



## **Devolution and Human Rights**

**February 2010**

**For further information contact**

Qudsi Rasheed, Legal Officer (Human Rights)

email: [grasheed@justice.org.uk](mailto:grasheed@justice.org.uk) direct line: 020 7762 6434

JUSTICE, 59 Carter Lane, London EC4V 5AQ tel: 020 7329 5100  
fax: 020 7329 5055 email: [admin@justice.org.uk](mailto:admin@justice.org.uk) website: [www.justice.org.uk](http://www.justice.org.uk)

## Devolution and Human Rights

### **A. Introduction**

1. JUSTICE is an all party law reform and human rights organisation dedicated to advancing access to justice, human rights and the rule of law.
2. This report builds on existing work carried out by JUSTICE on a bill of rights for the UK, most notably its 2007 report, *A British Bill of Rights: informing the debate*.
3. It has become evident that a Conservative government would consider implementation of a 'British Bill of rights and Responsibilities or Duties' as an early priority after winning an election. A Labour government might do so, though with much less priority. An administration influenced by the Liberal Democrats would take up the issue but only as part of a move to a written constitution.
4. The Ministry of Justice published, in March 2009, a government green paper dealing with a number of issues related to a bill of rights for the UK.<sup>1</sup>
5. Although briefly addressed in the green paper, one area in which serious consideration has been lacking is the effect of a bill of rights on the devolved settlements across the UK, which now make up part of the fabric of the UK's constitution.
6. This report was inspired by feedback given to JUSTICE by a number of its Northern Irish members who highlighted the lack of engagement with the devolved jurisdictions. JUSTICE held a seminar in the summer of 2008 to discuss some of these issues further with individuals from Scotland, Wales and Northern Ireland.
7. This report addresses the broader issue of human rights and devolution in the context of the political calls for a UK bill of rights, and some calls for the repeal of the Human Rights Act 1998. It briefly outlines the relevant history of devolution and the framework of the 1998 devolution settlements, focusing particularly on the protection of human rights. The relationship between the Human Rights Act and the protection of rights in the devolution statutes is examined, and suggestions for amendment to or

---

<sup>1</sup> *Rights and Responsibilities: developing our constitutional framework*, Cm 7577, March 2009

repeal of the Human Rights Act and/or enacting a bill of rights are considered from a legal, constitutional and political perspective.

8. A draft of this report was circulated to a number of legal and constitutional experts in this field in November 2009, and this final version has taken on board the very helpful and constructive comments, suggestions and criticisms that were provided, and JUSTICE is very grateful to all those who contributed.<sup>2</sup>

9. In the Ministry of Justice green paper, the government stated the following:

*Consideration of a Bill of Rights and Responsibilities for the UK will clearly need to include Parliament, the devolved legislatures, and the devolved executive bodies as well as the Human Rights Commissions which operate in the different parts of the UK. Each has its own history, conventions and identity and has different responsibilities and obligations in relation to fundamental rights, how they are safeguarded, and how they are respected in the delivery of key public services. In order to generate the degree of consensus appropriate for a Bill of Rights and Responsibilities, each will have an important contribution to make about the way rights and responsibilities should be expressed. This will require further careful consideration.<sup>3</sup>*

10. This report is intended to be a contribution to the careful consideration that, rightly, the green paper has identified as being necessary.

**B. Executive summary**

11. The devolution statutes create an extremely complex and complicated system by which some powers have been devolved to institutions in the devolved jurisdictions.

---

<sup>2</sup> JUSTICE is grateful to the following for all their comments: Maggie Beirne, Brice Dickson, Catherine Donnelly, the Equality and Human Rights Commission, Neil Faris, Brian Garrett, Robert Hazell, Chris Himsworth, Ciaran McAteer, Chris McCrudden, Derek Munn, Colm O’Cinneide and Aidan O’Neill

<sup>3</sup> *Rights and Responsibilities: developing our constitutional framework*, para 4.42

12. Human rights have been protected both by the Human Rights Act (HRA), and by the devolution statutes. In fact, there is a very close relationship between the HRA and the devolution statutes, which collectively have a symbiotic relationship in the protection of human rights.
13. The HRA itself incorporates some of the rights contained in the European Convention on Human Rights (ECHR). The devolution statutes incorporate the HRA rights into their own framework, and thus the substantive rights protected under both the HRA and the devolution statutes are the same.
14. Indeed, the procedural mechanisms of rights enforcement and application in the HRA are directly and indirectly incorporated into the devolution statutes. The duty of the courts to take into account Strasbourg case law found in the HRA has been implied by the courts as being a requirement under the devolution statutes. Analogous provisions to the interpretive obligation to construe legislation compatibly with Convention rights found in the HRA, are found in the devolution statutes. The tests for standing and damages in the devolution statutes are the same as in the HRA, with direct references to the relevant provisions of the HRA and also to the ECHR.
15. The devolution statutes and the HRA are tied together in order to provide mutually supporting and complementary rights protection, both in terms of substantive rights and procedural mechanisms. From a legal perspective, if the HRA was amended or repealed, and/or a bill of rights was enacted covering the devolved jurisdictions, there would almost certainly be a need for amendments to the devolution statutes.
16. A strong argument can be made that 'human rights' have been devolved to the Scottish Parliament and the Northern Irish Assembly, or at least that the 'observation and implementation' of the ECHR, has been devolved. If this is the case, although from a legal perspective the Westminster Parliament could still legislate in this area, constitutionally, the consent of the devolved bodies would be needed. As such, because any amendment to, or repeal of, the HRA and/or legislation enacting a bill of rights covering the devolved jurisdictions would touch upon 'human rights' or the 'observation and implementation' of the ECHR, from a constitutional perspective, the consent of the Scottish Parliament and the Northern Irish Assembly would be needed.

17. Even if the argument that ‘human rights’ or the ‘observation and implementation’ of the ECHR has been devolved is rejected, because any amendment to or repeal of the HRA and/or legislation enacting a bill of rights may touch upon areas of devolved competence – such as housing, education and local government – again, from a constitutional perspective, the consent of the Scottish and Northern Irish legislatures would be needed.
18. Additional complications arise in Northern Ireland. Not only was the motivation for devolution in Northern Ireland different to the rest of the UK in that it was part of the peace settlement of the Belfast (Good Friday) Agreement (GFA), but there has been a ten year discussion that has already taken place in Northern Ireland on a Northern Ireland bill of rights – something that was arguably required by the GFA itself. Thus, special consideration has to be given to the legal requirements of the GFA as well as the sensitivities and concerns over the Northern Ireland bill of rights.
19. Politically, a ‘UK/British’ bill of rights could be extremely divisive in the devolved jurisdictions, particularly in Scotland and Northern Ireland. A bill of rights must have a high degree of political and popular consensus, and this may be difficult to achieve in the devolved jurisdictions.
20. Any move to amend or repeal the HRA and/or legislate for a bill of rights would need to overcome these legal, constitutional and political hurdles. Although these hurdles are not insurmountable, they are complicated and potentially problematic and as such, serious consideration ought to be given to whether any legislative action in this area would be worth the associated difficulties.

**C. Overview of devolution**

**(i) Some background**

21. Scotland was historically a separate jurisdiction with its own courts, Parliament and monarch until, in 1707, the Act of Union ended the Scottish Parliament and brought together England with Scotland under the government and Parliament in Westminster. Scotland, however, retained its own legal system and continued to be a separate legal jurisdiction from England. The Labour Party came into power in 1997 with devolution as an important priority, and Parliament passed the Scotland Act

1998 which gave a degree of autonomy and power to a newly formed Scottish Parliament in Edinburgh.

22. England and Wales have been part of the same legal jurisdiction since the Laws of Wales Act 1536, which provided that England and Wales were united and Welshmen and Englishmen were to be subject to the same laws and have the same privileges. The Government of Wales Act 1998 gave a degree of responsibility to the devolved Welsh bodies, which was increased by the Government of Wales Act 2006.
  
23. The history of, and motivation for, devolution in Northern Ireland is different to that in Scotland and Wales. The Government of Ireland Act 1920 sought to establish separate Parliaments (and 'home rule' as it was then known) for what was to be called Northern and Southern Ireland within the UK. The 1920 Act applied to Northern Ireland (until 1998) but in what became the Republic of Ireland the 1920 Act was not accepted and never took effect, and it took its separate constitutional path from the United Kingdom. In Northern Ireland the 1920 Act provided for a devolved parliament and government at Stormont and for a separate legal jurisdiction (subject to the House of Lords having ultimate appellate jurisdiction). Nevertheless within Northern Ireland a persistent divide endured between those who wished Northern Ireland to remain part of the United Kingdom (unionists or loyalists), and those who wished it to be separate from the United Kingdom and reunited with the remainder of the island of Ireland (nationalists or republicans). The devolutionary settlement of 1920 continued until the conflict became so severe that Westminster re-assumed all legislative and executive powers in 1972, through the Northern Ireland (Temporary Provisions) Act. The Belfast (Good Friday) Agreement of 1998 (and subsequent developments over a ten year period), signalled a settlement for Northern Ireland between most categories of unionists/loyalists and nationalists/republicans. Consequently, a 'power sharing' Executive has been established together with a devolved Assembly at Stormont.

**(ii) Framework of devolution**

24. The Scotland Act 1998 (SA) conferred legislative powers on the newly created Scottish Parliament.<sup>4</sup> Scotland would continue to send representatives to sit in the Westminster Parliament, as well as electing members of the Scottish Parliament,

---

<sup>4</sup> s1 SA

sitting in Edinburgh. Provision for the creation of a devolved Scottish government known as the Scottish Administration<sup>5</sup>, headed by the First Minister, was also made.

25. The key to the devolution settlement in Scotland was that the Scottish Parliament was given the power to legislate on all matters that were not specifically reserved to the Westminster Parliament ('devolved powers').<sup>6</sup> As such, the Scotland Act sets out, in Schedule 5, a list of all matters reserved to the Westminster Parliament ('reserved powers'). It is unlawful for the Scottish Parliament to legislate with respect to any of these areas.
26. The Government of Wales Act 1998 (GWA 1998) gave limited responsibilities to the newly formed Welsh Assembly.<sup>7</sup> In essence, however, these were mainly executive functions (those formerly exercised by the Secretary of State for Wales). The Government of Wales Act 2006 (GWA 2006), in response to criticism of the former Act, created a Welsh government separate from the Welsh Assembly.<sup>8</sup>
27. At present, the power of the Assembly to exercise legislative or legislative-like functions depends on the UK Parliament or the UK government. There are two sources of such power. The first is by use of 'framework powers' conferring wider and more permissive powers on the Assembly. The second source of such power is contained in sections 93-95 of the GWA 2006. Section 98 makes provision for Orders in Council, known as Legislative Competence Orders (LCOs), to confer legislative functions regarding 'matters' in a specified field (contained in Schedule 5) on the National Assembly. Enactments of the Assembly pursuant to LCOs are known as Assembly Measures.<sup>9</sup>
28. Unlike the SA, which gives the devolved bodies the power to deal with all matters not specifically reserved, the GWA 2006 specifies exactly what powers have been devolved.

---

<sup>5</sup> s126 SA

<sup>6</sup> ss28 and 29 SA

<sup>7</sup> s1 GWA 1998

<sup>8</sup> s45 GWA 2006

<sup>9</sup> Jack Beatson, Stephen Grosz, Tom Hickman and Rabinder Singh, Human Rights: Judicial Protection in the UK, Sweet & Maxwell, 2008, p801

29. The Northern Ireland Act 1998 (NIA) represented a new constitutional settlement for Northern Ireland founded upon the Belfast (Good Friday) Agreement (GFA) in April 1998.<sup>10</sup> The GFA is multi-dimensional – in one respect it is a peace agreement between rival factions in that part of the UK, in another it takes effect as a bilateral treaty between the UK and the Republic of Ireland.<sup>11</sup>
30. The provisions of the GFA were enacted by the UK Parliament in the NIA – the preamble to the NIA states that it is ‘for the purpose of implementing’ the GFA. Accordingly, the nature of devolution in Northern Ireland differs from that in Scotland and Wales in that the primary objective of the NIA was to give the force of law to the essentials of the GFA.<sup>12</sup> Additionally, there is a modern history of devolution in Northern Ireland that sets it apart from Scotland and Wales.<sup>13</sup>
31. The NIA provided for the creation of a devolved Northern Ireland Assembly,<sup>14</sup> Northern Ireland Ministers, an Executive Committee and Northern Ireland Departments.<sup>15</sup> The Executive is led by a First Minister and Deputy First Minister, with the members of the Executive elected on the basis of a complex voting system intended to reflect cross-community interests and party strength as demonstrated in the elections to the Northern Ireland Assembly.
32. The NIA recognised three categories of powers. In defining the limits of competence, the NIA distinguishes between ‘transferred matters’, ‘excepted matters’ and ‘reserved matters’.<sup>16</sup>
33. ‘Excepted matters’ are those that remain entirely within the competence of the UK Parliament and are set out in Schedule 2.<sup>17</sup>

---

<sup>10</sup> Cm 3883, April 1998

<sup>11</sup> Beatson, p772. See also Christopher McCrudden, ‘Northern Ireland, the Belfast Agreement, and the British Constitution’, in Jeffrey Jowell and Dawn Oliver, The Changing Constitution, OUP, 2004

<sup>12</sup> Anthony Lester, David Pannick and Javan Herberg, Human Rights Law and Practice, LexisNexis, 2009, p741

<sup>13</sup> Beatson, p771

<sup>14</sup> s4(5) NIA

<sup>15</sup> ss16-21 NIA

<sup>16</sup> s4(1) NIA

<sup>17</sup> These are equivalent to the reserved powers under the Scotland Act

34. Excepted matters under the NIA and reserved matters under the SA include the Crown, the UK Parliament, defence of the realm, nationality, immigration and asylum, UK taxes and international relations/foreign affairs.<sup>18</sup>
35. Significantly, ‘observing and implementing’ all international obligations, including those under the European Convention and all other human rights treaties, is not within the scope of ‘international relations/foreign affairs’ and is therefore not an excepted matter under the NIA or a reserved matter under the SA.<sup>19</sup>
36. ‘Reserved matters’ are those in respect of which Westminster can legislate or the Northern Ireland Assembly may legislate with the consent of the Secretary of State.<sup>20</sup> Reserved matters include the conferral of functions of Northern Ireland Ministers, criminal law and public order including police.<sup>21</sup> Provision is made that any of the reserved matters may be subsequently devolved,<sup>22</sup> and discussions over the devolution of criminal justice and police are currently taking place.
37. ‘Transferred matters’ are those that the NIA conferred on the Northern Ireland Assembly and Executive.<sup>23</sup> The Act itself (like the SA) does not specifically recite the transferred powers but simply defines them as those that are neither excepted nor reserved. As the first two categories are specifically enumerated, any matter that is not listed within the first two categories falls within the competence of the devolved institutions. Westminster, however, retains the power to legislate in all areas.
38. Where a devolved institution has acted outside its competence, its actions can be challenged as a ‘devolution issue’. The court will then determine whether or not the devolved institution did in fact act outside its competence.
39. Despite the Westminster Parliament retaining the legal authority to legislate on all matters, whether reserved/excepted or devolved/transferred, a constitutional convention has arisen that it will not legislate on devolved/transferred matters without

---

<sup>18</sup> See Schedule 2, NIA and Schedule 5, SA

<sup>19</sup> Schedule 2, para 3(c), NIA and Schedule 5, para 7(2)(a), SA

<sup>20</sup> s8 NIA

<sup>21</sup> Schedule 3 NIA

<sup>22</sup> s2(a) NIA

<sup>23</sup> Equivalent to the devolved powers under the Scotland Act

the consent of the devolved Parliaments and Assemblies, which is given through legislative consent motions (formerly known as ‘Sewel Motions’).

40. A Memorandum of Understanding (MoU) between the UK Government and the devolved administrations reflects this position. It says:

*The United Kingdom Government retains authority to legislate on any issue, whether devolved or not. It is ultimately for Parliament to decide what use to make of that power. However, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administration will be responsible for seeking such agreement as may be required for this purpose on approach from the UK Government.*<sup>24</sup>

**(iii) Two relevant problems within the devolution framework**

41. The first problem relates to the division between devolved and reserved powers (or excepted, reserved and transferred powers in Northern Ireland). Himsworth explains that there are some areas:

*where the division between what is devolved and what is reserved is unclear in the first instance. The difficulties here are borne out by overlaps between the (devolved) responsibility for housing in general and the (reserved) responsibility for housing of asylum seekers; the (devolved) responsibilities for policies in relation to children and education and the (reserved) responsibility for the expulsion of illegal immigrants; the (devolved) responsibility for charities and the (reserved) responsibility for their taxation; and the (devolved) responsibility for planning and the (reserved) competences for nuclear power.*<sup>25</sup>

---

<sup>24</sup> Cm5240, para 13, December 2001

<sup>25</sup> Christopher Himsworth, ‘Devolution and its jurisdictional asymmetries’, 2007, 70(1) MLR 31, 46

42. Hazell makes the point that '[i]t was naive at the dawn of devolution to suppose that powers could be neatly separated into watertight compartments'.<sup>26</sup>

43. The second problem relates to the convention that normally requires the consent of the Scottish Parliament and Northern Ireland Assembly if Westminster is to legislate on devolved matters relating to Scotland or Northern Ireland. As Bradley and Ewing explain in the context of Scotland:

*[o]n devolved matters, there is a firm convention that Westminster should not legislate without the prior consent of the Scottish Parliament, given by a so-called 'Sewel motion'. This extensive use of Westminster's continuing supremacy is controversial and might not be sustainable if in future a close political relationship is not maintained between the governments in Edinburgh and London.*<sup>27</sup>

44. On Sewel motions, Hazell makes the point that:

*[i]n most cases it reflects the frequent entangling of reserved with devolved powers: a reflection of the impossibility of maintaining watertight compartments [the first problem that has already been highlighted]. In others it reflects a decision by Scotland to opt into a uniform regime.... Not surprisingly, the initiative for most of these uniform policies come from the centre, but it is always open for the Scots to opt out.*<sup>28</sup>

## **D. The protection of human rights in the devolution settlements**

### **(i) The Human Rights Act**

45. The Human Rights Act 1998 (HRA) applies throughout the UK, including the devolved jurisdictions. The devolved authorities and institutions, including the devolved Parliament in Scotland and the Assemblies in Wales and Northern Ireland,

---

<sup>26</sup> Robert Hazell, 'The continuing dynamism of constitutional reform', 2007, 60(1) *Parliamentary Affairs* 3, 6

<sup>27</sup> Anthony Bradley and Keith Ewing, *Constitutional and Administrative Law*, 2002, Longman, p46

<sup>28</sup> Hazell (2007), p6

are public authorities within the meaning of s6 HRA such that it is unlawful for them to act in any way contrary to the Convention rights.

46. According to Hazell:

*[d]espite the vehement opposition of the tabloids, it was hard to sustain a case that the HRA had been a disaster. Although there was an initial surge of cases in Scotland, the initial dire predications of floods of cases and judges running wild has not been borne out.<sup>29</sup>*

47. The operation of the HRA in Northern Ireland might be similarly so described.<sup>30</sup>

**(ii) The Devolution Acts**

48. The HRA, and human rights more generally, are tied and embedded into the devolution statutes. These provide that the devolved institutions have no competence to act in any manner that is contrary to the 'Convention rights'.<sup>31</sup> For the purposes of the devolution statutes, 'the Convention rights' are defined as having the same meaning as in the HRA, namely those rights of the European Convention that are specifically mentioned in section 1.<sup>32</sup>

49. According to Beatson et al:

*[s]hould the UK Parliament ever choose to amend the HRA by introducing any qualifications on the meaning or breadth of the Convention rights that are given effect by the HRA, this will automatically and correspondingly expand or reduce the competence of [the devolved bodies].<sup>33</sup>*

---

<sup>29</sup> Hazell (2007), p16

<sup>30</sup> See Brice Dickson, 'The Impact of the Human Rights Act in Northern Ireland in Morison, McEvoy and Anthony, Judges, Transition and Human Rights, 2007, OUP, pp201-272.

<sup>31</sup> s29 and s54 SA; s6 and s24 NIA; s81 and s94 GWA 2006

<sup>32</sup> s126, SA; s98 NIA; s158 GWA 2006

<sup>33</sup> Beatson, p735

50. While the Convention rights have been given similar effect under the devolution statutes, the impetus for doing so was not the same.
51. In the case of Northern Ireland, the desire to give overriding effect to the Convention rights was integral to the new constitutional settlement heralded by the GFA, and enacted by the NIA. The fact that none of the devolved institutions established by the NIA has power to act incompatibly with the Convention rights was required by the GFA. It was not directly the result of the UK Government's decision to incorporate the Convention into domestic law, although the reforms were undoubtedly interwoven.<sup>34</sup>
52. In the case of Scotland and Wales, however, the overriding effect given to Convention rights was part and parcel of the wider process of giving effect to the Convention in domestic law.
53. This competence, or lack of it, is controlled in a number of ways. When bills are going through the Scottish Parliament, the minister responsible for the bill must give a statement indicating that the bill is compatible with the Convention rights.<sup>35</sup> The Parliament's Presiding Officer must separately give his opinion on whether the bill is within the competence of the Scottish Parliament, which includes its compatibility with the Convention rights.<sup>36</sup> The Advocate General, Attorney General or Lord Advocate may refer for decision by the Supreme Court the question of whether the bill or a provision of the bill is within the legislative competence of Parliament.<sup>37</sup> Post-enactment, the compatibility of the Act with the Convention rights can be challenged as a 'devolution issue' before any court.<sup>38</sup>
54. In Northern Ireland and Wales, the positions are analogous although there are some subtle differences.
55. According to Gray,

---

<sup>34</sup> Beatson, pp718 and 775

<sup>35</sup> s31(1) SA

<sup>36</sup> s31(2) SA

<sup>37</sup> s33(1) SA

<sup>38</sup> s98 and Schedule 6 SA

*[w]ith regard, in particular, to the implementation and enforcement of Convention rights ... the NIA 1998 provides a more superior mechanism to that outlined in the corresponding provisions of the HRA 1998 governing parliamentary procedure, as can be seen from a comparison of the relevant provisions in the two Acts.*

Although the HRA has s19, requiring a ministerial statement of compatibility whilst the bill is going through Parliament, 'the NIA 1998 provides for legislative scrutiny at a number of different stages of the legislative process and by a number of different bodies'.<sup>39</sup>

56. The Minister in charge of a Bill, on or before introducing it to the Assembly, is required 'to make a statement to the effect that in his view the Bill would be within the legislative competence of the Assembly'.<sup>40</sup> Further, if the Presiding Officer decides that any provision of the Bill is outside the legislative competence of the Assembly, the Bill will not be introduced.<sup>41</sup> In addition, the Northern Ireland Human Rights Commission is mandated to advise the Assembly on whether a Bill is compatible with human rights.<sup>42</sup> The Attorney General for Northern Ireland may refer the question of whether or not a provision of a Bill would be within the legislative competence of the Assembly to the Supreme Court, and this would include whether a provision of a Bill is compatible with the Convention rights.<sup>43</sup> Post-enactment, the compatibility of the Act with the Convention rights can be challenged as a 'devolution issue' before any court.<sup>44</sup>
57. Similarly in Wales, the person in charge of a proposed Assembly Measure must, on or before the introduction of the proposed Assembly Measure, state that, in that person's view, its provisions would be within the Assembly's legislative competence, which would include compatibility with the Convention rights.<sup>45</sup> A proposed Assembly Measure may not be introduced in the Assembly unless the Presiding Officer has

---

<sup>39</sup> Margaret Gray, 'The Northern Ireland Act 1998, judicial review and human rights', 2000, 5 *Judicial Review* 114, 116

<sup>40</sup> s9(1) NIA

<sup>41</sup> s10 NIA

<sup>42</sup> s68(4) NIA. See below discussion on the NIHRC

<sup>43</sup> s11(1) NIA

<sup>44</sup> s79 and Schedule 10 NIA

<sup>45</sup> s97(2) GWA 2006

stated 'whether or not' in his view its provisions are within the legislative competence of the Assembly.<sup>46</sup> Again this would include compatibility with the Convention rights. The Counsel General or the Attorney General may refer the question of whether a proposed Assembly Measure or any provision of it would be within the legislative competence of the Assembly – including its compatibility with the Convention rights – to the Supreme Court for decision.<sup>47</sup> Like the position under the NIA and the SA, post-enactment, the compatibility of the Assembly Measure with the Convention rights can be challenged as a 'devolution issue' before any court.<sup>48</sup>

### (iii) Relationship between the HRA and the devolution statutes

58. It is important to note that specific provision is made in both the SA and the NIA to prevent the devolved Parliament and Assembly from modifying the HRA.<sup>49</sup>
59. The consequence of the incompetence of the devolved institutions to do anything incompatible with the Convention rights is that the Convention rights are protected both under the devolution statutes and under the HRA albeit in different ways.<sup>50</sup> This allows for the possibility that claims of violations of Convention rights, in most cases, may be brought either under the HRA, claiming that the relevant act of the public body was unlawful, or as a 'devolution issue', claiming that the relevant act was outside the competence of the relevant public body, because it was contrary to a Convention right.<sup>51</sup>
60. As set out above, under the devolution statutes, the term 'Convention right' is given the same meaning as that in s1(1) HRA.
61. In addition to the substantive rights set out in s1 HRA being incorporated into the devolution statutes, the procedural mechanisms are likewise interrelated.<sup>52</sup>

---

<sup>46</sup> s97(3) GWA 2006

<sup>47</sup> s99(1) GWA 2006

<sup>48</sup> s149 and Schedule 9 GWA 2006

<sup>49</sup> s29 and Schedule 4 SA; ss6(2f) and 7(1) NIA

<sup>50</sup> Beatson, p718

<sup>51</sup> See *Somerville v Scottish Ministers* [2007] UKHL 44, per Lord Hope

<sup>52</sup> See the discussion in Beatson, chapter 8

62. Unlike the HRA, the SA does not establish any duty on the Scottish courts to take into account Strasbourg case law.<sup>53</sup> However, in *Clancy v Caird*, Lord Sutherland stated that it is the duty of the Scottish courts to have regard to the decisions of the European Court of Human Rights when considering the interpretation of the Convention. As his Lordship explained, these decisions are not precedents and should not be treated in the same way; but he went on to say that '[i]nsofar as principles can be extracted from these decisions, those are the principles which will have to be applied'.<sup>54</sup> Lord Hope has said since the meaning of the Convention rights is the same under the devolution statutes and the HRA, 'there is no doubt that the same material must be considered'.<sup>55</sup>
63. As such, the duty to take into account Strasbourg case law under section 2 HRA has been implied by the Scottish courts and the House of Lords to be the same duty when deciding compatibility with Convention rights as a devolution issue. It is safe to assume that same approach would be taken under the NIA and the GWA 2006.
64. S83 of the NIA contains an interpretive obligation to construe Acts, bills and subordinate legislation as within the legislative competence of the Assembly or the authority of the Northern Ireland Executive. Since legislation will exceed the competence of the Assembly if it is incompatible with Convention rights, and subordinate legislation will be invalid if it is incompatible with Convention rights, s83 is similar in effect to s3 HRA in relation to devolved Northern Irish legislation. Although the provisions contain some important differences, according to Beatson et al, 'developing different approaches under sections 3 and 83 would be undesirable, costly and unduly legalistic'.<sup>56</sup>
65. There is an analogous interpretive obligation in s101 of the SA. In *Anderson v Scottish Ministers*, Lord Hope stated that the purpose of s101 is 'to enable the court to give effect to legislation which the Scottish Parliament has enacted wherever possible rather than strike it down'.<sup>57</sup> Again, although there are some differences, the

---

<sup>53</sup> s2 HRA

<sup>54</sup> 2000 SLT 546, at 549

<sup>55</sup> *HM Advocate v R* [2004] 1 AC 462, at 54

<sup>56</sup> Beatson, p796

<sup>57</sup> [2003] 2 AC 602, at 8

interpretive obligation has the same effect as s3 of the HRA. The interpretive obligation in s154 GWA 2006 is in exactly the same terms as s101 SA.

66. Although there are slightly different formulations in the devolution statutes when compared to s3 HRA, in view of the statement of Lord Hope that ‘the proper starting point is to construe the legislation as directed by section 3(1) of the [HRA]’, the different formulations should not make any difference in practice.<sup>58</sup>
67. S100(1) SA provides that nothing in the Act enables a person to bring proceedings on the ground that any Act of the Parliament or conduct of the Scottish Executive is incompatible with Convention rights, or to rely on such incompatibility in other legal proceedings, unless that person would be a victim under Article 34 ECHR. This seeks to prevent persons who could not claim under ss6 and 7 HRA from being able to claim instead under the SA. Its purpose is to ‘ensure there is no inconsistency’ between the SA and the HRA.<sup>59</sup> Analogous provisions are contained in s7(1) of the NIA and s81(2) of the GWA 2006.<sup>60</sup>
68. S100(3) SA provides that the SA ‘does not enable a court or tribunal to award any damages in respect of an act of which is incompatible with any of the Convention rights which it could not award if sections 8(3) and 8(4) of the [HRA] applied’. Ss 8(3) and (4) HRA provide that damages must only be awarded where it is necessary to afford just satisfaction in light of the principles applied by the Strasbourg Court under Article 41 ECHR.<sup>61</sup>
69. S71(4)(b) NIA states that s24, which renders acts of the NI Ministers or Departments ultra vires, does not enable a court or tribunal to award damages which it could not award on finding the act unlawful under s6(1) HRA. This provision is similar to s100(3) SA, except that there is no specific reference to s8 HRA. If the same approach is taken to s71(4)(b) as to the SA, the courts will be able to award damages as they would under s8 HRA for acts or failures of the Northern Ireland

---

<sup>58</sup> Beatson, p811

<sup>59</sup> *HM Advocate v R* [2004] 1 AC 462, at 27, per Lord Hope

<sup>60</sup> Beatson, p751

<sup>61</sup> *Ibid.*, p758

Ministers or Departments that are incompatible with Convention rights.<sup>62</sup> The provisions in the GWA 2006 are the same as those in the NIA.<sup>63</sup>

70. What can be seen is that the devolution statutes contain a number of provisions which help ensure broad congruence with the HRA. The substantive rights in s1 HRA (which itself incorporates some of the rights contained in the ECHR) are directly incorporated into the devolution statutes. Likewise, the procedural mechanisms in ss 2, 3, 7 and 8 are, in different ways, adopted explicitly or implicitly. In addition to direct references to the HRA in the devolution statutes, reference is also made in some sections to the provisions of the ECHR. As explained by Beatson et al,

*Although, as the jurisprudence on the Scotland Act shows, the schemes for protecting Convention rights under the HRA and under the devolution statutes are not identical or necessarily interdependent, they should in principle be understood in a mutually coherent and reinforcing way.*<sup>64</sup>

#### **E. Status of human rights – devolved, reserved or neither?**

71. Although the HRA itself is a ‘protected provision’, such that the devolved institutions cannot legislate to modify the HRA or the scope or meaning of the Convention rights, it is not totally clear whether ‘human rights’ are a devolved or reserved matter under the devolution statutes.
72. Himsworth argues that because human rights have not specifically been reserved to Westminster, under the framework of the SA (and likewise the NIA) they are arguably a devolved matter.<sup>65</sup> Elsewhere, he explains that “‘human rights’ are not, as such, reserved to the Westminster Parliament”.<sup>66</sup> If it were that human rights were a devolved matter, then any legislation by Westminster relating to human rights that would affect the devolved jurisdictions may need the consent of the devolved

---

<sup>62</sup> *Ibid.*, p797

<sup>63</sup> s81(4)(b) GWA 2006

<sup>64</sup> Beatson, p796

<sup>65</sup> Christopher Himsworth, ‘Greater than the sum of its parts: the growing impact of devolution on the processes of constitutional reform in the UK’, 2009, 77 *Amicus Curiae* 229

<sup>66</sup> Himsworth (2007), p55

parliaments in accordance with the constitutional convention that Westminster will not legislate on devolved matters.

73. It could however be argued that it is unhelpful to assign 'human rights' as to any of the categories. Rather, the obligations under the HRA and the devolution statutes could be seen as overarching provisions that apply to all categories of legislation wherever made. It has been suggested that to ask whether human rights are a devolved matter is like asking whether fairness and consistency are devolved matters, and that human rights are values, not fields of public administration.
74. A subtler yet associated argument is that rather than 'human rights' being a devolved matter simply because they have not been specifically reserved, the 'observation and implementation' of the ECHR is a specifically devolved matter.<sup>67</sup>
75. As already briefly mentioned above, the SA and the NIA both indicate that 'foreign affairs/international relations' are reserved/excepted matters such that it is within the sole competence of the Westminster Parliament to legislate in these areas.<sup>68</sup> However, the Acts also specifically state that foreign affairs/international relations do not include the observation and implementation of the ECHR.<sup>69</sup> As such, it appears that the SA and the NIA clearly devolve the responsibility to observe and implement the Convention. What this would mean is that not only do the devolved institutions have legislative competence to pass laws in relation to the observation and implementation of the Convention, but that any legislative action taken by the UK Parliament to do with the observation and implementation of the Convention, would be touching upon a devolved matter, such that constitutionally the consent of the Scottish Parliament and the Northern Ireland Assembly would be required through a legislative consent motion.
76. Specifically, the HRA is a piece of legislation that is explicitly concerned with the observation and implementation of the Convention. Although, because it is a protected provision it cannot be modified by the devolved institutions, any repeal or amendment of the HRA by the UK Parliament might require the consent of the

---

<sup>67</sup> The argument that follows would only apply to the SA and the NIA because, as explained above, the scheme under the GWA 2006 is markedly different

<sup>68</sup> Schedule 5, para 7 SA; Schedule 2, para 3 NIA. See paras 33-35 above

<sup>69</sup> Schedule 5, para 7(1)(a) SA, Schedule 2, para 3(c) NIA

Scottish Assembly and Northern Ireland Assembly as it would come within the legislative competence of the devolved jurisdictions.

77. That 'human rights' as a category have been devolved, or that the 'observation and implementation of the Convention' is a devolved matter, is confirmed by the practice of the devolved jurisdictions.
78. For example, the Convention Rights (Compliance) (Scotland) Act 2001, an Act of the Scottish Parliament, was directly concerned with amending aspects of Scottish law that were incompatible with the Convention. This appears to support the argument that human rights, or the observation and implementation of the Convention, are devolved matters. Similar support is found when one considers the devolved human rights commissions.
79. Some interesting implications can potentially be drawn from the creation and work of the relevant human rights commissions. The Scottish Commission of Human Rights (SHRC) was established by the Scottish Commission for Human Rights Act 2006 (an Act of the Scottish Parliament). The SHRC's general duty is to promote human rights and to encourage best practice in relation to human rights by public authorities.<sup>70</sup> As has already been indicated, the Scottish Parliament can only legislate in devolved areas. Since it has legislated for a Scottish Human Rights Commission, it could therefore be argued that human rights and/or the observation and implementation of the Convention are devolved matters, supporting the arguments set out above.<sup>71</sup>
80. S7 Equality Act 2006 provides that the Equality and Human Rights Commission (EHRC) (the British Human Rights Commission) may not take human rights action in relation to a matter, or consider the question whether a person's human rights have been contravened, if the Scottish Parliament has legislative competence to enable a person to take action of that kind in relation to that matter, or to consider that question. That general prohibition does not, however, prevent the EHRC from taking action with the consent of a person established by an act of the Scottish Parliament whose principal duties relate to human rights, for example, the SHRC.<sup>72</sup> What this

---

<sup>70</sup> s2 SA. See also ss3-5 SA

<sup>71</sup> There is an overlap that is addressed in a memorandum of understanding, between the responsibilities of the Scottish Human Rights Commission and those of the British Equalities and Human Rights Commission

<sup>72</sup> Lester, p739

seems to indicate is that the EHRC needs the consent of the SHRC to deal with issues in Scotland on which the Scottish Parliament, and therefore the SHRC, has competence. This would seem to include human rights issues in Scotland, further supporting the position that human rights and/or the observation and implementation of the Convention are devolved matters.

81. The Northern Ireland Human Rights Commission (NIHRC) was established under the Northern Ireland Act 1998,<sup>73</sup> the first of the commissions to be established. Its powers and duties are set out in s69 NIA. One of its key functions and the one most relevant for the purposes of this paper is its role in regard to a possible 'bill of rights for Northern Ireland', which is discussed further below.
82. In any event, irrespective of any attempt to categorise 'human rights' or the 'observation and implementation of the Convention' as either reserved or devolved, it is arguable that any legislation in the field of human rights (including any amendment to the HRA or passing of new legislation) which touched upon areas of devolved competence (such as housing, education and local government) would require the consent of the devolved Parliament in Scotland and the devolved Assemblies in Wales and Northern Ireland.
83. According to Himsworth:

*[a] Bill in the UK Parliament designed to repeal or amend or replace the Human Rights Act would, I assume, require a legislative consent (Sewel) motion in the Scottish Parliament because of the Bill's encroachment on devolved matters – both in respect of its touching on human rights at all and, if this were the case, its extension into other aspects of devolved legislative competence such as criminal justice or education or housing policy.<sup>74</sup>*

## **F. Northern Ireland**

84. A number of additional considerations and problems arise in the context of Northern Ireland.

---

<sup>73</sup> s68(1) NIA

<sup>74</sup> Himsworth (2009)

85. The responsibilities of the NIHRC, required by the GFA, include the duty to advise the Secretary of State on the content of a bill of rights for Northern Ireland. The NIHRC should:

*...consult and...advise on the scope for defining, in Westminster legislation, rights supplementary to those in the ECHR, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on International instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and – taken together with the ECHR – to constitute a Bill of Rights for Northern Ireland.<sup>75</sup>*

86. S69(7) NIA reflects this aspect of the GFA and requires the Secretary of State for Northern Ireland to request the NIHRC to provide advice in relation to a possible bill of rights for Northern Ireland.

87. The NIHRC produced its report dated 10 December 2008 recommending an extensive and comprehensive bill of rights for Northern Ireland. The report was produced following detailed and lengthy consultation throughout Northern Ireland. It recommended that a bill of rights for Northern Ireland should include various rights supplementary to the ECHR.<sup>76</sup>

88. The Northern Ireland Office (NIO), after considering the recommendations of the NIHRC for a year, published its consultation document on a bill of rights for Northern Ireland on 30 November 2009.<sup>77</sup> In its report, the NIO rejected most of the NIHRC's recommendations on the basis that the rights suggested by the NIHRC were not specific to the circumstances of Northern Ireland (as required by the terms of reference), and that they might be more appropriately addressed as part of the debate over a UK bill of rights. The NIO consultation document focuses on rights which in the government's view, 'can be argued to reflect the particular circumstances of Northern Ireland and the principles of mutual respect for the identity

---

<sup>75</sup> Para 4 of the Rights Safeguards and Equal Opportunity section in Stand 3 of the Agreement

<sup>76</sup> See [www.nihrc.org/bor](http://www.nihrc.org/bor)

<sup>77</sup> *A Bill of Rights for Northern Ireland: Next Steps*, Northern Ireland Office consultation paper, November 2009

and ethos of both communities.<sup>78</sup> This is essentially limited to rights related to sectarian and community issues. All responses to the NIO consultation are to be received by 1 March 2010.

89. Although this paper is not the appropriate forum for detailed discussion of the NIO's proposals, two brief points can be made.
90. First, that it has now come to the stage where the relationship between the Northern Ireland bill of rights and any UK/British bill of rights needs to be seriously considered. This has been recognised by the government in its green paper on a bill of rights, which accepts that '[o]ne issue for examination is the relationship between any Bill of Rights and Responsibilities and a potential Bill of Rights for Northern Ireland.'<sup>79</sup>
91. A number of possibilities have been suggested from Northern Ireland having its own bill of rights completely separate from any UK one, through to the Northern Ireland bill of rights forming a chapter in a wider UK bill of rights.
92. It is important, however, to remember that there has been over ten years of consultation and consideration in Northern Ireland over its bill of rights. As this process is coming to its end, it may be inappropriate to stall it by tying it to the debate taking place at the UK level. There is already a high level of frustration around that Northern Ireland process; were it to be interrupted by a UK bill of rights, it may fuel tension and disappointment. The bill of rights green paper explains that 'the Government does not wish the public debate about a UK instrument to detract from the process relating to a potential Bill relating to the particular circumstances of Northern Ireland'.<sup>80</sup> This is particularly so as it is generally regarded that the Northern Ireland bill of rights is a requirement of the GFA.
93. Indeed, to simply include Northern Ireland in a UK bill of rights may also upset the expectations of the Irish government in respect of the GFA. The Irish government has stated that it is awaiting specific legislation for Northern Ireland, indicating that it regards the international obligation of the UK as not being to implement a UK bill of rights including Northern Ireland, but rather a Northern Ireland bill of rights:

---

<sup>78</sup> *Ibid.*, para 4.1

<sup>79</sup> *Rights and Responsibilities: developing our constitutional framework*, para 4.38

<sup>80</sup> *Ibid*

*Regarding the bill of rights for Northern Ireland, I reiterate the commitment of the Government to ensure the full and effective implementation of all aspects of the Good Friday Agreement and the St Andrews Agreement. In that context, we attach importance to a specific bill of rights for Northern Ireland as envisaged in the Good Friday Agreement. The Government has consistently communicated that position in contacts with the current British Administration and with the Conservative Party Front Bench.<sup>81</sup>*

94. As stated above the primary objective of the NIA was to give the force of law to the essentials of the Belfast (Good Friday) Agreement of 10 April 1998. The GFA represented the foundation of a new constitutional settlement for Northern Ireland based on a commitment to constitutional government, human rights and the rule of law. The GFA seeks to achieve effective protection of human rights in a number of interconnected ways.
95. The fact that none of the devolved institutions established by the NIA has the power to act incompatibly with the Convention rights was required by the GFA. It was not directly the result of the UK government's decision to incorporate the Convention into domestic law, although the reforms were definitely interwoven.<sup>82</sup> But given the commitment of the UK government as contained in the International Treaty with the Republic of Ireland (to which the GFA is annexed) it is essential that the ECHR continues to apply in Northern Ireland. Any attempt to alter the HRA (and/or pass a bill of rights covering Northern Ireland) in a way that diminished the human rights protection in Northern Ireland may put the UK in breach of the its international treaty obligations owed to the Republic of Ireland. The language of the GFA is unequivocal on this point and as a matter of international legal obligation, there must be no diminution in the ECHR protection in Northern Ireland.
96. There is a reality that any tinkering with the HRA in regard to Northern Ireland and the human rights provisions in the Northern Ireland Act 1998 (at least of any category which interferes with the provisions of the 1998 Agreement) may not be achievable

---

<sup>81</sup> Answer of the Taoiseach in response to a question by Deputy Eamon Gilmore, 21 October 2009, Parliamentary Debates, Volume 692, No. 3, p564. Available at <http://debates.oireachtas.ie/Xml/30/DAL20091021.PDF>

<sup>82</sup> See para 51 above

without both the consent of the Republic of Ireland and the Northern Ireland Assembly. Any such tinkering also risks inflaming tensions which exist already between different groups of society in Northern Ireland.

**G. The politics of a bill of rights in the devolved jurisdictions**

97. It has already been explained that, legally, amendments to the devolution statutes would be required and that the consent of the devolved institutions may be necessary for constitutional reasons, if there was to be repeal of, or amendment to, the HRA and/or a bill of rights for the UK. However, almost more importantly, political consensus and consent would be needed across the devolved jurisdictions if there was to be any 'British' or 'UK' bill of rights. Some have argued that a debate about a bill of rights for the UK is an exercise that requires reopening competing assumptions about the Union.

98. There is the obvious problem of language. The Parliamentary Joint Committee on Human Rights (JCHR) has taken the position that a 'British' bill of rights would, by definition, exclude Northern Ireland:

*There is also a geographical aspect to the term "British" which is relevant, in that Northern Ireland is part of the United Kingdom but not part of Great Britain. A "British Bill of rights" therefore could not, by definition, apply to Northern Ireland.<sup>83</sup>*

99. However, unionists and loyalists in Northern Ireland do regard themselves as, and wish to be acknowledged as, 'British'. So they may not be willing to accept exclusion from a 'British' bill of rights. Any such proposal of exclusion would create, or perhaps more accurately antagonise, unionist and loyalist feeling.

100. But equally labelling any bill of rights as 'British' also may create, or perhaps more accurately antagonise, nationalist feeling that already exists among some in Scotland, and nationalist and republican feeling in Northern Ireland.

---

<sup>83</sup> *A Bill of Rights for the UK?* Joint Committee on Human Rights, HL 165-I/HC 150-I, July 2008, para 76. Whilst the definition, 'Great Britain' excludes Northern Ireland, the term 'British' is arguably more nebulous. Although the JCHR take 'British' to be

101. If insensitively handled, a bill of rights from Westminster could present problems in Northern Ireland. As already indicated, if a bill of rights were for the whole of the UK, it could present difficulties for the republican and nationalist sections of the community. If it were just for Great Britain, excluding Northern Ireland, it could present difficulties for the unionist and loyalist sections of the community. As such, any bill of rights is likely to present difficulties for one section of the community in Northern Ireland. Even now, over ten years after the GFA, there is a precarious balance. There is an appreciable risk that the bill of rights debate may stoke the embers of sectarian and political conflict in Northern Ireland. At the very least, it may derail the long and arduous discussions about a bill of rights for Northern Ireland which (as discussed earlier) figured prominently in the GFA negotiations. It may be suggested that a compromise would be to have a Northern Ireland chapter within a wider UK bill of rights. This may still not be sufficient to either community for the reasons set out. However, it may be particularly controversial in light of the existing process in Northern Ireland for a Northern Ireland bill of rights, as briefly discussed earlier.
102. As it stands, the HRA applies to Northern Ireland, and the difficulties just mentioned have not arisen, partly because the HRA reflects wider international and regional human rights standards that all communities can agree to be bound by.
103. In relation to Scotland, Kenny MacAskill, Justice Minister for the SNP, in his evidence to the JCHR made it very clear that the ECHR was a minimum, and that:

*we have the Human Rights Act and ECHR incorporated into our founding principles and these are dealt with by our courts and we are subject to challenge not simply on what we seek to legislate upon but also what we have legislated upon. We are happy with that and as a Government party we seek to expand upon that if and when the constitutional settlement changes.*

---

the adjective pertaining to Britain (and this is supported by the Chambers English Dictionary) and thus excluding Northern Irish people, some have argued that 'British' covers anyone coming from the UK

He went on to say: “Are we British? No, we are not. We consider ourselves Scottish and we consider those south of the border to be English. That is perfectly legitimate.”<sup>84</sup>

104. Pursuance of a ‘British’ bill of rights may just further fuel calls for independence and undermine the Union.
105. There is the additional problem about content. In particular, much of the political debate has focused on the Magna Carta and the right to a trial by jury, as traditionally ‘British’ institutions that have been eroded. In fact, the Magna Carta is a traditionally ‘English’ institution which predates the Union of England and Scotland, and does not have the same symbolic resonance in Scotland that it does in England. Likewise, the right to a trial by jury is not regarded as a fundamental right in Scotland. England and Scotland (and to a certain degree Northern Ireland) have differing legal traditions, something that is often forgotten by many in Westminster.

## **H. Conclusions**

106. The devolution statutes are complicated, and the human rights frameworks under them are tied up in a number of ways with the HRA and the indeed the ECHR.
107. A bill of rights covering the devolved jurisdictions would be legally, constitutionally and politically very difficult to achieve.
108. Any amendments to the HRA and any enactment of a bill of rights would almost certainly, from a legal perspective, require amendments to be made to the devolution statutes.
109. Any amendments to the HRA and any enactment of a bill of rights may, from a constitutional perspective – or simply to take account of the political ramifications – need the consent of the devolved institutions.
110. It would also require careful consideration so that the UK would not derogate from its international treaty obligations to the Republic of Ireland in regard to the Belfast (Good Friday) Agreement.

---

<sup>84</sup> Oral Evidence to the Joint Committee on Human Rights, HL 165-II/HC 150-II, July 2008, Ev 59 and 60

111. It may be possible to have an English bill of rights, but that would raise its own problems and complications. In particular there would be a raft of problems between the competing jurisdictions within the UK.
112. The HRA works, and at present the devolution framework has also been successful. Amendments to the HRA or legislating for a bill of rights would be dangerous and risky – to the protection of rights, to the constitution of the UK, and to the Union itself.

8 February 2010

## **Bibliography**

1. Jack Beatson, Stephen Grosz, Tom Hickman and Rabinder Singh, 'Human Rights: Judicial Protection in the UK' (2008) Sweet & Maxwell
2. Anthony Bradley and Keith Ewing, 'Constitutional and Administrative Law' (2002) Longman
3. Brice Dickson, 'The Impact of the Human Rights Act in Northern Ireland in Morison, McEvoy and Anthony, 'Judges, Transition and Human Rights' (2007) OUP
4. Margaret Gray, 'The Northern Ireland Act 1998, judicial review and human rights' (2000) 5 *Judicial Review* 114
5. Robert Hazell, 'The continuing dynamism of constitutional reform' (2007) 60(1) *Parliamentary Affairs* 3
6. Christopher Himsworth, 'Greater than the sum of its parts: the growing impact of devolution on the processes of constitutional reform in the UK' (2009) 77 *Amicus Curiae* 229
7. Christopher Himsworth, 'Devolution and its jurisdictional asymmetries' (2007) 70(1) *Modern Law Review* 31
8. Joint Committee on Human Rights, *A Bill of Rights for the UK?* HL 165-I/HC 150-I, July 2008
9. Anthony Lester, David Pannick and Javan Herberg, 'Human Rights Law and Practice' (2009) LexisNexis
10. Christopher McCrudden, 'Northern Ireland, the Belfast Agreement, and the British Constitution', in Jeffrey Jowell and Dawn Oliver, 'The Changing Constitution' (2004) OUP
11. Ministry of Justice green paper, *Rights and Responsibilities: developing our constitutional framework*, Cm 7577, March 2009

12. Aidan O'Neill, 'Constitutional judicial review in Scotland – some recent developments' (2009) 14(3) *Judicial Review* 267
13. Aidan O'Neill, 'Judging democracy: the devolutionary settlement and the Scottish constitution' (2004) 8(2) *Edinburgh Law Review* 177
14. The Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland – Advice to the Secretary of State for Northern Ireland*, December 2008
15. Northern Ireland Office consultation paper, *A Bill of Rights for Northern Ireland: Next Steps*, November 2009
16. Adam Tomkins, 'Public Law' (2003) OUP