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Northern Ireland and a Bill of Rights for the United Kingdom

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Northern Ireland and a Bill of Rights for the United Kingdom

Colin Harvey



Contents

About the Author	2
Introduction	3
Constitutionalism and Human Rights in the UK	4
The Northern Ireland Context	6
– Human Rights and the Peace Process	6
– The Belfast/Good Friday Agreement and Human Rights	7
– The Human Rights Act and the European Convention on Human Rights in Northern Ireland	9
– The Northern Ireland Bill of Rights Process	11
Talking about a ‘British Bill of Rights’	12
Conclusion: Not the Way Forward?	13
Endnotes	14

About the author

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Introduction

The proposals on repeal of the Human Rights Act 1998,¹ and the (currently abandoned) suggestion of possible withdrawal from the European Convention on Human Rights,² have generated a remarkable level of comment and debate.³ This should not be surprising, given the potential constitutional implications for a 'union state' that is already under excessive strain.⁴ The fact that the intention is to replace the Act with a new Bill of Rights for the United Kingdom (UK) - sometimes referred to as a 'British Bill of Rights'- adds further interest.⁵ It is not always clear precisely what is being proposed, and practical suggestions thus far have attracted widespread criticism.⁶ The discussion is principally about the implications of repeal, the options for a new legal framework for human rights protection in the UK, and the prospects for the current relationship with the European Convention on Human Rights (especially the Strasbourg court). As with the debate on 'Brexit', the UK is often intended when the word 'Britain' is used in these constitutional conversations, and this tendency to neglect Northern Ireland is not simply shorthand. It is reflective of a habit of mind that pays insufficient attention to impacts across these islands. The Human Rights Act 1998 is a UK-wide measure; any new Bill of Rights will have UK-wide implications, it will influence future relationships between the UK and Ireland, and other states are watching closely. This is in no sense a purely 'British' debate.

The aim in this short briefing paper is to raise awareness of the Northern Ireland context and highlight potential consequences flowing from the proposals noted. Three themes are explored here. First, consideration is given to human rights in the UK at present. Second, the position of Northern Ireland is explored, and finally (perhaps provocatively) this briefing includes reflections on consequences, and why those engaged in these discussions need to stop talking about a 'British Bill of Rights'.

The premise for much of what follows is the worry that the constitutional agenda being advanced by the UK Government might cause significant damage to the fundamentals of a peace and political process painstakingly constructed over decades.

Constitutionalism and Human Rights in the UK

Northern Ireland provides only one example of a marked trend within the evolving UK. The UK is an increasingly diverse and pluralist constitutional entity where public power is dispersed widely and multi-level governance is a mundane reality. Despite their prominence, the traditional concepts of constitutional law, such as the legislative supremacy of the Westminster Parliament, often seem to have questionable relevance to the emerging picture. The UK Government has a legally defined connection with a region (Northern Ireland), the bond embraces international obligations and carries significant bi-national implications (British-Irish). In such a complex context, respectful constitutional dialogue is required if relationships are not to deteriorate. This includes recognising constitutional conventions that apply in dealings with the devolved legislatures in the UK. Any debate about human rights must be located convincingly in an account of the new forms of constitutionalism that have emerged.⁷ Framed in this way, it is plain that the convention that the Westminster Parliament will not normally legislate on devolved matters – broadly understood – without the consent of the devolved legislature will apply to any attempt to replace the Human Rights Act 1998 with a new Bill of Rights.

There is a wider international environment too. The UK is a state party to an impressive number of international human rights instruments, and is a member of several intergovernmental organisations (the Council of Europe is only one). It has bound itself, as a matter of international law, to obligations on civil, political, economic, social and cultural rights. There are three 'A status'⁸ human rights institutions in the UK: the Equality and Human Rights Commission;⁹ the Northern Ireland Human Rights Commission;¹⁰ and the Scottish Human Rights Commission.¹¹ There is a Joint Committee on Human Rights in the Westminster Parliament,¹² and legal protections can be found in the Human Rights Act 1998, the devolution statutes, common law, EU law (for now) and the statutory frameworks that govern specific areas of law and policy.

Although debate continues, the UK remains a dualist state for international law purposes. This means that effective access to rights at the domestic level depends on incorporation or 'giving further effect to' international standards. The European Convention on Human Rights gains such prominence precisely because the Human Rights Act 1998 gives 'further effect' to 'Convention rights' in domestic law. The legislation marked a radical break with the past, and was one part of an agenda of constitutional reconstruction particularly (but not exclusively) associated with the election of a Labour government in 1997. It is of fundamental significance but it is not the only measure of relevance. Reference is still made to the other international standards, especially when, for example, a state report is due to a UN treaty-monitoring body or there is a visit from a UN Special Rapporteur. The Northern Ireland and the Scottish Human Rights Commissions, for example, make use of the full range of international standards in their work.¹³ There is nothing to prevent international human rights law from being cited and deployed in political (or even legal) arguments, and being adopted as advocacy tools. The problem is that it is only through domestic incorporation - in some form - that reasonably effective legal implementation and enforcement can be secured. That is why the debate on repeal of the Human Rights Act 1998, and the possibility of removal of access to the European Court of Human Rights, is so intense. The relatively recent attempt to bring human rights home in the UK is being called into question, often in terms that are legally and politically unpersuasive, and with much uncertainty on what will come next.

The Northern Ireland Context

Human Rights and the Peace Process

1998 was not only an auspicious year for human rights protection across the UK. It also represented a key moment in the peace process in Northern Ireland, with the adoption of a peace agreement and the subsequent advance of new devolution arrangements, among other things. Any credible assessment of the implications of repeal of the Human Rights Act 1998 must display acute awareness and understanding of the peace and political processes that have delivered a significant level of democratic stability. Even as the twentieth anniversary of the Belfast/Good Friday Agreement 1998 draws closer, it is still a society that is emerging slowly from the trauma of violent conflict. The conflict, and the enormous efforts involved in bringing it to a conclusion, are essential elements of any serious reflection on the human rights impact of discussions in the Westminster Parliament.

There are two points in particular to draw out here. First, the scale of the political investment in delivering a measure of stability to Northern Ireland must be acknowledged, and second, it was understood during the long journey to peace that human rights would be central to any political agreement. This is evident in the landmark documents of the process.¹⁴ It was therefore not surprising that the language of human rights was so prominent in the Belfast/Good Friday Agreement 1998.¹⁵ The legal and policy framework that has emerged since 1998 is intrinsically connected to the politics of the peace process, and an attempt at conflict transformation, that had human rights at its core.

This is not to promote a misleading view; there are risks in suggesting a monolithic Northern Ireland perspective on human rights. The peculiarities of the present arrangements are evident, for example, in the fact (always worth recalling) that, even though the fundamental principles agreed in 1998 shape the governing structures of Northern Ireland, the largest political party in the Northern Ireland Assembly (the Democratic Unionist Party) remains opposed to the Belfast/Good Friday Agreement 1998.¹⁶

The Belfast/Good Friday Agreement and Human Rights

The Agreement gave political, and eventually legal, life (in the UK and Ireland) to the constitutional fundamentals of the new arrangements, and this is worth stressing and remembering for the purpose of the current constitutional conversation. These ‘fundamentals’ gained legal form in the UK through the Northern Ireland Act 1998 (as amended), and also through the Human Rights Act 1998, and are underpinned by an international agreement between the UK and Ireland.¹⁷ It would, however, be a mistake to view this exclusively through the limited lens of legalism. At stake in these conversations are some of the very basics of the political constitutionalism that has shaped life around these islands for decades.

- First, recall the idea expressed in the Declaration of Support that ‘the achievement’ of the ‘protection and vindication of the human rights of all’ was one part of the ‘fresh start’ that would ‘best honour’ those who had ‘died or been injured, and their families’.¹⁸ This is underlined in the section on ‘Constitutional Issues’, where it is plain that whatever choice is made on the status of Northern Ireland the ‘sovereign government’ must act with ‘rigorous impartiality’ and ‘full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens’.¹⁹
- Second, the right of self-determination was recognised in a complex and carefully negotiated formulation that sensitively balanced competing objectives; supported by the right ‘of all the people of Northern Ireland’ to identify and be accepted as British or Irish or both.²⁰
- Third, the European Convention on Human Rights and ‘any Bill of Rights supplementing it’ was firmly embedded in the Agreement.²¹ For example, in Strand One on ‘Democratic Institutions’ the intention was to give a special place to the European Convention, including on the proofing of legislation and key decisions.²² The British Government agreed to ‘incorporation’ of the Convention into Northern Ireland law ‘with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency’.²³

- Fourth, a new Human Rights Commission in Northern Ireland would be established with lead responsibility for a new Bill of Rights process.²⁴ This Bill of Rights was envisaged as an instrument that would supplement the European Convention. The rights would be additional to the Convention rather than an inferior replacement.
- Fifth, the Agreement had implications for the UK and Irish Governments, seen clearly in the British-Irish Agreement,²⁵ but also evident in the express commitments undertaken by both. For example, the Irish Government agreed to establish a new Human Rights Commission as part of efforts to ‘further strengthen the protection of human rights’.²⁶ In the interests of guaranteeing ‘at least an equivalent level of protection’ it agreed to ‘strengthen and underpin the constitutional protection of human rights’ with an examination of the question of incorporation of the Convention.²⁷ The Agreement also provided the basis for a new Joint Committee of both Commissions on the island.²⁸
- And finally, there are references to human rights in the sections of the Agreement dealing with Reconciliation and Victims of Violence (‘a right to remember’²⁹), and Policing and Justice.

There are significant Agreements that have followed - including the St Andrews Agreement 2006 and the Stormont House Agreement 2014 - but the Belfast/ Good Friday Agreement 1998 (endorsed in referenda in both jurisdictions on the island of Ireland) provides the foundational framing context for understanding just how central human rights were and remain to the peace process in Northern Ireland. Many of the elements sketched above were operationalised, but it is notable (over 18 years later) that there is still no Bill of Rights in Northern Ireland supplementing the European Convention.

The Human Rights Act and the European Convention on Human Rights in Northern Ireland

The Human Rights Act 1998 and the European Convention on Human Rights are so intertwined with the constitutional project of securing peace and stability in Northern Ireland that it is difficult to understand why they would ever be lightly set aside. This is not to argue that political endorsement is universal, the DUP for example, is critical of the Act (and the approach of the Strasbourg court) and has called for reform.³⁰ It is, however, to suggest that tampering with these measures opens up an unhelpful question about a fundamental pillar (human rights) of the current dispensation in Northern Ireland; it will not promote a consensual dialogue about rights.

Active use was being made of the European Convention system in Northern Ireland for some time before the Human Rights Act 1998 was enacted.³¹ As with elsewhere in the UK, this usually involved taking the long road to the Strasbourg court. Northern Ireland was also at the centre of an inter-state complaint - Ireland v UK³² - which is now being looked at again following a request by the Irish Government.³³ The Northern Ireland case law from the European Court of Human Rights includes, for example, leading contributions on the meaning and application of article 2 (right to life) in the context of the use of lethal force, and the requirement to conduct effective investigations.³⁴ This conflict-related case law from Strasbourg is of particular note, and has made a significant difference to attempts to deal, in a principled way, with the legacies of the past (to such an extent that 'article 2 compliance' is exhaustively referenced in public debate).³⁵ The European Court has also proved useful, for example, in challenging the treatment of vulnerable minorities in Northern Ireland, such as the gay community in *Dudgeon v UK*.³⁶ Convention rights are often cited in the various attempts to resolve contentious issues such as parades, and reference to them has been notable in relevant sections of, for example, the Stormont House Agreement 2014.³⁷

The Human Rights Act 1998 is firmly embedded in the new governance arrangements. The Act has been widely employed and continues to inform an emergent culture of respect for human rights; Convention rights are woven into Northern Ireland's devolution scheme. It is notable, for example, that the Northern Ireland Assembly debated proposed repeal on 1 June 2015, and voted by 43 to 41 in support of a motion to reject this option.³⁸ Although there is an ever present 'conflict context' to the discussions, Northern Ireland is often little different to other parts of the UK in the use of the Act in the courts (including all the way to the UK's Supreme Court).³⁹ It is deployed regularly to challenge the actions of a wide range of public authorities.⁴⁰ The Northern Ireland Human Rights Commission has, for example, used Convention rights in the courts to question abortion law and policy⁴¹ as well as the approach to adoption.⁴²

Attempted institutional transformation was an essential component of the Northern Ireland peace process. This remains particularly evident in the discussions over policing reform. The Human Rights Act is key to this ongoing project, and Convention rights are referred to extensively in the PSNI Code of Ethics⁴³ and in the accountability work undertaken by the Policing Board.⁴⁴ Human rights remain a core ingredient in the reform agenda within the PSNI, and the justice sector in general in Northern Ireland.⁴⁵

Although the Human Rights Act 1998 and the European Convention on Human Rights have gained most attention in law, policy and practice, there is evidence that Northern Ireland has also gone beyond Convention rights. For example, the Attorney General's Guidance to criminal justice agencies includes a full range of international standards,⁴⁶ some Northern Ireland Assembly legislation references international measures,⁴⁷ and the Human Rights Commission and NGOs regularly promote engagement with international human rights law and relevant institutions.⁴⁸ There is a dynamic and robust civil society sector in Northern Ireland that displays enormous resilience in its work for human rights in often difficult times. There is evidence in these efforts of profound respect for the Human Rights Act 1998, as well as generous references to applicable international law.⁴⁹

The Northern Ireland Bill of Rights Process

Another distinctive feature of Northern Ireland's human rights landscape is the Bill of Rights process. The current initiative can be traced directly to the Belfast/Good Friday Agreement 1998. The Agreement included a mandate for a process that was launched in March 2000, and which led to the submission of advice to the UK Government on 10 December 2008.⁵⁰ The whole enterprise was conducted on the secure basis that any new Bill of Rights would flow from the particular circumstances of Northern Ireland, and would clearly supplement the European Convention on Human Rights. It was plainly intended that the Convention rights might not be the last word for these purposes, and that it might be possible and desirable to build constructively on them. Even if the idea did not arise from extended reflection at the negotiations in 1997 and 1998, the thinking was prefigured in the decades of negotiation leading to the Agreement. Although the process since 1999 revealed disagreements of principle, for example on maximalist and minimalist approaches, it proceeded on the basis that the European Convention (and then subsequently the Human Rights Act) would be a starting point for something demonstrably better. The debate was marked by delay, and as with the Commission on a Bill of Rights in Britain, unanimity was absent. In terms of political parties this largely divided along unionist/nationalist lines, with unionist parties tending to favour (if at all) a modest list of additional rights, and nationalist parties supporting more expansive protections. Whatever views were expressed in public, not one of the main political parties has ever made the Bill of Rights a non-negotiable element of the various political negotiations since 1998. That includes those parties most vocally supportive of the idea in principle.

The Northern Ireland Human Rights Commission, in its final advice of December 2008, opted for proposals that embraced an inclusive range of guarantees.⁵¹ This did not find favour with the Northern Ireland Office, and with some political parties, but it did gain significant levels of support. The Bill of Rights process remains stalled, with the UK Government unwilling to proceed without political consensus in Northern Ireland.⁵² It is regrettable that such a significant constitutional project appears to have lost momentum.⁵³

As should be apparent from the complex constitutional mechanisms in place to handle a divided society in a sensitive and respectful way, the suggestion of simply joining in a wider UK dialogue about a new Bill of Rights misses the point.⁵⁴ It must be assumed that such a proposal would risk exposing further divisions by neglecting the work already completed, and ignoring the distinctiveness of the Northern Ireland post-conflict setting. While unionist political parties might welcome the prospect of a UK-wide approach it is unlikely that nationalist/republican parties will.

Talking about a ‘British Bill of Rights’

The UK Government’s proposals for repeal of the Human Rights Act, and replacement with a ‘British Bill of Rights’, have provoked significant levels of critical attention. A widespread view is that it would be a mistake to press on, and that the plans can and should be reconsidered. As indicated, disquiet with the ambitions of the Conservative Party is not motivated by antipathy to the idea of a Bill of Rights. For many in this conversation the Human Rights Act 1998 is already a ‘Bill of Rights’ or at minimum the foundation stone for another more expansive measure (particularly in Northern Ireland). There are strategic and tactical calculations in play but it makes little sense, from a Northern Ireland perspective, to view the Human Rights Act 1998 as the ceiling on the future of human rights. Why? Because the Act was so evidently intended as the starting point of a more extensive programme of human rights reform linked to a process of conflict transformation. The anxiety now plain among many flows from the context noted above, and not from any lack of imagination about enhancing human rights guarantees. Remember that this is a constitutional conversation triggered from a position of scepticism about the implications of human rights, and this leads to the well-founded fear that essential guarantees will be removed and replaced by inferior substitutes.

The terms of this debate, given the particular circumstances, are intrinsically divisive and destabilising because they often display alarming levels of disrespect for the fundamental principles of the peace process. Take the example of the use of ‘British’ or ‘Britain’ in these discussions. This is often profoundly unhelpful for anyone trying to speak credibly to an ethno-nationally divided society such as Northern Ireland, where the right to identify as British or Irish or both is a constitutional fundamental. That is not in any way to suggest a denial of British identity in Northern Ireland, but it is to urge acceptance of the power-sharing nature of the current arrangements based as they are on recognition of bi-national division in a climate of mutual respect. Although proposed and advanced in often the most nationalistic terms,⁵⁵ the Human Rights Act 1998 does at least retain a principled focus on human beings.

It is generally accepted that effective intergovernmental co-operation was vital to securing peace in Northern Ireland. The Irish Government retains an established role in these discussions and its views must and should be taken into account. The UK and Irish Governments are co-guarantors of the Agreement, and this fact has more than mere symbolic significance. The perception that the current UK Government is continually questioning the fundamentals of the peace process does risk derailing the progress that has been made in securing better relationships across these islands, and it is apparent that the Irish Government has been monitoring developments closely.⁵⁶

Taken together this combines to create an uneasy moment for anyone troubled about the constitutional future of the UK. A constitutional confrontation is pending that might ultimately fracture the 'union state' beyond repair. Politics will dictate whether this is regarded as welcome or unwelcome, but it does seem to be a high price for what looks like an ill-judged constitutional intervention. Is it therefore time to stop talking about a 'British Bill of Rights' and, in line with scholarly and other assessments, embrace the more pluralist UK that is emerging?

Conclusion: Not the Way Forward?

The constitutional arrangements in Northern Ireland are the result of many years of careful negotiation and compromise. Northern Ireland remains a region within the UK (the United Kingdom of Great Britain and Northern Ireland) with distinctive power-sharing structures that reflect relationships across these islands (perhaps still best captured in the three-stranded approach in the Belfast/Good Friday Agreement 1998). Human rights protections are central, and the European Convention is directly referred to in the Agreement; Convention rights (in the form of the Human Rights Act 1998 and the Northern Ireland Act 1998) continue to influence law, policy and practice in essential ways. Use is still made of the Strasbourg court, and its jurisprudence continues to shape the debates on dealing with legacy issues, and will inform any new mechanisms established. Even though the expected Bill of Rights has not been delivered, the highly participative process helped to mould a distinctive regional human rights culture. Northern Ireland benefits from vibrant civil society networks that are attentive to the global framework of human rights norms and institutions.

The briefing is intended to highlight why the UK Government's proposals have generated high levels of concern in Northern Ireland and elsewhere. Questions must be raised about the wisdom of proceeding with these plans, and whether the constitutional damage is really worth it. Initiating a process to repeal the Human Rights Act will provoke further division in Northern Ireland, and the UK in general, at a time when relationships need to be repaired. It is not the way forward.

Endnotes

1. The Conservative Party Manifesto 2015 <www.conservatives.com/manifesto> accessed 16 May 2016; Conservative Party, *Protecting Human Rights in the UK: The Conservatives' Proposals for Changing Britain's Human Rights Law* (Conservative Party, London 2014).
2. 'Theresa May's Speech on Brexit' <www.conservativehome.com/parliament/2016/04/theresa-mays-speech-on-brexit-full-text.html?utm_campaign=twitter&utm_medium=twitter&utm_source=twitter> accessed 16 May 2016. Theresa May, as part of her leadership bid within the Conservative Party, has since indicated that this option should not be pursued, Anna Dannreuther and Adam Wagner, 'Where The Tory Leadership Candidates Stand On Human Rights' <<http://rightsinfo.org/tory-leadership-candidates-stand-human-rights/>> accessed 6 July 2016; 'Theresa May launches Tory leadership bid with pledge to unite country' <www.theguardian.com/politics/2016/jun/30/theresa-may-launches-tory-leadership-bid-with-pledge-to-unite-country> accessed 16 July 2016.
3. See, for example, House of Lords, EU Committee, The UK, the EU and a British Bill of Rights (HL Paper 139, 2016), in particular, see the evidence on Northern Ireland provided by Christopher McCrudden and Gordon Anthony; Kanstantin Dzentsiarou and Tobias Lock (eds) *The legal implications of a repeal of the Human Rights Act 1998 and withdrawal from the European Convention on Human Rights* <http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2605487> accessed 16 May 2016; Christine Bell, 'Human Rights Act Repeal and Devolution' <<http://www.centreonconstitutionalchange.ac.uk/blog/human-rights-act-repeal-and-devolution-0>> accessed 16 May 2016; Mark Elliot, 'Theresa May's Case for Withdrawal from the ECHR: Politically astute, legally dubious, constitutionally naive' <<https://publiclawforeveryone.com/2016/04/26/theresa-mays-case-for-withdrawal-from-the-echr-politically-astute-legally-dubious-constitutionally-naive/>> accessed 16 May 2016; C.R.G. Murray, Aoife O'Donoghue, Ben T.C. Wanwick, 'The Place of Northern Ireland within UK Human Rights Reform' <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2643464> accessed 16 May 2016.
4. A position that must be viewed in the light of the divisive outcome of the referendum on membership of the EU, see Colin Harvey, 'Complex Constitutionalism in a Pluralist UK' <<https://ukconstitutionallaw.org/2016/07/02/colin-harvey-complex-constitutionalism-in-a-pluralist-uk/>> accessed 6 July 2016.
5. The final report of the Commission on a Bill of Rights, *A UK Bill of Rights? The Choice Before Us* (Vols 1 and 2, December 2012) provides essential background for understanding the current conversation.
6. For example, Dominic Grieve, 'Scrapping the Human Rights Act will Hurt the UK' Prospect (September 2015 issue) <www.prospectmagazine.co.uk/features/scrapping-the-human-rights-act-will-hurt-the-uk> accessed 16 May 2016; KRW Law and Doughty Street Chambers, *Report on the Potential Effects of Repeal of the Human Rights Act 1998 by the British Government: An Independent Study Commissioned by the European United Left/Nordic Green (GUE/NGL) Group of the European Parliament*, 15 February 2016 <www.doughtystreet.co.uk/documents/uploaded-documents/HRA_NI_FINAL_15_02_16.pdf> accessed 16 May 2016; Colin Harvey, 'Rights in a Fractured Union' <<http://ukconstitutionallaw.org/2015/06/01/hra-watch-reform-repeal-replace-colin-harvey-rights-in-a-fractured-union/>> accessed 16 May 2016.
7. For an analysis of the place of human rights in the UK constitution see Colm O'Conneide, *Human Rights and the UK Constitution* (2012, British Academy Policy Centre) <www.britac.ac.uk/policy/Human-rights.cfm> accessed 16 May 2016.
8. See <<http://nhri.ohchr.org/EN/AboutUs/ICC/Accreditation/Pages/default.aspx>> accessed 16 May 2016.
9. <www.equalityhumanrights.com/en> accessed 16 May 2016.
10. <www.nihrc.org/> accessed 16 May 2016.
11. <www.scottishhumanrights.com/> accessed 16 May 2016.
12. <www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/> accessed 16 May 2016.
13. See Northern Ireland Act 1998 s 69 and Scottish Commission for Human Rights Act 2006 s 2.
14. Colin Harvey and Stephen Livingstone, 'Human Rights and the Northern Ireland Peace Process' [1999] *European Human Rights Law Review* 162.
15. Paul Mageean and Martin O'Brien, 'From the Margins to the Mainstream: Human Rights and the Good Friday Agreement' (1999) 22 *Fordham International Law Journal* 1499.
16. It is the St Andrews Agreement 2006 that is central to the DUP's understanding of its approach to devolved government, see the comments on the Human Rights Act and the Agreement by Jeffrey Donaldson, 'The Human Rights Act has Failed Victims' <www.mydup.com/news/article/donaldson-human-rights-act-has-failed-victims> accessed 16 May 2016. The electoral position was confirmed in the Assembly elections in May 2016 when the DUP returned with 38 MLAs (with the other major parties as follows: Sinn Féin 28, UUP 16, SDLP 12, Alliance Party 8) <www.bbc.co.uk/news/election/2016/northern_ireland/results> accessed 16 May 2016.
17. Belfast (Good Friday) Agreement 1998, 'Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland' Article 2: 'The two Governments affirm their solemn commitment to support, and where appropriate implement, the provisions of the Multi-Party Agreement.'

18. Declaration of Support para 2.
19. Constitutional Issues para 1 (v).
20. Constitutional Issues para 1 (vi).
21. Democratic Institutions in Northern Ireland para 5(b).
22. Democratic Institutions in Northern Ireland paras 5(b), (c), 11, 26(a),
23. Rights, Safeguards and Equality of Opportunity, para 2.
24. Rights, Safeguards and Equality of Opportunity, para 4.
25. The Preamble to which states: 'Reaffirming their commitment to the principles of partnership, equality and mutual respect and to the protection of civil, political, social, economic and cultural rights in their respective jurisdictions.'
26. Rights, Safeguards and Equality of Opportunity, para 9.
27. Rights, Safeguards and Equality of Opportunity para 9.
28. Rights, Safeguards and Equality of Opportunity para 10.
29. Reconciliation and Victims of Violence para 12.
30. Jeffrey Donaldson above n 16. See also the contributions to a Northern Ireland Assembly debate on the repeal Human Rights Act, 1 June 2015, <<http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/06/01&docID=236056>> accessed 16 May 2016.
31. Brice Dickson, *The European Convention on Human Rights and the Conflict in Northern Ireland* (OUP, 2010).
32. *Ireland v UK* (1979-1980) 2 EHRR 25.
33. 'Statement by Minister Flanagan on the "Hooded Men" Case' 2 December 2014 <www.dfa.ie/news-and-media/press-releases/press-release-archiv/2014/december/hooded-men-case-northern-ireland/> accessed 16 May 2016.
34. For example, *Jordan v UK* (2003) 37 EHRR 52; *McKerr v UK* (2002) 34 EHRR 20; *McCann v UK* (1996) 21 EHRR 97.
35. See Gordon Anthony and Luke Moffett, 'Northern Ireland: Law, Politics and the "Problem of the Past" (2014) 20 *European Public Law* 395.
36. *Dudgeon v UK* (1982) 4 EHRR 149.
37. <www.gov.uk/government/uploads/system/uploads/attachment_data/file/390672/Stormont_House_Agreement.pdf.> accessed 16 May 2016.
38. 'That this Assembly recognises the vital importance that the Human Rights Act 1998 plays in the lives of citizens of the United Kingdom; further recognises the importance of this Act to the Good Friday Agreement and the devolution of policing and justice powers; and rejects any attempts by the Conservative Government to repeal the Human Rights Act 1998.' Private Members' Business, MLAs Stewart Dickson, Chris Lyttle and Anna Lo, <www.niassembly.gov.uk/assembly-business/minutes-of-proceedings/01-june-2015/> accessed 16 May 2016.
39. For example, *Re JR38's Application* (Northern Ireland) [2015] UKSC 42.
40. Ronagh McQuigg, 'A "very limited" effect or a "seismic" impact? A study of the impact of the Human Rights Act 1998 on the Courts of Northern Ireland' [2010] *Public Law* 551; See B Dickson, 'The impact of the Human Rights Act in Northern Ireland' in John Morison, Kieran McEvoy and Gordon Anthony, *Judges, Transition and Human Rights* (OUP, 2007) 201-222.
41. *Re NIHRC's Application* [2015] NIQB 102.
42. *Re NIHRC's Application* [2013] NICA 37. See also, *In re G* [2008] UKHL 38, [2009] 1 AC 173.
43. See <www.nipolicingboard.org.uk/index/our-work/content-humanrights/content-psnicodeofethics.htm> accessed 16 May 2016.
44. The Board is required to monitor PSNI performance on compliance with the Human Rights Act, *Police (Northern Ireland) Act 2000* s 3(3)(b)(i); see generally <www.nipolicingboard.org.uk/index/our-work/content-humanrights.htm> accessed 16 May 2016.
45. Colin Harvey, 'Bringing Humanity Home: A Transformational Human Rights Culture for Northern Ireland' in Anne-Marie McAlinden and Clare Dwyer (eds), *Criminal Justice in Transition: The Northern Ireland Context* (Hart Publishing, 2015) 47.
46. See <www.attorneygeneralni.gov.uk/human-rights-guidance> accessed 16 May 2016; *Justice (Northern Ireland) Act 2004* s 8.
47. *Commissioner for Older People Act* (Northern Ireland) 2011; *Children's Services Co-operation Act* (Northern Ireland) 2015.

48. See, for just one example, the submissions from Northern Ireland to the UN Committee on Economic, Social and Cultural Rights for its consideration of the UK State report in June 2016, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1059&Lang=en> accessed 16 May 2016.
49. See, for example, CAJ, *Fighting the Repeal of the Human Rights Act*, 9 June 2015, <www.caj.org.uk/contents/1318> accessed 16 May 2016.
50. Northern Ireland Human Rights Commission, *A Bill of Rights for Northern Ireland: Advice to the Secretary of State for Northern Ireland* (NIHRC, 10 December 2008). For the response of the Northern Ireland Office see, NIO, *A Bill of Rights for Northern Ireland: Next Steps* (NIO, November 2009) and NIHRC, *A Bill of Rights for Northern Ireland: Next Steps – Response to the Northern Ireland Office* (NIHRC, February 2010). The work of the Commission on this project was extensive, see e.g. NIHRC, *Progressing a Bill of Rights: An Update* (NIHRC, April 2004) and *Making a Bill of Rights for Northern Ireland: A Consultation by the Northern Ireland Human Rights Commission* (NIHRC, September 2001); *Summary of Submissions on a Bill of Rights* (NIHRC, July 2003). See also, *Bill of Rights Forum, Final Report: Recommendations to the Northern Ireland Human Rights Commission on a Bill of Rights for Northern Ireland* (31 March 2008). See Anne Smith, Monica McWilliams, and Priyamvada Yarnell, *Political Capacity Building: Advancing a Bill of Rights for Northern Ireland* (Transitional Justice Institute, 2014); Colin Harvey and Alex Schwartz, 'Designing a Bill of Rights for Northern Ireland' (2009) 60 *Northern Ireland Legal Quarterly* 181; Colin Harvey, 'Revisiting a Bill of Rights for Northern Ireland' <<http://ukconstitutionalaw.org/2015/07/10/hra-watch-reform-repeal-replace-colin-harvey-revisiting-a-bill-of-rights-for-northern-ireland/>> accessed 16 May 2016.
51. The author was a Commissioner at the time. Two Commissioners, Jonathan Bell and Daphne Trimble, dissented from the final report.
52. Stormont House Agreement 2014 para 69: 'Noting that there is not at present consensus on a Bill of Rights, the parties commit to serving the people of Northern Ireland equally, and to act in accordance with the obligations on government to promote equality and respect and to prevent discrimination; to promote a culture of tolerance, mutual respect and mutual understanding at every level of society, including initiatives to facilitate and encourage shared and integrated education and housing, social inclusion, and in particular community development and the advancement of women in public life; and to promote the interests of the whole community towards the goals of reconciliation and economic renewal.' The Fresh Start Agreement 2015 offered no proposals for a way forward.
- 53 See Anne Smith and Monica McWilliams, 'Human Rights Protections in Northern Ireland: How to Make the Best Out of a Bad Situation' <<http://ohrh.law.ox.ac.uk/human-rights-protections-in-northern-ireland-how-to-make-the-best-out-of-a-bad-situation/>> accessed 7 July 2016.
54. It is instructive that the Northern Ireland Executive (unlike Scotland and Wales) did not nominate members to the Advisory Panel established by the Commission on a Bill of Rights. Is this a likely response to any new UK-wide process, and does it signal (along with the Assembly vote against repeal of the Human Rights Act) the likely result of any request for a legislative consent motion in the Northern Ireland Assembly?
55. For comment on this see Colin Harvey, 'Taking the Next Step? Achieving another Bill of Rights' [2011] *European Human Rights Law Review* 24.
56. Speech by Minister Flanagan to the Seanad on the effect of the repeal of the UK Human Rights Act on the Good Friday Agreement, 14 May 2015 <www.dfa.ie/news-and-media/speeches/speeches-archive/2015/may/minister-flanagan-addresses-the-seanad/> accessed 16 May 2016: 'On the broad question of human rights and the Good Friday Agreement, the views of the Government are clear and unchanged. The protection of human rights in Northern Ireland law, predicated on the European Convention of Human Rights, is one of the key principles underpinning the Agreement. As a guarantor of the Good Friday Agreement, the Government takes very seriously its responsibility to safeguard its institutions and principles. Protecting the human rights aspects of the Good Friday Agreement is not only a shared responsibility between the two Governments in terms of the welfare of the people of Northern Ireland, but is also an obligation on them as parties to the international treaty, lodged with the UN, in which the Agreement was enshrined. The fundamental role of human rights in guaranteeing peace and stability in Northern Ireland cannot be taken for granted and must be fully respected.'

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