A Human Rights Committee for Westminster

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Executive Summary

The leader of the House of Commons, Margaret Beckett, has confirmed that Parliament will be asked to establish a Human Rights Committee. The Committee will be a Joint Committee of both Houses with a wide range of tasks. These will include inquiries into human rights issues and the scrutiny of legislation for compliance with the Human Rights Act.

Scrutinising legislation will be a key role. While the government will not want the legislative process to be unduly complicated or lengthened, it will be important
that the committee has the freedom to subject Bills to a human rights impact assessment as it considers necessary.

The tasks and demands on the committee will far exceed its capacity. The main
constraint is sitting time, likely to be a maximum of 70 to 100 hours a year. The
committee will need to plan its priorities and work programme very carefully. It
can extend its reach through cooperation with other committees, and imaginative to 580.32 49

Introduction

On 27 May 1999 the Constitution Unit held a private seminar, hosted in the House of Lords, to

PART I

The Background

"Following the passage of the Human Rights Act 1998, the then Leader of the House of Commons told the House on December 14 1998 that the Government wishes there to be a
Standing Joint Committee on Human Rights, whose remit will include the examination
of draft legislation where there is doubt about compatibility with the ECHR. On the
basis of our experience the two Houses should establish a specialist Human
Rights Committee as soon as possible."2

In the White Paper, 'Rights Brought Homef3, which set out their plans with respect to incorporation of the European Convention on Human Rights, the government repeated the intent present in its earlier consultation paper, 'Bringing Rights Home' that

"Parliament itself should play a leading role in protecting the rights which are at the
heart of parliamentary democracy."

It goes on to say that how this is achieved is a matter for Parliament to decide, but, in the Government's view, the best course would be to establish a new Parliamentary Committee with functions relating to human rights. In 'Bringing Rights Home' Labour indicated that,

"The Committee would have a continuing responsibility to monitor the operation of the
new [Human RightsIAct and other aspects of the UK's human rights obligations. It
would have the powers of a select committee to compel witnesses to attend. Where new legislation was identified as having an impact on human right issues it could be subject
to scrutiny by the Joint Committee. The committee would be able to call on other bodies
in discharging its responsibilities."

'Rights Brought Homef goes on to say that,

The new Committee might conduct enquiries on a range of human rights issues relating
to the Convention, and produce reports so as to assist the Government and Parliament
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... I am pleased to announce today that both Houses will be asked to appoint a Joint Committee on human rights. It is intended to set up that Committee before the Human

Rights Act 1998 comes fully into force so that it will have time to prepare its work ...... We envisage that the Joint Committee's terms of reference will include the conduct of
inquiries into general human rights issues in the United Kingdom, the scrutiny of remedial orders, the examination of draft legislation where there is doubt about compatibility with the ECHR, and the issue of whether there is a need for a human rights commission to monitor the operation of the Human Rights Act .... It is not intended that the Joint Committee will have a role in commenting on the handling of human rights overseas. ..... It is a

triggered by bringing s. 19 of the Act into force on 24 November 1998. The section requires every Minster responsible for introducing a Bill into either House to make a statement of compatibility, (i.e a statement that in his view the provisions of the Bill are compatible with the

The Committee needs to be established as soon as possible, so that it can begin to provide a central resource within Westminster on human rights expertise. Expert scrutiny is required of new bills and draft bills; and existing law needs to be reviewed to remedy provisions which are known to be non compliant.

Achieving equal representation would mean that account needs to be taken not just of the balance from within the Commons and within the Lords, but of the balance which will result from the combined total of members. The committee needs to

The constitutional role of the committee also renders it desirable to have representation from all the

addressed. Power to establish sub-committees would need to be provided for in Standing Orders. Concern has been expressed that in the Commons sub-committees have led to fragmentation, with difficulties in finding a quorum, excessive workload, and difficulties in their reports being agreed by the full committee. They can also require as much support as the main committee. The experience of sub-committees in the Lords has not been as disappointing. For example, the European Communities Committee has six policy sub-committees; but each is de facto a separate committee. There is no precedent for a Joint Committee having sub-committees. If the JPCHR is allowed to establish sub-committees, thought would need to be given to their composition and balance; to the need for two or more chairs; and additional support staff.

Procedure

Time

The nature and number of tasks entrusted to the JPCHR will raise serious questions about its capacity to do justice to them all. The main constraint is time. Select Committees generally meet for one half day a week for two to three hours. Attendance falls away if they are expected to meet for longer: although members are

willing to put in extra sessions for particular inquiries. Meeting once a week for half '
a day throughout the parliamentary year of 34-35 weeks means the committee will sit for around 70 to 100 hours a year. Any additional time can be found only by establishing sub-committees, or by squeezing in extra sessions on a temporary basis.

With such time constraints a clearly defined timetable, allocating time for enquiries and time for legislative scrutiny will have to be maintained. The time management of the comittee will be of key importace.

Support
The Committee will have to be serviced by expert legal advisers, akin to the legal counsel provided to the Joint Committee on Statutory Instrument and the legal counsel provided to the Australian Committees. The legal counsel provided to the Human Rights Committee will be extremely important and will be the be the

PART Ill

Functions and Tasks of the Committee

There are a number of sources from which the likely terms of reference for the Committee are likely to be drawn: the two Consultation Papers which the Labour Party produced and the statement of Mrs. Beckett on 14 December 1998. An amalgamation of those terms include:
Examination of draft legislation where there is doubt about compatibility with the ECHR
Scrutiny of remedial orders
Monitoring of policy and practice for Human Rights Act compliance
Conduct of inquiries into general human rights issues in the UK, in particular an inquiry into the need for a Human Rights Commission o

Committees report (See Annexes C and D to the Report). The Committee recommended that the Government should produce a written response on the ECHR issues raised by the draft Bill as soon as possible. Significantly it also recommended that the two Houses should establish a specialist Human Rights Committee as soon as possible.1° The Government replied to the Committee by way of a memorandum from HM Treasury to the Committee setting out why it considered that the provisions of the Bill complied with the Convention. In the process, the government took on board the concerns expressed in relation to certain powers created under the Bill. The government indicated that the legislation will be amended before being introduced to Parliament so that, in its opinion, compliance with the Human Rights Act will be achieved.11

The process of pre-legislative scrutiny is still in its early days but it is a practice which the government would appear to be keen to use on an increasing basis when developing policy.12 In the context of Bills which have particular human rights impact, this process should prove particularly valuable and the Committee will be able to play a role in this. As the second report from the Joint Committee on Financial Services and Markets demonstrates, the dialogue which develops through consultation on role

Primary Legislation
Pre - legislative scrutiny of draft bills is to be welcomed, but at present it is a procedure which is available for less than 1O0/0 of all bills. Where ordinary legislation is concerned, the committee should have a general power to identify the Bills that it wishes to subject to scrutiny. Early experience has shown has shown that s.19 statements do not lessen the need for parliamentary scrutiny of legislation. Two examples of this are the following:

Access to

The Committee acts as 'a long stop' whereby issues are referred to it by other committees, where a specific human rights concern has arisen in the course of the bill's parliamentary passage.
a The Committee would exercise a filtering system. The Committee would be equipped with legal counsel advising the chairman, who would look at all Bills and indicate to the Committee whether a full scrutiny should be conducted on any particular Bill. This would require the Committee to enjoy a power, but not a duty, to scrutinise legislation. The effective functioning of this model depends on the quality of the human rights expertise the officer acting as a filter can offer.

It is suggested that the final option is the preferred option, and also follows a precedent set by the House of Lords Delegated Powers and Deregulation Committee. The House of Lords Delegated Powers and Deregulation Committee examines all Bills after their first reading and before committee stage. The JPCHR, being a joint committee, should be able to should be able to exercise a similar role after their first reading in either House so that any human rights concerns can be raised at the earliest possible stage. This should alert the Standing Committee in the Commons to any human rights concerns, if the JPCHR decides not to undertake a full scrutiny. And it should alert the business managers that time needs to be found during the bill's parliamentary passage for full scrutiny, if the committee decided that full scrutiny was required.

Effective scrutiny should only be carried out when there is adequate information to evaluate the government's proposals. In effect this means that the committee should have the right to expect co-opeo,1.955 0 T

(2) If a Minister of the Crown considers that there are compelling

Both Committees have six members with three members nominated by the government and three by the opposition. They operate on a bipartisan basis. The Committees are serviced by legal advisers and report to the Senate on possible infringements on rights caused by the measures. The terms of reference are set down in Senate standing orders.
The Standing Committee for the Scrutiny of Bills checks that the Bill does not: trespass unduly on personal rights and liberties
make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers
make rights, liberties or obligations unduly dependent upon non-reviewable decisions
inappropriately delegate legislative powers
insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee on Regulations and Ordinances ensures each instrument:
is in accordance with the statute

does not trespass unduly on personal rights and liberties
does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by

Monitoring of policy and practice for Human Rights Act compliance

The Committee could be involved in scrutinising all types of action which seeks to redress human rights problems which Departments have identified, not just where that action takes the form of legislation. The Committee could be entitled to recommend and/or monitor changes in practice or procedure which aim to improve human rights compliance.

In most cases the monitoring should be left to the departmental Select Committees. For example, the issue of the police or Customs and Excise using close circuit TV and automatic number plate readers may be a matter for the Home Affairs Committee. Only when an issue cuts across other select committees and is being neglected should the JPCHR consider stepping in. Even then it will rarely have the time or the resources to do so. This does assume that departmental select committees will include in their remit review of the human rights policy of their department. A practice which also may be encouraged is that when human rights monitoring is carried out, a member of the JPCHR could attend the meeting of the select committee. In this way the JPCHR member could contribute the views of the JPCHR to the meeting and the results of the meeting of the select committee could be directly linked into the considerations of the JPCHR.

Conduct of enquiries

The Committee will also have the power to conduct enquiries. The most important
early inquiry will be into whether there is a need for a Human Rights Commission
to monitor the operation of the Human Rights Act.

To conduct these enquiries the JPCHR will need to be able to conduct public
hearings and to take evidence in different countries, and possibly outside of the the JPTd [(7

itself as a Committee. In addition the Committee should consider its relationship with the Northern Irish Human Rights Commission (NIHRC). The NIHRC has a

likely to be used most effectively to identify

should take place, and if so when. This type of enquiry should not be limited to consideration of ratification only of ECHR protocols but should extend to consideration of other human rights treaties.

A similar role for the JPCHR should also exist where the government is negotiating the draft of new human rights text in inter-governmental forum. The position of the government in such negotiating forums should be informed by the opinion of the Human