cannot be the finder of fact as it would be inappropriate for the jury to give a determination which is not based on all the relevant evidence. The logical consequence is that the jury would have to be dispensed with in such cases. That is what the Government's proposals sought to achieve.

Using the Inquiries Act?

6. In our view, any Inquiries Act 2005 inquiry specifically designed to circumvent an inquest, in order to meet the Government's concerns about disclosure of sensitive information would raise the same or similar issues as Clauses 11-12 about the independence and effectiveness of that inquiry for the purposes of Article 2 ECHR. (Paragraph 1.27)

An inquiry under the Inquiries Act 2005 is a legitimate way of investigating a death in a way that is compliant with Article 2 ECHR, and is just as capable of fulfilling that function as a coroner's inquest, a criminal trial or civil court proceedings.

We are confident that investigation of a death by way of an inquiry will be Article 2 ECHR compliant in exactly the same way as a certified inquest carried out under the proposed (but now withdrawn) clauses 11 and 12 of the Coroners and Justice Bill would have been, and will meet the requirements placed upon such an investigation by rulings such as that in *Jordan*.

In particular, we consider that our proposals to conduct such investigations by way of an inquiry would fulfil the requirements of *Jordan* in the following ways:

- Relatives of the deceased will be able to achieve closure, because they can have confidence in the knowledge that the inquiry has had access to all the evidence, including sensitive material such as intercept evidence, and has reached a finding or findings accordingly.

- The public can have confidence that lessons will be learned, again because any findings and determinations made will have been reached on the basis of access to all the evidence.

- At the end of the inquiry, the inquiry's report can contain recommendations outlining what actions should be taken to prevent similar deaths in future, in the same way as can happen after a coroner's inquest.

- The Secretary of State is under a statutory obligation to ensure the suitability and impartiality of those conducting the inquiry. In addition, if the person to be appointed to conduct such an inquiry is to be a senior judge (as would almost certainly be the case in these circumstances), the appointment is to be made in consultation with the Lord Chief Justice, thereby further ensuring the independence from executive control of the appointee.

- Even if persons (including bereaved families) have to be excluded from those parts of the inquiry that are to consider intercept or other sensitive evidence, the inquiry will otherwise be open to the family, their legal representatives, the general public and the press.

- If the family are excluded while such matters are being considered, their views will be represented by the independent counsel to the inquiry, who will be tasked with probing and questioning that evidence on their behalf. (Such counsel already has the legal right to hear intercept evidence under amendments made to Regulation of Investigatory Powers Act 2000 by the Counter Terrorism Act 2008.) It is our belief that this represents suitable protection for the interests of the next of kin for Article 2 purposes, in that it supports the participation of the next of kin to the extent necessary to safeguard their legitimate interests and as far as is practicable.
- It remains our position that all other alternatives that would enable an inquest to take place would have to be considered and rejected before the decision would be taken to conduct the investigation by way of inquiry, and that therefore inquiries would only be considered in the most exceptional of cases.

Legacy cases

7. We recommend that, should these proposals remain part of the Bill, the Government should provide a clear explanation of its view that the Bill should not be amended to ensure that the certification process has no retrospective effect in respect of historical deaths in Northern Ireland. In the alternative, the Government should give a clear undertaking on the floor of the House that there are no protected matters arising from legacy cases in Northern Ireland which would support certification under Clause 40 and Schedule 9. This undertaking should clarify which cases the Government considers legacy cases. (Paragraph 1.34)

The provisions on certified inquests were removed from the Bill at Lords Committee stage on 10 June.

Scope of application to Northern Ireland

8. We consider that if the human rights enhancing measures in the Bill are not to be extended to Northern Ireland, the Minister should provide sufficiently cogent reasons. It is not enough to say that we are all agreed that the situation must be different in Northern Ireland. If reform of the coroners system is to be left to the Northern Ireland Assembly, the Government should explain whether, it its view, this is required by the devolution settlement or is a policy decision designed to meet a decision or request by the Northern Ireland Assembly. (Paragraph 1.36)

There have already been significant reforms to the coroner system in Northern Ireland in recent years through administrative means. In particular, these reforms have seen the creation of a single Northern Ireland Coronial jurisdiction in April 2006 together with the appointment of a Senior Coroner and a presiding High Court judge for the Northern Ireland Coroners Service.

It is the Government's view that further reform of the coroner system in Northern Ireland should reflect the particular circumstances of that jurisdiction including the discrete body of coronial law there (principally the Coroners Act (Northern Ireland) 1959), rather than simply seek to import, with necessary modifications, the reforms designed for England and Wales.

The Coroners and Justice Bill has been used as a vehicle to achieve one particularly pressing change to the current law in Northern Ireland (namely the extension of a coroner's powers in respect of witness and evidence), but otherwise it is intended to take a comprehensive look at the 1959 Act separately. This is currently under consideration and this stage of the work is intended to be completed by the end of 2009. If, by the, responsibility for justice matters, including coroners, is not fully devolved, it would fall to Ministers in the Ministry of Justice to make decisions on the way forward. If justice matters are devolved by then, such decisions will fall to Ministers of the devolved administration.

Where responsibility rests for taking forward further reforms in this are is therefore simply one of timing. While decisions in this area currently rest with the UK Government, responsibility would in due course reside with the locally accountable elected representatives in the Northern Ireland Assembly once crime and justice matters are devolved. No request has been made by the Assembly to the Government to defer further reform pending devolution of justice matters.

Letter from Bill McKenzie MP, Parliamentary Under Secretary of State for Work and Pensions, dated 4 June 2009

Welfare Reform Bill

As you know, I will be taking the Welfare Reform Bill through its Committee stage over the next few weeks. I wanted to take this opportunity to thank you and Committee members for your helpful report on the Bill published on 27 April. You raise a number of interesting points, both on the measures within the Bill and wider welfare policy, which I have no doubt will be explored at length during Committee. I look forward to this opportunity to clarify the Government's position. If necessary I will come back to you in writing to deal with any outstanding issues.

The Bill drives forward the Government's commitment to social inclusion and to making the best possible use of the human talent available to us. We cannot afford to waste the enormous skills and potential of our people, either in social or economic terms; and we cannot, as has been done in the past, allow short-term unemployment in a recession to develop into long-term benefit dependency. That is why the Welfare Reform White Paper, "Raising expectations and increasing support: reforming welfare for the future" set out a single simple principle son which to operate: that no one should be left behind. This principle requires the continuing evolution of the welfare system to create an environment which encourages and enables as many people as possible to return to the labour market. It will be achieved by engaging with customers and helping them overcome any barriers to work they may face. This Bill will take further steps towards creating this personalised welfare state.

In light of this, I would sum up the objectives that the Bill seeks to achieve as:

- Personalised conditionality
- Simplifying the benefits system
- No one written off – enhancing support and control for disabled people

- The option to devolve power to private, voluntary and public providers.

While I do think that this Bill is the right way to take our vision forward, I acknowledge the concerns you have raised. I hope to be able to explore these points and others during the forthcoming Committee stage. The report of your Committee will be extremely useful in helping to frame and inform these debates.

Safeguards are rightly an issue you have identified as being key to making these measures work. I hope to be able to use Committee to put our policy intentions – and how we envisage them working – fully on the record. In the meantime, I attach a copy of the information pack we have provided to Peers, which I hope will be of some comfort. Levels of training, support and guidance for Personal Advisers will also, I know, be discussed in detail in Committee. It is right that they are, as these are again crucial to the success of the policy. Once more I hope to be able to give you the reassurances you need.

The availability of appropriate, accessible and affordable childcare will also be key and, I know this will be covered in detail in Committee. The principles and evidence behind the drug dependency measures, and their operation in practice, will be probed thanks to amendments already tabled by Baroness Meacher. Meanwhile, the operation and effect of the child maintenance measures will, I am sure, be debated in some detail, informed by the observations of both your Committee and the Select Committee on the Constitution.

Finally, you raise some generic issues around the contracting out of Government services and the definition of public authorities. These, as you acknowledge, go beyond the measures in this Bill. I think it is likely that some of these issues will be touched on in Committee but they are not matters that we can deal with in the context of this Bill.

Thank you again for your Report and its valuable contribution to the scrutiny of this Bill. It is important that we get these policies right, because of their effects on individuals and families, and because of their broader economic implications.

Previous Reports from the Committee

First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee’s Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204
Fifth Report	Counter–Terrorism Policy and Human Rights: Annual Renewal of Control Orders Legislation 2009	HL Paper 37/HC 282
Sixth Report	UN Convention on the Rights of Persons with Disabilities: Government Response to the Committee’s First Report of Session 2008-09	HL Paper 46/HC 315
Seventh Report	Demonstrating respect for rights? A human rights approach to policing protest	HL Paper 47/HC 320
Eighth Report	Legislative Scrutiny: Coroners and Justice Bill	HL Paper 57/HC 362
Ninth Report	Legislative Scrutiny: Borders, Citizenship and Immigration	HL Paper62/HC 375
Tenth Report	Legislative Scrutiny: Policing and Crime Bill	HL Paper 68/HC 395
Eleventh Report	Legislative Scrutiny: 1) Health Bill and 2) Marine and Coastal Access Bill	HL Paper 69/HC 396
Twelfth Report	Disability Rights Convention	HL Paper 70/HC 397
Thirteenth Report	Prisoner Transfer Treaty with Libya	HL Paper 71/HC 398
Fourteenth Report	Legislative Scrutiny: Welfare Reform Bill; Apprenticeships, Skills, Children and Learning Bill; Health Bill	HL Paper 78/HC 414
Fifteenth Report	Legislative Scrutiny: Policing and Crime Bill (gangs injunctions)	HL Paper 81/HC 441
Sixteenth Report	Legislative Scrutiny: Coroners and Justice Bill (certified inquests)	HL Paper 94/HC 524
Seventeenth Report	Government Replies to the 2nd, 4th, 8th, 9th and 12th reports of Session 2008-09	HL Paper /HC 592
Eighteenth Report	Counter-Terrorism Policy and Human Rights (Fifteenth Report): Annual Renewal of 28 Days 2009	HL Paper 119/HC 726
Nineteenth Report	Legislative Scrutiny: Parliamentary Standards Bill	HL Paper 124/HC 844
Twentieth Report	Legislative Scrutiny: Finance Bill; Government Responses to the Committee's Sixteenth Report of Session 2008-09, Coroners and Justice Bill (certified inquests)	HL Paper 133/ HC 882

Session 2007-08

First Report	Government Response to the Committee’s Eighteenth Report of Session 2006-07: The Human Rights of Older People in Healthcare	HL Paper 5/HC 72
Second Report	Counter-Terrorism Policy and Human Rights: 42 days	HL Paper 23/HC 156
Third Report	Legislative Scrutiny: 1) Child Maintenance and Other Payments Bill; 2) Other Bills	HL Paper 28/ HC 198
Fourth Report	Government Response to the Committee’s Twenty–First Report of Session 2006-07: Human Trafficking: Update	HL Paper 31/ HC 220
Fifth Report	Legislative Scrutiny: Criminal Justice and Immigration Bill	HL Paper 37/HC 269
Sixth Report	The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 38/HC 270
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume I Report and Formal Minutes	HL Paper 40-I/HC 73-I
Seventh Report	A Life Like Any Other? Human Rights of Adults with Learning Disabilities: Volume II Oral and Written Evidence	HL Paper 40-II/HC 73-II
Eighth Report	Legislative Scrutiny: Health and Social Care Bill	HL Paper 46/HC 303
Ninth Report	Counter-Terrorism Policy and Human Rights (Eighth Report): Counter-Terrorism Bill	HL Paper 50/HC 199
Tenth Report	Counter-Terrorism Policy and Human Rights (Ninth report): Annual Renewal of Control Orders Legislation 2008	HL Paper 57/HC 356
Eleventh Report	The Use of Restraint in Secure Training Centres	HL Paper 65/HC 378
Twelfth Report	Legislative Scrutiny: 1) Health and Social Care Bill 2) Child Maintenance and Other Payments Bill: Government Response	HL Paper 66/HC 379
Thirteenth Report	Government Response to the Committee’s First Report of Session 2006-07: The Council of Europe Convention on the Prevention of Terrorism	HL Paper 67/HC 380
Fourteenth Report	Data Protection and Human Rights	HL Paper 72/HC 132
Fifteenth Report	Legislative Scrutiny	HL Paper 81/HC 440
Sixteenth Report	Scrutiny of Mental Health Legislation: Follow Up	HL Paper 86/HC 455
Seventeenth Report	Legislative Scrutiny: 1) Employment Bill; 2) Housing and Regeneration Bill; 3) Other Bills	HL Paper 95/HC 501
Eighteenth Report	Government Response to the Committee’s Sixth Report of Session 2007-08: The Work of the Committee in 2007 and the State of Human Rights in the UK	HL Paper 103/HC 526
Nineteenth Report	Legislative Scrutiny: Education and Skills Bill	HL Paper 107/HC 553
Twentieth Report	Counter-Terrorism Policy and Human Rights (Tenth Report): Counter-Terrorism Bill	HL Paper 108/HC 554
Twenty-First Report	Counter-Terrorism Policy and Human Rights (Eleventh Report): 42 days and Public Emergencies	HL Paper 116/HC 635

Twenty-Second Report	Government Response to the Committee's Fourteenth Report of Session 2007-08: Data Protection and Human Rights	HL Paper 125/HC 754
Twenty-Third Report	Legislative Scrutiny: Government Replies	HL Paper 126/HC 755
Twenty-Fourth Report	Counter-Terrorism Policy and Human Rights: Government Responses to the Committee's Twentieth and Twenty-first Reports of Session 2007-08 and other correspondence	HL Paper 127/HC 756
Twenty-fifth Report	Counter-Terrorism Policy and Human Rights (Twelfth Report): Annual Renewal of 28 Days 2008	HL Paper 132/HC 825
Twenty-sixth Report	Legislative Scrutiny: Criminal Evidence (Witness Anonymity) Bill	HL Paper 153/HC 950
Twenty-seventh Report	The Use of Restraint in Secure Training Centres: Government Response to the Committee's Eleventh Report	HL Paper 154/HC 979
Twenty-eighth Report	UN Convention against Torture: Discrepancies in Evidence given to the Committee About the Use of Prohibited Interrogation Techniques in Iraq	HL Paper 157/HC 527
Twenty-ninth Report	A Bill of Rights for the UK?: Volume I Report and Formal Minutes	HL Paper 165-I/HC 150-I
Twenty-ninth Report	A Bill of Rights for the UK?: Volume II Oral and Written Evidence	HL Paper 165-II/HC 150-II
Thirtieth Report	Counter-Terrorism Policy and Human Rights (Thirteenth Report): Counter-Terrorism Bill	HL Paper172/HC 1077
Thirty-first Report	Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008	HL Paper 173/HC 1078
Thirty-second Report	Scrutiny of Mental Health Legislation: Government Response to the Committee's Sixteenth Report of Session 2007-08	HL Paper/ HC 1079