



HOUSE OF LORDS

Unopposed Bill Committee on the
London Local Authorities Bill [HL]

Special Report

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The Unopposed Bill Committee was appointed by the House of Lords on 16 June and 8 July 2009.

The Members of the Committee were:

Baroness Fookes (Chairman)
Lord Haskel
Baroness McIntosh of Hudnall

General Information

Information about the Committee, including the transcript of evidence taken before the Committee, is available on the internet at:

<http://www.parliament.uk/lords/ubc/lla200809.cfm>

Details about the Bill's passage through Parliament and documents relating to it can be found on the internet at:

<http://services.parliament.uk/bills/2008-09/londonlocalauthorities.html>

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LONDON LOCAL AUTHORITIES BILL [HL]

Background

1. The London Local Authorities Bill covers a wide range of issues relating to London. The provisions of the Bill are described in the explanatory memorandum which is attached to the Bill.¹ The Bill was introduced into the House of Lords on 22 January 2008 and given a Second Reading on 20 February 2008. It is promoted by Westminster City Council on behalf of all 33 London Boroughs, including the Corporation of the City of London.
2. Those directly or especially affected by the Bill had an opportunity to voice their objections by presenting a petition against the Bill. A Select Committee on the Bill was appointed on 30 June 2008 to consider the matters complained of in the petitions.²
3. The House also received four reports from Government Departments, two of which related to Clauses in the Bill which were considered by the Select Committee.²
4. The Select Committee met on 7-9 July 2008 to hear evidence and submissions from the promoters, the petitioners and Government Departments. It published a Special Report on 22 July 2008.³

The Unopposed Bill Committee

5. On 8 July 2009 the Chairman of Committees announced that Lord Haskel and Baroness McIntosh of Hudnall would form the Unopposed Bill Committee on the Bill, together with Baroness Fookes as Chairman of the Committee.
6. On 9 July 2009, Andrew Dismore MP, Chairman of the Joint Committee on Human Rights (JCHR), wrote to our Chairman to express the views of the JCHR on Clauses 21 and 22.⁴
7. The Committee met on 16 July 2009 to consider the unopposed Clauses which had not previously been considered by the Select Committee.⁵ Clauses 9 to 20 and 23 and Schedules 2 and 3 of the Bill were considered by the Select Committee and not by this Committee. The Department for Environment, Food and Rural Affairs had reported against Clause 4, but, before we met, the promoters indicated that they intended to delete the Clause, and so we did not consider that report. We therefore considered the two reports from the Department for Communities and Local Government which dealt with Clauses 21 and 22, one of which dealt with the compatibility of Clause 22 with the European Convention on Human Rights.

¹ Available from the Parliamentary Agents for the Bill: Sharpe Pritchard, Elizabeth House, Fulwood Place, London, WC1V 6HG or on the internet at:

<http://www.publications.parliament.uk/pa/ld200708/ldprbill/018/018.pdf>

² The petitions against the Bill and the reports from Government Departments are available on the internet at:

<http://services.parliament.uk/bills/2008-09/londonlocalauthorities.html>

³ The Special Report is available on the internet at: <http://services.parliament.uk/bills/2008-09/londonlocalauthorities/Committees/hlobclondonlocalauthoritiesbill.html>

⁴ The letter can be found in Appendix 3

⁵ A list of the Clauses considered by this Committee can be found in Appendix 1

8. Clauses 21 and 22 are about local authorities' powers of entry and enforcement under the Housing Act 2004 (the 2004 Act). The report from the Department on these Clauses can be taken as a recommendation that the Clauses should not proceed. Since the Committee does not agree entirely with such a recommendation, this report explains the reasons. The full transcript of proceedings before the Committee is available on the internet.⁶ The proceedings on Clauses 21 and 22 can be found in paragraphs 9-342 of the transcript.

Clause 21: Powers of entry under section 239 of the Housing Act 2004

9. Clause 21 would amend section 239 of the 2004 Act in its application to London. Section 239(3) confers power to enter a property for the purposes of carrying out a survey or inspection. Section 239(5) provides that 24 hours' notice of entry in exercise of that power must be given both to the owner of the property (if known) and to the occupier (if any). Section 239(7) confers power to enter a property without notice for the purpose of ascertaining whether any particular offences have been committed.
10. The promoters of the Bill argued that section 239 was unduly burdensome and created difficulties for councils. The promoters were particularly concerned about the implications of two cases heard by the residential property tribunal, specifically in relation to informal visits to properties.
11. Clause 21(2) would remove the need to serve notice of entry on the owner except in cases where there is no occupier.
12. Clause 21(3) would enable a person authorised by a housing authority to enter a property for a purpose authorised by section 239 of the 2004 Act without notice if delay would be likely to give rise to an "imminent risk to the safety or health of the occupiers of the premises".
13. Clause 21(4) would allow the local housing authority to enter premises without notice for the purposes of carrying out a survey or inspection in cases where they have been invited in by the occupier to inspect the premises, so long as the power of entry is exercised at a reasonable time and complies with any conditions of the invitation.
14. The representatives from the Department for Communities and Local Government argued that the 2004 Act provided local authorities with the necessary powers to enter properties, including provision for those circumstances where emergency work was needed. They had several further objections to Clause 21. Clause 21(2) would mean that landlords (who have ultimate responsibility for the management of their property) would not be informed of activities of the local authority for which they would be expected to pay and which were taking place in their property. Clause 21(3) would mean that a local authority could enter premises of their own authorisation even if no hazard had been identified. Clause 21(4) was unacceptable as it presumed that the owner of the premises would not be informed about the actions of the local housing authority in respect of the premises.

⁶ The transcript of the Committee's proceedings is available on the internet at:

<http://www.parliament.uk/lords/ubc/lla200809.cfm>

The Committee's opinion and conclusion on Clause 21

15. The Committee accepted that there may well be difficulties for housing authorities in operating under the existing legislation on their powers of enforcement in relation to housing conditions. However, the solution proposed in Clause 21(2) was not a justified response to those difficulties as it effectively denied the owner of the property notice of matters of which the owner should be notified.
16. The Committee considered that there was insufficient evidence of the need for subsections (2) and (4) of Clause 21 and so concluded that they should not remain in the Bill.
17. However, the Committee considered that Clause 21(3) should proceed. We acknowledge that section 40 of the 2004 Act enables housing authorities to take emergency remedial action in connection with category 1 hazards which they are satisfied involve imminent risk of serious harm to health or safety. But section 40 is about removal of the imminent risk. The promoters persuaded us that the position of the housing authority seeking to ascertain if there is a hazard causing that risk is difficult; and that allowing entry without notice, but only where delay is likely to cause imminent risk, would be reasonable.
18. The Committee welcomed the announcement by the representatives from the Department for Communities and Local Government that the guidance they were planning to issue on the 2004 Act would cover the procedure for informal visits (see paragraphs 298-302 of the transcript). It is apparent that housing authorities (and possibly also tribunals) are having difficulties with establishing the proper scope for informal visits within the formal system. We urge the Department to issue the guidance without delay.
19. **The Committee concluded that Clause 21 should proceed without subsections (2) and (4) but with an amendment suggested by the promoters.**

Clause 22: Authorisation for enforcement purposes under the Housing Act 2004

20. Clause 22 would amend section 243 of the 2004 Act in its application to London. Section 243 deals with authorisations for enforcement purposes under the 2004 Act. Under section 243, such authorisation may only be given by an officer of the local housing authority who is at least a deputy chief officer of the authority. Clause 22 would enable authorisation to be given also by a person who reports directly to, or is accountable to, a deputy chief officer. The effect of the Clause would be to widen the range of officers who could authorise entry into premises.
21. The promoters of the Bill argued that section 243 imposed a large administrative burden on local authorities, and they presented evidence to that effect.
22. The representatives from the Department for Communities and Local Government argued that where a decision was taken which would have implications for an individual's rights (the Convention rights) protected by the Human Rights Act 1998 that decision should be taken by someone at a senior level who was not directly involved in the case, and that section 243 of the 2004 Act specified the appropriate level.

The Committee's opinion and conclusion on Clause 22

23. The Committee considered that the promoters had identified a problem in relation to the number of authorisations required and the seniority of the officer who is empowered to give them. The Committee considered it important that the legislation deal with the practicalities of the situation facing housing authorities.
24. The Department for Communities and Local Government expressed concerns about the compatibility of Clause 22 with the Convention rights. The letter from the Chairman of the Joint Committee on Human Rights raised similar concerns. In essence, the broader the class of officer who can authorise entry into premises, the less likely it becomes that the powers of entry in the 2004 Act will in practice be exercised in a way compatible with the Convention rights. In the proceedings before the Committee, the promoters raised the possibility of an amendment to Clause 22 limiting to one the number of additional officers per council enabled by the Clause to give authorisations.
25. **The Committee concluded that the amendment suggested by the promoters would go a long way towards meeting the concerns about the Clause whilst addressing some of the authorities' practical difficulties; and that Clause 22 should proceed with that amendment.**

The Committee's conclusions on the remaining Clauses

26. **The Committee concluded that the remaining Clauses should proceed with amendments suggested by the promoters.**

APPENDIX 1: CLAUSES CONSIDERED BY THE COMMITTEE

The table below shows the Clauses which were considered by the Committee, together with the applicable Government Departmental Reports.

Clauses	Departmental Reports against each provision
Part 5 Housing: Powers of Entry, etc. Clauses 21 & 22	Department for Communities and Local Government: 1. Report on the compatibility of the Bill with the European Convention on Human Rights 2. Report against Clauses 21 & 22
Part 1 Preliminary Clauses 1 - 3	
Part 2 Penalty Charges Clauses 4 - 6 except: Clause 4 (and Schedule 1) (withdrawn by the Promoters before the Committee sat)	[The Department for Environment, Food and Rural Affairs reported against Clause 4 – littering and dog related offences]
Clause 7 Street Litter	
Clause 8 Public Toilets	
Part 6 Licensing Clauses 23 – 33 except: Clause 23 - Entertainment involving nudity (dealt with by the Select Committee on the Bill); Clause 25 - Management of street markets (withdrawn by the Promoters before the Committee sat)	
Part 7 Miscellaneous and Supplemental Clauses 34 - 37	

APPENDIX 2: AMENDMENTS TO CLAUSES 21 AND 22

Clause 21 (Housing Act 2004: powers of entry)

Page 13, line 6, leave out subsection (2)

Page 13, line 20, at the end insert—

“() In subsection (7) for “that purpose” substitute “the purpose mentioned in subsection (6)(a) or where the circumstances mentioned in subsection (6)(b) apply”

Page 13, line 21, leave out subsection (4)

Clause 22 (Housing Act 2004: authorisation for enforcement purposes, etc.)

Page 14, line 5, at the end insert—

“and

(d) when the authorisation is given, no other person also remains designated as an appropriate person under paragraph (b) of this subsection in relation to that authority.”

APPENDIX 3: LETTER TO THE CHAIRMAN OF THE UNOPPOSED BILL COMMITTEE FROM ANDREW DISMORE MP, CHAIRMAN OF THE JOINT COMMITTEE ON HUMAN RIGHTS

Baroness Fookes

House of Lords

London Local Authorities Bill

I am writing to you in advance of the Unopposed Bill Committee on this Bill because the Government has expressed concerns about the human rights compatibility of two of its provisions, both of which concern the adequacy of the procedural safeguards accompanying powers of entry into residential premises. You might find it helpful to be aware of the views previously expressed by the JCHR on those issues.

In particular, the Bill Committee should be aware that one of the provisions in the Bill proposes to relax a procedural safeguard which was inserted by the Government into the 2004 Housing Act specifically in response to concerns expressed by the JCHR. In view of the JCHR's direct involvement in the provenance of that provision, I deal with it first. The other compatibility issue raised by the Government is not one on which the JCHR has commented specifically in relation to this legislation, but it raises a general compatibility issue on which it has commented in other contexts.

(1) Seniority of officer authorising entry

Clause 22 of the Bill amends s. 243 of the Housing Act 2004 in its application to London. Section 243 provides that any authorisation for individual officers to exercise certain enforcement powers, including powers of entry into premises, must be given by an officer of the local housing authority who is at least a deputy chief officer of the authority.⁷ Clause 22 of the Bill would enable such authorisation to be given also by a person who reports directly to, or is accountable to, a deputy chief officer. The effect of the amendment is therefore to widen significantly the range of officers who can authorise entry into premises.

The provision of the Housing Act 2004 which clause 22 of the Bill amends in its application to London was inserted into that Act by the Government specifically to meet one of the concerns expressed by the JCHR about the lack of adequate procedural safeguards attached to a very widely defined power of entry into premises. As the Committee explained in its Eighth Report of 2003-04,⁸ at para. 4.34, powers of entry, in particular powers of entry to residential premises, engage the right to respect for private life of the occupiers of the premises under Article 8 ECHR. In order to be justified under Article 8.2, powers of entry must be clearly defined, so as to comply with the requirement that they be in accordance with law; and must be subject to sufficient safeguards so as to ensure that they are necessary in a democratic society and proportionate to the aim they pursue. The procedures for authorisation of entry to premises is one of the factors which is relevant to

⁷ Section 243(3) Housing Act 2004.

⁸ Eighth Report of Session 2003-04, HL paper 49, HC 427.

assessing the justification for powers of entry under Article 8.2. The Committee said:⁹

In particular, we are concerned that the absence of a requirement for judicial authorisation of entry onto premises and the absence of specification of the level of internal authorisation required may allow for unjustified and disproportionate use of these powers.

The Government initially rejected the Committee's concern but in the light of the Committee's sustained concern,¹⁰ the Government reconsidered the matter and tabled an amendment to the Bill to strengthen the authorisation requirements where a power of entry is exercised under the Bill. The Government explained the amendment in a letter to the Committee:¹¹

“We have tabled an amendment which introduces a new clause that will require an authorisation for the purposes of certain provisions of the Bill to be given by a senior local authority officer. That officer would be a deputy chief officer (within the meaning of section 2 of the Local Government and Housing Act 1989) whose duties are relevant to the function for which the authorisation is to be given, or the officer to whom the deputy chief officer reports or is accountable in respect of that function. The new requirement would apply to the exercise of any of the powers of entry under the Bill, except one, including those in clause 203

The Committee welcomed the Government's amendment.¹²

Therefore, I share the concern expressed by the Secretary of State in her SO 98 report on the Bill that allowing a person who reports directly to the deputy chief officer may not be compatible with the European Convention on Human Rights. Broadening the class of officer who can authorise entry into premises would remove one of the important procedural safeguards in the Housing Act 2004 which was specifically inserted to make it more likely that the wide powers of entry in s. 239 of that Act would be exercised in practice in a way which is compatible with the right to respect for private life and home in Article 8 ECHR.

(2) Notice to owner of intention to enter

Clause 21 of the Bill amends s. 239 of the Housing Act 2004 in its application to London by removing the requirement in s. 239(5) that at least 24 hours' notice of intention to enter premises must be given to the owner of the premises (if known). Clause 21(2) removes the need to serve notice of entry on the owner except where there is no occupier.

The exercise of a power of entry into premises is an interference with the right of the owner of those premises to peaceful enjoyment of their possessions under Article 1 Protocol 1 ECHR. A requirement of a minimum period of notice before the power of entry is exercised is one of the procedural safeguards which contributes to ensuring that the power to interfere with that right is exercised in a way which is not arbitrary but is necessary and proportionate.

I therefore share the concern of the Secretary of State to ensure that the interference with property rights as a result of the powers of entry in s. 239 of the Housing Act 2005 is both necessary and proportionate. Removing the requirement that the owner of the premises be given notice of an intended exercise of the power

⁹ Ibid. at para. 4.35.

¹⁰ Tenth Report of Session 2003-04, HL Paper 64/HC503.

¹¹ Twentieth Report of Session 2003-04, HL Paper 182/HC 1187, Appendix 2 at para. 10.

¹² Ibid. at para. 3.2.

of entry makes it more likely that those powers of entry will be exercised in practice in a way which is incompatible with the right to peaceful enjoyment of possessions.

I hope that this is helpful.

Yours sincerely,

Andrew Dismore MP

Chair, Joint Committee on Human Rights

9 July 2009