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Assembly

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Ray McCaffrey & Fiona O'Connell

Standing Committees that examine conformity with human rights and equality issues in legislatures in the UK and Ireland

1 Introduction

This briefing paper has been prepared following a request from the Assembly & Executive Review Committee. The Committee asked for information, where it exists, on the following:

- The remit and role of any Standing Committees in the UK and Ireland examining conformity with human rights and equality issues
- The membership of these Committees
- The main processes of these Committees, and in particular any common processes such as examining detailed human rights memoranda and/or equality impact assessments accompanying Government Bills.

2 The wider human rights framework

Legislation passed by the Northern Ireland Assembly, Scottish Parliament and National Assembly for Wales must be compatible with the European Convention on Human Rights (ECHR)¹. The UK Parliament, as a sovereign Parliament, can pass legislation that is incompatible with the ECHR. The Supreme Court of the UK (unlike its US counterpart) cannot strike down an Act of Parliament, but can issue a declaration of incompatibility. It is then up to Parliament to decide what action it wishes to take and this is discussed below in relation to the Joint Committee.

Therefore, there are no directly comparable committees in any other legislature in the UK or the Republic of Ireland with a remit similar to the joint committee at Westminster. Neither, it would appear, is there provision elsewhere for the establishment of an Ad Hoc Committee on Conformity with Equality Requirements as provided for within the Northern Ireland Assembly. Furthermore, monitoring and compliance with human rights extends beyond legislative committees to human rights and equality commissions, making for a more complex framework. For example, in both Northern Ireland and the Republic of Ireland, the respective Human Rights Commissions can examine legislation for compliance with human rights issues and report to the legislatures their recommendations.

Specifically in the context of Northern Ireland, human rights and equality form a significant part of the Belfast Agreement and the subsequent Northern Ireland Act 1998. Indeed, the Agreement “envisaged that there would be a joint committee of representatives of the two Human Rights Commissions, North and South, as a forum for consideration of human rights issues in the island of Ireland. The joint committee will consider, among other matters, the possibility of establishing a charter, open to signature by all democratic political parties, reflecting and endorsing agreed measures for the protection of the fundamental rights of everyone living in the island of Ireland”².

In addition, of the seven different mechanisms for ensuring that legislation made by the Northern Ireland Assembly falls within its competence, “four relate specifically to human rights”:

- 1) the Attorney General can...initiate court proceedings challenging the legislation’s compatibility with ‘Convention rights’, i.e. those rights listed in the European Convention on Human Rights which were made part of domestic law throughout the UK by the Human Rights Act 1998.
- 2) the Secretary of State for Northern Ireland can refuse to submit a Bill for Royal Assent if he or she thinks it is incompatible with international human rights obligations.

¹ See the relevant Acts establishing these institutions.

² Belfast Agreement <http://cain.ulst.ac.uk/events/peace/docs/agreement.pdf>

3) the Northern Ireland Human Rights Commission has power to advise the Assembly that a Bill is incompatible with human rights

4) the compatibility of legislation with human rights can be challenged during court proceedings or by way of parallel court proceedings³.

Therefore, while there are committees within the Scottish Parliament, National Assembly for Wales and the Oireachtas that to varying degrees examine issues around human rights and equality (and these are listed below), these are generally part of a broader remit with which a committee has been tasked.

3 Examples of Committees

House of Commons and House of Lords Joint Committee on Human Rights

Historical context of the Committee

In its reflections on its work from 2001-05 the Committee commented on its establishment:

General consensus on the desirability of a parliamentary committee on human rights was achieved at an early stage in the debate over the incorporation of the ECHR into UK law through the Human Rights Act. It seems to us that this was primarily because a parliamentary committee was seen as an important part of the constitutional compromise that was struck between parliamentary sovereignty and human rights in the terms of the Act. As is well known, the Act was crafted in such a way as to preserve ultimate parliamentary sovereignty in the field of human rights. The UK courts may not strike down incompatible primary legislation. Instead, assuming they cannot construe legislation in such a way as to make it compatible with the Convention rights, they may make a declaration of incompatibility, leaving it up to Parliament and the Government to decide how the situation should be remedied. This constitutional compromise leaves Parliament with a crucial responsibility for the protection of human rights. The establishment of a specialised committee within Parliament, reflecting that responsibility, was therefore seen as a natural development⁴.

House of Commons and House of Lords Joint Committee on Human Rights
Dr Hywel Francis MP (Chair), Labour
Mr Robert Buckland MP, Conservative
Mr Rheman Chishti MP, Conservative
Rt Hon Simon Hughes MP, Liberal Democrats
Mr Virendra Sharma MP, Labour
Sir Richard Shepherd MP, Conservative

³ Brice Dickson, *Law in Northern Ireland*, 2nd edition, Hart Publishing, 2013

⁴ Joint Committee On Human Rights - Nineteenth Report:

<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/112/11202.htm>

Baroness Berridge, Conservative Lord Faulks, Conservative Baroness Kennedy of The Shaws, Labour Lord Lester of Herne Hill, Liberal Democrats Baroness Lister of Burtersett, Labour Baroness O'Loan, Crossbench

The Joint Committee on Human Rights' formal remit is to consider:

- (a) matters relating to human rights in the United Kingdom (but excluding consideration of individual cases);
- (b) proposals for remedial orders, draft remedial orders and remedial orders made under the Human Rights Act 1998; and
- (c) in respect of draft remedial orders and remedial orders, whether the special attention of the House should be drawn to them on any of the grounds specified in HC Standing Order No. 151 (Statutory Instruments (Joint Committee))⁵

Work of the Committee

The Joint Committee on Human Rights was first appointed in January 2001. The Committee has a maximum of six members from each House and the quorum is two Members from each House. It has the power to appoint specialist advisers and to adjourn from place to place. This power originally extended only to within the UK and to institutions of the Council of Europe outside the UK no more than four times in any calendar year. This was subsequently changed to a general power to adjourn from place to place in January 2002⁶.

Erskine May has summarised the work of the Committee:

The Committee has chosen to examine each bill introduced into either House and to report on whether any of a bill's provisions could raise questions around compatibility with 'Convention rights', within the meaning of the Human Rights Act 1998. It also considers questions of compatibility with international human rights instruments to which the UK is a signatory, and draws the attention of each House to any concerns it has in regular reports. On occasion, items of subordinate legislation which are primary legislation within the meaning of the 1998 Act (for example commencement orders and statutory instruments that repeal primary legislation) are also considered by the Committee. In undertaking this legislative scrutiny, the Committee is assisted by a permanent legal adviser, who is an officer of both Houses.

Within the very broad terms of its orders of reference, the Committee has also undertaken inquiries similar to those of other select committees of either House on

⁵ <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/>

⁶ Erskine May, *Parliamentary Practice*, 24th edition, Lexis-Nexis, 2011, p917

general matters of public policy. It has reported, for example, on the case for establishing a human rights commission in Great Britain and a UK bill of rights, and on the United Kingdom's compliance with judgments of the European Court of Human Rights and the international human rights obligations. In this respect it is of a very different nature from other joint committees established permanently, which have very narrow Terms of reference, or the ad hoc committees which report only on the specific matter referred to them by the two Houses⁷.

The Committee's work on remedial orders

A remedial order is a form of subordinate legislation which has the power to amend or repeal primary legislation for purposes and in circumstances specified in the Human Rights Act 1998: "It is a fast-track method of removing incompatibilities with Convention rights which emerge in the course of litigation in courts in the United Kingdom or at the European Court of Human Rights at Strasbourg..."⁸.

The role of the Committee is to report and recommend, within a 60-day timeframe, on whether a draft order remedying the incompatibility should be approved by each House.

Compatibility with European Convention on Human Rights – Government Bills

The work of the Joint Committee should not be viewed in isolation – detailed guidance exists for those drafting and introducing legislation to ensure that it complies, in so far as possible, with the Government's responsibilities under the ECHR:

Section 19 of the Human Rights Act 1998 requires that, for every government bill, the minister in charge in each House make a statement that in her or his view the bill's provisions are compatible with the Convention rights.

Departmental legal advisers will take the lead in providing the formal advice required to justify such statements, seeking assistance from legal advisers in the Ministry of Justice Human Rights Division and, ultimately, the law officers as necessary⁹.

The devolved institutions and the Oireachtas

The Scottish Parliament, National Assembly for Wales and Dail Eireann do have committees that address equality issues and these are outlined briefly below:

Scottish Parliament

Equal Opportunities Committee
Margaret McCulloch (Convenor), Labour
Marco Biagi, SNP

⁷ Erskine May, *Parliamentary Practice*, 24th edition, Lexis-Nexis, 2011 pp917-918

⁸ As above p691

⁹ The guidance is detailed. The full version can be found in chapter 11 of the following document:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210917/Guide_to_Making_Legislation_July_2013.pdf

Alex Johnstone, Conservative John Finnie, Independent Siobhan McMahon, Labour Christian Allard, SNP John Mason, SNP

The Justice Committee of the Scottish Parliament is mandated to scrutinise Human Rights issues, but it was criticised in a 2012 report from Glasgow University for having failed to adequately address such issues since its establishment:

A review of the official papers and reports of the Justice Committee for the period under review reveals a reductive and sceptical pattern of attitude towards human rights that comports with the CPGHR's assessment. Although the applicable human rights regimes, such as the European Convention on Human Rights (ECHR), have their own normative and institutional frameworks, the committee employs neither such frameworks nor the vocabulary of human rights in dealing with issues of indisputable human rights character. In the few occasions the Committee made reference to these normative and institutional frameworks, it was in negative terms, alluding to the confining constraints posed by the Convention in the administration of criminal justice¹⁰.

The report called for the establishment of a separate Human Rights Committee within the Scottish Parliament.

The Equal Opportunities Committee has a remit to consider matters of discrimination relative to sex or marital status, race, disability, age, sexual orientation, language, social origin or other personal attributes, including beliefs or opinions on, for example, religion or politics¹¹. The work of the Committee encompasses a broad range of business. A list of the current business includes:

- Marriage and Civil Partnership (Scotland) Bill
- Draft budget scrutiny 2014-15
- Equality and Human Rights Commission
- Women and Work

Within its inquiries and published reports the Committee addresses issues of equality and human rights. For example, in its report on the Marriage and Civil Partnership (Scotland) Bill, the Committee highlights the human rights issues raised by various stakeholders who gave evidence to the Committee. The report itself, however, does not take a position on the overall human rights implications of the Bill.

¹⁰ University of Glasgow, *Scottish Parliament Committees' Perspective on Human Rights*, April 2012

http://www.gla.ac.uk/media/media_241147_en.pdf

¹¹ Scottish Parliament: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29807.aspx>

National Assembly for Wales

Constitutional and Legislative Affairs Committee	Communities, Equality and Local Government Committee
Dave Melding (Chair), Conservative Suzy Davies, Conservative Julie James, Labour Eluned Parrott, Liberal Democrats Simon Thomas, Plaid Cymru	Christine Chapman (Chair), Labour Leighton Andrews, Labour Peter Black, Liberal Democrats Jocelyn Davies, Plaid Cymru Janet Finch-Saunders, Conservative Mike Hedges, Labour Mark Isherwood, Conservative Gwyn R Price, Labour Jenny Rathbone, Labour Rhodri Glyn Thomas, Plaid Cymru

The remit of the Constitutional and Legislative Affairs Committee is to carry out the functions of the responsible committee set out in Standing Order 21 of the National Assembly for Wales and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.

As part of this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.

The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General¹².

The Communities, Equality and Local Government Committee has a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: Wales's culture; languages communities and heritage, including sport and the arts; local government in Wales, including all housing matters; and equality of opportunity for all¹³.

The Committee published a report in August 2013, *The future of equality and human rights in Wales*, which looked at the following issues:

- how well the specific public sector equality duties are functioning in Wales;
- the future of the Equality and Human Rights Commission in Wales;
- the link between poverty and equality, and the socio-economic duty; and

¹² Constitutional and Legislative Affairs Committee, *Report on the Further and Higher Education (Governance and Information) (Wales) Bill*: <http://tinyurl.com/nmr4knt>

¹³ National Assembly for Wales, Communities, Equality and Local Government Committee: <http://www.senedd.assemblywales.org/mgCommitteeDetails.aspx?ID=226>

- accountability for equality and human rights legislation in Wales¹⁴.

The report made a series of recommendations in relation to the above issues that were broadly accepted by the Welsh Government. One of these recommendations was that “The Welsh Government should seek further powers in the field of equality and human rights to build on the Equality Act 2010 and the Human Rights Act 1998”. The committee acknowledged that the Assembly could do more to scrutinise equality issues¹⁵.

Oireachtas

Defence, Justice and Equality Committee
<p>TDs</p> <p>David Stanton, Fine Gael Niall Collins, Fianna Fáil Marcella Corcoran Kennedy, Fine Gael Alan Farrell, Fine Gael Anne Ferris, Labour Seán Kenny, Labour Pádraig Mac Lochlainn, Sinn Féin Finian McGrath, Independent John Paul Phelan, Fine Gael</p> <p>Senators</p> <p>Ivana Bacik, Labour Martin Conway, Fine Gael Tony Mulcahy, Fine Gael Rónán Mullen, Independent Denis O'Donovan, Fianna Fáil Katherine Zappone, Independent</p>

The Defence, Justice and Equality Committee ‘has been a forum for Oireachtas members from all parties and none to have a meaningful input into key legislation and policy areas which have real significance. It plays a major role in helping to shape opinion and policy in the fields of justice, security, the rule of law, equality, defence and immigration to ensure that Irish society is safe, secure, just, open-minded and impartial’¹⁶.

In addition, the Committee on Foreign Affairs and Trade lists as one of its roles “the protection and promotion of human rights” and selected as a key priority for 2013:

¹⁴ Communities, Equality and Local Government Committee: *The future of equality and human rights in Wales*, August 2013
<http://tinyurl.com/p5zy6yw>

¹⁵As above

¹⁶ Role of the Committee on Justice, Defence and Equality:
http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/jde-committee/role/

The protection and promotion of human rights, including (i) the completion of a report on human rights and democracy clauses in international agreements to which the European Union is a party, and (ii) the Government's objectives for its term of membership of the UN Human Rights Council¹⁷

A sub-committee on Human Rights was established from 2007-11 with a remit to "consider such aspects of international human rights, including the role of the United Nations in this field, as the sub-Committee may select or as may be referred to it by the Joint Committee on Foreign Affairs"¹⁸.

¹⁷ 2013 Work programme of the Committee on Foreign Affairs and Trade

<http://www.oireachtas.ie/parliament/media/committees/foreignaffairs/JCFAT-Work-Programme-2013-V.5.doc>

¹⁸ Sub-Committee on Human Rights, Order of Reference: <http://tinyurl.com/jvpzfzm>