



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 123/11

27 September 2011

NIAR 598-11

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UK Bill of Rights Consultation

1 Introduction

On 18 March 2011, the UK Government established the Commission on a Bill of Rights under the Chairship of Sir Leigh Lewis with terms of reference as follows¹:

- The Commission will investigate the creation of a UK Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in UK law, and protects and extend our liberties.
- It will examine the operation and implementation of these obligations, and consider ways to promote a better understanding of the true scope of these obligations and liberties.
- It should provide interim advice to the Government on the ongoing Interlaken process to reform the Strasbourg court ahead of and following the UK's Chairmanship of the Council of Europe².
- It should consult, including with the public, judiciary and devolved administrations and legislatures, and aim to report no later than by the end of 2012.

¹ Website of the Commission on a Bill of Rights, accessed 19 September 2011: <http://www.justice.gov.uk/about/cbr/index.htm>.

² The Commission published its interim advice to government on the reform of the Strasbourg court in July 2011: <http://www.justice.gov.uk/downloads/about/cbr/cbr-court-reform-interim-advice.pdf>.

In August 2011, the Commission published a consultation paper ‘Do we need a UK Bill of Rights?’³, with a deadline for responses **11 November 2011**. The Chair of the Commission wrote to the Committee for the Office of the First Minister and Deputy First Minister to invite views regarding the consultation⁴.

This paper summarises the consultation paper and places it in the context of Northern Ireland.

³ Commission on a Bill of Rights (2011), *Discussion Paper: Do we need a UK Bill of Rights?*: <http://www.justice.gov.uk/downloads/about/cbr/cbr-discussion-paper.pdf>.

⁴ Letter from Sir Leigh Lewis to Mr Tom Elliot 5 August 2011.

2 The Commission on a Bill of Rights Consultation Paper

The consultation paper gives an introduction to the Commission, setting out its terms of reference, lists the four questions for responses and outlines the existing human rights framework in the UK, but does not set out any particular proposals. The four consultation questions are:

(1) Do you think we need a Bill of Rights?

If so,

(2) What do you think a UK Bill of Rights should contain?

(3) How do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?

(4) Having regard to our terms of reference, are there any other views which you would like to put forward at this stage?

The paper summarised the UK human rights framework as follows:

Principles of the liberties of the subject The UK does not have a comprehensive written constitution or charter, rather operates on two principles:

1. People may do as they please provided they do not break the law or infringe the rights of others
2. Public authorities may only act if they have the power to do so

Parliamentary sovereignty The power to legislate rests with Parliament alone and its power to do so cannot be limited

The rule of law The judiciary interprets and applies the law independently and international treaties do not automatically become part of UK law

International rights standards There are international treaties which are binding, but they are not directly incorporated into UK law, for example:

Universal Declaration of Human Rights

Covenant on Civil and Political Rights

Covenant on Economic, Social and Cultural Rights

European Convention on Human Rights The Convention rights (see Appendix) are given effect in UK law by means of the Human Rights Act 1998⁵ and also the devolution legislation for Northern Ireland, Scotland and Wales. This has the following implications:

⁵ Human Rights Act 1998: <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

- UK courts and tribunals are required to take into account judgement of the European Court of Human Rights
- Acts of Parliament have to be declared compatible with the Convention
- Public authorities may not act in a way which is incompatible with the convention
- Individuals may seek redress through the UK courts and, if these are exhausted, may seek redress through the European Court of Human Rights

Scrutiny The implementation of rights standards are monitored by the following:

Joint Committee on Human Rights – for cross-party scrutiny of both Houses of Parliament

Equality and Human Rights Commission – which has monitoring and advisory powers and may bring legal proceedings

European Union The EU Charter of Fundamental Rights applies to the EU institutions and to the UK when implementing EU law, but does not contain any new justiciable rights in the UK

3 Northern Ireland⁶

The consultation document highlights the following points in relation to Northern Ireland⁷:

- “Under the terms of the Northern Ireland Act 1998, Ministers and Northern Ireland departments are not permitted to act in a way that is incompatible with the Convention”
- The Northern Ireland Assembly “does not have the competence legislate in a manner incompatible with the Convention”
- The Northern Ireland Human Rights Commission “is required by statute to advise the Secretary of State for Northern Ireland on the scope for defining, in a Bill of Rights for Northern Ireland to be enacted by the Westminster Parliament, rights supplementary to those in the Convention”.
- “The Belfast (Good Friday) Agreement 1998 states the Bill should reflect the particular circumstances of Northern Ireland, drawing as appropriate on additional international law and experience”

The Belfast Agreement states⁸:

The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, 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.

A cross-sectoral, cross-party Bill of Rights Forum published its report in March 2008⁹ and the Human Rights Commission published its Advice to Government in December of that year¹⁰. A Government response in November 2009 outlined some additional rights for consideration in Northern Ireland¹¹, which was subject to public consultation¹².

⁶ For an overview of human rights legislation in Northern Ireland, see Research and Information Service Research Paper 75/11 *Equality and Human Rights Legislation in Northern Ireland: A Review*, August 2011, Chapter 4: <http://www.niassembly.gov.uk/researchandlibrary/2011/7511.pdf>.

⁷ Commission on a Bill of Rights (2011), *Discussion Paper: Do we need a UK Bill of Rights?*, p.10.

⁸ Belfast Agreement, 1998, Rights, Safeguards and Equality of Opportunity.

⁹ Bill of Rights Forum (2008), *Final Report: Recommendations to the Human Rights Commission for a Bill of Rights for Northern Ireland*, 31 March 2008: http://www.billofrightsforum.org/borf_final_report.pdf.

¹⁰ Northern Ireland Human Rights Commission (2008), *Advice to Government on a Bill of Rights for Northern Ireland*, 10 December 2008: http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf.

¹¹ Northern Ireland Office (2009), *A Bill of Rights for Northern Ireland: Next Steps*, November 2009: http://www.nio.gov.uk/consultation_paper_-_a_bill_of_rights_for_northern_ireland_next_steps.pdf.

A Bill of Rights for Northern Ireland was debated in the Northern Ireland Assembly on 1 March 2010, where a motion expressing concern at the UK Government response to the Human Rights Commission's advice, calling for the inclusion of social and economic rights and calling for the introduction of a "robust, enforceable bill of rights that will provide rights-based protection for all our people" was not agreed¹³.

A motion put on 3 November 2009 to consider the Human Rights Commission's advice to the Secretary of State on a Bill of Rights "incompatible with the provisions of the Belfast Agreement" and to call on the Secretary of State not to implement the recommendations fell due to a lack of cross-community support¹⁴.

On 8 April 2008 the Assembly resolved the following motion¹⁵:

That this Assembly expresses its grave concern at the lack of cross-community support for the recommendations contained in the Report of the Bill of Rights Forum; and strongly urges the Northern Ireland Human Rights Commission to ensure cross-community support for its advice to the Secretary of State.

In a previous debate around community representation on the Bill of Rights Forum, the following was resolved¹⁶:

That this Assembly acknowledges that the unionist community has been largely excluded from the human rights process in Northern Ireland and under-represented within the human rights sector, resulting in the Bill of Rights Forum having a clear imbalance in the composition of its membership; believes that without the support of all sections of our community any Bill of Rights process is fundamentally flawed; and calls upon the Secretary of State to address these problems urgently, by ensuring processes that will facilitate better engagement with the unionist community and ensuring that the membership of the Bill of Rights Forum is more reflective of all the people of Northern Ireland.

Keen interest has also been shown in the Northern Ireland Bill of Rights process through numerous Assembly Questions¹⁷.

¹² Responses to the consultation, Northern Ireland Office website: <http://www.nio.gov.uk/index/public-consultation/archive-consultation/content-responses-bill-of-rights.htm>.

¹³ Northern Ireland Assembly debate 1 March 2010: <http://www.niassembly.gov.uk/record/reports2009/100301.htm#a6>.

¹⁴ Northern Ireland Assembly debate 3 November 2009: <http://www.niassembly.gov.uk/record/reports2009/091103.htm#a5>.

¹⁵ Northern Ireland Assembly debate 8 April 2008: <http://www.niassembly.gov.uk/record/reports2007/080408.htm#4>.

¹⁶ Northern Ireland Assembly debate 15 October 2007: <http://www.niassembly.gov.uk/record/reports2007/071015.htm#3>.

¹⁷ See, for example, AQO 2841/09, AQO 2545/08, AQO 2389/08, AQW 3095/08, AQW 2945/08, AQW 2832/08, AQO 1294/08.

4 Considerations for the UK Bill of Rights Consultation

The consultation document does not set out any proposals, but explains the context of a potential UK Bill of Rights. The questions for consideration are therefore very general.

(1) ***Do you think we need a Bill of Rights?***

The Joint Committee on Human Rights reported in July 2008 that there should be a Bill of Rights and Freedoms¹⁸. The Government response to the Joint Committee's report acknowledged there may be scope for a new constitutional document that would safeguard Convention rights but also extend certain rights and responsibilities beyond the Convention¹⁹. The Joint Committee was concerned, however, at Government equivocation regarding the Human Rights Act and the relationship between rights and responsibilities envisaged by the Government.

(2) ***What do you think a UK Bill of Rights should contain?***

The Joint Committee on Human Rights set out what a draft Bill could look like in an appendix to its July report:

- Preamble – to set out the purpose of the Bill of Rights
- Values – that are considered important in the UK, such as liberty, fairness, civic duty, democracy and the rule of law
- Interpretation – to set out how the Bill of Rights should be used
- Additional rights – such as trial by jury and administrative justice
- Saving provision – making it clear that the Bill of Rights cannot strike down legislation
- International rights – which are present in international treaties, but not expressed in domestic law
- Protection for vulnerable groups – such as children, disabled people, minorities, workers (including migrant workers) and victims of crime
- Economic and social rights – such as health, education, housing, adequate standard of living and a healthy and sustainable environment, not as absolutes, but as 'aspirational' or 'progressive' rights

The Joint Committee is clear in not making rights dependent on responsibilities or duties.

¹⁸ House of Lords House of Commons Joint Committee on Human Rights (2008), *A Bill of Rights for the UK? - Twenty-ninth Report of Session 2007-08*, HL paper 165-I HC 150-I, 10 August 2008: <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf>.

¹⁹ House of Lords House of Commons Joint Committee on Human Rights (2009), *A Bill of Rights for the UK?: The Government Response to the Committee's Twenty-ninth Report of Session 2007-08 – Third Report of Session 2008-09*, HL paper 15 HC 145, 19 January 2009: <http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/15/15.pdf>.

(3) How do you think it should apply to the UK as a whole, including its four component countries of England, Northern Ireland, Scotland and Wales?

Consideration of the position of devolved administrations and of Northern Ireland in particular is included in the consultation document and in the Joint Committee report. The Bill of Rights Commission has stated its intention to visit Northern Ireland and engage with the relevant committees of the Northern Ireland Assembly²⁰ ‘later this year’²¹.

Neither the consultation document nor the Joint Committee makes any suggestion regarding a relationship between the UK Bill of Rights and any Bill of Rights for Northern Ireland. The Northern Ireland Affairs Committee collected evidence on a Bill of Rights for Northern Ireland, but in its interim statement in March 2010 did not take a particular position, rather it urged those with an interest in the matter to respond to the UK Government consultation, although there were discussions around the relationship between the UK Bill of Rights and the Bill of Rights for Northern Ireland during the evidence sessions²². However, the Joint Committee on Human Rights foresees a UK Bill of Rights which includes Northern Ireland within its scope and also a Bill of Rights for Northern Ireland to reflect the particular circumstances of the devolved region²³.

(4) Having regard to our terms of reference, are there any other views which you would like to put forward at this stage?

The consultation document does not indicate what additional matters may be covered, however the Joint Committee outlined some points with regard to the process of developing a UK Bill of Rights, in particular, drawing on the experience of Northern Ireland²⁴:

Discussions about a Bill of Rights in Northern Ireland have taken place against a very particular political background, which is not present throughout the UK. It would therefore not be appropriate for the UK Government to follow this model wholesale. However, there are positive aspects of the Northern Ireland approach which should be taken into account in designing the UK process, particularly its engagement with the public and its referral to an independent body for recommendations.

²⁰ Minutes of the Meeting of the Bill of Rights 6 May 2011 and 29 June 2011.

²¹ Letter from Sir Leigh Lewis to Mr Tom Elliot 5 August 2011.

²² House of Commons Northern Ireland Affairs Committee (2010), *A Bill of Rights for Northern Ireland: An Interim Statement – Sixth Report of Session 2009-10*, 15 March 2010: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmniaf/236/236.pdf>; see also additional submissions to the inquiry: <http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmniaf/memo/billofrights/contents.htm>.

²³ House of Lords House of Commons Joint Committee on Human Rights (2008), *A Bill of Rights for the UK? - Twenty-ninth Report of Session 2007-08*, HL paper 165-I HC 150-I, 10 August 2008, pp.31-33.

²⁴ *Ibid.*, p.84.

Appendix 1: Convention Rights and Freedoms

Right to life (Article 2)

Prohibition of torture or inhuman or degrading treatment or punishment (Article 3)

Prohibition of slavery or servitude, or forced or compulsory labour (Article 4)

Right to liberty and security (Article 5)

Right to a fair trial (Article 6)

No punishment without law (Article 7)

Right to respect for private and family life, home and correspondence (Article 8)

Freedom of thought, conscience and religion (Article 9)

Freedom of expression (Article 10)

Freedom of peaceful assembly and association (Article 11)

Right to marry (Article 12)

Right to an effective remedy (Article 13)

Prohibition of discrimination (Article 14)

Protection of property (Protocol 1, Article 1)

Right to education (Protocol 1, Article 2)

Right to free elections (Protocol 1, Article 3)