

The House of Lords: In defence of human rights?

by

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Executive Summary

The Human Rights Act 1998 is central to the UK's legal constitutional settlement. It is

Background

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Weedon and Lord Scarman, submitted a proposal to a Liaison Committee of the House of Lords that the appropriate machinery be established in the Lords to ensure that legislation would be scrutinised for consistency with obligations under the ECHR.¹³ In 1996 in another debate on the constitutional settlement of the UK, Lord Bingham (CB, LP), the new Lord Chief Justice, in his maiden speech, and Lord Donaldson (CB JP) former Master of the Rolls spoke out on the relationship between

The pattern of activity in the Lords on a Bill of Rights and the debates on the constitutional

settlement, reflect the presence in the Lords of members who bring with them expertise and practical

The impact which the Lords' contribution can make to the improvement of legislation is however critically restricted by the absence of democratic legitimacy to oppose the will of the elected members of the Commons. The vulnerability of the Lords in either voting against Bills, or in pressing amendments, even where they hold concerns over the impact on fundamental principles, is often attributable to this deficit. For example, during the passage of the *Firearms Bill 1997*, the legislation was subject to much criticism for the manner in which the scheme was being implemented. Lord Stoddart of Swindon (Lab, LP) called the Bill " .. a thoroughly bad Bill, of which Parliament should be ashamed. ...".²⁰ All the Lords amendments had been reversed in the Commons. Lord Lester of

requirements on property rights. The amendment, although it attracted widespread support, was ultimately defeated because that amendment for the Law of Property Act (C) (1997) 1111

The profile of the Peers

It has frequently been argued that one of the strengths of the House of Lords is that its members

at stake, illustrates that the majority of the current membership of the Lords do not necessarily display a determination to uphold a modern concept of human rights law

statement that although unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.

Where a section 19 statement of compliance is provided, Parliament should be encouraged to ask questions of Ministers about the measures taken to ensure compatibility and whether those measures are in fact adequate. If a Minister is unable to make a statement of compliance, this will

function which both Houses of Parliament will carry out. However, a second chamber whose role is

that of a revising chamber, which is less committed to adhering to the party whip will potentially be

government has also committed itself to ratification of Protocols No. 4 and 7 of the ECHR,⁴² after a review of legislation to ensure that UK laws comply with the Protocols. Ratification of those Protocols would affect the devolved territories' constitutional framework.

With respect to other international human rights obligations, the Secretary of State has reserved the power to direct the devolved executives to take or desist from action where it is appropriate to meet the UK's obligations. The Secretary of State can also revoke legislation where such legislation is

Access to Justice Bill was deemed compatible with Article 6 of the ECHR.⁴⁷ The government has indicated that they will explain the thinking behind a Section 19 statement if the issue is raised in

considered that the provisions of the Draft Financial Services and Markets Bill complied with the Convention.⁴⁹ These are precedents which a reformed upper chamber could draw on to inform the

Two of the current House of Lords' committees which conduct scrutiny alongside the

the process surrounding international human rights obligations. This would mean, for example, that treaties for ratification, the government's human rights periodic reports and the response of the

House of Lords would need to take on some form of territorial representation or have close links with the devolved assemblies.

Promoting legislation

As the history of legislation on a Bill of Rights demonstrates, the House of Lords can be a useful forum for the introduction of legislation which would not receive an opportunity for debate in the

When the current House of Lords is noted for its independence, it is frequently as a result of the existence of a large section of cross benchers who do not take a party whip. Independence is often measured by reference to the manner of selection of members, the duration of their office, the existence of guarantees against undue influence and whether the body presents the appearance of independence.

Selection methods

Election: The advantages to elected members performing a role of human rights protection, is that they enjoy the democratic mandate to exercise effective opposition to the government where they consider that human rights are at stake. However direct election inevitably means that political parties will dominate the candidates who run for the upper chamber. Elected members would therefore predominantly take the party whip, and are unlikely to operate or be perceived to be sufficiently independent to play an effective scrutinising role. Elected members would...

Lords, two salient points should be highlighted here. The first concerns their contribution to

the Human Rights Act could be made subject to obtaining a qualified majority in the House of Commons.

Extended delaying powers over constitutional legislation

Experience of operation of the Joint Committee will indicate whether it would be an appropriate use of resources and reflect the strengths of the chamber, for the upper chamber to establish its own committee - either a human rights committee or a wider constitutional committee. If it was considered that such a committee be established, care would have to be taken to ensure that it did not duplicate the work of the Human Rights Committee or any other committee. Such a committee could provide the following services in addition to the Joint Committee on Human Rights.

Scrutiny of section 19 statements

Bill for human rights compatibility if the Joint



