



House of Lords  
House of Commons  
Joint Committee on  
Human Rights

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# Scrutiny of Bills: Final Progress Report

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Seventeenth Report of  
Session 2002–03

*Drawing special attention to:*

*Hunting Bill*

*European Parliamentary and Local Elections (Pilots) Bill*

*Company Directors' Performance and Compensation Bill*

*Consumer Protection (Unsolicited E-mails) Bill*

*Corporate Responsibility Bill*

*Fishery Limits (United Kingdom) Amendment Bill*

*Medical Practitioners & Dentists (Professional  
Negligence Insurance) Bill*

*Street Furniture (Graffiti) Bill*





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House of Commons  
Joint Committee on  
Human Rights

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**Seventeenth Report of  
Session 2002–03**

*Report, together with formal minutes and  
appendices*

*Ordered by The House of Lords to be printed  
17 November 2003*

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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.

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Lord Lester of Herne Hill  
Lord Parekh  
Baroness Perry of Southwark  
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(Conservative, *Aldridge-Brownhills*)  
Mr Paul Stinchcombe (Labour, *Wellingborough*)  
Mr Shaun Woodward MP (Labour, *St Helens South*)

### Powers

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](http://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

In the 2002-03 Session the Joint Committee on Human Rights has reported on all Bills presented to Parliament. The Committee examines each Bill with regard to its compatibility with Convention rights as defined by the Human Rights Act 1998, and for compatibility with other human rights instruments which bind the UK.

The Committee has not in general published separate reports on each Bill which raises human rights questions. For the most part it has published regular progress reports on the scrutiny of Bills, usually setting out any initial concerns and, subsequently, the Government's responses to these concerns and any further observations it may have on these responses. The aim is to complete initial consideration of a Bill before its second reading in the second House. Occasionally the Committee has returned to a Bill that it has previously considered when new matters are raised, either by way of submissions to the Committee or by way of amendments made to the Bill during its passage through Parliament.

In this 2002-03 Session, the Committee has published eleven reports on Bills before both Houses.<sup>1</sup> It has considered a total of 110 Public Bills, including 36 Government Bills. In addition, it has reported on Private Bills<sup>2</sup> presented during this session; and on the Draft Civil Contingencies Bill, the Draft Corruption Bill and the Draft Mental Incapacity Bill.<sup>3</sup> The Committee has also carried out fuller pre-legislative scrutiny of the Draft Gender Recognition Bill.<sup>4</sup>

This is the Committee's final Progress Report of the 2002-03 session. The Annex at the back of this report sets out details of where our comments on each individual Bill can be found.

In this report the Committee reports on the human rights implications of Bills introduced in the 2002-03 session on which it has not previously reported, and reports further on the Hunting Bill.

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- 1 First Report, Session 2002-03, *Scrutiny of Bills: Progress Report*, HL Paper 24/HC 191; Second Report, Session 2002-03, *Criminal Justice Bill*, HL Paper 40/HC 374; Third Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 41/HC 375; Fourth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 50/HC 397; Seventh Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 74/HC 547; Eighth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 90/HC 634; Eleventh Report, Session 2002-03, *Criminal Justice Bill: Further Report*, HL Paper 118/HC 724; Twelfth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 119/HC 765; Thirteenth Report, Session 2002-03, *Anti-social Behaviour Bill*, HL Paper 120/HC 766; Fifteenth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 149/HC 1005
  - 2 First Report, Session 2002-03, *Scrutiny of Bills: Progress Report*, HL Paper 24/HC 191, Third report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 41/HC 375; Fourth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 50/HC 397;
  - 3 Eighth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 90/HC 634, Fifteenth Report, Session 2002-03, *Scrutiny of Bills: Further Progress Report*, HL Paper 149/HC 1005
  - 4 Nineteenth Report, Session 2002-03, Draft Gender Recognition Bill, HL Paper 188-I&II/HC 1276-I&II

In relation to the Hunting Bill, the Committee draws attention to the implications of the absence from the Bill as introduced to the House of Lords of any compensation scheme for people who are deprived of property or whose rights are affected by the proposed prohibition of the hunting of wild mammals with dogs.

In relation to a number of private Member's Bills, the Committee draws attention to possible incompatibilities with rights under the European Convention on Human Rights.

Other Bills are listed as enhancing rights, or as raising no human rights issue requiring to be drawn to the attention of either House.

Relevant pieces of correspondence are appended to the Report.

# Government Bills

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*Bills drawn to the special attention of each House*

## 1 Hunting Bill

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|   |                                   |
|---|-----------------------------------|
| Date introduced to the House of Commons | 3 December 2002                   |
| Date introduced to the House of Lords   | 10 July 2003                      |
| Current Bill Number                     | House of Lords 95                 |
| Previous Reports                        | 3 <sup>rd</sup> & 7 <sup>th</sup> |

### Background: earlier versions of the Bill and the Committee's earlier consideration of them

1.1 This is a Government Bill, published with explanatory notes.<sup>5</sup> It carries a statement of compatibility made by Lord Whitty under section 19(1)(a) of the Human Rights Act 1998. The Bill was originally introduced to the House of Commons. In its original form, it would have:

- a) prohibited hare coursing;
- b) prohibited the hunting of stags with dogs;
- c) prohibited the hunting of other wild mammals with dogs, unless the hunting was either (i) registered in accordance with clauses 2 and 8, or (ii) exempt in accordance with clause 3;
- d) put in place a registration system for the purposes registered hunting; and
- e) made transitional provision for the period when the new arrangements were being put into effect.

It would also have been an offence knowingly to permit one's own land to be used for the unlawful hunting of wild mammals, including stags, with dogs.

1.2 We initially considered the Bill and published our initial reflections in our Third Report. In response to a letter from the Chair seeking the Government's views, the Committee received a memorandum attached to a letter from Mr Alun Michael MP, the Minister for Rural Affairs and Urban Quality of Life, dated 31 January 2003. We considered the Bill's implications in respect of: the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the ECHR, hereafter P1/1); the right to respect for private life (Article 8 of the ECHR); the right to respect for the home (Article 8 of the ECHR); and the right to be free from discrimination (Article 14 of the ECHR taken together with other Articles).

1.3 After examining the decision of the European Court of Human Rights in *Chassagnou v. France*,<sup>6</sup> we concluded that the control of unregulated hunting is a legitimate aim for the purposes of P1/1.<sup>7</sup> In the light of the decision of Lord Nimmo Smith in the Outer House of the Court of Session in *Petition of Adams for Judicial Review of the Protection of Wild Mammals (Scotland) Act 2002 and the Protection of Wild Mammals (Scotland) Act 2002 (Commencement) Order 2002*<sup>8</sup> (hereafter *Adams*) we concluded that Parliament could legitimately decide that the provisions of the Bill generally struck a fair balance between the public interest and the rights of those whom the Bill would affect. That being so, there was no significant risk of a violation of P1/1.

1.4 However, we raised with the Government a question about the human rights implications of the Bill in relation to contracts already entered into, performance of which would be made unlawful were the Bill to be enacted and come into force. The economic benefit of such a contract, already binding on the parties to it, is a possession for the purposes of P1/1. The legislation would have entirely deprived the economic beneficiary of the benefit of the contract. We asked why the Government considered that the lack of any provision for compensation was justifiable in relation to the right to the peaceful enjoyment of possessions under P1/1. In due course, we reported that in our view the requirements of P1/1 were likely to be satisfied in view of the fact that, among other considerations, the Bill originally introduced a registration system rather than a ban, and made provision for transitional arrangements.<sup>9</sup>

1.5 We also considered the Bill in relation to the right to respect for private life. We took the view that the Bill might engage the right to respect for private life if hunting with dogs were to be prohibited in private settings, such as on land owned or occupied by the hunter. Under the Bill as originally drafted, the Committee thought that any interference with the right to respect for private life would be justifiable because it would be in accordance with the law, and could be said to serve a legitimate aim, respond to a pressing social need and be proportionate to the object pursued as required under ECHR Article 8.2. This was in the context of a less than total prohibition on hunting with dogs.

1.6 The Government considered that the Bill raised issues under ECHR Article 14 (prohibition of discrimination), but that the differences in treatment of different classes of hunting with dogs do not come within the scope of Article 14 because ‘they are not based on a personal characteristic and can be justified objectively’.<sup>10</sup> We prefer to say that in our view the provisions do not amount to a difference in treatment falling with Article 14, because they do not give rise to discrimination on the ground of any characteristic or status personal to the hunters. For the same reason, we did not consider that the Bill engaged the free-standing right to be free of discrimination under ICCPR Article 26.

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6 Judgment of 29 April 1999, 29 EHRR 615.

7 See particularly paragraph 108 of the Court’s Judgment, and note also paragraph 105 of the decision of the European Commission of Human Rights in the same case

8 Judgment of 31 July 2002.

9 See Seventh Report, para 19.

10 HL Bill 95-EN, paras. 67, 69.

1.7 Overall, in our Seventh Report, we concluded that, ‘At present, and subject to any amendments being introduced to the Bill at a later stage, we do not consider that the Bill gives rise to a significant risk of incompatibility with Convention rights’.<sup>11</sup>

1.8 During the course of its passage through the House of Commons, the Bill was significantly amended. The effect of the amendments was to remove from the Bill a proposed regime for registering certain hunting with dogs where it could be shown that hunting with dogs was the most humane way of controlling the numbers of the mammals in question, and also to remove the transitional provisions.

## The Bill as introduced to the House of Lords

1.9 The Bill as introduced to the House of Lords would have prohibited all hunting of wild mammals with dogs (clause 1) unless it falls in a class of ‘exempt hunting’ (clause 2 and Schedule 1), which could be amended by the Secretary of State by a statutory instrument subject to the ‘super-affirmative’ procedure (clauses 2 and 14). The classes of exempt hunting were:

- stalking or flushing out the wild mammal with not more than two dogs to prevent or reduce serious damage which it would otherwise cause, or to obtain meat for human or animal consumption, or to participate in a field trial, on land owned by the person doing the stalking or flushing out or with the owner’s or occupier’s permission, subject to certain other conditions (Schedule 1, paragraphs 1 and 2);
- stalking or flushing out the wild mammal with not more than two dogs to allow the mammal to be hunted by a bird of prey, on land owned by the person doing the stalking or flushing out or with the owner’s or occupier’s permission (*ibid.*, paragraph 6);
- hunting rats or rabbits on land owned by the hunter or with the permission of the owner or occupier (*ibid.*, paragraphs 3 and 4);
- retrieving hares which have been shot on land which belongs to the hunter or with the permission of the land’s owner or occupier (*ibid.*, paragraph 5);
- recapturing an escaped wild mammal (*ibid.*, paragraph 7);
- Rescuing an injured wild mammal with not more than two dogs (*ibid.*, paragraph 8);
- carrying out study or observation of the wild animal, with not more than two dogs (*ibid.*, paragraph 9).

1.10 The Bill would have created criminal offences capable of being committed by individuals or bodies corporate, and would have allowed the arrest of a person on reasonable suspicion of having committed one of them (clauses 1-7 and 10). Following conviction, the court would have been able to order forfeiture of dogs or hunting articles used in the commission of the offence or in the possession of the accused at the time of his

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11 HL Paper 74, HC 547, para. 23.

arrest, but a third party with an interest in a dog, vehicle or article would have been able to apply to the court to have it returned to him or her (clause 9). There would have been powers to search people and vehicles for evidence of an offence or for articles liable to forfeiture (clause 8).

1.11 The Bill did not complete its Committee Stage in the House of Lords. When it became clear, on 28 October 2003, that the Bill would not complete all its stages, we had not yet reported on it in the form in which it was introduced to that House. Nevertheless, as we had already devoted a significant amount of attention to the Bill and a similar Bill in some form is likely to be reintroduced at some stage, we take this opportunity to report our considered views of the human rights implications of the Bill as introduced to the House of Lords.

### ***Relevant differences between the Bills introduced to the House of Commons and the House of Lords***

1.12 The Bill as introduced to the House of Lords was relevantly different from that introduced to the House of Commons in two ways. First, the Bill introduced to the House of Lords would have imposed a total ban (with very limited exemptions) on all hunting of wild mammals with dogs, rather than a system of registration which would have allowed the circumstances of each hunt to be taken into account. Secondly, it contained no transitional provisions. We therefore asked the Government a number of questions about their reasons for continuing to think that the Bill as introduced to the House of Lords was compatible with Convention rights. The questions were set out in a letter from our Chair to the Minister for Food, Farming and Sustainable Energy (Lord Whitty) on 29 October 2003. He replied in a letter of 6 November 2003, enclosing a memorandum (hereafter ‘the Government’s Memorandum’) setting out the Government’s response. The correspondence is appended to this Report.

### ***The effect on property rights***

1.12 The Government still takes the view that a total prohibition on hunting with dogs amounts only to a control over property rather than a deprivation of it, in respect of both the physical possessions used in hunting (dogs, horses etc.) and the benefit of contracts related to hunting. In our view, the Government is correct in relation to physical possessions related to hunting. However, we find it hard to accept that depriving someone of the benefit of vested rights under a concluded contract can be described as anything other than a deprivation of those rights, which in our view are property for the purposes of P1/1.

1.13 The Government refers to two admissibility decisions, one made by the European Commission of Human Rights in a case concerning the loss of a de-boning business in the wake of restrictions introduced to combat BSE<sup>12</sup> and the other by a panel of the European Court of Human Rights in a case concerning loss of business following the banning of hand-guns.<sup>13</sup> In each case, the Government says, the Commission and the Court

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<sup>12</sup> *Pinnacle Meat Processors Co. v. United Kingdom*, App. No. 33298/96

<sup>13</sup> *Slough and King v. United Kingdom*, Apps. Nos. 37679/97 and 37682/97

proceeded on the basis that there had been a control on possessions rather than a deprivation of property.<sup>14</sup> However, we do not consider those cases to be relevant, for two reasons. First, the decisions make it clear that the complaint in each case was about loss of the value of a business, and particularly about the diminution in the value of goodwill, whereas our concern is over the value of vested rights under concluded contracts. Secondly, in each of those cases the Government had made available compensation or financial support, and the complaint was that it did not provide enough compensation or compensation to enough people. By contrast, the Hunting Bill provided for no compensation scheme whatever.

1.14 In paragraph 10 of its memorandum, the Government reiterates its view, which had also been expressed in earlier correspondence with us, that parties to hunting-related contracts—

... will have been aware for a considerable period of time of the intention of the Government to legislate on hunting with dogs ... The current Bill is the result of an extensive and well-publicised process of consultation over a long period. The Government takes the view that persons entering contracts in connection with hunting with dogs have no legitimate expectation that any or all types of this activity would continue to be lawful ... In [the *Slough and King* case mentioned earlier] the [European Court of Human Rights] held that the applicant firearms sellers had no legitimate expectation that the use of particular types of firearm, including handguns, would continue to be lawful because of the progressively more restrictive legislative framework since 1920.

1.15 We note that there is no history of progressive legislative restriction of hunting with dogs over a long period. Even if a person could lose the legitimate expectation that he or she would be able to enjoy the benefit of contracts by virtue of an announcement by a Government with a majority in the House of Commons that it intends to legislate in a particular way (and we express no view on that), we do not consider that the Government gave any such notice. A legitimate expectation cannot be lost merely because the Government is consulting on possible future legislation. The Government's first Bill on this subject offered three options for Parliament to choose between. Only one of these would have involved a total ban on hunting wild mammals with dogs. The present Bill, when the Government first introduced it to the House of Commons, did not propose a total ban. In any case, there can be no certainty that a Bill will be passed, particularly on a matter as controversial as hunting with dogs. While the introduction of a Government Bill could have been anticipated, nobody could have been sure what it would contain. Depending on the terms of such a Bill when it reached the House of Lords, it was also possible that its enactment would require the use of the Parliament Acts, and there was no certainty that the Government would be prepared to do this. We are therefore not satisfied that the Government has publicly advanced such a clear policy of banning the hunting of wild mammals with dogs that people should lose the legitimate expectation that their contracts will be effective and enforceable.

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14 See paras. 8 and 9 of the Government's Memorandum

1.16 We take the view that the Bill as introduced to the House of Lords, so far as it would have made unlawful the performance of contracts already entered into, would have been likely to deprive the parties to the contracts of the benefit of them. We consider that this would have been likely to constitute a deprivation of property, that is the benefit of vested rights under those contracts. As a general principle, compensation for such a deprivation is required under P1/1 unless there is the strongest justification for not providing it.

1.17 In relation to the restriction on the use of dogs and other physical assets for hunting wild mammals, we accept that the Bill would have constituted a control on the use of possessions rather than a deprivation of property. The Government argues that it is compatible with P1/1 to refuse compensation for such a control on use.<sup>15</sup> But we note that it does not follow automatically that no compensation is required by P1/1. The availability of compensation is a relevant matter when considering whether a control over property, rather than a deprivation of it, strikes a fair balance between competing rights and interests under Article 1.<sup>16</sup> The Government accepts this, but relies on one of the cases mentioned earlier as authority for the proposition that there is no right to compensation for a control on the use of property.<sup>17</sup> We accept that the Government is entitled to take this view, but the question is one of balance. We note once again that the dispute in the case which the Government cites concerned the extent of a compensation or financial support scheme rather than the existence of one.

1.18 Another relevant factor when assessing the fairness of the balance is the justification for the interference. In order to strike a fair balance between competing rights and interests, the interference with rights must go no further than necessary for the legitimate purpose pursued. The Bill as introduced to the House of Lords included a number of exemptions from the ban on hunting wild animals with dogs: see paragraph 1.9 above. These exemptions prompted us to ask for an explanation of the rationale for them, and for the remaining areas of absolute prohibition. The Government has justified these controls and the exemptions by reference to protecting the welfare of wild mammals. We consider that this is an adequate explanation of the rationale for the exemptions.

**1.19 Nevertheless, we draw to the attention of each House our view of the human rights implications of the absence from the Bill of any compensation scheme, particularly in relation to the deprivation of the benefit of vested rights under contracts already entered into (see paragraph 1.16 and 1.17 above).**

### **Respect for private life**

1.20 The Government considers that hunting with dogs does not engage the right to respect for private life under ECHR Article 8.1, because its nature is essentially public and it falls outside the meanings given to ‘private life’ by the European Court of Human Rights. The Government refers to the decision of the Court of Session in *Adams*, the more recent

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15 See paras. 8, 9 and 10 of the Government’s Memorandum

16 See particularly *Chassagnou v. France*, (1999) 29 EHRR 615, Eur. Ct. H.R., at § 82 of the judgment, and, in non-hunting contexts, *Immobiliari Saffi v. Italy* (1999) 30 EHRR 756 at § 57 and *Marcic v. Thames Water Utilities Ltd* [2002] 2 WLR 932, CA, at para. 116 of the judgment

17 See para. 15 of the Government’s Memorandum, citing *Pinnacle Meat Processors Co. v. United Kingdom*, App. No. 33298/96

decision in *Petition of Whaley and Friend for the judicial review of the Protection of Wild Mammals (Scotland) Act 2002*, P672/02, judgment of 20 June 2003, and decisions of the European Commission and Court of Human Rights. In any case, the Government considers that the Bill's interference with the activities would have been justifiable under ECHR Article 8.2 as being in accordance with the law and, like other animal welfare legislation, necessary in a democratic society for the protection of morals.<sup>18</sup>

1.21 We do not wish to express any concluded view as to whether hunting on one's own land would be regarded as falling outside the realm of 'private life' for the purpose of ECHR Article 8.1. On the other hand, like the Government, we are satisfied that the interference with that right would be likely to be regarded as justifiable under ECHR Article 8.2.

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18 See paras. 19-21 of the Government's Memorandum

## 2 European Parliamentary and Local Elections (Pilots) Bill

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|   |                      |
|---|----------------------|
| Date introduced to the House of Commons | 17 September 2003    |
| Date introduced to the House of Lords   |                      |
| Current Bill Number                     | House of Commons 160 |
| Previous Reports                        | None                 |

2.1 The Bill would pave the way for the Government to test, through pilot projects, different manners of conducting elections. Pilot projects would be undertaken at the election for the European Parliament in 2004 and at the local elections due to be held at the same time.

2.2 In the Explanatory Notes, paragraphs 23-26, the Government correctly accepts that the Bill would engage the right to the free expression of the electorate's opinion by a secret ballot under Article 3 of Protocol No. 1 to the ECHR. The Government recognizes that it would be necessary to ensure the secrecy, security and accessibility of the ballot, and hopes that the pilot schemes will generate evidence on which there would be a report by the Electoral Commission, so that decisions on the wider use of such systems 'can be proportionate and soundly based' (paragraph 24). There would be statutory safeguards, including an offence of personation (clause 6), and we are also promised unspecified non-statutory safeguards.

2.3 We have asked the Secretary of State for Constitutional Affairs for details of the non-statutory safeguards for accessibility and secrecy in relation to each of them, and for the reasons for making them non-statutory rather than statutory, to facilitate an assessment of the protection available to voters in the elections which are used to pilot the schemes. The Government responded by way of a letter from the Parliamentary Under-Secretary of State at the Department for Constitutional Affairs (Mr Christopher Leslie MP), dated 10 November 2003, enclosing a memorandum setting out the Government's response. The correspondence and the memorandum are published as an appendix to this Report, and we draw them to the attention of each House.

## Private Members' Bills

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### 3 Company Directors' Performance and Compensation Bill

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|   |                     |
|---|---------------------|
| Date introduced to the House of Commons | 11 December 2002    |
| Date introduced to the House of Lords   |                     |
| Current Bill Number                     | House of Commons 22 |
| Previous Reports                        | none                |

3.1 The Bill would amend the Companies Act 1986 by inserting a new section 316A and a new paragraph 6(5) of Schedule 7A to the Act. The combined effect would be to limit any compensation or payment payable to a director for termination of his or her office or employment to 'such amount as is...fair and reasonable having regard to any failure by the director in the performance of his duties either in his office as director or as an employee or both'. That would apply, 'Notwithstanding anything contained in a company's articles, or in any contract ...': see proposed new section 316A(1).

3.2 This would appear to make it possible to deny payment of money legally due to a director, interfering with the director's right to peaceful enjoyment of possessions and depriving the director of property protected by Article 1 of Protocol No. 1 to the ECHR.

3.3 We are concerned about the possibility that this might be incompatible with two sets of rights under that Article: first, the right of the director to money legally due to him or her; secondly, the right of the company to use its property and enter into contracts as seems best to it. Under Article 1, compensation for a deprivation of property in the public interest is required save in exceptional circumstances, and any control on the use of property must strike a fair balance between the rights of property owners and the general public interest (which may itself demand compensation in some circumstances). Our Chair has written to Mr. Archie Norman MP, the Member responsible for the Bill, to draw his attention to our concern. The letter is printed as an appendix to this Report.

**3.4 We draw this matter to the attention of each House.**

## 4 Consumer Protection (Unsolicited E-mails) Bill

|   |                      |
|---|----------------------|
| Date introduced to the House of Commons | 10 June 2003         |
| Date introduced to the House of Lords   |                      |
| Current Bill Number                     | House of Commons 119 |
| Previous Reports                        | None                 |

4.1 This Bill would amend the Consumer Protection (Distance Selling) Regulations 2000 by adding a new regulation 24A, making it an offence to send unsolicited commercial E-mails. A commercial E-mail would be one that advertises goods and services.

4.2. This would interfere with the right to freedom of expression under ECHR Article 10.1, which protects commercial expression, although an interference with it is easier to justify under Article 10.2 than an interference with (for example) political expression.

4.3 An interference is capable of being justified if it meets the criteria set out in ECHR Article 10.2. The interference would, in our view, be likely to meet the requirement of being ‘prescribed by law’, and would serve a legitimate aim, namely the protection of the rights of others (the right to respect for private life under ECHR Article 8, and the right to be free of unwanted interference with one’s property, namely the hard disk of a computer which can be adversely affected by unwanted messages and viruses).

4.4 The remaining question is whether the interference would be ‘necessary in a democratic society’ for that purpose, that is a proportionate response to a pressing social need, so as to be justifiable under Article 10.2. The existence of a pressing social need is a matter of legislative judgment, but in our view it could legitimately be concluded that there is such a need. The issue of proportionality is more difficult. Few people ask to receive advertising material, so nearly all advertising by E-mail would become criminal. That might seem an unnecessarily intrusive approach when there would be a way of protecting people’s right to be free of nuisance E-mails without totally banning advertising by E-mail. For example, a register could be established of people who do not want to receive such E-mails, and it could be made an offence to send the E-mails to those people. Legislation might also provide for a defence where it could be shown that the sender did not know, and had no reason to know, that the recipient is on the list (for instance because the recipient’s E-mail address had recently changed).

4.5 In the light of this, our Chair wrote to the Member responsible for the Bill, Mr Paul Flynn MP, to draw the above matters to his attention. Mr Flynn replied in a letter dated 17 November 2003. The correspondence is published as an appendix to this Report. We draw it to the attention of each House in the hope that it will help to clarify the issues addressed in it.

## 5 Corporate Responsibility Bill

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|   |                                 |
|---|---------------------------------|
| Date introduced to the House of Commons | 19 June 2003                    |
| Date introduced to the House of Lords   |                                 |
| Current Bill Number                     | House of Commons 129            |
| Previous Reports                        | 26 <sup>th</sup> Report 2001-02 |

5.1 In the 2001-02 session, we took the view that a similar Bill, by requiring companies to make certain information available to the public and by interfering with the right of a company to use its resources as it sees fit, might interfere with the right to respect for private life etc. under ECHR Article 8 and the right to peaceful enjoyment of possessions under Article 1 of Protocol 1 to the ECHR. We published a letter to Linda Perham MP, the Member responsible for the Bill: see Twenty-sixth Report of the Committee of last Session.<sup>19</sup>

5.2 The present Bill, also introduced by Linda Perham MP, raises the same issues. Our Chair has written to Ms Perham. We have received a response sent on Ms Perham's behalf by S E Cohen. The correspondence is published as an appendix to this Report, and we draw it to the attention of each House.

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<sup>19</sup> Joint Committee on Human Rights, Twenty-sixth Report, Session 2001-02, *Scrutiny of Bills: Final Progress Report*, HL Paper 182 HC 1295

## 6 Fishery Limits (United Kingdom) Amendment Bill

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|   |                      |
|---|----------------------|
| Date introduced to the House of Commons | 4 June 2003          |
| Date introduced to the House of Lords   |                      |
| Current Bill Number                     | House of Commons 117 |
| Previous Reports                        | None                 |

6.1 This Bill would amend the Fishery Limits Act 1976:

- to make it a criminal offence for any foreign fishing vessel to enter British waters within the limits unless the vessel is from an EU country which offers reciprocal facilities to British vessels and maintains appropriate conservation measures for fisheries;
- to impose a licensing requirement for foreign fishing vessels within British fishing limits;
- to require all fish caught within British fishing limits to be landed at a port within the British Islands or reported to the Ministers and made available for inspection;
- to make it a criminal offence (with a potential prison sentence) to violate those requirements.

6.2 It seemed to us that these provisions might interfere with the right to free movement of goods and services, and would also be likely to interfere with the right to peaceful enjoyment of possessions under Article 1 of Protocol No 1 to the ECHR. The Chair of the Committee wrote to Mr Austin Mitchell MP drawing attention to our concerns. Mr Mitchell replied that the requirement to land fish at a port in the United Kingdom, Isle of Man or the Channel Islands or report it to a Minister, cannot be a breach of human rights because the fishermen catch the fish under quota. The implication is that it must be legitimate to require them to account in the United Kingdom for the amount caught. The correspondence is published as an appendix to this Report. We hope that it will help to clarify these issues.

6.3 **We draw this matter to the attention of each House.**

## 7 Medical Practitioners & Dentists (Professional Negligence Insurance) Bill

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|   |                      |
|---|----------------------|
| Date introduced to the House of Commons | 20 May 2003          |
| Date introduced to the House of Lords   |                      |
| Current Bill Number                     | House of Commons 111 |
| Previous Reports                        | None                 |

7.1 This Bill would make it a condition of registration to practice medicine or dentistry that the practitioner should hold approved indemnity insurance cover. The drafting of the Bill is unclear. For example, it does not define ‘approved indemnity cover’, or mention professional negligence insurance except in the long and short titles. It also engages the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR. In our view the requirement (if more clearly drafted) would be likely to be justifiable under that Article, but the current drafting makes it impossible for us to be satisfied that the Bill would be held to meet the demands of the principle of legal certainty which underpins the protection of human rights.

7.2 Our Chair has written to the Member responsible for the Bill, Dr Desmond Turner MP, to draw his attention to our concerns. The letter is printed as an appendix to this Report.

**7.3 We draw the matter to the attention of each House.**

## 8 Street Furniture (Graffiti) Bill

|   |                      |
|---|----------------------|
| Date introduced to the House of Commons | 13 May 2003          |
| Date introduced to the House of Lords   |                      |
| Current Bill Number                     | House of Commons 106 |
| Previous Reports                        | None                 |

8.1 This Bill would allow a local authority to serve a notice on the owner of any surface of land owned, occupied or controlled by a statutory undertaker, or any building, structure, apparatus, plant or other object in or on any such land, requiring the owner to remove or obliterate graffiti from that surface within 14 days, if the local authority considers the graffiti to be detrimental to the amenity of the area or offensive. The owner would have a right of appeal to a magistrates' court. If the owner fails to comply with the notice (subject to any appeal) or asks the local authority to remove the graffiti, the local authority would be empowered to remove it and to recover from the owner the expenses reasonably incurred in doing so.

8.2 Where the owner wants to retain the graffiti, a notice would interfere with the right to freedom of expression under ECHR Article 10.1, and would require justification under Article 10.2. It is not clear to us that detriment to the amenity of the area or offensiveness would justify the interference unless the graffiti are in some way outrageous (for example, provoking public disorder or crime, or threatening morality, or libelling someone) and are readily visible to the public at large, or violate planning requirements. No such limitation is contained in the Bill. This seems to us to make it possible that a notice would not serve a legitimate purpose under ECHR Article 10.2 and/or would be disproportionate to any legitimate purpose.

8.3 The notice would also engage the right of the owner of the surface to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR. It represents a control over property, which is justifiable if it serves a legitimate state aim (protecting public amenity and preventing offensiveness might be such aims) and represents a fair balance between the right and competing public interests. The Bill could lead to considerable burdens being imposed on owners: for example, the effect of a notice being served on London Underground statutory undertakers in respect of graffiti would have substantial financial implications; and it is not clear that imposing the cost of compliance on the statutory undertaker would represent a fair balance between the undertaker's rights and the public interest (or, in other words, be a proportionate interference with the statutory undertaker's rights).

8.4 Our Chair has written to Ms. Siobhain McDonagh MP, the Member responsible for the Bill, to draw to her attention our concerns about the compatibility of the Bill with ECHR Article 10 and Article 1 of Protocol No. 1.

**8.5 We draw the matter to the attention of each House.**

## 9 Bills which enhance protection for human rights

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9.1. The following Private Members' Bills seem to us to be likely to enhance protection for human rights in different contexts.

9.2 The Aviation Health Bill (HC Bill 136) would place on airlines the legal responsibility for protecting passengers against threats to health from flying, thus helping to protect the right to life, the right to be free of degrading treatment and the right to respect for private life under ECHR Articles 2, 3 and 8.

9.3 The Children's Commissioner for England Bill (HC Bill 121) would require the establishment of an Office of the Children's Commissioner for England, with power to do anything which appears to him or her to be necessary or expedient for the purpose of or in connection with the exercise of his or her (undefined) functions.

9.4 The Freedom of Information Act 2000 (Commencement) Bill (HC Bill 169) would bring into force on 1 January 2004, instead of its planned date in 2005, section 1 of the Freedom of Information Act 2000, conferring a right to have information provided by public authorities on request.

9.5 The Physical Punishment of Children (Prohibition) Bill (HC Bill 143) would put into statutory form the common law on justification of physical punishment of a child by a parent or carer for a child, and prohibiting physical punishment by child minders, daycare providers, nannies and au pairs, thus enhancing protection for rights of children under ECHR Article 3 (degrading treatment) and the Convention on the Rights of the Child.

# Bills which raise no human rights issues

## 10 Government Bills

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### Northern Ireland (Monitoring Commission etc) Act 2003

10.1 The Northern Ireland (Monitoring Commission etc.) Bill received Royal Assent on 18 September 2003. We see no need to draw its provisions to the attention of either House on human rights grounds at this time.

## 11 Private Members' Bills

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11.1 The following Private Members' Bills seem to us to raise no human rights issues needing to be drawn to the attention of either House:

Draft Constitutional Treaty on the Future of Europe (Referendum) Bill (HC Bill 114)

Emergency Broadcasting Systems Bill (HC Bill 85)

European Communities (Regulations) Bill (HC Bill 115)

Museums and Galleries Bill (HC Bill 151)

National Minimum Wage (Tips) Bill (HC Bill 150)

UK Elections Bill (HC Bill 152)

# Formal Minutes

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**Monday 17 November 2003**

Members present:

Jean Corston MP, in the Chair

Lord Bowness

Lord Lester of Herne Hill

Baroness Prashar

Baroness Whitaker

Mr David Chidgey MP

Mr Richard Shepherd MP

Mr Paul Stinchcombe MP

The Committee deliberated.

Draft Report [Scrutiny of Bills: Final 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 11.5 read and agreed to.

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

Summary agreed to.

*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 8 December at half past Four o'clock.]

# Appendices

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## Appendix 1: Hunting Bill

### Letter from the Chair to Lord Whitty, Parliamentary Under Secretary, Department for Environment, Food and Rural Affairs

The Joint Committee on Human Rights is considering whether to report further to each House on the Hunting Bill in the form in which it was brought to the House of Lords from the House of Commons. When it carried out its initial examination of this Bill in the form in which it was introduced to the House of Commons, the Committee was of the opinion that it was likely to be compatible with human rights (see our Third and Seventh Reports of this Session). However, it was substantially amended in the House of Commons. When introducing the amended version of the Bill to the House of Lords, you made a statement of compatibility with Convention rights under section 19(1)(a) of the Human Rights Act 1998.

In the light of this, the Committee would be grateful for your response to a number of questions. Our starting-point is of course the statement made under section 19(1)(a) of the Human Rights Act 1998; but I should make it clear that the Committee's remit extends to human rights in a broad sense, not just the Convention rights under the Act.

The Committee is concerned about the following matters:

#### *Compensation for loss of benefit of contracts as a result of the Bill: deprivation of property*

In the light of the judgment of the European Court of Human Rights in *Chassagnou v. France*,<sup>20</sup> and the decision of Lord Nimmo Smith in the Outer House of the Court of Session in *Petition of Adams for Judicial Review of the Protection of Wild Mammals (Scotland) Act 2002 and the Protection of Wild Mammals (Scotland) Act 2002 (Commencement) Order 2002*,<sup>21</sup> the Committee concluded that the control of unregulated hunting is a legitimate aim for the purposes of Article 1 of Protocol No. 1 to the ECHR,<sup>22</sup> and that the 'middle way' provisions of the Bill as originally introduced generally struck a fair balance between the public interest and the rights of those whom the Bill would affect. However, the Bill as introduced to the House of Lords contained an absolute prohibition of many forms of hunting with dogs. This would make it impossible to give effect lawfully to contracts already entered into, performance of which would be made unlawful were the Bill to be enacted and come into force. The economic benefit of such a contract, already binding on the parties to it, is a possession for the purposes of P1/1. The legislation would entirely deprive the economic beneficiary of the benefit of the contract. This seems to go beyond a mere control or regulation of ownership, so far as it relates to the rights under those contracts.

The Government accepted in 2001, in relation to the Hunting Bill introduced but lost in the 2001-02 session, that Article 1 of Protocol No. 1 to the ECHR generally requires compensation for a deprivation of property, but considered that, even in relation to the benefit of existing, legally binding contracts, the legislation would only amount to a

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20 Judgment of 29 April 1999, 29 EHRR 615.

21 Judgment of 31 July 2002.

22 See particularly paragraph 108 of the Court's Judgment, and note also paragraph 105 of the decision of the European Commission of Human Rights in the same case.

control of property rather than a deprivation of it.<sup>23</sup> On the face of it, this seems to fail to distinguish between two different kinds of possessions: (i) the land over which hunting takes place and the dogs, etc., used when hunting; and (ii) the economic benefit accruing from contracts already entered into for hunting. The Bill would deprive people of possessions of type (ii).<sup>24</sup> In any case, even if the effect of the Bill would merely be to impose a control on property, the availability of compensation is a relevant matter when considering whether a control over property, rather than a deprivation of it, strikes a fair balance between competing rights and interests under Article 1: see particularly *Chassagnou v. France*, above, at § 82 of the judgment<sup>6</sup> and, in non-hunting contexts, *Immobiliari Saffi v. Italy* (1999) 30 EHRR 756 at § 57 and *Marcic v. Thames Water* [2002] 2 WLR 932, CA, at para. 116 of the judgment.

Question 1. In the light of this, does the Government—

(a) now take the view that the Bill as introduced to the House of Lords would merely constitute a control on, rather than a deprivation of, the right of parties to contracts related to hunting with dogs to enjoy the benefit of those contracts; and

(b) continue to take the view that no compensation for loss of such rights would be required;

and could you set out, in each case, the reasons for the Government's view.

*Compensation for loss of benefit of contracts as a result of the Bill: control on property, and relevance of earlier legislative proposals*

The Government appears to accept that the Bill as introduced to the House of Lords would constitute a control on the use of other property, including land and hunting dogs. However, the Government considers that such a control would be justifiable under Article 1 of Protocol No. 1 to the ECHR, even without the payment of compensation. At the same time, there would be a number of categories of exempt hunting (clause 2 and Schedule 1), which can be summarised as follows:

Stalking or flushing out the wild mammal with not more than two dogs to prevent or reduce serious damage which it would otherwise cause, or to obtain meat for human or animal consumption, or to participate in a field trial, on land owned by the person doing the stalking or flushing out or with the owner's or occupier's permission, subject to certain other conditions (Schedule 1, paragraphs 1 and 2);

Stalking or flushing out the wild mammal with not more than two dogs to allow the mammal to be hunted by a bird of prey, on land owned by the person doing the stalking or flushing out or with the owner's or occupier's permission (*ibid.*, paragraph 6);

Hunting rats or rabbits on land owned by the hunter or with the permission of the owner or occupier (*ibid.*, paragraphs 3 and 4);

Retrieving hares which have been shot on land which belongs to the hunter or with the permission of the land's owner or occupier (*ibid.*, paragraph 5);

Recapturing an escaped wild mammal (*ibid.*, paragraph 7);

23 Memorandum from the Home Office printed in Joint Committee on Human Rights, Third Special Report of 2000-01, *Scrutiny of Bills*, HL Paper 73, HC 448, Appendix 2, p. xi, paras. 28-29 and p. xii, para. 42.

24 Although pleaded, this issue was not argued by counsel or considered in the judgment in *Adams*.

Rescuing an injured wild mammal with not more than two dogs (*ibid.*, paragraph 8);

Carrying out study or observation of the wild animal, with not more than two dogs (*ibid.*, paragraph 9).

It is not immediately obvious what the rationale for these exempt categories is, and in some cases how it relates to the legitimate aim of reducing the suffering of mammals. This makes it difficult to assess whether the Bill's control on the use of property strikes a fair balance between the public interest and the rights of those whose property would be affected.

In so far as the prohibitions in the Bill are capable of being justified under Article 1 of Protocol No. 1, the question of compensation arises. As noted above, compensation for a control on the use of property may be necessary in order to strike the fair balance required by Article 1. It has been suggested to the Committee that the scale of any required compensation might fall to be reduced, perhaps even to nil, where the contracts in question were entered into in the light of the knowledge that the Government intended to invite Parliament to prohibit some or all forms of hunting mammals with dogs.

Question 2: In the light of this—

(a) what is the justification, in terms of the fair balance required by Article 1 of Protocol No. 1 to the ECHR, for exempting the categories of hunting mammals with dogs mentioned above, while prohibiting absolutely all other forms of hunting mammals with dogs;

(b) does the Government still consider that it would not be necessary to compensate the owners of property for the control in the use of property; and

(c) in so far as the Government considers that the giving of notice of a forthcoming prohibition is relevant to the need for or scale of compensation, what were the terms and date on which such notice was given to the public at large or to the owners of property used for hunting in particular?

*Right to respect for private life*

In its earlier consideration of the Bill, the Committee took the view that the Bill might engage the right to respect for private life if hunting were to be prohibited in private settings, such as on land owned or occupied by the hunter. Under the Bill as originally drafted, the Committee thought that any interference with the right to respect for private life would be justifiable because it would be in accordance with the law, and could be said to serve a legitimate aim, respond to a pressing social need and be proportionate to the object pursued as required under ECHR Article 8.2. The Bill as introduced to the House of Lords contains a very much more extensive prohibition on hunting mammals with dogs, even when it takes place on private property with the consent of the occupier or owner.

The Explanatory Notes to the Bill seem to indicate that the Government none the less does not consider that the Bill as amended engages the right to respect for private life under ECHR Article 8.1.

Question 3: In view of the amendments to the Bill in the House of Commons does the Government—

(a) take the view that Article 8.1 is not engaged by the Bill's provisions, and if so why; and

(b) if Article 8.1 is engaged, consider that the Bill as amended is a proportionate response to a pressing social need so as to be justifiable under Article 8.2, and if so, why?

#### 4. *Representations*

Finally, the Committee would be grateful for a description of any representations you have received in connection with the Bill as introduced to the House of Lords in relation to human rights issues, and to what specific points those representations were directed.

In view of the imminence of the end of the parliamentary session, the Committee would be grateful for a response to its questions as early as possible, and in any event no later than 7 November.

29 October 2003

### **Memorandum from the Department for Environment, Food and Rural Affairs**

1. This memorandum is submitted by the Department for Environment, Food and Rural Affairs in response to a letter from the Chair of the Joint Committee on Human Rights to Lord Whitty of 29 October 2003.

2. The Committee has raised several questions in respect of the Hunting Bill as introduced into the House of Lords following amendment by the House of Commons. It may assist the Committee to set out briefly the nature of the changes which were made to the original Bill by the House of Commons.

3. The object of the original Bill introduced in the House of Commons on 16 December 2002 was to prevent all cruelty (that is, the causing of unnecessary suffering) to wild mammals associated with hunting with dogs. The Bill made it an offence to hunt a wild mammal with dogs unless the hunting was registered or exempt. The registration system established by the Bill would have allowed some activities involving the hunting of a wild mammal with dogs to continue only if they could be shown on a case-by-case basis to pass two tests of utility and least suffering, and was in effect a special sort of exemption. The Bill also provided for generally applicable exemptions in respect of certain activities which, if carried out in accordance with conditions to ensure the protection of animal welfare, would allow dogs to be used for particular purposes including pest control without giving rise to unnecessary suffering.

4. At Report Stage, the House of Commons voted to exclude fox hunting and mink hunting from the scope of the registration system, and subsequently on Re-committal to remove the provisions in the original Bill establishing the registration system. The House of Commons retained the general exemptions and the prohibition on hare coursing events. The Bill as brought to the House of Lords therefore makes it an offence to hunt a wild mammal with a dog unless the hunting is exempt. The general exemptions remain essentially the same as in the original Bill, although they were slightly amended and extended during the Bill's consideration in the House of Commons. The Bill will also still come into force three months after Royal Assent.

5. The Government considers that the removal from the Bill of the registration system does not affect the compatibility of this legislation with the rights protected by the European Convention on Human Rights (ECHR). As the Committee notes, Lord Whitty made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect on the introduction of the amended Bill into the House of Lords on 10 July.

*Compensation for loss of benefit of contracts as a result of the Bill: deprivation of property*

6. The Committee has asked the following questions concerning the rights protected by Article 1 of Protocol 1 ECHR (Protection of property) as regards the economic benefit of contracts which will become incapable of being performed as a result of the coming into force of the present Bill:

**Question 1. In the light of this, does the Government—**

**(a) now take the view that the Bill as introduced to the House of Lords would merely constitute a control on, rather than a deprivation of, the right of parties to contracts related to hunting with dogs to enjoy the benefit of those contracts; and**

**(b) continue to take the view that no compensation for loss of such rights would be required;**

**and could you set out, in each case, the reasons for the Government's view.**

7. The Government's view is that the changes made to the Bill during its consideration in the House of Commons do not materially alter its legal consequences in respect of Article 1 of Protocol 1 ECHR. These are summarised in paragraph 68 of the Explanatory Notes to the amended Bill:

The controls imposed by the Bill are capable for the purposes of Article 1 of Protocol 1 of constituting an interference with the peaceful enjoyment of possessions connected with hunting with dogs and hare coursing events (including associated economic benefits). In the Government's view this interference is justified under the second paragraph of the Article on the basis that it strikes a fair balance between the rights of the individual, and the general interest of the community in the protection of animal welfare. It is considered that the controls do not amount to a deprivation of property but rather to a control of use and so do not give rise to an obligation to provide compensation to those affected.

8. Question 1(a). The Government continues to consider that the restrictions imposed by the Bill constitute a control of use of property (including the right of parties to contracts related to hunting with dogs to enjoy the benefit of those contracts) rather than a deprivation. The reasons for this view remain as set out in paragraphs 4 and 5 of this Department's previous memorandum to the Committee of 31 January:

4. The Government accepts that contractual rights are in some circumstances capable of constituting "possessions" for the purposes of Article 1 of Protocol 1 to the ECHR. It does not, however, consider that compensation should be payable for any economic losses that may be suffered as a consequence of the Bill by the persons concerned.

5. The Government holds the view it took in 2001 in relation to the earlier Hunting Bill that the current legislation would amount to an interference with the use and enjoyment of property rather than a deprivation of property. In the case of *Pinnacle Meat Processors Company v UK* (Application 33298/96), the claimants complained about the loss of their deboning business in the wake of the restrictions brought in to combat BSE. The European Commission of Human Rights noted that the loss of business suffered by the applicants was more akin to a control of use rather than a

deprivation of property. Accordingly, the Commission applied the “control of use” test. Similarly, in the case of *Slough and King v UK Government* (Application Nos. 37679/97 and 37682/97), the applicants also complained about the loss of part of their business (the sale of hand guns, banned post Dunblane), and the European Court of Human Rights applied the control of use test. The Government considers that the principles followed in these cases are equally applicable to possessions comprising land over which hunting takes place, the dogs used for hunting, and the economic benefits accruing from contracts connected with hunting.

The Committee accepted (in paragraph 20 of its Seventh Report of Session 2002-03) that it was legitimate for the Government to take this view on the basis of the current state of the Strasbourg case-law.

9. To the extent that the points made in paragraph 6 of the previous memorandum to the Committee relate to the registration system they are obviously no longer relevant, but it remains the case that limited forms of hunting with dogs will be permitted after the Bill is enacted under the exemptions in Schedule 1. For example, the exemption in paragraph 1 permits up to two dogs to be used above ground to stalk and flush out wild mammals to be shot for pest control and other purposes. The exemption in paragraph 2 also permits gamekeepers and others to use a single dog below ground to protect birds kept for shooting. The exemptions will therefore allow the performance of some existing contracts to provide services involving hunting with dogs after the Bill becomes law, while other contracts may be renegotiated to allow hunting in compliance with the exemptions.

10. Question 1(b). The Government continues to consider that the restrictions imposed by the Bill do not give rise to a requirement to pay compensation to those affected, for the reasons set out in paragraphs 7 to 9 of the previous memorandum:

7. The Committee refers to paragraphs 28-29 and 42 of the memorandum submitted on 8 March 2001 by the Home Office on the previous Hunting Bill. These paragraphs, together with paragraphs 24-27, 36-41 and 43, set out the reasons why the Government considered that Article 1 of Protocol 1 did not require the payment of compensation for interference to a person’s use and enjoyment of contractual rights in respect of that Bill. It was noted that there are numerous occasions where new legislation interferes with existing contractual rights without the individuals being compensated. The same principles apply to the current Bill. The contracting parties will have been aware for a considerable period of time of the intention of the Government to legislate on hunting with dogs. The current Bill is the result of an ‘extensive and well-publicised process of consultation over a long period.

8. The Government takes the view that persons entering contracts in connection with hunting with dogs have no legitimate expectation that any or all types of this activity would continue to be lawful. This view is supported by the admissibility decision of the European Court of Human Rights in the *Slough and King* case. In that case, the Court held that the applicant firearms sellers had no legitimate expectation that the use of particular types of firearm, including handguns, would continue to be lawful because of the progressively more restrictive legislative framework since 1920.

9. This decision also confirms the wide margin of appreciation conferred on national authorities when determining whether compensation should be payable in respect of an interference with possessions. The Court made clear that national authorities must enjoy a wide margin of appreciation

in determining not only the necessity of the measure of control concerned but also the types of loss resulting from the measure for which compensation will be made. The legislature's judgment in this connection should in principle be respected unless it is manifestly arbitrary or unreasonable.

The Committee accepted (in paragraph 20 of its Seventh Report of Session 2002-03) that these considerations meant that the Government was entitled to take the view that the Bill would be likely to be compatible with Article 1 of Protocol 1.

*Compensation for loss of benefit of contracts as a result of the 'Bill: control on property, and relevance of earlier legislative proposals*

11. The Committee has asked the following further questions concerning the rights protected by Article 1 of Protocol 1 in respect of the exemptions contained in the amended Bill and the payment of compensation.

**Question 2: In the light of this—**

**(a) what is the justification, in terms of the fair balance required by Article I of Protocol No. I to the ECHR, for exempting the categories of hunting mammals with dogs mentioned above, while prohibiting absolutely all other forms of hunting mammals with dogs;**

**(b) does the Government still consider that it would not be necessary to compensate the owners of property for the control in the use of property; and**

**(c) in so far as the Government considers that the giving of notice of a forthcoming prohibition is relevant to the need for or scale of compensation, what were the terms and date on which such notice was given to the public at large or to the owners of property used for hunting in particular?**

12. Question 2(a). The Government's view is that each of the general exemptions in Schedule 1 to the amended Bill can be objectively justified and that together they reflect a fair balance between the general interest in the prevention of cruelty to animals and the rights of persons who wish to hunt wild mammals with dogs.

13. The exemptions allow the continuation of specified activities involving the hunting of wild mammals with dogs where these will not give rise to unnecessary suffering. The rationale for the exemptions is thus consistent with the basic intention of the Bill, which is to prevent the cruelty associated with hunting with dogs. The exemptions recognise that the use of dogs may, in certain circumstances and subject to appropriate controls, be the most acceptable method of achieving necessary purposes. These include the prevention of serious damage to livestock, crops, other property or the biodiversity of an area (paragraph 1), the protection of birds kept for shooting (paragraph 2), the control of rats and rabbits (paragraphs 3 and 4) and the recapture of wild mammals (paragraph 6). Activities which are technically hunting but which do not give rise to animal welfare concerns in respect of the use of dogs are also exempted, such as field trials (paragraph 1), the retrieval of shot hares (paragraph 5), falconry (paragraph 6) and the tracking of a wild mammal for research and observation (paragraph 9). In addition, the exemption concerning the rescue of wild animals (paragraph 7) permits hunting for the animal welfare purpose of relieving the suffering of an injured wild mammal.

14. Conditions are imposed where necessary to protect animal welfare and to avoid abuse, and all the exemptions require prior permission to be obtained from the occupier

or owner of the land (or a constable in the case of the recapture and rescue exemptions in paragraphs 7 and 8).

15. Question 2(b). See the answer to Question 1(b) above. It is accepted that the availability of compensation is a relevant matter in considering whether a control over property strikes a fair balance between competing rights and interests, but it is well established law that the control of use does not, as a rule, give rise to any right to compensation (*Pinnacle Meat Processors Company v United Kingdom*)<sup>25</sup>.

16. Question 2(c). The extensive publicity which all proposed legislation on hunting receives, particularly among those groups most directly concerned, means that the Government considered that there was no need to give any formal public notice concerning the effects of the amendment of the Bill by the House of Commons. In any case the proposals in the original Bill, which would also have introduced severe restrictions on hunting with dogs, had been already been widely publicised.

*Right to respect for private life*

**Question 3: In view of the amendments to the Bill in the House of Commons does the Government—**

**(a) take the view that Article 8,1 is not engaged by the Bill's provisions, and if so why; and**

**(b) if Article 8.1 is engaged, consider that the Bill as amended is a proportionate response to a pressing social need so as to be justifiable under Article 8.2, and if so, why?**

17. The Government considers that the changes made to the Bill during its consideration in the House of Commons do not alter its legal consequences in respect of Article 8 ECHR (Respect for private life). As indicated in the Home Office's memorandum to the Committee of 8 March 2001:

In the Government's view, the nature of hunting activities, even when conducted on private land or by an individual, is essentially public in nature (paragraph 45).

18. The Bill as amended does not materially differ from the original Bill in its effect for the purposes of Article 8 on the use of dogs for hunting on private land.

19. Question 3(a). The Government continues to consider that Article 8 is not engaged by the Bill because hunting with dogs falls outside any meaning of 'private life' recognised in the jurisprudence of the European Court of Human Rights. This is supported in respect of hunting by organised groups by the recent judgment of the Court of Session in *Adams*:<sup>26</sup>

Foxhunting appears to me to have no characteristic that would bring it within the concept of private life. It is carried on in the open air. It involves a fairly large number of participants. It is open to all comers and is thus inclusive rather than exclusive. It may be carried on, principally at least, on private land rather than on public roads, but it is private land to which all who wish to participate are admitted for the occasion. It constitutes a spectacle for them as

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25 Application 33298/96, 21 October 1998, EcommHR.

26 Petition of Adams for Judicial Review of the Protection of Wild Mammals (Scotland) Act 2002 and the Protection of Wild Mammals (Scotland) Act 2002 (commencement) Order 2002 (P557/02), judgment of 31 July 2002.

well as for those who use the public roads to follow the hunt. ... As it was put in *Botta v Italy*, foxhunting gives rise to interpersonal relations of such broad and indeterminate scope that it cannot be described as the private life of its participants. It goes well beyond the "certain degree" contemplated in *Niemietz v Germany*, and cannot be regarded as falling within the "personal sphere" recognised by the European Court of Human Rights (paragraph 103).

This approach was also followed by the Court of Session in *Whaley*<sup>27</sup> (paragraphs 63 to 65).

20. Equally, the Government considers that hunting by individuals does not engage Article 8. In *Bruggemann and Scheuten v Federal Republic of Germany*<sup>28</sup> the European Commission for Human Rights held that:

there are limits to the personal sphere. While a large proportion of the law existing in a given State has some immediate effect on the individual's possibility of developing his personality by doing what he wants to do, not all of these can be considered to constitute an interference with private life in the sense of Article 8 of the Convention. In fact, as the earlier jurisprudence of the Commission has already shown, the claim to respect for private life is automatically reduced to the extent that the individual brings his private life into contact with public life or into close connection with other protected interests (paragraph 55).

In the Government's view, hunting by individuals is not a matter of private life for the purposes of Article 8 because it has serious consequences for the protection of the welfare of the wild mammals being hunted.

21. Question 3(b). Even if the activities concerned fall within the scope of Article 8.1, the Government is satisfied that interference with this right to restrict hunting with dogs by means of the measures contained in the Bill would be justifiable under Article 8.2 as being in accordance with the law and necessary in a democratic society for the protection of morals. There is a substantial body of existing legislation aimed at the protection of animal welfare, and it is considered that the restrictions on hunting with dogs imposed by the Bill address a pressing social need and are proportionate to the legitimate aim pursued of preventing cruelty.

#### *Representations*

22. The Committee has asked for a description of representations received in connection with the Bill as introduced to the House of Lords which relate to human rights issues, and the specific points to which those representations were directed. Since the House of Commons Report stage, letters received by the Department have included various references concerning the compatibility of the Bill as amended with human rights provisions. No new substantive representations have been received. There have also been references to human rights issues in Parliamentary debates on the Bill, notably the Second Reading debate in the House of Lords on 16 September.

*6 November 2003*

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27 Petition of Whaley and Friend for the Judicial Review of the Protection of Wild Mammals (Scotland) Act 2002 (P672102), judgment of 20 June 2003.

28 Application 6959/75 (1978) 10 DR 100, EcommHR

## Appendix 2: European Parliamentary and Local Elections (Pilots) Bill

### Letter from the Chair to Mr Christopher Leslie MP, Parliamentary Under Secretary, Department for Constitutional Affairs

The Committee is considering whether to report to each House on the above Bill. It has carried out an initial examination of this Bill, and has formed the provisional opinion that the Bill is not likely to be intrinsically incompatible with relevant human rights obligations. The Committee would, however, be grateful for your comments on the following points. Our starting-point is of course the statement made under s.19(1)(a) of the Human Rights Act 1998; but I should make it clear that the Committee's remit extends to human rights in a broad sense, not just the Convention rights under the Act.

The Bill would pave the way for the Government to test, through pilot projects, different manners of conducting elections. Pilot projects would be undertaken at the election for the European Parliament in 2004 and at the local elections due to be held at the same time. In the Explanatory Notes, paragraphs 23-26, the Government correctly accepts that the Bill would engage the right to the free expression of the electorate's opinion by a secret ballot under Article 3 of Protocol No. 1 to the ECHR. The Government recognizes that it would be necessary to ensure the secrecy, security and accessibility of the ballot, and hopes that the pilot schemes will generate evidence on which there would be a report by the Electoral Commission, so that decisions on the wider use of such systems 'can be proportionate and soundly based' (paragraph 24). The Explanatory Notes refer to statutory safeguards, although the only one which is apparent on the face of the Bill is an offence of personation (clause 6). The Explanatory Notes also contain a promise of unspecified non-statutory safeguards.

The Committee is mindful of the importance of ensuring that voters in elections which are used as pilot projects should suffer no disadvantage, in terms of the secrecy, security and accessibility of the ballot, as compared with voters who participate in traditional ways. The Committee is concerned to ensure that the statutory and non-statutory safeguards for pilot projects are at least as dependable as those applying to traditional methods of voting.

In this context, the Committee would be grateful for your responses to the following questions:

1. What technical or legal safeguards will be put in place to ensure that the elections are conducted in a way that will be equally secret, secure and accessible regardless of the technique by which electors cast their votes, so as to comply with Article 3 of Protocol No. 1 to the ECHR on its own and in combination with Article 14 of the ECHR (non-discrimination in the enjoyment of Convention rights).
2. Why is it thought to be appropriate, and to offer adequate safeguards for the rights mentioned in question 1, to have some of the safeguards in a non-statutory form, rather than to include them in the legislation and give them legal force.

Finally, could you give details of any representations you have received in connection with this Bill in relation to human rights issues, and to what specific points those representations were directed.

*5 November 2003*

## Letter from Mr Christopher Leslie MP, Parliamentary Under Secretary, Department for Constitutional Affairs, to the Chair

I am writing further to your letter of 5 November about the European Parliamentary and Local Elections (Pilots) EPLE (P) Bill's compatibility with relevant Human Rights obligations.

The EPLE(P) Bill is an important Bill because it will allow a continuation at next year's European and combined elections, of the Government's successful programme of piloting innovative electoral processes. Piloting new voting mechanisms is not done for its own sake. Its purpose is to engage the maximum number of voters in the sections, and make their participation more easy and convenient.

At the same time, the Government is very aware of the concerns of some voters and other stakeholders that the integrity of the existing ballot should not be breached by the use of new methods of voting. We are very keen to address these concerns and have therefore, put on the face of the Bill measures aimed at increasing security and public confidence. Further measures, more appropriate for subordinate legislation, will be included in a subsequent order.

You have raised 3 specific queries in connection to the Bill. I have addressed these in the attached annex.

To summarise our position, whilst we recognise the Bill raises important issues under the Convention, particularly Article 3 of Protocol 1 (right to free elections), the Department takes the view that the Bill is compatible with the Convention rights. I have made a statement to this effect on the front of the Bill.

*10 November 2003*

Annex

EUROPEAN PARLIAMENTARY AND LOCAL ELECTIONS (PILOTS) BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS

### **Summary**

1. The Bill raises important issues under the Convention, particularly Article 3 of Protocol 1 (right to free elections); but on balance the Department takes the view that the Bill is compatible with the Convention rights. The minister has made a statement under section 19(1)(a) of the Human Rights Act.

### **Purpose of Bill**

2. The Bill will allow innovative voting methods to be piloted in the European Parliamentary election scheduled for June 2004. In some parts of the United Kingdom, local elections will be combined with the European poll. Where that happens in a pilot area, the whole of the combined poll will be subject to the pilot

3. Current law allows piloting at local elections but not at European (or Westminster) elections.

4. The innovative voting methods likely to be piloted at the 2004 election are:

(a) all-postal voting, where postal ballot papers are sent to all registered electors automatically. There are no traditional polling stations - voters return the ballot paper by post or may deliver the ballot paper by hand to any place designated for the purpose of the delivery of ballot papers;

(b) e-enabled, an election where voting is possible by a number of channels where at least one of those channels is electronic.

### **Article 3 of Protocol 1**

5. The main Convention issue raised by the Bill is under Article 3 of Protocol 1.

### **Principles**

6. The case of *Matthews v UK* confirms that the European Parliament is, for the purpose of Article 3, a part of "the legislature", and that elections to the European Parliament must comply with Article 3. By contrast, there is a strong argument that local elections are not covered by Article 3.

7. An argument raised by some commentators and researchers is that innovative voting methods compromise the secrecy of the ballot, and obstruct the ability of vulnerable members of the electorate freely to express their opinion. In particular, it is suggested that all-postal voting tends to subject the decisions of some electors to the undue influence of family members, carers, and canvassers.

8. This is an argument that is likely to be the subject of litigation, using Article 3 of Protocol 1.

9. The Department recognises that:

(a) the UK is under a positive obligation by virtue of Article 3 to guarantee the secrecy of the ballot, and to protect voters from undue influence;

(b) any voting system which reduces the secrecy of the ballot, or allows voters to be unduly influenced in casting their vote, will raise an issue under Article 3;

(c) there is some public concern whether the methods to be piloted in 2004 may indeed increase the ability of some people to influence others in the casting of votes: that extent to which this is likely is discussed below.

10. However, the Department regards the following as important in establishing the compatibility of the Bill:

(a) Article 3 gives the UK freedom to devise its own voting procedures, provided those procedures do not remove the essence of the rights guaranteed by Article 3.

(b) The right to a "secret" ballot does not imply an absolute standard of privacy; a fair balance must be struck between the degree of protection given to individual voters, and the general interest of the community.

(c) Innovative voting methods promote greater turn-out and participation, which are legitimate purposes likely to be recognised by the courts.

(d) The courts are likely to respect the decision taken by Parliament on how the balance between individual rights and wider benefit should be achieved.

(e) One of the purposes of the pilot scheme is to gather information on the benefits and disadvantages of the various methods, so that future decisions on how here the balance should be achieved may be better informed. The courts are likely to be particularly cautious about finding incompatibility in these circumstances.

(f) The Bill, together with existing law and practice and with provisions intended to be made by subordinate legislation, will put in place a number of safeguards designed to protect voting secrecy.

(g) The courts are likely to have regard to the practice in other European states.

### ***Evidence of effect on secrecy***

11. The degree to which the innovative voting methods proposed for the 2004 election are likely to have an adverse effect on secrecy and freedom from influence must, at this stage, be a matter of speculation.

12. In their evaluation of the 2003 pilots, the Electoral Commission said that the number of complaints about lack of secrecy had arisen with the wider application of electoral pilots. There were strong concerns expressed about breaches of secrecy but the majority of voters were reassured with simple explanations about the security in place and how this was managed.

13. Many people still removed or defaced barcodes on ballot papers but it is also clear that these people were unaware of the existence of serial numbers on ballot papers used in traditional elections. The Commission concluded that the technology often had the effect of illuminating practices that were hitherto unnoticed.

14. Some members of the public, as well as candidates and agents, express concern over the possibility that postal voting could increase the likelihood of dominant members of a household coercing others in the house to vote the way they wanted. Scope (the national disability charity) also points out that remote voting forces many disabled people to ask for assistance from family members or enablers; some report they prefer to ask polling officials.

### ***Evidence of effect on turnout, participation and access***

15. Participation rates in electoral pilots have been encouraging. The average turnout of approximately 49% for all-postal pilots was significantly higher than the turnout across England and as whole, where 34.9% of the electorate voted. The Electoral Commission's indicative figure of the size of increase in e-voting is in the region of 0-5%.

16. The Electoral Commission engaged Scope to conduct a disability access audit of the 2003 electronic pilot schemes. Scope's overall assessment was that access to electronic voting systems would benefit from the use of consistent terminology across systems, and standardisation of some elements such as the length of voter identification codes. Authorities should also keep in mind the access requirements unrelated to the technology, such as access to the kiosk location and the design and availability of voter information materials. The majority of disabled people surveyed by Scope found voting by post easy and often commented positively that they no longer had to fight their way into inaccessible polling stations. Postal voting was also easier for some disabled people (especially those with variable conditions) as they could take more time with their ballot.

### **Safeguards**

17. It is an offence to exercise undue influence on a voter to cause him or her to vote or to refrain from voting, or on account of having voted or not voted (section 115 of the Representation of the People Act 1983). Bribery offering money to vote or not to vote or as an inducement to procure the election of a particular candidate (section 113) and treating - that is, offering inducements other than money for voting or not voting - (section 114) are also offences. In addition, section 66(3) of the 1983 Act also makes it an offence for any person 'to interfere with or attempt to interfere with a voter when recording his vote' or to induce a voter to show how he has voted to any other person. Personation, that is pretending to be another voter, living, dead or fictional - is also an offence. All these offences apply as much to proxy voters as to voters casting their own votes.

18. There is therefore a range of existing offences in place to protect electors who wish to vote by post from duress. The Department, however, acknowledges that a voter subject to undue influence or interference may not be in a position to resist it, or be aware that such actions are illegal, or have any wish to take the matter forward. It therefore intends to put in place, in the legislation enabling the pilots to go forward, measures which will assist voters to be aware of their rights and give them the opportunity to exercise them.

19. The Electoral Commission recommended a number of improvements to aid secrecy of the ballot in remote voting. Secrecy warnings attached to the literature accompanying postal voting papers will make it plain both to electors and others that voting is an important and private matter for an individual voter. Votes should be cast in secret, even if a voter does not mind their voting intentions being known. Although a voter may seek assistance in voting from family members or friends, such assistance should only be sought and given when it is absolutely necessary. The warnings will point out that influencing voters, or inducing them to vote for particular candidates, or interfering with them whilst they are voting, or inducing them to show their ballot paper to anyone else, are all offences. Provision of these secrecy warnings will be required by the detailed Orders made under section 2 of the Bill. Extra publicity aimed at getting these messages across will also be provided.

20. In addition, in the pilot areas, there will be some limited provision for electors to attend in person and cast their votes in a supervised environment. The equivalent of polling stations will therefore be provided - at least one in each local authority area - to allow electors to take their ballot papers and mark them (or use the electronic voting equipment) secretly, but under the protection of an election official. This choice will give those who fear lack of secrecy at borne the opportunity to vote more or less in the traditional way.

### **Article 14: Prohibition of discrimination**

21. The Article is only engaged where a person's treatment comes within the ambit of another Convention right. Here, Article 14 would be read with Article 3 of Protocol I. The argument would be that a voter in a pilot region enjoys a lower guarantee of secrecy and free expression than a voter in a region where traditional polling methods are used.

22. The Department may wish to argue, were a case to be brought, that a person's location in a particular region of the UK is not a "status" for the purpose of Article 14. However, it recognises that the argument may not succeed; recent case-law suggests that geographical place of residence does indeed amount to a "status": see, for example. *R (Carson) v Secretary of State for Work and Pensions*, Court of Appeal, 17 June 2003.

23. The Department would accept, assuming that an argument on "status" does not succeed, that a voter in a pilot region and a voter elsewhere are in a comparable position, so that any difference in treatment between them would need to be justified.

24. The Department would therefore seek to establish a reasonable and objective justification for the difference in treatment.

25. The Department's arguments would be similar to those raised under Article 3 itself. In particular, the Department would draw attention to the benefits likely to accrue from the introduction of innovative voting methods on a pilot basis rather than nationwide:

(a) turnout may be measured as between pilot and non-pilot regions, ensuring a more accurate evidential basis for deciding whether innovative voting should be introduced more widely;

(b) introducing innovative voting methods nationwide before they have been piloted would increase the risk of failure, which would obstruct the effective administration of the entire election (and would jeopardise the Article 3 rights of the entire electorate).

26. Finally, the Department has considered the compatibility of the provisions introducing different rules of criminal law and procedure between different electoral regions.

27. In particular, the lengthening of the time limit for prosecutions from one year (nationwide, except in the pilot areas) to two years in exceptional circumstances (in the pilot areas) may be thought to raise an issue under Article 6 (right to a trial within a reasonable time), read with Article 14. The Department has concluded that time spent investigating an offence, before a charge is brought, does not engage this guarantee in Article 6; the right is therefore unlikely to be engaged.

28. The fact that an offence of personation is arrestable without warrant in one part of the country, but not in another, may raise an issue under Article 5 (right to liberty) read with Article 14; but the difference in treatment between those in pilot regions and those elsewhere is relatively small: all offences are arrestable with a warrant; and the fact that an offence is arrestable does not remove the requirement for a person to be brought promptly before a court. The Department therefore regards the need for stronger anti-abuse measures to attend the innovative voting methods as providing adequate justification for the difference in treatment.

*Department for Constitutional Affairs*

*28 August 2003*

## **Appendix 3: Company Directors' Performance and Compensation Bill**

### **Letter from the Chair to Mr Archie Norman MP**

As part of its function to consider human rights in the United Kingdom, the Joint Committee on Human Rights examines all bills introduced to either House with a view to reporting to each House on their compatibility with Convention rights under the Human Rights Act 1998, and with other rights which arise in international law under human rights instruments by which the United Kingdom is bound. The Committee is currently considering the human rights implications of the Company Directors' Performance and Compensation Bill, which you introduced to the House of Commons.

As you know, the Bill would amend the Companies Act 1986 by inserting a new section 316A and a new paragraph 6(5) of Schedule 7A to the Act. The combined effect would be to limit any compensation or payment payable to a director for termination of his or her office or employment to 'such amount as is ... fair and reasonable having regard to any failure by the director in the performance of his duties either in his office as director or as an employee or both.' That would apply, 'Notwithstanding anything contained in a company's articles, or in any contract...': proposed new section 316A(1).

This appears to make it possible to deny payment of money legally due to a director, interfering with the director's right to peaceful enjoyment of possessions and depriving the director of property protected by Article 1 of Protocol No. 1 to the ECHR. The Committee is concerned about the possibility that this might be incompatible with two sets of rights under that Article: first, the right of the director to money legally due to him or her; secondly, the right of the company to use its property and enter into contracts as seems best to it. Under Article 1, compensation for a deprivation of property in the public interest is required save in exceptional circumstances, and any control on the use of property must strike a fair balance between the rights of property owners and the general public interest (which may itself demand compensation in some circumstances).

In the light of this, the Committee is considering whether to draw the attention of each House to the human rights implications of the Bill. The Committee understands the difficulties which the sponsors of private members' bills, with limited resources, often face in responding to questions from the Committee about the human rights implications of their bills. Nevertheless, without suggesting that you are under any obligation to respond to its concerns, the Committee would of course give full weight to any representations which you might wish to put before it.

The Committee is likely to be deciding on 17 November 2003 whether, and if so how, to report to each House on the Bill, and so would be unable to take account of representations received after 14 November 2003.

*5 November 2003*

## **Appendix 4: Consumer Protection (Unsolicited E-mails) Bill**

### **Letter from the Chair to Mr Paul Flynn MP**

As part of its function to consider human rights in the United Kingdom, the Joint Committee on Human Rights examines all bills introduced to either House with a view to reporting to each House on their compatibility with Convention rights under the Human Rights Act 1998, and with other rights which arise in international law under human rights instruments by which the United Kingdom is bound. The Committee is currently considering the human rights implications of the Consumer Protection (Unsolicited E-mails) Bill, which you introduced to the House of Commons.

As you know, the Bill would amend the Consumer Protection (Distance Selling) Regulations 2000 by adding a new regulation 24A, making it an offence to send unsolicited commercial E-mails. A commercial E-mail would be one that advertises goods and services.

This would interfere with the right to freedom of expression under ECHR Article 10.1. That Article protects commercial expression, although an interference with it is easier to justify under Article 10.2 than an interference with (for example) political expression. The Bill would be likely to meet the requirement in Article 10.2 of being 'prescribed by law', and would serve a legitimate aim, namely the protection of the rights of others (the right to

respect for private life under ECHR Article 8, and the right to be free of unwanted interference with one's property, to wit the hard disk of a computer which can become clogged up with unwanted messages and infected by viruses).

However, the Committee is concerned that the interference might fail the test of being 'necessary in a democratic society' for that purpose, that is a proportionate response to a pressing social need, so as to be justifiable under Article 10.2. While there might well be a pressing social need to interfere with freedom of expression for this purpose, the issue of proportionality seems to the Committee to be more difficult. The Bill would, in practice, make nearly all advertising by E-mail criminal. That might be regarded as an unnecessarily heavy-handed approach when there could be less intrusive ways of protecting people's right to be free of nuisance E-mails. For example, the mischief at which the Bill aims could be more precisely targeted. Alternatively, a register could be established of people who do not want to receive such E-mails, and it could be made an offence to send the E-mails to those people. Legislation could also provide for a defence where it could be shown that the sender did not know, and had no reason to know, that the recipient is on the list (for example because the recipient's E-mail address had recently changed).

In the light of this, the Committee is considering whether to draw the attention of each House to the human rights implications of the Bill. The Committee understands the difficulties which the sponsors of private members' bills, with limited resources, often face in responding to questions from the Committee about the human rights implications of their bills. Nevertheless, without suggesting that you are under any obligation to respond to its concerns, the Committee would of course give full weight to any representations which you might wish to put before it.

The Committee will be deciding on 17 November 2003 whether, and if so how, to report to each House on the Bill, and so would be unable to take account of representations received after 14 November 2003.

*5 November 2003*

### **Letter from Mr Paul Flynn MP to the Chair**

Many thanks for your letter regarding the above Bill. There are several points which I wish to make in response to the matters you raise.

Firstly, the Bill would prohibit only unsolicited emails, and whilst protecting the privacy of Internet users and freeing them of 'unwanted interference' with their property, it does not prohibit any communication, only those to whom that communication can be sent. Therefore the freedom of speech of individuals and companies is protected, whilst simultaneously safeguarding the privacy of individuals.

The EU Privacy and Electronic Communication Directive, 2002/58/EC of the European Parliament and of the Council, establishes opt-in as the default for commercial e-mail, thus banning unsolicited commercial communications. The Directive states that it is "justified" to require "prior explicit consent" of recipients for commercial email (Article 40). HC Bill 199 is consistent, and proportional, with this Directive.

The alternative that you suggest, of a register consisting of people who do not wish to receive such emails (opt-out), is unlikely to comply with the above EU Directive. Customer relationships are unaffected by this directive which comes onto force on 11 December 2003. Those wishing to receive commercial email retain their right to do so. Therefore, HC Bill 199 is a proportionate response in light of the EU regulations.

Further, the Bill proposes similar legislation to that which currently governs facsimile communication, under the Telecommunications (Data Protection and Privacy) (Direct Marketing) Regulations 1998. These Regulations prohibit unsolicited commercial fax to individuals. The Consumer Protection (Unsolicited E-mails) Bill is consistent with this legislation, and adopts a proportionate response.

On the matter of demonstrating a pressing social need for this legislation it is important to note that the vast volume of commercial e-mail is threatening to overwhelm the e-mail system. AOL, one of the largest Internet Service Providers, was reported to be blocking an average of 780 million unwanted messages every day, whilst its average delivery was 680 million (The Economist, April 24 2003). This is replicated across the Internet Service Providers (ISPs), and constitutes a significant risk to their ability to maintain email services. Steve Linford, a renowned fighter of unsolicited commercial mail, has stated that the "email system is on the edge of meltdown" (The Observer, 1/06/2003). Unsolicited commercial email now accounts for over half of all emails sent (MessageLabs, 2003). The sheer scale of the problem caused by Unsolicited Commercial Mail, and the likely repercussions for the email system are such that this legislation is entirely proportional. The extent to which email is used for individual and business purposes means that safeguarding access to email is a pressing social need. It is also important to note that the collapse of the electronic mail system would inhibit the right of free speech far more than its regulation.

Many other European countries have introduced similar legislation without contravening the proportionality inherent in the European Convention on Human Rights. Denmark and Austria have both prohibited the sending of commercial email without the prior permission of the recipient, and both have avoided breaching the Convention on Human Rights. Directive 2002/58/EC states that there should be harmonisation on these issues amongst European countries in order to combat the threat posed to human right, and the effectiveness of the email system. It notes the difficulties that are caused for the electronic communication networks and terminal equipment (Article 40). It is on this basis that it is considered justifiable to ban unsolicited commercial email.

The Bill is of such a nature that any misinterpretation that would adversely affect a person's human rights would be extremely difficult. The terms are clearly and unambiguously defined, and the limits of the Bill clear. Further to this the Human Rights Act, 1998, states that all legislation must be read and given effect in such a way that it complies with the relevant articles and protocols of the European Convention on Human Rights. I maintain that HC Bill 199 does not contravene the European Convention on Human Rights, and that the nature of the Bill and existing UK legislation prevents any interpretation that may damage human rights as set out in the Convention.

In this situation, the response, which targets unsolicited commercial email alone, is entirely proportional. It protects the privacy of individuals, whilst ensuring the right to free speech is upheld. Further it is consistent with approaches taken by the Houses of Parliament, the European Council and Parliament, and other European signatories to the Convention on Human Rights. This is urgent legislation that seeks to protect Internet users, and ISPs, from a problem that violates human rights specified in the European Convention as well as causing very real practical problems.

*14 November 2003*

## Appendix 5: Corporate Responsibility Bill

### Letter from the Chair to Ms Linda Perham MP

As part of its function to consider human rights in the United Kingdom, the Joint Committee on Human Rights examines all bills introduced to either House with a view to reporting to each House on their compatibility with Convention rights under the Human Rights Act 1998, and with other rights which arise in international law under human rights instruments by which the United Kingdom is bound. The Committee is currently considering the human rights implications of the Corporate Responsibility Bill, which you introduced to the House of Commons.

The Committee is concerned about the possibility that this Bill, by requiring companies to make certain information available to the public and by interfering with the right of a company to use its resources as it sees fit, might interfere with the right to respect for private life under ECHR Article 8 and the right to peaceful enjoyment of possessions under Article 1 of Protocol 1 to the ECHR. The Committee's Legal Adviser wrote to you on 24 July 2002 about a similar Bill which you introduced in the last session: see 26th Report of the Committee (HCP 1295/HL Paper 182 01/02 enclosed). The Committee understands the difficulties which the sponsors of private members' bills, with limited resources, often face in responding to questions from the Committee about the human rights implications of their bills. Nevertheless, without suggesting that you are under any obligation to respond to its concerns, the Committee wants to give you a further opportunity to comment should you wish to do so.

The Committee is likely to be deciding on 17 November 2003 whether to draw the attention of each House to the Bill in similar terms to those of its report of last year, and so would be unable to take account of representations received after 14 November 2003.

*5 November 2003*

### Memorandum from S E Cohen, legal adviser, on behalf of Ms Linda Perham MP

I am writing to you as requested to let you have some general thoughts with regard to the above mentioned Bill and its compatibility or otherwise with the Human Rights Act 1998.

I have noted the various points raised by the Parliamentary Committee in their letter of 24 July 2002 to Linda Perham MP. I propose dealing with the various relevant Convention Rights in turn but before doing so will address the general issue raised of lack of certainty.

As the committee points out The European Convention on Human Rights requires that state to act "in accordance with the law" (Article 1 First Protocol). The principle of legal certainty is inherent in the Convention as a whole.

Some useful guidance on the principle of certainty can be found in the Judgment of the European Court of Human Rights in *Sunday Times v United Kingdom* (1979) 2 EHRR 245:

"First the law must be adequately accessible: the citizen must be able to have an indication that is adequate in all the circumstances of the legal rules applicable to a given case. Secondly, a norm can not be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be

foreseeable with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a great or lesser extent, are vague and whose interpretation and application are questions of practice.”

The Bill has raised concerns with the Committee in relation to the following convention rights:-

### 1. Right to a fair trial

Article 6 of the Convention applies to both criminal and civil proceedings and can be invoked to protect companies and their officers.

The right to a fair trial in a criminal case incorporates a restriction on self-incrimination which means that prosecuting authorities may not be able to rely on evidence obtained through compulsion. This is the concern raised by the Committee. The privilege against self-incrimination is not absolute and guidance can be found in *Brown v Stott* (2001) 2 WLR 817 where Lord Bingham stated:-

“The jurisprudence of the European Court (of Human Rights) very clearly establishes that while the overall fairness of a criminal trial cannot be compromised, the constituent rights comprised whether expressly or implicitly, within Article 6 are not themselves absolute. Limited qualification of these rights is acceptable if reasonably directed by national authorities towards a clear and proper public objective and if represent no greater qualification than the situation calls for.”

The common law recognises a privilege with regard to documents. However the position so far as the Strasbourg jurisprudence is concerned is far from clear. In *Funke v France* (1993) 16 EHRR 297 the European Court of Human Rights found that a conviction for failure to produce documents was a violation of Article 6 and drew no distinction between the compulsion to produce documents and the answering of questions.

### 2. Right to respect for private life

The Committee has expressed concern with Clause 5 of the Bill which requires a company to make certain papers available for inspection to the public. However, there would appear to be no Strasbourg case law directly on the point of whether a corporation can claim a right to privacy under Article 8. Such case law as there is would seem to indicate that the right is of a personal nature.

In *Hoechst v EC Commission* (1989) ECR 2859 the European Court of Justice indicated “the protective scope of (Article 8) is concerned with the development of man’s personal freedom.

If Article 8 is engaged et al it would be in its application to “correspondence”. This encompasses letters, telephone calls, faxes and other forms of communication such as e-mail. Interference with non-legal “correspondence” is permitted but would have to be justified under Article 8(2) i.e. “in accordance with the law and (as) necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

To be compatible with Article 8 should it apply, the Bill and its relevant provisions must be aimed at protecting one or more of the above interests which are exhaustive.

A restriction will be “necessary in a democratic society” only if there is a pressing social need for restriction and the restriction is proportionate to the aim of responding to that need in that it does not go further than is necessary.

Lawyer-client privilege is accorded a high degree of protection by Article 8 and the bill ought perhaps to provide explicit safeguards in this regard.

### 3. Freedom of Expression

Article 10 can be invoked by both natural and legal persons and includes the right to receive and impart information. It does not make obligatory the disclosure of information.

### 4. Protection of Property

The requirement in the Bill to consult or to publish reports and assessments before deciding how to deal with property amounts to a control or interference and thus as the Committee points out engages Article 1 of the First Protocol which applies to “every natural or legal person”.

An assessment has to be undertaken of whether the right balance has been achieved between ‘the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental right’ (the ‘fair balance’ test). The application of the test will vary according to the measure in issue and control is harder to justify than an interference and it may be arguable the Bill seeks to do the latter rather than the former and accordingly the relevant provision may be easier to justify. There must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is no concept of the ‘public interest’ as such but it is necessary for there to be a legitimate aim in the sense of the Bill and/or its relevant provisions not being ‘manifestly without reasonable foundation’.

The scope for review by a court of the object or purpose of a legislative measure of other interference with property is limited. The state has a wide margin of appreciation in implementing social and economic policies and the legislature’s judgement as to what is in the public or general interest will usually be respected.

It is worth noting it has been suggested by the Strasbourg Court only interferences which touch on the financial value of property can engage this Convention Right. It may be questioned whether the provisions of the Bill highlighted by the Committee even need to be justified in this regard although the economic interests connected with the running of a business are capable of being protected under Article 1 of the First Protocol.

*11 November 2003*

## **Appendix 6: Fishery Limits (United Kingdom) Amendment Bill**

### **Letter from the Chair to Mr Austin Mitchell MP**

As part of its function to consider human rights in the United Kingdom, the Joint Committee on Human Rights examines all bills introduced to either House with a view to reporting to each House on their compatibility with Convention rights under the Human Rights Act 1998, and with other rights which arise in international law under human rights instruments by which the United Kingdom is bound. The Committee is currently considering the human rights implications of the Fishery Limits (United Kingdom) Amendment Bill, which you introduced to the House of Commons.

As you know, the Bill would amend the Fishery Limits Act 1976 in various ways. Among other effects, it would:

require all fish caught within British fishing limits to be landed at a port within the British Islands and reported to the Ministers and made available for inspection; and

make it a criminal offence (with a potential prison sentence) to violate those requirements.

The Committee is concerned about the possibility that these provisions would be likely to interfere with the right to peaceful enjoyment of possessions under Article 1 of Protocol No 1 to the ECHR.

In the light of this, the Committee is considering whether to draw the attention of each House to the implications of the Bill for those rights. The Committee understands the difficulties which the sponsors of private members' bills, with limited resources, often face in responding to questions from the Committee about the human rights implications of their bills. Nevertheless, without suggesting that you are under any obligation to respond to its concerns, the Committee would of course give full weight to any representations which you might wish to put before it.

The Committee is likely to be deciding on 17 November 2003 whether, and if so how, to report to each House on the Bill, and so would be unable to take account of representations received after 14 November 2003.

*5 November 2003*

### **Letter from Mr Austin Mitchell MP to the Chair**

This is a late response to your letter of 5 November which I have only just received. You say the committee is concerned that two provisions of my Fishery Limits Bill interfere with peaceful enjoyment of possessions.

I'm afraid you have misread the bill. The requirements that fish be landed is not as you quote it "and" reported but "or reported" This can hardly be an interference with human rights because the fishermen catch the fish under quota. The provision is taken from the regulations for the Common Fisheries Policy coupled with the regulations enforced by HMG on quota hoppers, i.e. foreign vessels registered as British which are now required to land a proportion of their catch at British ports.

I realise that you will be deciding this issue on 17 November but I do hope you'll take this explanation into account. On a personal level I'll delighted for your committee to rule that these provisions interfere with the rights of fishermen under Article I of Protocol No I because in ruling that you will be ruling that the CFP as at present operated infringes the rights of British fishermen and quota hoppers registered as British but foreign owned. As a critic of the CFP and the impositions it makes on the rights of British fishermen to fish in their own waters that will be wonderful ammunition for me so please go ahead and use my late representations as a reason for not considering my arguments However it might be fairer to you to say that whatever my personal feelings you should be made aware of this.

*16 November 2003*

## **Appendix 7: Medical Practitioners and Dentists (Professional Negligence Insurance) Bill**

### **Letter from the Chair to Dr Desmond Turner MP**

As part of its function to consider human rights in the United Kingdom, the Joint Committee on Human Rights examines all bills introduced to either House with a view to reporting to each House on their compatibility with Convention rights under the Human Rights Act 1998, and with other rights which arise in international law under human rights instruments by which the United Kingdom is bound. The Committee is currently considering the human rights implications of the Medical Practitioners and Dentists (Professional Negligence Insurance) Bill, which you introduced to the House of Commons.

As you know, the Bill would make it a condition of registration to practice medicine or dentistry that the practitioner should hold approved indemnity insurance cover. The Bill as drafted has certain lacunae. For example, it does not currently define 'approved indemnity cover', or mention professional negligence insurance except in the long and short titles. It would also engage the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR.

While the requirement seems intrinsically likely to be justifiable under that Article, the Committee is concerned that the drafting could prevent the Bill from meeting the demands of the principle of legal certainty which forms an essential part of any justification for an interference with a right under the ECHR.

In the light of this, the Committee is considering whether to draw the attention of each House to the human rights implications of the Bill. The Committee understands the difficulties which the sponsors of private members' bills, with limited resources, often face in responding to questions from the Committee about the human rights implications of their bills. Nevertheless, without suggesting that you are under any obligation to respond to its concerns, the Committee would of course give full weight to any representations which you might wish to put before it.

The Committee is likely to be deciding on 17 November 2003 whether, and if so how, to report to each House on the Bill, and so would be unable to take account of representations received after 14 November 2003.

*5 November 2003*

## **Appendix 8: Street Furniture (Graffiti) Bill**

### **Letter from the Chair to Ms Siobhain McDonagh MP**

As part of its function to consider human rights in the United Kingdom, the Joint Committee on Human Rights examines all bills introduced to either House with a view to reporting to each House on their compatibility with Convention rights under the Human Rights Act 1998, and with other rights which arise in international law under human rights instruments by which the United Kingdom is bound. The Committee is currently considering the human rights implications of the Street Furniture (Graffiti) Bill, which you introduced to the House of Commons.

As you know, the Bill would allow a local authority to serve a notice on the owner of any surface of land owned, occupied or controlled by a statutory undertaker, or any building, structure, apparatus, plant or other object in or on any such land, requiring the owner to

remove or obliterate graffiti from that surface within 14 days, if the local authority considers the graffiti to be detrimental to the amenity of the area or offensive. The owner would have a right of appeal to a magistrates' court. If the owner fails to comply with the notice (subject to any appeal) or asks the local authority to remove the graffiti, the local authority may remove it and recover from the owner the expenses reasonably incurred in doing so.

Where the owner wants to retain the graffiti, a notice would interfere with the right to freedom of expression under ECHR Article 10, and would require justification under Article 10.2. The Committee is concerned that detriment to the amenity of the area or offensiveness might not justify the interference in terms of Article 10.2 unless the graffiti are in some way outrageous (for example, provoking public disorder or crime, or threatening morality, or libelling someone) and are visible to the public at large, or violate planning requirements. The Bill as currently drafted contains no such limitation. This raises the possibility that a notice would not serve a legitimate purpose under ECHR Article 10.2 and/or would be disproportionate to any legitimate purpose.

The Committee is also provisionally of the view that a notice would engage the right of the owner of the surface to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the ECHR. It represents a control over property, which is justifiable if it serves a legitimate state aim (protecting public amenity and preventing offensiveness might be such aims) and represents a fair balance between the right and competing public interests. The Bill could lead to considerable burdens being imposed on owners. For example, the effect of a notice being served on London Underground statutory undertakers in respect of graffiti would be very considerable. It is not clear to the Committee that imposing the cost of compliance on the statutory undertaker, which is not likely to be responsible for the presence of the graffiti, would represent a fair balance between the undertaker's rights and the public interest (or, in other words, be a proportionate interference with the statutory undertaker's rights).

In the light of this, the Committee is considering whether to draw the attention of each House to the human rights implications of the Bill. The Committee understands the difficulties which the sponsors of private members' bills, with limited resources, often face in responding to questions from the Committee about the human rights implications of their bills. Nevertheless, without suggesting that you are under any obligation to respond to its concerns, the Committee would of course give full weight to any representations which you might wish to put before it.

The Committee is likely to be deciding on 17 November 2003 whether, and if so how, to report to each House on the Bill, and so would be unable to take account of representations received after 14 November 2003.

*5 November 2003*

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

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\* indicates a Government Bill

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

| <i>BILL TITLE</i>  | <i>Report No.</i>   |
|--|---|
| Animals (Electric Shock Collars)                                 | 7 <sup>th</sup>   |
| <b>Anti-social Behaviour*</b>                                    | <b>13<sup>th</sup> &amp; 15<sup>th</sup></b>                                |
| Arms Control & Disarmament [Lords]*                              | 1 <sup>st</sup>   |
| <b>Aviation (Health)</b>   | <b>17<sup>th</sup></b>  |
| Aviation (Offences)  | 4 <sup>th</sup>   |
| <b>Children's Commissioner for England</b>                       | <b>17<sup>th</sup></b>  |
| <b>Communications*</b>   | <b>1<sup>st</sup> &amp; 4<sup>th</sup></b>                                  |
| <b>Community Care (Delayed Discharges)*</b>                      | <b>1<sup>st</sup>, 3<sup>rd</sup>, 7<sup>th</sup> &amp; 8<sup>th</sup></b>  |
| Community Prosecution Lawyers                                    | 12 <sup>th</sup>  |
| Company Directors (Health and Safety)                            | 12 <sup>th</sup>  |
| <b>Company Directors' Performance &amp; Compensation</b>         | <b>17<sup>th</sup></b>  |
| Consolidated Fund*   | 4 <sup>th</sup>   |
| Consolidated Fund (Appropriation)*                               | 1 <sup>st</sup>   |
| Consolidated Fund (No. 2)*                                       | 7 <sup>th</sup>   |
| Consolidated Fund (Appropriation)(No.2)*                         | 15 <sup>th</sup>  |
| <b>Consumer Protection (Unsolicited E-mails)</b>                 | <b>17<sup>th</sup></b>  |
| Co-operatives & Community Benefit Societies                      | 4 <sup>th</sup>   |
| <b>Corporate Responsibility</b>                                  | <b>17<sup>th</sup></b>  |
| <b>Courts [Lords]*</b>   | <b>1<sup>st</sup> &amp; 4<sup>th</sup></b>                                  |
| <b>Crime (International Co-operation) [Lords]*</b>               | <b>1<sup>st</sup>, 3<sup>rd</sup> &amp; 7<sup>th</sup></b>                  |
| <b>Criminal Justice*</b>   | <b>1<sup>st</sup>, 2<sup>nd</sup>, 7<sup>th</sup> &amp; 11<sup>th</sup></b> |
| Crown Employment (Nationality)                                   | 4 <sup>th</sup>   |
| Dealing in Cultural Objects (Offences)                           | 4 <sup>th</sup>   |
| <b>Disabled People (Duties of Public Authorities)</b>            | <b>8<sup>th</sup></b>   |
| Draft Constitutional Treaty on the Future of Europe (Referendum) | 17 <sup>th</sup>  |
| Electricity (Miscellaneous Provisions)*                          | 4 <sup>th</sup>   |
| Emergency Broadcasting System                                    | 17 <sup>th</sup>  |
| Endangered Species (Illegal Trade)                               | 4 <sup>th</sup>   |
| Equality [Lords]   | 4 <sup>th</sup>   |
| European Communities (Regulations)                               | 17 <sup>th</sup>  |
| <b>European Parliamentary and Local Elections (Pilots)*</b>      | <b>17<sup>th</sup></b>  |
| European Parliament (Representation)*                            | 1 <sup>st</sup>   |
| European Union (Accessions)*                                     | 12 <sup>th</sup>  |
| European Union (Implications of Withdrawal) [Lords]              | 1 <sup>st</sup>   |
| <b>Extradition*</b>  | <b>1<sup>st</sup></b>   |
| <b>Female Genital Mutilation</b>                                 | <b>8<sup>th</sup></b>   |
| Finance*   | 12 <sup>th</sup>  |

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| Fireworks   | 7 <sup>th</sup>  |
| <b>Fire Services*</b>   | <b>8<sup>th</sup> &amp; 12<sup>th</sup></b>  |
| <b>Fishery Limits (United Kingdom) Amendment</b>                              | <b>17<sup>th</sup></b>   |
| Food Colouring and Additives Bill   | 15 <sup>th</sup>   |
| Food Justice Strategies   | 12 <sup>th</sup>   |
| Food Labelling  | 8 <sup>th</sup>  |
| <b>Freedom of Information Act 2000 (Commencement)</b>                         | <b>17<sup>th</sup></b>   |
| Government Powers (Limitation)  | 8 <sup>th</sup>  |
| Greater London Authority Act 1999 (Repeal) [Lords]                            | 3 <sup>rd</sup>  |
| <b>Greenbelt Protection</b>   | <b>8<sup>th</sup></b>  |
| Harbours [Lords]  | 8 <sup>th</sup>  |
| Health (Wales)*   | 1 <sup>st</sup>  |
| Health and Safety at Work (Offences)  | 4 <sup>th</sup>  |
| Health and Social Care (Community Health & Standards)*                        | 8 <sup>th</sup>  |
| <b>High Hedges [Lords]</b>  | <b>1<sup>st</sup></b>  |
| <b>High Hedges (No. 2)</b>  | <b>8<sup>th</sup></b>  |
| House of Lords (Amendment) [Lords]  | 7 <sup>th</sup>  |
| Household Waste Recycling <i>previously Municipal Waste Recycling</i>         | 7 <sup>th</sup>  |
| <b>Housing (Overcrowding)</b>   | <b>8<sup>th</sup></b>  |
| Human Fertilisation & Embryology (Amendment)                                  | 7 <sup>th</sup>  |
| <b>Human Fertilisation &amp; Embryology (Deceased Fathers)</b>                | <b>8<sup>th</sup></b>  |
| <b>Hunting*</b>   | <b>3<sup>rd</sup>, 7<sup>th</sup> &amp; 17<sup>th</sup></b>                                |
| Income Tax (Earnings & Pensions)*   | 4 <sup>th</sup>  |
| Industrial Development (Financial Assistance)*                                | 1 <sup>st</sup>  |
| Legal Deposit Libraries   | 8 <sup>th</sup>  |
| <b>Licensing [Lords]*</b>   | <b>1<sup>st</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 12<sup>th</sup> and 15<sup>th</sup></b> |
| Litter & Fouling of Land by Dogs  | 7 <sup>th</sup>  |
| Local Communities Sustainability  | 12 <sup>th</sup>   |
| Local Government*   | 1 <sup>st</sup>  |
| Marine Safety   | 7 <sup>th</sup>  |
| <b>Medical Practitioners and Dentists (Professional Negligence Insurance)</b> | <b>17<sup>th</sup></b>   |
| Ministerial and other Salaries (Amendment) [Lords]                            | 7 <sup>th</sup>  |
| Museums and Galleries   | 17 <sup>th</sup>   |
| National Lottery (Funding of Endowments)                                      | 7 <sup>th</sup>  |
| National Minimum Wage (Enforcement Notices) [Lords]*                          | 1 <sup>st</sup>  |
| National Minimum Wage (Tips)  | 17 <sup>th</sup>   |
| Needle Stick Injury   | 12 <sup>th</sup>   |
| Northern Ireland Assembly Elections*  | 7 <sup>th</sup>  |
| Northern Ireland Assembly (Elections and Periods of Suspension)*              | 12 <sup>th</sup>   |
| <b>Northern Ireland (Monitoring Commission etc.) [Lords]*</b>                 | <b>17<sup>th</sup></b>   |
| <b>Patient (Assisted Dying) [Lords]</b>                                       | <b>7<sup>th</sup></b>  |
| <b>Patients' Protection [Lords]</b>   | <b>1<sup>st</sup></b>  |
| Pensioner Trustees and Final Payments   | 15 <sup>th</sup>   |
| Pensions (Winding-up)   | 7 <sup>th</sup>  |
| <b>Physical Punishment of Children (Prohibition)</b>                          | <b>17<sup>th</sup></b>   |
| <b>Planning &amp; Compulsory Purchase*</b>                                    | <b>3<sup>rd</sup></b>  |
| <b>Police (Northern Ireland) [Lords]*</b>                                     | <b>3<sup>rd</sup></b>  |

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|---|---|
| Prevention of Driving under the Influence of Drugs [Lords]                  | 8 <sup>th</sup>                             |
| Prevention of Driving under the Influence of Drugs (Road Traffic Amendment) | 8 <sup>th</sup>                             |
| <b>Public Services (Disruption) [Lords]</b>                                 | <b>3<sup>rd</sup></b>                       |
| Ragwort Control <i>previously Equine Welfare (Ragwort Control)</i>          | 7 <sup>th</sup>                             |
| Railways & Transport Safety*  | 4 <sup>th</sup>                             |
| Regional Assemblies (Preparations)*   | 1 <sup>st</sup>                             |
| Regulation of Child Care Providers  | 12 <sup>th</sup>                            |
| Retirement Income Reform  | 7 <sup>th</sup>                             |
| Road and Street Works (Notice and Compensation)                             | 12 <sup>th</sup>                            |
| Road Safety   | 15 <sup>th</sup>                            |
| Road Traffic (Amendment) [Lords]  | 1 <sup>st</sup>                             |
| <b>Sex Discrimination in Private Clubs</b>                                  | <b>8<sup>th</sup></b>                       |
| <b>Sexual Offences [Lords]*</b>   | <b>7<sup>th</sup> &amp; 12<sup>th</sup></b> |
| <b>Street Furniture (Graffiti)</b>  | <b>17<sup>th</sup></b>                      |
| Sunday Working (Scotland)   | 4 <sup>th</sup>                             |
| Sustainable Energy  | 8 <sup>th</sup>                             |
| Taxation (Information) [Lords]  | 12 <sup>th</sup>                            |
| Telecommunications Masts (Railways)   | 15 <sup>th</sup>                            |
| <b>Traveller Law Reform</b>   | <b>12<sup>th</sup></b>                      |
| UK Elections (Observers)  | 17 <sup>th</sup>                            |
| Voting Age (Reduction to 16) [Lords]  | 1 <sup>st</sup>                             |
| Waste & Emissions Trading [Lords]*  | 1 <sup>st</sup>                             |
| Water [Lords]*  | 7 <sup>th</sup>                             |
| <b>Welfare of Laying Hens (Enriched Cages)</b>                              | <b>8<sup>th</sup></b>                       |
| Wild Mammals (Protection) (Amendment) [Lords]                               | 1 <sup>st</sup>                             |
| Wild Mammals (Protection) (Amendment) (No. 2) [Lords]                       | 1 <sup>st</sup>                             |