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Scotland and the British Bill of Rights Proposals

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She has been active in non-governmental organizations, and was chairperson of Belfast-based Human Rights organization, the Committee on the Administration of Justice from 1995-7, and a founder member of the Northern Ireland Human Rights Commission established under the terms of the Belfast Agreement. In 1999 she was a member of the European Commission's Committee of Experts on Fundamental Rights.

Introduction and background

The aim in this short briefing paper is to address the specific implications of the potential changes in the UK's relationship to the European Convention On Human Rights (ECHR) for Scotland. The briefing paper considers the specific considerations for Scotland of repeal or replacement of the Human Rights Act (HRA), and possible withdrawal from some or all of the Council of Europe system for protecting human rights, notably the European Convention on Human Rights and/or the European Court of Human Rights supervisory mechanism. This Act gives domestic effect to the European Convention on Human Rights in UK domestic law.

The immediate background to this briefing paper is the proposal in the Queen's Speech 2015 and 2016, to bring forward proposals for 'a British Bill of Rights'. This commitment rests on a proposal of the Conservative Party prior to the elections of 2014 to repeal and replacement the Human Rights Act. The proposal for repeal is set out in a Conservative Party proposal of October 2014 (Conservatives) and mentioned in the Conservative Party Manifesto 2015 on page 60. Prior to that the 2010-2015 Coalition government had established a 'Bill of Rights Commission' to 'investigate the creation of a UK Bill of Rights' (see Bill of Rights Commission 2012: 5). That Commission resulted in a majority and minority report, the latter rejecting the idea of a UK Bill of Rights completely and the former noting (19) that:

> "the meetings that we had, particularly in Scotland and Wales, produced in general very little support for a UK Bill of Rights. Calls for a UK Bill of Rights were generally perceived to be emanating from England only and there was little if any criticism of the European Court of Human Rights or of the Convention. By contrast, it was, and is, difficult to hear purely English views given the absence of an English, as opposed to a UK, political entity."
>
> "As noted above, doubt was also expressed by some of those we met in Scotland as to whether the Commission had a legitimate remit in respect of Scotland with some arguing that any changes to the current framework of human rights legislation as they might affect Scotland should be matters solely for the Scottish Government and Parliament to decide."

This briefing paper explores further the extent to which there are distinctively Scottish dimensions to the 'British Bill of Rights' (BBR) and related proposals. However, two caveats apply from the outset.

First, while there is a broad commitment to propose a British Bill of Rights, there is little to no detail on the proposals. The Conservative Party documents that set out the aspiration for change detailed above are legally fairly incoherent. It is difficult to predict exactly what the consequences of repeal and replacement for Scotland or anywhere else without seeing the full manner and form in which they are proposed.

Second, while the paper concentrates on the legal issues raised by the BBR proposal, it is important to state at the outset that assumptions are built in that this is an exercise to limit rather than extend rights, based on the reasons stated to motivate the proposal. While it would be possible to supplement and extend the Human Rights Act through a British Bill of Rights, information thus far suggests that the government's main motivation in making changes is to limit certain rights such as rights relating to asylum seekers, and apply them more narrowly than at present. The Conservative Policy document that constitutes the most developed articulation of the motivation for the proposals outlines three main problems with the HRA (see further Dzehtsiarou at al, 2014):

- First, that the HRA undermines the role of UK courts when deciding human rights cases. The requirement that national judges 'take into account' European Court of Human Rights (ECtHR) jurisprudence is said to lead to the application of 'problematic Strasbourg jurisprudence' in UK law.
- Second, that the HRA 'undermines the sovereignty of Parliament, and democratic accountability to the public.' In particular it is suggested the requirement in section 3(1) of the HRA to interpret legislation in a way which is compatible with ECHR rights, 'so far as it is possible to do so', has led to UK courts going to 'artificial lengths to change the meaning of legislation so that it complies with their interpretation of Convention rights'.
- Third, the HRA is said to go beyond what is necessary under the ECHR because the ECHR does not require the UK to have any particular legal mechanism for securing ECHR rights, to directly incorporate ECHR rights into UK law, or to make ECtHR jurisprudence directly binding on domestic courts.

These reasons have been somewhat supplemented or amended by the evidence of then Secretary of State for Justice, Michael Gove to an Inquiry undertaken by the House of Lords European Union Committee (Justice Sub-committee). Gove justified the need for a British Bill of Rights in terms of the need for review, the bad name of human rights, and the need to resist foreign intervention (House of Lords, European Union Committee 2016, 13).

The political motivations of the changes are significant to how they would be perceived in Scotland and therefore the likely reactions of the current Scottish Government, as will be addressed further below.

1. Repeal and Replacement of the Human Rights Act

Human rights in Scotland

The Human Rights Act 1998 is a UK-wide piece of legislation. If it were repealed and replaced without more, this would automatically repeal and replace it for Scotland. Before considering the impact of repeal and replacement of the Human Rights Act, it is worth considering the position of human rights in the Scottish devolution framework more generally.

The Scotland Act 1998 (as amended) specifies that the Scottish Parliament and Scottish Government must exercise their powers in compliance with the ECHR (section 29 and 57).[1] This provision would not be affected by the repeal or replacement of the Human Rights Act alone. It would be likely to be affected by any withdrawal from the ECHR, as discussed towards the end of this briefing paper. However, were the Human Rights Act 1998 to be repealed or replaced there would be a consequential need to amend the Scotland Act (and indeed all the devolution statutes). Sections 100 and 126 of the Scotland Act 1998 link the definition of 'Convention rights' in the Act, to the definition in the Human Rights Act, and Schedule 4 prevents its amendment.

The Human Rights Act 1998 applies across the UK and therefore in Scotland. So Scottish public bodies, including the Scottish Parliament itself and Scottish courts are governed by the Human Rights Act and have to give effect to ECHR rights. As the Scottish Parliament legislation is 'secondary' legislation, unlike UK-wide legislation it can be struck down by courts meaning that the protection for rights is backed up by a strong form of judicial review.

However, while human rights are part of the framework for devolution both through the Scotland Act 1998 and the Human Rights Act 1998, human rights are also a devolved matter (see Christopher Himsworth; cf also House of Lords European Union Committee, 2016 (per views of Biagi:41-42). As Himsworth notes while there is a division of competences on human rights, human rights are not listed as a reserved matter, and the operation of the different levels of power can be illustrated by the connection between the distinctive UK-wide and Scottish 'National Human Rights Institutions' (2011: 7) which are framed around UK-wide and devolved competences on human rights and equality. The Equality and Human Rights Commission is a GB-level Commission (it does not have remit in Northern Ireland) with a dedicated Scottish Office, with general responsibility to promote and monitor human rights and to protect, enforce and promote equality. A Scottish Human Rights Commission established by Act of Scottish Parliament also has the task of promoting human rights. As Himsworth notes:

> "The parallel existence of the two institutions reflects the terms of the devolution settlement. Although the HRA itself is a UK measure and is itself protected from amendment by the Scottish Parliament, 'human rights' are not, in terms, reserved under the Scotland Act and it was, therefore, seen as wholly competent for the Scottish Parliament to legislate to establish the SHRC. On the other hand the Scotland Act does exclude from Parliament's competence the power to legislate on equal opportunities and the UK-level Equality and Human Rights Commission has correctly been given powers in those areas by the UK Parliament. That Commission is expressly prohibited from straying into areas within the SHRC's own remit." (notes omitted)

This then is the legal position of human rights in Scotland: however, the politics of the relationship between human rights and devolution also deserve a brief mention. Devolution in Scotland was not viewed from within Scotland as merely part of a new Labour constitutional reform agenda rushed in, it was viewed as a concession to long-standing initiatives by Scottish people to articulate their position as a constituent people asserting constituent power through mechanisms such as the Scottish Constitutional Convention (see further Bell 2015). The use of the referendum to confirm devolution reinforced this narrative.

The narrative has been further bolstered by the fall-out of the Scottish independence referendum: the Smith Commission and a revision of the terms and powers of devolution which the referendum triggered provided, among other things provision on the 'Permanence of the Scottish Parliament and Scottish Government'. Section 1, Scotland Act 2016 provides:

> "Permanence of the Scottish Parliament and Scottish Government
>
> (1)The Scottish Parliament and the Scottish Government are a permanent part of the United Kingdom's constitutional arrangements.
>
> (2)The purpose of this section is, with due regard to the other provisions of this Act, to signify the commitment of the Parliament and Government of the United Kingdom to the Scottish Parliament and the Scottish Government.
>
> (3)In view of that commitment it is declared that the Scottish Parliament and the Scottish Government are not to be abolished except on the basis of a decision of the people of Scotland voting in a referendum."

Whether or not this provision does entrench the Scottish parliament (English understandings of Parliamentary sovereignty would suggest not), the perspective on Scottish devolution that understands it to have been a response to Scottish demands and to be now legislatively irreversible without Scottish consent, is unlikely to easily view amendments to the shape of Scottish devolution as something that can be unilaterally imposed by a Westminster Parliament. Furthermore, a part of how the current dominant party in Scotland, the Scottish Nationalist Party, articulate the distinctiveness of Scottish political culture is with reference to a commitment to Europeanism and human rights. So politically, the attempt by the UK government to re-shape the human rights order in which devolution was situated, is likely to be a particularly charged political issue.

The Human Rights Act

How then would repeal or replacement of the Human Rights Act play out with reference to Scotland?

First, repeal and/or replacement of the HRA raises a technical legal issue which connects closely to the political context outlined above. This issue concerns the question of whether the consent of the devolved legislatures is needed for repeal or replacement of the HRA (and the answer may be different depending on whether the Act is repealed or replaced as discussed further below). While the issue is one which affects all the devolved legislatures as we will see it has a political and legal significance that is distinctively Scottish, and it is this particular significance that will be concentrated on here.

The requirement for consent of the devolved legislatures is referred to in Scotland as the 'Sewel Convention' although it is provided for in memoranda of understanding with all of the devolved legislatures. However, the case is more complicated in Scotland due to the placing of the Sewel Convention on a legislative footing. As well as providing for the permanence of the Scottish Parliament, the authority of the Parliament was strengthened by Section 2 of the Scotland Act 2016, in a section entitled 'Sewel Convention' which states:

> In section 28 of the Scotland Act 1998 (Acts of the Scottish Parliament) at the end add—
>
> "(8) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament."

Previous devolution guidance of the UK Government stated that in terms of interpreting the phrase 'with regard to devolved matters':

- "The convention applies when legislation makes provisions specifically for a devolved purpose. It does not apply when legislation deals with devolved matters only incidentally to, or consequentially upon, provision made in relation to a reserved matter, although it is good practice to consult the Scottish Executive in these circumstances."

The question of whether the UK Parliament can unilaterally repeal or replace the Human Rights Act turns on whether it makes provision for 'devolved matters' by making provisions specifically for 'a devolved purpose'. Here evaluation of the HRA's relationship to devolution becomes somewhat complicated in two respects. First of all, it is somewhat unclear what the scope of the Sewel Convention is. There are different understandings of how it operates: a narrower version and a broader version. Under the narrower version the convention applies only to the UK Parliament legislating specifically in devolved matters; according to the broader view the convention also applies 'to legislation altering the competence of the Scottish Parliament and Government'. (See Paragraph 4, Devolution Guidance Note 10 for broader view; for discussion of broad and narrow versions see Law Society of Scotland views set out in House of Lords, European Union Committee 2016: 41 McCrudden & Anthony 2016: paras 25-33.) As the Law Society of Scotland pointed out in evidence to the House of Lords European Union Committee 'if the Sewel convention is being interpreted on the narrow basis currently in [then] Clause 2 then such legislation [repeal and replacement of the HRA] would not fall under the Sewel convention as provided for in the [then] Scotland Bill' (41).

During the passage of the Scotland Act 2016, the Advocate General strongly argued that the narrow version was what was intended (see HL Deb 8 December 2015, and HL Deb 24 February 2016)

However, it can also be debated what the purpose of the HRA in fact was with regard to devolution. It is clear that the HRA was in part made to ensure that there was a common human rights standard across the UK as a whole, and that public bodies in the devolved regions would indeed comply with the ECHR and be judicially reviewable under the HRA when they did not. However, through this provision it was intended that human rights should be part of the regional devolved framework. The precise devolved purpose of the Act in each devolved region is somewhat different. While the framework of devolution is broadly similar across jurisdictions, in fact the rights framework in each of the jurisdictions and the role that the HRA plays is somewhat distinct in each region. This is clearest in the case of Northern Ireland, where a clear devolved purpose of achieving peace lay behind the legislative intent, and indeed the Northern Ireland Act 1998 provides for a Northern Ireland Human Rights Commission with specific powers with relation to enforcement of the Human Rights Act in Northern Ireland, along with a Northern Ireland Equality Commission with powers concerning equality and anti-discrimination.

The HRA was of course also enacted with the overarching purpose of 'bringing ECHR rights home' in UK law, by providing legally enforceable rights in UK courts. Does the fact that there was also a 'non-devolved' purpose to the HRA negate that the Act made provision 'specifically for a devolved purpose'? Some commentators have argued as per the Law Society of Scotland that because the HRA is an overarching legal framework which constrains devolution the Sewel convention is not affected (see Elliot). This argument suggests that repeal of the Human Rights Act would not affect 'devolved matters' and therefore is out-with the scope of the Sewel convention.

Elliot finds two parts to the concept of 'devolved matters' (embracing the 'broad' approach), legislation (a) that a devolved legislature could have enacted or (b) affects the scope of the legal authority of a devolved legislature or a devolved administration' (2015). He suggests that whether condition (a) or (b) is satisfied is a 'question of law'. Elliot suggests that criterion (a) is not affected because the Human Rights Act could not have been passed by the Scottish Parliament. However, this is debatable. In fact, in the event of repeal of the Human Rights Act the Scottish Parliament could, within its power, enact to restrict its own

devolved powers in a manner similar to the Human Rights Act, unless and until an inconsistent superior human rights law was applied by the UK Parliament (and provided that its legislation did not attempt to change Scotland's compliance with the ECHR, presuming that constraint on devolved power was left in place).

As regards the second condition Elliot argues that repeal of the Human Rights Act 'would not affect the extent of the competences of devolved institutions, and therefore neither would this second part of the Sewel Convention be violated'. Here he enters very technical terrain. Devolved competences he argues (correctly) are limited by the ECHR and not the Human Rights Act. As Elliot puts it 'In other words, devolved administrations and legislatures are bound by the ECHR independently of the Human Rights Act, because the ECHR rights are effectively written into the devolved nations' principal constitutional texts'. He suggests that 'the Human Rights act could be repealed in a way that would leave unaltered the range of rights that circumscribe the devolved institutions' competences, meaning that it would not trigger Sewel'. However, this argument can be said to underestimate the extent to which human rights are devolved as well as reserved as set out above. Given that a range of provisions support the HRA at the devolved level, including the Scottish Human Rights Commission, and the constraining of all devolved public bodies by the Human Rights Act, the idea that it only operates as an overarching constraint of power, rather than a shaper of the fabric of devolved power is difficult to square with reality. Moreover, as Jamieson in another HRA blog points out, repeal of the HRA as a technical matter would lift a constraint on the Scottish Parliament's powers, thereby increasing them, and so the scope of powers would indeed be altered (Jamieson 2015).[2]

British Bill of Rights

Moreover, the proposal is not merely to repeal the Human Rights Act, but to replace it with a British Bill of Rights. The purpose of such a Bill of Rights would be very definitely to govern and restrain devolved powers and devolved executive action, and this even more clearly requires devolved consent under the Sewel Convention/memoranda of understanding/Scotland Act. Indeed, successive governments have opposed legislating on a new Bill of Rights in Northern Ireland that would modify the Human Rights Act as contemplated by the Agreement, because they did not have the support of the political parties in Northern Ireland. In letters to Non-government organisations. Elliot since his first mounting of the argument that Sewel does not apply to the HRA's repeal or replacement has modified his position somewhat, confining his conclusions to the case of repeal of the HRA but not also replacement, which would seem correct.

Of course a final judgement as to the impact on the Sewel convention and the new Scotland Act provisions cannot be made until the precise British Bill of Rights consultation proposals are seen. It could also be that there are conditions under which the Scottish Government would give its consent to repeal and/or replacement of the HRA, although current political statements indicate not. There have been rumours that Scotland was offered a clear power to put in place its own 'Scottish Bill of Rights' if it would give such consent. Whether this rumour is true or not, it indicates that there are possible deals which could be attempted to gain Scottish consent to the changes.

However, in the event that the Scottish Parliament did not give its consent, it is worth noting that the placing of the Sewel Convention on a legislative footing in the Scotland Act 2016, also raises the possibility of litigation on the issue, rather than just political challenge (for other more general 'legitimate expectations' legal challenges see McCrudden & Anthony 2015). The outcome of any such litigation is difficult to predict. Even at the time of passage of this amendment, it was pointed out that the wording of the new legislative requirement for Scottish Parliament consent leaves some ambiguity in when the constraint applies and it can also be observed with the Law Society of Scotland, that the legal formulation more clearly follows 'narrow Sewel' than 'broad Sewel'.

So in summary, repeal of the Human Rights Act is likely to be a politically and legally fraught issue as regards the relationship between the Scottish and UK governments, and indeed Scotland and the rest of the UK. The relationship of the proposals to the question of the permanence and relative sovereignty of the Scottish Parliament, are likely to re-open the still fresh scars of the referendum debate.

Aside from these peculiarly Scottish characteristics of the HRA debate, it is worth emphasising more generally that the HRA was an integral part of devolution and the ambition was that it strengthen rather than undermine the Union. The HRA did not merely ensure a UK wide 'floor' to human rights protection, it established a UK wide set of values in the absence of any other national articulation of the values that bind the constituent parts of the UK and its people together. At this most general of levels any proposal to repeal or replace the HRA will need consensus and support of all the UK's regions, if it is not to unbalance the delicate fabric of the Union and indeed the internal fabric of each of its regions.

2. Scottish Devolution, withdrawal from the ECHR

With these complications in mind, let us briefly consider the even larger issues which arise with the suggestion that the UK withdraw from the European Convention on Human Rights. This larger question appears at time of writing to be somewhat in abeyance, and to have taken second place to the question of changes to the Human Rights Act. However, the coalition government's Bill of Rights Commission increased awareness amongst those Conservatives seeking change, that any removal of rights or reduction in their scope of application effected through changes to the Human Rights Act alone would be likely to lead to little more than a direct right of appeal to the European Court of Human Rights such as existed prior to the enactment of the Human Right Act. Perhaps as a result, the Conservative Party proposals indicated not just an intention to repeal the Human Rights Act, but an intention to try to renegotiate the relationship between the UK and the Council of Europe by:

> Seeking 'recognition that our approach is a legitimate way of applying the Convention'; and that 'In the event that we are unable to reach that agreement, the UK would be left with no alternative but to withdraw from the European Convention on Human Rights' (8).

How then, would withdrawal from the European Convention of Human Rights affect Scotland? Withdrawal from the ECHR would affect the entire framework of devolution. At present as noted all the devolution Acts require that legislation is compatible with the European Convention on Human Rights. The Scotland Act 1998 (as amended), as with the other devolution Acts gives powers to the Scottish Parliament, so long as it complies with the ECHR (among other things). This would not change with repeal of the Human Rights Act alone, the obligation to comply with the ECHR would remain as long as this Scotland Act provision was in place as part of the limitation of how power is devolved.

It would be technically possible to keep the ECHR as a framework for devolved government, even if the UK were not a member of the Council of Europe and were no longer bound by the ECHR. However, even if this was acceptable to a government which sought to withdraw from the ECHR (which is doubtful) it would be an unusual situation to have a treaty that no longer bound the UK as the basis for the devolution settlement and legal decisions relating to the scope of devolved powers.[3] It would also be likely to lead to differentiated application of rights across the UK and perhaps legal uncertainty as to what those rights entailed. Withdrawal from the ECHR and the European Court of Human Rights (ECtHR) supervision of rights, would leave UK courts, including those in

Scotland, as free-floating adjudicators of whether devolved legislatures in fact 'complied' with the ECHR, and if the HRA was also repealed (as it likely would be in such a scenario) without a legislative framework for whether and how interpretations by the Strasbourg Courts were to be taken into account. This could lead to different bases for interpreting rights in different parts of the UK which while not necessarily a problem would move clearly away from the idea of a common human rights floor across the country. For an example of how significant this could be in the devolved context, one merely needs to look at the differences between the Scottish Courts and UK Supreme Court in significant rights cases, based in part on the way in which each differently 'read down' the ECtHR judgements as they apply the provisions of the Convention to criminal law practice in Scotland.

It would be more likely that departure from the European Convention on Human Rights would require a fundamental amendment of the legal framework for devolution across the UK, which itself was subject to referenda in each of the regional jurisdictions including Scotland. This would constitute a major constitutional revision which would require a level of popular and other consent in the regions.

3. Conclusion

The Scottish devolution issues have much in common with Welsh and Northern Irish devolution issues, but also have a particular Scottish political and legal dynamic related to Scottish narratives around devolution, human rights and the referendum. It remains to be seen whether it would be possible for proposals to change so little that they either received consent from the Scottish Government and Parliament, or could be argued not to need it. However, it is difficult to see how any meaningful change in terms of the Conservative Party's political objectives behind the change could be introduced in this way.

A constitutional crisis can be understood as a clash between constitutional rules or principles for which the constitution itself does not provide a resource for resolving. Should the UK Government and the Scottish Government take different views on the need for legislative consent, a constitutional crisis in this sense would ensue, no doubt with further political ramifications both sides of the border. However, such a crisis also gives rise to the possibility of litigation under the newly added clauses to the Scotland Act, and both the UK and Scottish Governments have in the past – notably around the stand-off over who had power to call an independence referendum - preferred to resolve their political disputes politically rather than leaving them to the courts.

The proposal to repeal and replace the HRA raises significant legal and political issues with respect to Scotland that have parallels in Wales and Northern Ireland, but are also have a distinctive Scottish dimension.

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Further Blogs

Bell, Christine, 'Human Rights Act Repeal and Devolution: Quick Points and Further Resources on Scotland and Northern Ireland' at http://www.scottishconstitutionalfutures.org/OpinionandAnalysis/ViewBlogPost/tabid/1767/articleType/ArticleView/articleId/5597/Christine-Bell-Human-Rights-Act-Repeal-and-Devolution-Quick-Points-and-Further-Resources-on-Scotland-and-Northern-Ireland.aspx

Bell, Christine, Briefing, on Human Rights Act Repeal and Devolution at http://www.centreonconstitutionalchange.ac.uk/papers/human-rights-act-repeal-and-devolution-points-and-further-resources-scotland-and-northern

Dzehtsiarou, Lock, Johnson, de Londras, Green, and Bates, 'The Legal Implications of a Repeal of the Human Rights Act 1998 and Withdrawal from the European Convention on Human Rights', 2014 at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2605487

Other useful resources

Reports

2010 JUSTICE, 'Devolution and Human Rights', at http://justice.org.uk/devolution-human-rights/

2012 O'Cinneide, Colm, 'Human Rights and the UK Constitution' (British Academy) at http://www.britac.ac.uk/policy/human-rights.cfm

UK Bill of Rights Commission process and reports (dealing with repeal and replacement of HRA) at https://www.justice.gov.uk/about/cbr

Lectures

Dominic Grieve, 'Is the European Convention Working?' Faculty of Advocates, at http://www.advocates.org.uk/media/1859/domgrievelecture.pdf

Useful Blogs

Committee on the Administration of Justice. Tory Plan to Repeal Human Rights Act in NI would constitute flagrant breach of GFA, at http://www.caj.org.uk/contents/1293

Committee on the Administration of Justice. Fighting Repeal of the Human Rights Act, at http://www.caj.org.uk/contents/1318

Aileen McHarg. Will Devolution Scupper Conservative Plans for a 'British' Bill of Rights?, at http://ukhumanrightsblog.com/2014/10/02/will-devolution-scupper-conservative-plans-for-a-british-bill-of-rights/

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Endnotes

1. The Scotland Act 1998, section 29(1) states that 'an Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.' Section 29(2)(d) includes incompatibility with 'any of the Convention rights or with community law' as outside legislative competence. Similarly under section 57(2) a member of the Scottish Government 'has no power to make any subordinate legislation, or to do any other act, so far as the legislation or acct is incompatible with any of the Convention rights or with Community law.'

2. An additional complication to this argument is that under Schedule 4, Scotland Act 1998, modifying the Human Rights Act, is itself outwith the legislative competence of the Scottish Parliament. During the passage of the Scotland Act 2016, the SNP sought to get rid of this provision, one theory being that rather than seeking to gain power to amend the Human Rights Act, they were trying to remove the possible argument that the Human Rights Act was reserved and could therefore be repealed without Holyrood consent (see further Lallands Peat Worrier, The SNP's Clever, Clever Human Rights Gambit, 15 June 2015, at http://lallandspeatworrier.blogspot.co.uk/2015/06/the-snps-clever-clever-human-rights.html)

3. While other constitutions (eg Article 39(1) South African Constitution 1996) permit reference to international law as a tool for interpretation this is somewhat different from using international human rights law to constrain law and policy in the way the ECHR is used through the Human Rights Act.

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