



House of Lords
House of Commons
Joint Committee on
Human Rights

Legislative Scrutiny: Political Parties and Elections Bill

Fourth Report of Session 2008-09

*Report, together with formal minutes and
written evidence*

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Joint Committee on Human Rights

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

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

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

Publications

The Reports and evidence of the Joint Committee are published by The Stationery Office by Order of the two Houses. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/commons/selcom/hrhome.htm.

Current Staff

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

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Summary

The Political Parties and Elections Bill is a Government Bill, which regulates party funding and election expenditure. The House of Commons Report stage is scheduled for Monday 2 February, and the Bill will subsequently be debated in the House of Lords. We raise two human rights issues relating to this Bill.

Entry and inspection powers

The Bill would give powers to the Electoral Commission to enter properties, including the homes of electoral candidates and their agents, in order to inspect financial information about individuals and organisations.

These entry and inspection powers interfere with the right to respect for private life and home (Article 8 of the European Convention of Human Rights). We are concerned that the Government has not adequately demonstrated a pressing social need for these powers of entry and inspection. Therefore, we recommend an amendment to delete the relevant provision from the Bill.

Prisoners' voting rights

No UK prisoners are, at present, able to vote, once convicted and sentenced. Over three years ago the European Court of Human Rights ruled that the ban on all prisoners from voting is disproportionate and incompatible with the Convention right to participate in free and fair elections (Article 3 of Protocol 1 of the European Convention). We regret that the Government has not used this opportunity to bring forward a proposal to address this judgment, and we call on the Government to explore whether it can amend this Bill to ensure that UK law is in line with the European Convention on Human Rights.

Government Bill

Bill drawn to the special attention of each House

1 Political Parties and Elections Bill

Date introduced to first House	17 July 2008
Date introduced to second House	4 December 2008
Current Bill Number	Bill 4
Previous Reports	

Background

1.1 This is a Government Bill first introduced in the House of Commons in July 2008. The Bill has been carried over from the last parliamentary session and is scheduled to being its Report stage in the House of Commons on 2 February. The Secretary of State for Justice, Jack Straw MP, has made a statement of compatibility under s. 19(1)(a) of the Human Rights Act 1998. The Explanatory Notes accompanying the Bill set out the Government's view of the Bill's compatibility with the Convention rights at paragraphs 132 - 150.¹

1.2 We wrote to the Secretary of State on 28 October 2008 to ask for further information about one of the provisions in the Bill relating to the investigatory powers of the Electoral Commission. We publish this correspondence, and the Secretary of State's response with this Report.² We comment on this and one other significant human rights issue, below.

The Commission's investigatory powers

1.3 The Bill would enable a person authorised by the Electoral Commission to enter premises occupied by an organisation or individual, at any reasonable time, and inspect any documents relating to the income and expenditure of the organisation or individual, for the purposes of the carrying out of the Commission's functions.³ This investigatory power can be used in relation to a wide range of individuals or entities, including a candidate and their election agent.⁴ It would enable an official of the Electoral Commission to enter the home of a candidate or their agent, without a warrant or any requirement of reasonable cause, and to inspect all of their personal financial documentation such as receipts and bank statements. It is a criminal offence to obstruct a person authorised to exercise this power of entry and inspection.⁵

1.4 Such a power to enter premises and inspect financial documents engages the right to respect for private life and home in Article 8 ECHR and the right to peaceful enjoyment of possessions in Article 1 Protocol 1 ECHR. The Explanatory Notes to the Bill correctly acknowledge (at para. 140) that the power of entry engages Article 1 Protocol 1 and (at para. 139) that the power of inspection engages Article 8 because it involves the inspection

¹ Bill 4 – EN.

² BILLS (07-08) 124 and BILLS (07-08) 125.

³ Paragraph 1(5) of proposed new Schedule 19A to the Political Parties, Elections and Referendums Act 2000, inserted by clause 2 and Schedule 1 of the Bill.

⁴ Paragraph 1(1)(f) and (g) of proposed new Schedule 19A.

⁵ Paragraph 13(2).

of personal information. The Explanatory Notes do not, however, acknowledge that the power of entry itself engages the right to respect for private life and home in Article 8 because the premises which can be entered may be the individual's home.

1.5 The Explanatory Notes to the Bill state that the power of entry and inspection features safeguards designed to ensure that the power will be exercised compatibly with Convention rights. Certain safeguards against the wrongful use of the power are set out on the face of the Bill. For example, entry must be at a reasonable time.⁶ The power to inspect is confined to financial documents.⁷ The power may not be used to enter premises and inspect documents for the purposes of an investigation by the Commission of a suspected offence or contravention of the Political Parties, Elections and Referendums Act 2000:⁸ there is a separate power of entry and search, requiring a warrant, where an offence or contravention is suspected.⁹ Authorisation of a person exercising the power must be in writing,¹⁰ and evidence of the authorisation must be produced by the person exercising the power if required to do so by the occupier of the premises.¹¹ There is protection for material which is subject to legal professional privilege.¹² The Commission is required to prepare and publish guidance as to the circumstances in which it is likely to exercise the power of entry and inspection,¹³ and to specify in its annual report the cases in which premises were entered under the power.¹⁴

1.6 Notwithstanding these safeguards, we were concerned about the breadth of the power and in particular the fact that the only precondition to its exercise is that it must be for the purpose of carrying out the Electoral Commission's functions. We therefore wrote to the Secretary of State pointing out that there is no requirement that the Commission have reasonable grounds to suspect anything before exercising the very broadly drafted power of entry and inspection. We asked what safeguards he could point to which would ensure that power will not be exercised incompatibly with the right to respect for private life and home in Article 8 ECHR and the right to peaceful enjoyment of possessions in Article 1 Protocol 1.

1.7 The Secretary of State in his response said that the power is "intentionally widely drawn in order to ensure that the Commission has available to it sufficient powers in order to perform its compliance monitoring function". He said that the Commission has indicated that such powers are "necessary for it to carry out proactive risk-based assessments of regulated entities ... for example, when its compliance staff visit party premises for the purposes of auditing policy development grants." In the vast majority of cases, the Commission says, this will be done on a voluntary basis, but "it is possible to envisage a situation where such an audit has begun, potential procedural irregularities are apparent, but a party or other individual or organisation to whom the power applies withdraws their co-operation." Though broad, the Secretary of State argues that the power is not unlimited

⁶ Paragraph 1(5)(a).

⁷ Paragraph 1(5)(b).

⁸ Paragraph 2(6).

⁹ Paragraph 3.

¹⁰ Paragraph 7.

¹¹ Paragraph 8.

¹² Paragraph 11.

¹³ Paragraph 14(1)(c).

¹⁴ Paragraph 15(2)(b).

because it must be exercised rationally and in accordance with the general principles of public law, and s. 6 of the Human Rights Act requires it to be exercised compatibly with Article 8 and Article 1 Protocol 1. In addition, the Secretary of State points to the fact that the Commission will be required to issue guidance on how it will use its power of entry and inspection, including the likely circumstances in which it will use the power, and it will be required to take that guidance into account in its exercise of the power.

1.8 We have considered carefully the Government’s justification for the power and the adequacy of the safeguards relied on. However, we have considerable difficulty understanding the necessity for this power at all, bearing in mind the availability of a power to enter and search with a warrant in cases where there are reasonable grounds for believing that an offence or a contravention has been committed.¹⁵ In the example the Government relies on to demonstrate the necessity of the wide power to enter and inspect, where co-operation has been withdrawn but “potential procedural irregularities are apparent”, it seems to us that the power to enter and search with a warrant would be available. We also note that the Government itself points out in its letter to us that the current equivalent power¹⁶ “has not been used since 16 February 2001, the date on which it became available.” That existing power is narrower than the power proposed in the current Bill, which extends its application to others such as candidates and their agents. We also note that the Government has still not indicated the likely circumstances in which the Commission would seek to use such a power. Such an important restriction on the scope of a very broad power should be on the face of the Bill, not left to future guidance to be drawn up by the body on which the power is conferred.

1.9 We remind the Government that the onus is on it to demonstrate a pressing social need for powers of entry and inspection that interfere with the right to respect for private life and home. We do not consider that the Government has shown a pressing social need to extend an already broad power of entry and inspection, which has never been used, and the Commission will already have available a power to enter and search, with a warrant, where there are reasonable grounds to suspect an offence under, or contravention of, election law. We therefore recommend that paragraph 1(5) of proposed new Schedule 19A to the Political Parties, Elections and Referendums Act 2000 be deleted from the Bill because the Government has failed to show any pressing social need for such a wide power to interfere with the private life and homes of candidates and their agents. We suggest the following amendment to give effect to this recommendation:

Schedule 1, page 17, line 5, leave out sub-paragraph (5).

Prisoners’ voting rights

1.10 In our last two reports monitoring adverse human rights judgments, we have criticised the Government’s delay in responding to the judgment of the Grand Chamber of the European Court of Human Rights in *Hirst v UK*.¹⁷ In that case, the Grand Chamber

¹⁵ Paragraph 3.

¹⁶ In s. 146(3) of the Political Parties, Elections and Referendums Act 2000.

¹⁷ *Hirst v UK (No2)*, App. No. 74025/01, Judgment dated 6 October 2005 (Grand Chamber). Sixteenth Report of Session 2006-07, *Monitoring the Government’s Response to Court Judgments Finding Breaches of Human Rights*, HL Paper 128/HC 728, paragraphs 67 - 79; Thirty-first Report of Session 2007-08, *Monitoring the Government’s Response to Human Rights Judgments: Annual Report 2008*, HL Paper 173/HC 1078, paragraphs 47 - 63).

decided that the current ban on prisoners' voting in the UK¹⁸ is disproportionate and incompatible with the Convention right to participate in free and fair elections (guaranteed by Article 3 of Protocol 1 ECHR). That the relevant statutory provisions have never been subject to a full parliamentary debate played a part in the decision of the court.¹⁹ The statutory ban has also been declared incompatible with Convention rights under Section 4 of the Human Rights Act 1998 by the Court of Session in Scotland.²⁰

1.11 The decision of the Grand Chamber was handed down in October 2005, after an earlier adverse decision in 2004. The Government launched a consultation on prisoners' voting rights in December 2006.²¹ This consultation ended in March 2007 and a second stage consultation was planned. The Government originally aimed to bring forward legislation to address this issue in or around May 2008. Contributions to the first stage of the Government consultation have not been published and the second stage consultation has not been launched.

1.12 More recently, in response to a written question by Lord Lester of Herne Hill, the Government confirmed that it intends to proceed with its second stage consultation on this issue, but provided no timetable for publication.²²

1.13 Our previous criticisms of the Government's approach to this issue have included:

- Drawing the attention of both Houses to the continuing failure of the Government to provide answers to our request for information on the timetable proposed for reform and for full information on the Government's approach to the case (including any new information provided to the Council of Europe monitoring body, the Committee of Ministers);
- Expressing concern that the delay in this case indicated that it was destined to join a list of long-standing breaches of the Convention by the United Kingdom which were legally straightforward but politically difficult to remedy;
- Noting that, since the judgment was handed down, other countries including Ireland and Cyprus, have amended their elections law to allow prisoners to vote;²³
- Recommending that the Government publish the responses to its earlier consultation and its own proposals for reform without delay, together with a timetable for progress;

¹⁸ Section 3, Representation of the People Act 1983.

¹⁹ *Hirst v UK*, paragraph 79.

²⁰ *Smith v Scott* [2007] SC 345.

²¹ *Voting rights of prisoners detained within the United Kingdom*, Department of Constitutional Affairs, December 2006. <http://www.dca.gov.uk/consult/voting-rights/condoc.htm>.

²² HL Deb 12 Jan 2009, Col WA122 (Lord Bach).

²³ Further recent developments on this issue have taken place across a number of other common law jurisdictions. For example, since the publication of our last report, the High Court in Hong Kong has determined that electoral law which prevents prisoners from voting in Hong Kong is incompatible with the basic law and the Hong Kong Bill of Rights, in so far as it contravenes the constitutionally guaranteed right to vote. The Court ordered the Hong Kong Government to make arrangements to enable all prisoners to vote on election day. See *Chan Kin Sum v Secretary of State for Justice and the Electoral Affairs Commission*, Judgment dated 8 December 2008, HCAL 82/2008. Similar developments have taken place in India and Ghana, where a court judgment and a decision of the local electoral commission have enabled significant numbers of prisoners to vote in recent elections. Statutory limitations on prisoners' voting have also been declared incompatible with the constitutional right to vote by courts in both Australia and South Africa (See *Roach v Electoral Commissioner* [2007] HCA 43, High Court of Australia, dated 30 August 2007 and *Minister of Home Affairs v NICRO* 2005 (3) SA 280 (CC), South African Constitutional Court, dated 3 March 2004).

- Recommending that a legislative solution should be proposed during this parliamentary session. Without such a solution, there is a significant risk that the next general election will take place in a way which unlawfully disenfranchises at least part of the prison population in the United Kingdom.²⁴

1.14 Contrary to some press reports, we have never suggested that the ECHR requires that all prisoners should be entitled to vote.²⁵ The current blanket ban on all prisoners voting has been found by the European Court of Human Rights to breach the European Convention and the Government is under an obligation to implement that judgment by repealing the blanket ban²⁶ and bringing forward an alternative proposal.

1.15 We recently asked Jack Straw MP, the Secretary of State for Justice, and Michael Wills MP, the Human Rights Minister, in oral evidence for an explanation of the ongoing delay with this case. The Secretary of State said that lack of parliamentary and political support for reform had contributed to the Government's approach.²⁷

The difficulty we have got - and there is no secret about this - is this is an issue ... on which both the main parties have had a very clear position, which has not been the subject of any significant controversy whatsoever within their parties, that when people are convicted and sentenced to prison they lose their civic right to vote ... If Members of Parliament decide that they are not going to accept what the European Court says then they will not accept it. What we have been seeking to do is to identify the best possible way of meeting the obligations under that decision and to do so in a way that shows respect and achieves consent for that decision, and I happen to think that that is sensible and it recognises the unusual reality of this particular decision.

1.16 In addition, the Human Rights Minister added his concern about the practical implications of reform:²⁸

If prisoners are allowed to vote, there is then the issue of putting them on an equal footing with other voters. Other voters have not a right but an expectation of access to parliamentary candidates so that they can judge them first hand. What implications does that have for prison and prison access at a time when the prison service is already very stretched?

1.17 It is surprising that, in the three years during which we have been engaged with the Government on this issue, this is the first time that any Minister has clearly articulated the Government's concerns. While we accept difficult political issues may be involved in meeting the judgment of the Grand Chamber, it remains for the Government to take the initiative and to propose a solution for parliamentarians to scrutinise. In the meantime, UK electoral law remains in breach of the ECHR.

²⁴ Thirty-first Report of Session 2007-08, *Monitoring the Government's Response to Human Rights Judgments: Annual Report 2008*, HL Paper 173/HC 1078, paragraphs 47 – 63.

²⁵ See for example, *Daily Express*, "Prisoners must get the vote", MPs urge, 10 November 2008.

²⁶ Repeal of the blanket ban could be simply achieved by amending the Bill to omit s. 3 of the Representation of the People Act 1983.

²⁷ Q66, Minutes of Evidence, 20 January 2009, HC 174.

²⁸ Q67, Minutes of Evidence, 20 January 2009, HC 174.

1.18 The practical issues which may be associated with reform should not be overemphasised. Prisoners who are on remand, or who have been convicted, but not sentenced, are already entitled to vote and prison rules and guidance exist for this purpose.²⁹

1.19 It is unacceptable that the Government continues to delay on this issue. The judgment of the Grand Chamber was clear that the blanket ban on prisoners voting in our current electoral law is incompatible with the right to participate in free elections. We call on the Government to explore the possibility of bringing forward amendments to this Bill, to give effect to the European Court's judgment.

²⁹ See Prison Service Order 2650, *Prisoners' Voting Rights*. These prisoners will generally be registered at their usual home address, but may also register there by way of a local connection or in the constituency where the prison is located. This final option is only available where the prisoner is unable to register at a usual home address or by establishing a local connection with another constituency. The rules make provision for prisoners to vote by post or proxy and allow prisoners to right receive electoral literature and permit prisoners to write to relevant candidates' agents requesting any relevant literature.

2 Bills not requiring to be brought to the attention of either House on human rights grounds

Government Bills

2.1 We consider that the following Government bills do not raise human rights issues of sufficient significance to warrant us undertaking further scrutiny of them:

- Banking Bill (carried over from previous session).
- Banking (No. 2) Bill [*Lords*] (identical in form to the Banking Bill).
- Business Rates Supplement Bill.
- Consolidated Fund Bill
- Corporation Tax Bill.
- Geneva Conventions and United Nations Personnel (Protocols) Bill.
- Saving Gateway Accounts Bill.

Conclusions and recommendations

1. We remind the Government that the onus is on it to demonstrate a pressing social need for powers of entry and inspection that interfere with the right to respect for private life and home. We do not consider that the Government has shown a pressing social need to extend an already broad power of entry and inspection, which has never been used, and the Commission will already have available a power to enter and search, with a warrant, where there are reasonable grounds to suspect an offence under, or contravention of, election law. We therefore recommend that paragraph 1(5) of proposed new Schedule 19A to the Political Parties, Elections and Referendums Act 2000 be deleted from the Bill because the Government has failed to show any pressing social need for such a wide power to interfere with the private life and homes of candidates and their agents (Paragraph 1.9)
2. It is unacceptable that the Government continues to delay on this issue. The judgment of the Grand Chamber was clear that the blanket ban on prisoners voting in our current electoral law is incompatible with the right to participate in free elections. We call on the Government to explore the possibility of bringing forward amendments to this Bill, to give effect to the European Court's judgment. (Paragraph 1.19)

Formal Minutes

Tuesday 27 January 2009

Members present:

Mr Andrew Dismore MP, in the Chair

Lord Bowness	Dr Evan Harris MP
Lord Dubs	Mr Edward Timpson MP
Lord Lester of Herne Hill	
Lord Morris of Handsworth	
Earl of Onslow	
Baroness Prashar	

Draft Report (*Legislative Scrutiny: Political Parties and Elections Bill*), 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 2.1 read and agreed to.

Summary read and agreed to.

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

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

Written evidence reported to the House and ordered to be published on 28 October 2008 and 25 November 2008 was ordered to be reported for printing with the Report.

Ordered, That embargoed copies of the Report be made in available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 3 February at 1.30pm.]

Written Evidence

Letter to Rt Hon Jack Straw, Secretary of State, Ministry of Justice, dated 28 October 2008

We are scrutinising this Bill for human rights compatibility and would be grateful for your response to the following questions about some of the investigatory powers of the Electoral Commission.

Paragraph 1(5) of proposed new Schedule 19A to the Political Parties, Elections and Referendums Act 2000 would enable a person authorised by the Electoral Commission to enter premises occupied by an organisation or individual, at any reasonable time, and inspect any documents relating to the income and expenditure of the organisation or individual, for the purposes of the carrying out of the Commission's functions.

This investigatory power can be used in relation to a wide range of individuals or entities, including a candidate's election agent. The only precondition to its exercise is that it must be for the purpose of carrying out the Commission's functions. There is no requirement that the Commission have reasonable grounds to suspect that it might find evidence that a person has committed an offence or contravened some other restriction or requirement in the 2000 Act. On its face it is an extremely broad power which appears to authorise the Commission to enter an individual's home and inspect all of their personal financial documentation, without any reasonable cause requirement.

Please explain why in your view the proposed power of the Commission to enter premises and inspect documents, without reasonable cause, is compatible with the right to respect for private life and home in Article 8 ECHR and the right of peaceful enjoyment of possessions under Article 1 Protocol 1 ECHR?

What safeguards can you point to which will ensure that the powers will not be exercised incompatibly with those rights?

Letter from Rt Hon Jack Straw, Secretary of State, Ministry of Justice, dated 13 November 2008

Thank you for your letter of 28 October.

As your letter says, paragraph 1(5) of the proposed new Schedule 19A to the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act"), as presently drafted, provides the Electoral Commission with a power of entry closely modelled on its existing power in section 146(3) in the 2000 Act. That power enables the Commission to enter, at a reasonable time for the purposes of carrying out its functions, premises occupied by a supervised individual or organisation. A "supervised individual or organisation" in this sense means a registered political party, a recognised third party or a permitted participant as defined by the 2000 Act. The key difference between section 146(3) and paragraph 1(5) is that the latter provides that the power of entry goes beyond supervised individuals and organisations and may also be applied to regulated donees (as defined), candidates and their agents.

Although the following points are also relevant to the Committee's second question about safeguards, allow me to highlight the limitations that exist in relation to the use of this power, which are the same in both its existing and its new form.

Under section 146(3) and its intended successor in paragraph 1(5), there is no power for the Commission or anyone else to use force in order to obtain entry. Further, it only allows entry at a reasonable time. Also significant is the fact that it is not an offence to refuse entry where there is a reasonable excuse for doing so (see section 146(5)). Once on the premises, the Commission (or person authorised in writing by it) may inspect or make copies of documents relating to the income and expenditure of the individual, in so far as those documents are reasonably required by the Commission in order to carry out its functions. I make these points so as to be absolutely clear about the nature of the power and to reassure the Committee that it cannot be used to access premises at any time of day or night using force. That being the case, the potential degree of any interference with a "qualified" Convention right such as Article 8 or Article 1 of Protocol 1 ECHR will necessarily be limited from the very start.

This power is intentionally widely drawn in order to ensure that the Commission has available to it sufficient powers in order to perform its compliance monitoring function expressly provided in section 145(1) of the 2000 Act. The Commission has indicated that such powers are necessary for it to carry out proactive risk-based assessments of regulated entities in line with Hampton principles – for example, when its compliance staff visit party premises for the purpose of auditing policy development grants. In the vast majority of cases this will be done on a voluntary basis. But it is possible to envisage a situation where such an audit has begun, potential procedural irregularities are apparent, but a party or other individual or organisation to whom the power applies withdraws their co-operation.

That is not to say that it is envisaged that the Commission will have *carte blanche* to enter premises as and when it likes where a body stops co-operating with it when it carries out its "audit" function. The power must be exercised rationally, in accordance with the general principles of public law. And, of course, before deciding whether to use it, the Commission will, as a public authority, have to have full regard to the requirement to act compatibly with Convention rights given effect by section 6 of the Human Rights Act 1998.

By way of factual background, the Committee may find it helpful to note that the power in section 146(3) has not been used since 16 February 2001, the date on which it became available. That gives a clear indication that the power will be used by the Commission only in the rarest of circumstances. The Commission is unlikely to take decisions to exercise its new power lightly or without having fully considered the implications of its use as regards compatibility with Convention rights.

Turning to the first of your two specific questions, the existence of a power such as this could not be said, of itself, to be incompatible with Convention rights. Section 6 requires the power to be exercised compatibly and there is nothing in the clause that could be said to require the use of the power in such a way that incompatibility would inevitably follow. On this view it is the way in which the power is proposed to be exercised in an individual case that raises issues about compatibility with Convention rights and not the existence of the power itself. It is then necessary to explore whether the power is genuinely capable of being exercised compatibly.

I would not accept that the existence of the power itself engages Article 8. However, its use in individual cases (both by the exercise of the power to enter premises in the first place and by any subsequent inspection of documents) may do so and the Commission will be obliged to ensure that its use of the power is compatible with Article 8 as required by section 6.

The power can be exercised in accordance with the law given that the power to enter is set out in statute. It can also be exercised in pursuit of a legitimate aim in accordance with Article 8(2). Ensuring the functioning of a transparent and properly regulated electoral system is clearly in the interests of a democratic society so that the rights and freedoms of others can properly be protected within it. Whether the use of the power is proportionate to the achievement of that aim will be a matter for careful consideration, particularly given the fact that the interference may be of a serious character. It is for this reason that I would not envisage this power being used other than in the most serious of cases. Notwithstanding that, we consider that the power is fully capable of being exercised in a way that is compatible with Article 8.

Article 1 of the First Protocol raises the same issues as regards justification by reference to a legitimate aim and proportionality as does Article 8. To that extent, my conclusion on this point stands on the ground already established by the points I have made above in relation to Article 8.

So to conclude on this point, it is my view that the power is capable of being exercised compatibly with Article 8 and Article 1 of Protocol and it will be incumbent upon the Commission to ensure that it does so, under section 6 of the Human Rights Act 1998. In particular, it is envisaged that the powers will, in all cases, seek to pursue a legitimate aim where used and should be capable of being used in a way that is proportionate to the pursuit of that aim.

On your second question about safeguards, the presence or otherwise of safeguards on the face of the Bill do not compromise the basic point that a power such as this one must be exercised compatibly with Convention Rights. As I have set out above, it is my firm belief that the power is capable of being exercised compatibly because of the legitimate aim that the power is designed to target.

Notwithstanding that proposition, it would not be right in my view to regard this power as being subject to insufficient safeguards. I have already set out my belief that the limitations on the use of the power (the absence of authority to use force, the “reasonable time” requirement, and the limited ability to inspect only financial documents) are real and meaningful and would go a long way to ensuring that the level of interference with a Convention right caused by using the power would be minimised and be more easily capable of justification as a proportionate means of pursuing a legitimate aim.

That said, if there was any lingering concern that these safeguards needed to be strengthened, it would seem to me that it would be entirely open to the Commission as a matter of practice to put in place such safeguards as it feels are appropriate around the use of the power if it thinks that to do so will help it to exercise the powers in a way that is compatible with Convention rights. For example, entry at a reasonable time is already required by the clause. In addition the Commission could consider giving prior notice of

the proposed date and time of entry, who will attend, what sorts of document will be sought, the likely length of the visit, detail about the purpose of the visit and why the visit is deemed necessary. Whether notice of this sort is necessary will, of course, be a matter for the Commission to consider on the facts of each case.

The Committee will also wish to be aware of a number of amendments that I tabled on 6th November in Public Bill Committee aimed at providing further clarity over the use of the investigative powers that the Bill gives to the Commission. Two of those amendments are relevant in this context.

The first amendment requires the Commission to issue guidance on how it will use its powers (including that given by paragraph 1(5)), including the likely circumstances of their use. Importantly, the amendment requires the Commission to take that guidance into account when exercising its powers. So, guidance must be meaningful and must, in particular, take into account the need to ensure that powers are exercised compatibly with Convention rights.

The second amendment requires the Commission to report on the use of its powers on a yearly basis. This will introduce a welcome degree of transparency as to how powers have been used in the past and will give some indication of their possible use in the future.

I hope that the above is sufficient to satisfy the concerns that the Committee has raised.

Reports from the Joint Committee on Human Rights in this Parliament

The following reports have been produced

Session 2008-09

First Report	The UN Convention on the Rights of Persons with Disabilities	HL Paper 9/HC 93
Second Report	The Work of the Committee in 2007-08	HL Paper 10/HC 92
Third Report	A Bill of Rights for the UK? Government Response to the Committee's Twenty-ninth Report of Session 2007-08	HL Paper 15/ HC 145
Fourth Report	Legislative Scrutiny: Political Parties and Elections Bill	HL Paper 23/ HC 204

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