



Northern Ireland
Assembly

Assembly and Executive Review Committee

OFFICIAL REPORT (Hansard)

Petitions of Concern: Briefing from Northern
Ireland Assembly Research and Information
Service

14 January 2014

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Members present for all or part of the proceedings:

Mr Stephen Moutray (Chairperson)
Mr Pat Sheehan (Deputy Chairperson)
Mr Gregory Campbell
Mr Paul Givan
Mr Raymond McCartney
Mr Seán Rogers

Witnesses:

Mr Ray McCaffrey

Northern Ireland Assembly Research and Information Service

The Chairperson: Further to the discussion at the meeting on 10 December 2013, a research briefing paper on Standing Committees that examine conformity with human rights and equality issues in legislatures in the UK and Ireland has been prepared for the Committee. I invite the research officer to brief the Committee on the paper. I advise Members that Hansard will report the presentation and any subsequent discussion. I welcome Ray McCaffrey, who will present the paper. Go ahead when you are ready, Ray.

Mr Ray McCaffrey (Northern Ireland Assembly Research and Information Service): Thank you, Chair. The Research and Information Service was asked to look at the remit and role of any Standing Committees in legislatures in the UK and Ireland in examining conformity with human rights and equality issues.

The starting point is the House of Commons and House of Lords Joint Committee on Human Rights at Westminster. It has a broad role in the context of the UK's obligations under the European Convention on Human Rights (ECHR) and the incorporation of that convention under the Human Rights Act 1998. I will give members an overview of the work of the Joint Committee.

In a 2005 report, the Joint Committee reflected on its work to date. It stated that it was an important part of the constitutional compromise struck between parliamentary sovereignty and human rights in the 1998 Human Rights Act. That Act was crafted in such a way as to preserve parliamentary sovereignty at Westminster in the field of human rights. So, unlike its US counterpart, for example, the UK Supreme Court cannot strike down primary legislation that is incompatible with convention rights. Instead, it makes a declaration of incompatibility, essentially leaving it up to Parliament and the Government to remedy the situation; and that is where the Joint Committee comes in. Part of its role

is to report on remedial orders that can be introduced to rectify any incompatibility. It is essentially a fast-track method for removing incompatibilities with convention rights.

This forms only part of the Joint Committee's broader remit. For example, it has chosen to review each Bill brought before the House. It can undertake inquiries into areas of public policy; for example, establishing a human rights committee in Great Britain. Neither should the work of the Joint Committee be viewed in isolation. Before legislation reaches that stage, detailed guidance exists for those drafting and introducing legislation to ensure that it complies, as far as possible, with the Government's responsibilities under the convention. If a Minister is not able to provide that personal assurance, he or she must state, nevertheless, that the Government wish the House to proceed with the Bill. That is an overview of the Westminster situation.

Unlike the UK Parliament, legislation passed by the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales must be compatible with the UK's obligations under the convention. Obviously, there are no directly comparable Committees in the devolved institutions to the Joint Committee, as there does not necessarily need to be. Neither, it appears, is there a directly comparable Committee in the Houses of the Oireachtas.

At this point, it is worth mentioning that, in its 2008 advice to the Secretary of State on a bill of rights for Northern Ireland, the Northern Ireland Human Rights Commission (NIHRC) recommended that an Assembly Committee should be established similar to the Joint Committee at Westminster. Just to reiterate, that advice was to be seen in the context of a bill of rights having been established here. The NIHRC envisaged that the Committee's functions would include pre-legislative scrutiny of legislation for compliance with the bill of rights; conducting consultations; publishing reports; and drawing up departmental guidance to government for compliance with the bill of rights in respect of statements of compatibility.

The Justice Committee in Scotland is mandated to scrutinise human rights issues, but it has come in for criticism for having failed to adequately address such issues. The Equal Opportunities Committee in Scotland 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 attribute. The National Assembly for Wales has the Communities, Equality and Local Government Committee, which has the 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 all. In the Oireachtas, the Committee on Justice, Defence and Equality and the Joint Committee on Foreign Affairs and Trade cover equality and human rights issues between them. From 2007 to 2011, there was a subcommittee on human rights, but it took a wider view of the issue, including international human rights. Again, it does not appear to have been concerned with looking at the minutiae of legislation, as this Committee is discussing. So, there are Committees that look at human rights issues and equality. However, those issues really have to be seen in the broader remit of the Committees. There is not really a Committee as such relating to the one that you would find at Westminster.

Looking beyond that, and one thing that the paper touched on, monitoring and compliance with human rights extends beyond Committees of legislatures and the various human rights and equality commissions, making for a more complex framework within which the issues need to be placed, certainly in the context of Northern Ireland. For example, human rights and equality form a significant part of the Belfast Agreement and the Northern Ireland Act 1998. In addition, of the seven different mechanisms for ensuring that legislation made by the Assembly falls within its competence, four relate specifically to human rights. For example, the Attorney General can initiate court proceedings challenging the legislation's compatibility with convention rights. 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. The NIHRC has the power to advise the Assembly that a Bill is incompatible with human rights. Finally, the compatibility of legislation with human rights can be challenged during court proceedings.

Essentially, that is a brief overview of the position. What may be required is a wider look at how the issues are addressed in the devolved institutions and the Oireachtas. As I said, this extends beyond looking just specifically at Committees in the legislatures. It is a more complex framework that is perhaps worthy of more detailed discussion, but hopefully this is a useful overview for members.

The Chairperson: Thank you, Ray. Are there any questions?

Mr Givan: Thank you very much, Ray. This is a very useful piece of work for us. I was struck by the comment that we have been looking at whether we should potentially have a human rights Committee to look at legislation once that is triggered by petitions of concern or motions. In all your research, you have not found a parallel-type process that has been used at Westminster or the Dáil.

Mr McCaffrey: No, but I suppose you could make the point that the petitions of concern mechanism is not found in the other legislatures either. So, there perhaps is not the trigger that would send legislation to such a Committee. In Westminster, the Joint Committee carries out that function around incompatibility with European Convention rights. However, you will not find a directly comparable mechanism to petitions of concern. We would always caution against drawing parallels with other institutions, especially the House of Commons, given its much wider remit.

Mr Givan: You made the point that we have the Attorney General and the Secretary of State. There are all those checks and balances if we decide to do something that is contrary to human rights. Westminster does not have that. If that Parliament decides to pass legislation, it is sovereign.

Mr McCaffrey: Again, that is the difference. When you compare Westminster to the devolved institutions you should proceed with caution because the doctrine of parliamentary sovereignty applies. If it wishes to do so, it can pass legislation that is incompatible with convention rights, and that is where the work of the Joint Committee comes in. The Supreme Court in the UK cannot strike legislation down, but it can declare that it is incompatible. Essentially, it bats the ball back to Parliament and the Government and tells them that they need to sort it out.

Mr McCartney: My point is similar. As far as the four steps are concerned, the court challenge can only come after the Bill has been passed. Is that correct?

Mr McCaffrey: Yes.

Mr McCartney: OK. Thank you.

The Chairperson: There are no other questions. Thanks very much.

The research paper usefully highlights that there are human rights and equality obligations for Ministers in relation to public Bills. There are also processes in the Assembly for proofing Bills in respect of human rights and equality. I propose that we ask the Research and Information Service to prepare a further paper or papers on that to inform the Committee's scrutiny of the issue of petitions of concern and an ad hoc Committee on conformity with equality requirements. Are members content that we do that?

Members indicated assent.

The Chairperson: As members will recall, draft terms of reference for the review of petitions of concern were discussed at the Committee's meeting of 10 December. Further to that discussion, revised draft terms of reference are included in members' packs. Do members wish to go into closed session to consider them?

Members indicated assent.

The meeting continued in closed session.

On resuming —

The Chairperson: We are now in open session. The text of the draft terms of reference is as follows:

"The Assembly and Executive Review Committee will review Petitions of Concern, taking into account how the Petition of Concern has been used to date and the fact that the mechanism was designed as part of the safeguards to ensure that all sections of the community are protected and can participate and work together successfully in the operation of these institutions. The Committee will:

1. *Examine provisions for an Ad Hoc Committee on Conformity with Equality Requirements in relation to Petitions of Concern, including alternative procedures, e.g. the Westminster Joint Committee on Human Rights.*
2. *Examine the possibility of restricting the use of Petitions of Concern to certain key areas, and consider mechanisms that might facilitate this.*
3. *Consider whether the current threshold of 30 signatures required for a Petition of Concern should be adjusted.*
4. *Consider whether the Petitions of Concern mechanism should be replaced with an alternative mechanism, such as a weighted-majority vote."*

Are members agreed?

Members indicated assent.