

Bill of Rights Forum – Working Group on Preamble, Enforcement and Implementation

Paper on Adoption, Entrenchment and Amendment

1. The Belfast Agreement (BA) states that subsequent to NIHRC consulting and advising “on the scope for defining ... rights supplementary to ECHR”, any such rights would be defined “in Westminster legislation”ⁱ. No further statement is made within BA as to adoption or entrenchment.

However, there is an implied comparison with the incorporation of the ECHR (“taken together with ECHR”)ⁱⁱ. This would also suggest that BA does not require any mechanism beyond Westminster legislation.

2. The Saint Andrews Agreement (SAA) made no addition or revision to the above provision of BA. SAA’s sole reference to a potential Bill of Rights was the UK Government’s commitment to “establish a forum on a Bill of Rights”ⁱⁱⁱ.
3. The Sewel Convention (SC) has relevance regarding the role of the Northern Ireland Assembly in Westminster’s potential deliberations concerning a Bill of Rights for Northern Ireland. The DCA has stated that SC has application to the devolved institutions in Northern Ireland^{iv}. According to the guidance provided by the Scottish Executive, SC’s commitment that Westminster will not legislate on matters devolved to the Scottish Parliament is interpreted in a broad manner:

'devolved matters' does not refer just to matters that are within the legislative competence of the Scottish Parliament and could, therefore, potentially be included within an Act of the Scottish Parliament. It additionally is taken to refer to matters which, although reserved, affect the breadth of the devolved institutions' powers - i.e. the legislative competence of the Scottish Parliament or the executive competence of the Scottish Ministers^v.

In light of this understanding of SC, there would seem to be a strong case that Westminster would require the consent of the Northern Ireland Assembly (NIA) before adopting legislation creating a Bill of Rights for Northern Ireland.

4. NIHRC’s Making a Bill of Rights for Northern Ireland (2001), suggested 3 methods – not mutually exclusive – for entrenching a Northern Ireland Bill of Rights:
 - no amendment without the request/consent of the NIA by a cross-community vote;

- incorporation of guarantees in the Bill of Rights in an international treaty between UK and ROI;
- no amendment without a referendum of the people of Northern Ireland^{vi}.

With regards to these methods, the document respectively stated:

- while legislation requiring the consent of the NIA is not "an absolute guarantee", this mechanism for entrenchment "is well established in UK constitutional practice"^{vii};
- an international UK-ROI treaty "would be wholly in line" with the respective rights obligations placed on the Governments in BA^{viii};
- a referendum would be "normal constitutional practice" and that a weighted majority (two-thirds or three-quarters) "might be ... necessary"^{ix}.

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ⁱ BA, "Rights, Safeguards and Equality of Opportunity", 3.

ⁱⁱ Ibid. and 2.

ⁱⁱⁱ SAA Appendix B.

^{iv} DCA Devolution: A Guide for Officials

http://www.dca.gov.uk/constitution/devolution/pubs/odpm_dev_600630.pdf.

^v <http://www.scotland.gov.uk/Topics/Government/Sewel/KeyFacts>.

^{vi} NIHRC Making a Bill of Rights for Northern Ireland (September 2001), p.101.

^{vii} Ibid. p.102.

^{viii} Ibid.

^{ix} Ibid. p.103