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Meaning of 'public authority' in Human Rights Bill

As a lawyer who writes on statutory interpretation, I am pondering what to tell my readers about the Human Rights Bill. The legal meaning of 'public authority' is one of the biggest puzzles.

The Bill makes it unlawful for a 'public authority', meaning 'any person certain of whose functions are of a public nature', to act incompatibly with a right conferred by the Convention. This does not apply to the 'private' acts of such an authority. In fifty years of dealing with legislation, I have not come across a vaguer definition.

You, Sir, have concentrated on attacking this definition because it may include the Press Complaints Commission. But the problems it poses go very much wider than that.

The terms 'public' and 'private' are notoriously imprecise. The OED says of 'public': 'The varieties of sense are numerous and pass into each other by many intermediate shades of meaning . . . in some expressions more than one sense is vaguely present'. A great deal of litigation is going to be needed before anyone can say with assurance what is a 'public authority', and which are its excluded 'private' functions.

The white paper on the Bill says the definition includes companies, such as privatised utilities, which are responsible for areas of activity which were previously within the public sector. I would say this is doubtful, and anyway it raises problems in itself. A company is 'private' when contrasted with say a local authority. Yet in another sense some companies are in law 'public companies'. Others are 'private companies'. The confusions are endless.

Complaint is often made about the obscurity of the law. Yet here we have a government deliberately perpetrating a law which, in a vastly important and widespread area, is at the outset obviously obscure.

The answer is surely for the Bill to be amended so as to include a detailed list of the types of bodies and persons which are intended to fall within this provision.¹

¹ *The Times*, 8 December 1997. (Published in shortened form.)