

# JUSTICE PRESS RELEASE

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**'A legal and political nightmare': Report on devolution and human rights warns of major difficulties ahead**

Repeal or significant amendment of the Human Rights Act will prove difficult to reconcile with the current devolution framework governing Scotland, Wales and Northern Ireland, concludes a JUSTICE report published today. The terms of the devolution settlement are therefore likely to prove a major challenge to any proposal for a UK-wide 'British' bill of rights.

The report details how the Human Rights Act and the devolution statutes formed part of a broader constitutional shift in the late 1990s, and how they are now legally and constitutionally intertwined. Accordingly, any move to repeal or substantially amend the Human Rights Act and/or enact a bill of rights for the UK would have serious consequences for the devolved jurisdictions.

The report predicts that it would be extremely difficult, and probably impossible, for Westminster to legislate for a bill of rights without the approval of the Scottish Parliament and the Northern Irish Assembly.

Roger Smith, Director of JUSTICE, said:

**Repeal or substantial amendment of the Human Rights Act will require changes to the devolution settlements for Scotland, Wales and Northern Ireland. This is likely to prove a legal and political nightmare.**

**The devolution settlement is incredibly complex. The consent of the devolved Parliaments – certainly practically and probably constitutionally – will also be required. This is not a project in which Westminster can go it alone. Any attempt to introduce a UK-wide Bill of Rights would need to be a joint enterprise of all four parts of the UK.**

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#### Note to editors

1. An executive summary of the report is set out at the end of this press release, with the full report attached.
2. JUSTICE is holding public and private meetings in Edinburgh at the end of February, and possibly in Belfast at the end of March, to discuss the content of the report. More information about these meetings can be obtained on request.

#### **Executive Summary of JUSTICE report on devolution and human rights**

1. The devolution statutes create an extremely complex and complicated system by which some powers have been devolved to institutions in the devolved jurisdictions.
2. Human rights have been protected both by the Human Rights Act (HRA), and by the devolution statutes. In fact, there is a very close relationship between the HRA and the devolution statutes, which collectively have a symbiotic relationship in the protection of human rights.
3. The HRA itself incorporates some of the rights contained in the European Convention on Human Rights (ECHR). The devolution statutes incorporate the HRA rights into their own framework, and thus the substantive rights protected under both the HRA and the devolution statutes are the same.
4. Indeed, the procedural mechanisms of rights enforcement and application in the HRA are directly and indirectly incorporated into the devolution statutes. The duty of the courts to take into account Strasbourg case law found in the HRA has been implied by the courts as being a requirement under the devolution statutes. Analogous provisions to the interpretive obligation to construe legislation compatibly with Convention rights found in the HRA, are found in the devolution statutes. The tests for standing and damages in the devolution statutes are the same as in the HRA, with direct references to the relevant provisions of the HRA and also to the ECHR.
5. The devolution statutes and the HRA are tied together in order to provide mutually supporting and complementary rights protection, both in terms of substantive rights and procedural mechanisms. From a legal perspective, if the HRA was amended or repealed, and/or a bill of rights was enacted covering the devolved jurisdictions, there would almost certainly be a need for amendments to the devolution statutes.
6. A strong argument can be made that 'human rights' have been devolved to the Scottish Parliament and the Northern Irish Assembly, or at least that the 'observation and implementation' of the ECHR, has been devolved. If this is the case, although from a legal

perspective the Westminster Parliament could still legislate in this area, constitutionally, the consent of the devolved bodies would be needed. As such, because any amendment to, or repeal of, the HRA and/or legislation enacting a bill of rights covering the devolved jurisdictions would touch upon 'human rights' or the 'observation and implementation' of the ECHR, from a constitutional perspective, the consent of the Scottish Parliament and the Northern Irish Assembly would be needed.

7. Even if the argument that 'human rights' or the 'observation and implementation' of the ECHR has been devolved is rejected, because any amendment to or repeal of the HRA and/or legislation enacting a bill of rights may touch upon areas of devolved competence – such as housing, education and local government – again, from a constitutional perspective, the consent of the Scottish and Northern Irish legislatures would be needed.
8. Additional complications arise in Northern Ireland. Not only was the motivation for devolution in Northern Ireland different to the rest of the UK in that it was part of the peace settlement of the Belfast (Good Friday) Agreement (GFA), but there has been a ten year discussion that has already taken place in Northern Ireland on a Northern Ireland bill of rights – something that was arguably required by the GFA itself. Thus, special consideration has to be given to the legal requirements of the GFA as well as the sensitivities and concerns over the Northern Ireland bill of rights.
9. Politically, a 'UK/British' bill of rights could be extremely divisive in the devolved jurisdictions, particularly in Scotland and Northern Ireland. A bill of rights must have a high degree of political and popular consensus, and this may be difficult to achieve in the devolved jurisdictions.
10. Any move to amend or repeal the HRA and/or legislate for a bill of rights would need to overcome these legal, constitutional and political hurdles. Although these hurdles are not insurmountable, they are complicated and potentially problematic and as such, serious consideration ought to be given to whether any legislative action in this area would be worth the associated difficulties.

*Chairman of Council* **Baroness Kennedy of The Shaws QC** *Director* **Roger Smith OBE**

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