Northern Ireland Assembly

Ad Hoc Committee on a Bill of Rights

OFFICIAL REPORT (Hansard)

Briefing by Dr Katie Boyle

17 September 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Emma Sheerin (Chairperson)
Mr Mike Nesbitt (Deputy Chairperson)
Ms Paula Bradshaw
Mr Mark Durkan
Miss Michelle McIlveen
Mr John O'Dowd

Witnesses:
Dr Katie Boyle University of Stirling

The Chairperson (Ms Sheerin): I welcome Dr Katie Boyle, who is an associate professor in international human rights law at the University of Stirling. Thank you very much for joining us this afternoon. Also, thank you very much for your submission. It was very detailed and easy to digest. Legal jargon can sometimes be a struggle. You laid it out quite explicitly, to be fair, but, if you do not mind, I want to put you over some of the points about the North and whether or not we have a gap in rights compared with the rest of the UK. You laid out the difference between the North and Scotland and Wales, in particular. Could you talk about that and our potential to fix it through a bill of rights?

Dr Katie Boyle (University of Stirling): Certainly. You are referring to the section of my paper that tries to understand better where Northern Ireland sits in relation to the rest of the UK. I wanted to highlight that there is certainly an accountability gap in economic and social rights in particular. There have been movements in different parts of the UK on that. I highlighted some of the developments in Scotland, where there is now a First Minister's advisory group, which I sat on. I know that you previously spoke to my colleague Tobias Lock about this, but the First Minister's advisory group on human rights leadership in Scotland made recommendations for a new human rights Act — a devolved human rights Act — that incorporates economic, social, cultural and environmental rights in devolved areas. That is a significant development on the progression of human rights provision in a post-Brexit situation. We also have, for example, section 1 of the Equality Act, which has been devolved to Scotland and is now in force under the Fairer Scotland duty. It introduces a duty on public authorities to have due regard to socio-economic disadvantage. The same provision of the Equality Act has also been devolved to Wales. In Scotland, we also have the Social Security (Scotland) Act 2018; there is recognition, in relation to the areas that are devolved under social security, that the right to social security is a right that is indispensable to the fulfilment of other rights. There is a much broader indivisible approach to civil, political, economic, social, cultural and environmental rights in that respect. There have been quite significant strides.

In Wales, there have already been developments in relation to the Children and Families Measure, which introduced a duty to have due regard to the UN Convention on the Rights of the Child

(UNCRC). In Scotland, there is the UNCRC (Incorporation) (Scotland) Bill; the Scottish Parliament is considering whether to incorporate the full treaty into Scots law in relation to devolved areas.

Finally, Wales has also taken some steps to try to incorporate the right to adequate housing, as well as a Measure that looks at well-being for future generations, which has quite powerful requirements on public bodies to think about how their decisions can impact on the development of the economic, social, cultural and environmental rights of future generations.

Those are just some of the examples that I drew on to demonstrate that the UK picture is much more complex than it would first appear. There are, of course, really important things to be aware of in how human rights apply under the ECHR. The Human Rights Act incorporates the ECHR for reserved areas, but, under the Northern Ireland, Scotland and Welsh devolved systems, you have a stronger form of incorporation of the ECHR. It is also important to reflect on the way in which equality law operates across the UK, which, again, is different; there is a GB system across England, Wales and Scotland, and there is a separate equality framework for Northern Ireland. There are differences between them. It just helps to paint a picture of the way in which human rights operate across the UK. There are discrepancies and divergences in different places. The devolved jurisdictions are on different trajectories to the national framework on the protection of rights.

The Chairperson (Ms Sheerin): Thank you. Obviously, we do not have a single equality Act in the North. The Human Rights Commission laid out recommendations in 2008; you could look at that as being ECHR-plus. What do you think the added complications are, particularly for socio-economic rights, in the face of Brexit and leaving the EU?

Dr Boyle: I am not an expert on European Union law, so I add that caveat. You have to bear in mind that EU law goes further than the ECHR in some areas. There is the potential for the rights included in the Charter of Fundamental Rights of the European Union to be developed further through future jurisprudence on economic and social rights. There are also some rights under that charter that go further than *[Inaudible]* framework under the ECHR would facilitate, such as, for example, article 47 and the right to an effective remedy. Apart from that, it is probably the potential of where EU law will go that will be the greatest loss. It is the loss of rights that may be developed under that system in the future. It is really important for the devolved legislatures to be alive to the fact that they have responsibilities for devolved areas that include many economic, social and cultural rights. There is a responsibility to reflect on how far protections in those areas should go. Apart from that, the types of remedies that are available under EU law will also be lost. The Supreme Court spoke about the loss of rights and remedies, and that is a really important aspect of the framework that we are losing under that area of law.

The Chairperson (Ms Sheerin): Katie, the Committee Clerk has just alerted me to the fact that I ploughed ahead and started asking you questions without offering you the opportunity to give us your briefing.

Dr Boyle: That is OK.

The Chairperson (Ms Sheerin): I am just so enthusiastic. If you want to go ahead with your briefing, we will then go to other members for questions. My apologies, folks.

Dr Boyle: Not at all. I am happy for you to fire questions at me. I framed my briefing so that you could ask questions and I could respond to them — a question and answer format — because I thought that that was the easiest way to set it out. I appreciate that there will be questions, so, to allow for those, I will keep the briefing as close to 10 minutes as I can and not go over that time.

I have already covered some of the issues that you raise, but I want to highlight the fact that, often, one of the first questions asked about devolved legislatures and what they are able to do is whether they have the competence to progress on human rights protections. That is one question that I wanted to highlight: does the Northern Ireland Assembly have the competence to introduce a devolved version of a bill of rights? The answer to that question is yes, it does. It has the power to implement and observe international human rights obligations under paragraph 3(c) of schedule 2 to the Northern Ireland Act. However, that comes with some qualifications. For example, it cannot legislate for a bill of rights in reserved or excepted areas, which means that a bill of rights would be restricted to transferred areas under the devolved system. A further qualification is that the peace agreement envisaged that a bill of rights would be implemented through Westminster legislation, so you have to

weigh up the difference between Northern Ireland Assembly legislation and Westminster legislation and what each of them means.

It is also really important to be aware that, under the devolved framework, the Northern Ireland Assembly cannot modify protected enactments, which include the Northern Ireland Act and the Human Rights Act, and cannot encroach into reserved provisions, which include section 75 of the Northern Ireland Act in relation to equality.

The second question that I posed in the written briefing was whether the ECHR goes far enough. My area of expertise is economic and social rights, and the most obvious gap, UK-wide but also in relation to each of the devolved jurisdictions, is that the ECHR does not sufficiently protect economic, social, cultural or environmental rights. There is a great deal more scope to progress on that, and, ideally, devolved legislatures should take steps to ensure that they bridge what I deem to be an accountability gap. Essentially, you are working within a framework in which there is no requirement to justify decision-making on an economic and social rights framework. That can cause an accountability gap, and it reduces access to remedies for people who experience violations in those areas.

Should Northern Ireland implement a bill of rights? I very much wanted to highlight the importance of consensus and the process through which a bill of rights should be implemented. It requires inclusive, informed, participative and deliberative frameworks. I agree with what Professor Roach said about it having to be a bottom-up people's approach that has buy-in across society. That takes a lot of capacity building. I say that in the knowledge that so much of that work has already been done in Northern Ireland and that all of the progress in Scotland and Wales, for example, was built on the work that had been done in Northern Ireland on the bill of rights. So, it is important to highlight that, whilst that is a question for the people of Northern Ireland, it certainly comes with its benefits in relation to having accountability for decision-making in devolved areas, including decisions on an adequate standard of living, housing, health and education, and dealing with issues related to poverty, destitution and socio-economic deprivation. Even yesterday, in relation to COVID, statistics came out which suggested that, putting age aside, those in the most deprived areas are twice as likely to die of COVID as those in the least deprived areas. A bill of rights can try and introduce a decision-making framework which can help try to alleviate some of the social determinants of poverty and destitution, looking at those broad areas of health, employment and social security, and free people from poverty and destitution.

You have already asked me to comment on whether Northern Ireland is in step with the rest of the UK, and I have mentioned elements in relation to Scotland and Wales where there has been progress on the incorporation of international human rights, specifically in relation to economic, social, cultural and environmental rights. Those frameworks are being built around what is deemed to be best practice. That brings me onto a short discussion of what kind of lessons can be learned. You have already heard really important contributions around best practice from the experiences of different jurisdictions. To give you an idea of what the big story is in relation to this, when you look at comparative examples across different countries, what the international framework tells us to do and the lessons that have been learned in other sub-national or devolved areas, the ideal situation is that you try to introduce a framework where the legislature, executive and judiciary are all responsible to act as guarantors of human rights. That framework would recognise that there is a role for the legislature in protecting civil, political, economic, social, cultural and environmental rights. There is a role also for the executive in its administrative decision-making sphere, and then, finally, there is a role for the courts. As has already been mentioned, this is a model that encourages dialogue between these institutions, rather than affording one institution supremacy over another. It is something that occurs across the globe. There are lots of different examples of how striking that right balance can be achieved. What Northern Ireland has to reflect on, and what the Committee might reflect on, is what would work for the particular circumstances of Northern Ireland in getting that balance between institutions.

In relation to the first, I want to highlight the experience of the Finnish constitution and the role of the constitutional committee, which looks at compliance with the constitution pre-enactment. It is basically what is called pre-legislative scrutiny. The Finnish constitutional framework is interesting because it says that rights exist, including economic and social rights, housing, social security, employment rights and so on, but it then places the obligation on the legislature to give substance and content to those rights. There is a duty to introduce an Act which protects a particular right, and so you have this nice balance between the legislature performing its role in relation to fulfilment of a right, as well as the committee within the Parliament scrutinising laws before they are passed as to whether there is compliance with those rights through the committee framework. You also have pre-legislative scrutiny in the Joint Committee on Human Rights in the UK Parliament. There is an Equalities and Human

Rights Committee in the Scottish Parliament, which has widened its remit to look more closely at pre-legislative scrutiny. There is also an Equality, Local Government and Communities Committee in the Welsh Parliament which looks specifically at compliance with human rights. There probably is more scope for a Committee dedicated to pre-legislative scrutiny in the Northern Ireland Assembly. You can reflect on different means by which you can embed human rights decision-making within the Assembly to achieve more rights-orientated decisions from the beginning. A bill of rights can help guide the legislature in that respect.

The second area of best practice is how the executive itself — the government — can be a source or guarantor of human rights. This is about the implementation or operationalisation of decisions that will help improve people's lives. Really, a bill of rights is about guiding that process, setting out the values and goals of a society and helping to guide the executive in decision-making. It is the responsibility of the Assembly and the courts to hold the executive to account in that regard, and it is really helpful and encouraging to see that New Decade, New Approach basically encourages compliance with, for example, a wide variety of rights, including economic and social rights. The political impetus is there to meet those standards and, essentially, a bill of rights helps to provide a framework for that decision-making and makes sure that no one is left behind in that respect.

The final mechanism through which to learn best practice from comparative examples internationally is the role of the court, and again you have heard quite a lot about that today. The role of the court is essentially an accountability mechanism of last resort, rather than first resort, and it should be viewed in relation to how it can perform a role of holding the other branches of state to account and asking them to justify their actions. There is often a lot of misconception around the court essentially overstepping its mark. On that, you can draw examples from other jurisdictions of how the courts reach that balance, and you will see that some remedies follow what would be called a weak form of review and others follow a much stronger form. In the context of what constitutes an effective remedy, the court has to have what I call a constellation of options available to it, because each situation will merit a different response. Sometimes, the court will have to be much more deferential in its approach and refer a matter back to the decision-maker, whether that be the legislature or the executive, to say, "You need to revisit that decision because it does not comply with particular rights", or it may need to have a more interventionist approach.

In this area, I draw your attention to the importance of structural remedies and effective remedies for what would be called systemic issues, which will often occur around areas of social rights in particular. In Germany, for example, the court has intervened where the executive has failed to provide social security mechanisms that meet a sufficient threshold to ensure the dignity of the person, and it has relied on the constitution to enforce that. Secondly, the South African court has used a reasonableness review to look at many different economic and social rights, including, for example, the right to adequate housing, and has referred matters back to the legislature and Executive to say, "Your approach to housing in this particular circumstance has not met the threshold of reasonableness, and you need to introduce a policy that more clearly achieves the aim of trying to ensure adequate housing for everyone".

You also have the Colombian example, where you have what is called an individual writ — a tutela. Interestingly, in this scenario, what will often happen is that, if the court recognises that many people are facing the same type of issue and it has become systemic, it can group the cases and hear an action where it actually deals with a structural problem. For example, if a group of people are all facing the same type of housing issue, the court might pull together all those cases and issue a structural remedy with orders to different components of government or to public and private authorities that have responsibility for fulfilling rights. That gives you a very broad overview of different examples of best practice.

When reflecting on where to go next, one thing to take into consideration is how to get that balance between the role of the Parliament, the executive and the judiciary. The Northern Ireland Human Rights Commission recommendations reflect best practice in how they try to reach that balance, so it is useful to use the work that has already been done and build on that to create a bill of rights that can serve the people of Northern Ireland. Of course, it is also important to reflect on issues such as enhanced equality provisions and looking at the rights of different marginalised groups as part of that. One area that continues to need much closer attention is that, if you introduce a bill of rights, you also need to introduce mechanisms through which access to justice can occur, and that means reflecting on what an effective remedy means in the context of Northern Ireland and how you enable access to effective remedies for violations of rights under any new framework.

The Chairperson (Ms Sheerin): Thank you very much, Dr Boyle, and apologies again for talking over the top of you.

Dr Boyle: Not at all.

The Chairperson (Ms Sheerin): I have one last question — obviously, I asked others earlier. Following on from the last conversation that we had and some of the questions that Mark had been asking around regional inequality and the systemic discriminative practices that you end up with, obviously we can think of the divide in the North, but there was also a rural-urban divide, and we are still seeing the impacts of that. When we think of socio-economic rights, we often think of housing and healthcare, but with regard to infrastructure you can even look at communication, your road network, rail, public transport provision and all of that. Is there room for that to be provided for in a bill of rights?

Dr Boyle: What you are talking about there is really about the allocation of resources to different communities. There are only a limited amount of resources in any society, and decisions need to be made about how best to allocate them. What the international human rights framework provides for this is to basically try and build in a reasonable and sensible approach to decision-making as early on as possible so that fairness can permeate the system. So, for example, when you are talking about geographical discrepancies, or discrepancies between different groups, the international framework suggests that you have to allocate resources fairly and that you have to allocate them at the maximum available resources, so you start right back at the beginning about what budget is available, what areas you need to prioritise and how you ensure a levelling up of rights. Therefore, you need data to know, for example, which marginalised groups or geographical areas are more disadvantaged than others. The gathering of that evidence is key to making reasonable decisions. You start from a framework where you are basically trying to ensure allocation of resources in a fair way. You do so by making sure that you are aware of who is disadvantaged, and for what reason. What you are trying to do is to level up access to resources in a way that improves on a continuous basis, if possible, the access to resources in those different areas with regard to health, infrastructure, mechanisms to alleviate poverty and so on, and you do so in a way which applies vertically with regard to continuous improvement, but also horizontally so that you bring everyone in levelling up. This idea is of prioritising which areas need attention first and then levelling up so that everyone gets to access the benefits that society can provide in that respect.

The Chairperson (Ms Sheerin): Thank you, Dr Boyle. I will pass to the Deputy Chair, Mike.

Mr Nesbitt: Thank you very much, Chair. Katie, thank you very much for your presentation. To follow on from the Chair's last question, I am wondering how practical progressive realisation is in the Northern Ireland context. Given that it is fundamentally about the maximum available resources, how do you get agreement on what that represents in a five-party coalition Government?

Dr Boyle: Progressive realisation is basically a duty which has a number of sub-duties attached to it. As I mentioned before, it creates a framework for decision-making where you, first of all, are under a duty to take steps to try and achieve particular rights. You then need to try and introduce measures that respect rights, so that is basically to refrain from interfering with people's rights and to protect rights, which is basically to ensure that you introduce frameworks that ensure that others, including private bodies, comply with human rights, and that you take steps to fulfil rights, which is a duty to try and progressively achieve them. Connected to that is, of course, also a non-discrimination element. This is about taking into account all of the different groups that are required to be considered. So, of course, in a Northern Ireland context you have to ensure non-discrimination between the two communities that were impacted in the conflict, but also accounting for all of those other communities who are marginalised and who do not have a strong and powerful voice in political representation. Non-discrimination therefore applies across the board, to all different groups, such as those recognised under race and disability, as well as children, women and older persons. You have to think about the broader framework.

Progressive realisation also requires allocation of the maximum available resources, and those resources need to be deployed in an effective, efficient, adequate and equitable way. There is also a minimum core. That is a really key aspect, and you will often find that it is a helpful analogy for ensuring that there is consensus on rights. A minimum core is about recognising that there is a social minimum below which no one should fall. We often find that everyone is in agreement that, for example, no one should be living without adequate shelter, food and access to appropriate facilities, including water and sanitation. When people live in poverty and destitution, they often do not have

access to those. That can be forgotten about in societies that have not introduced a bill of rights or some sort of framework that protects the most marginalised groups.

You then have a duty to ensure non-regression. That means that, in times of economic hardship, you try to introduce measures that are proportionate, are the least restrictive and are temporary; that you do not place the burden on the most vulnerable or marginalised; that you try to share hardship among communities; and, finally, that you have access to an effective remedy, which means, ultimately, a judicial remedy as a means of last resort, but you try to embed remedies much earlier in the system.

Progressive realisation is therefore a framework for decision-making, and it applies to everybody. It is the responsibility of politicians in the Assembly, as well as Ministers on the Executive, to try to take the steps to realise rights for everybody in society.

Mr Nesbitt: Again, on the practicalities of it, I fear that, in the context of a five-party coalition Government, there is huge scope for disagreement, up to and including one party taking a judicial review against another party, which is not unheard of in the history of the Northern Ireland Executive, Katie.

Dr Boyle: In a consociational framework, yes, you may face new challenges. What is required in that respect is political leadership to try to find ways in which to build consensus. A bill of rights can provide a framework. There is no flesh on the bones of a bill of rights: it is the responsibility of the legislature and the Executive to introduce that and to put content and substance on rights. Ultimately, if the Executive are not able to fulfil their duties to take the appropriate steps to try to achieve the fulfilment of rights, the opportunity for both the Assembly and the courts to hold them to account has to be facilitated. There are mechanisms through which political leadership would enable consensus-building on an agreed framework such as a bill of rights. There is not an absolute provision and requirement that a particular aim always be achieved. It is about trying to create a decision-making framework whereby decision makers can be held accountable and have to justify their approach.

Mr Nesbitt: That is helpful, Katie. Thank you very much.

Ms Bradshaw: Thank you very much for your presentation. I want to pick up on your suggestion of setting up an Ad Hoc Committee on Conformity with Equality Requirements that would have a pre-legislative scrutiny role. Could that significantly delay legislation coming forward? Would it not be better to train up, or enhance the role of, the existing Statutory Committee, be it Health or the Economy? I do not know why you would suggest that as a separate part of the process.

Dr Boyle: That is an excellent question. I would not settle on any one form of enhanced pre-legislative scrutiny. It is for this Committee to reflect on that and for the Assembly to decide what works best within its particular framework. In Scotland, for example, some of the suggestions were about embedding consideration of compliance with rights across all Committees and that that would be enabled and supported through legal advisers on human rights compliance. They were termed in the context of the report that was produced by the Equalities and Human Rights Committee. It introduced the idea of human rights champions who work across Committees to try to help embed better practice early on and consideration of international human rights frameworks across the work of Parliament.

Of course, you also have the pre-legislative scrutiny mechanisms that relate to the requirement of Ministers to have their declarations on compatibility. You could also have an enhanced form of that, which is published, transparent and can be scrutinised. There are therefore different mechanisms by which you can embed better practice within legislatures. It is about reflecting on the practice that works best. Perhaps, especially with fewer MLAs than there are MSPs, you might say that that is not the perfect way in which to achieve it in the Northern Ireland Assembly, but you find a mechanism that works. You could have both. You could have an Ad Hoc Committee that looks at very specific legislation where, for example, another Committee has referred the legislation to it to seek further guidance. Yes, you are of course right that you also need to reflect on the practicalities of the time that that would take. Pooling resources around constitutional and legal experts on human rights compliance would help with that, because, ultimately, it often relates to constitutional and human rights legalities that just need to be worked out.

Ms Bradshaw: Thank you.

The Chairperson (Ms Sheerin): No problem. Michelle, do you have a question?

Miss McIlveen: No. Thank you.

The Chairperson (Ms Sheerin): We will switch now to the members who are joining us via videoconferencing. Mark, have you got questions?

Mr Durkan: Not really, Chair. I was just interested in the discussion about the Ad Hoc Committee. The provision for it exists in Standing Orders. We have gone down that route just once, to my recollection. One of the problems with it is that, I think, only the Minister or the Chair of the Committee who is dealing with that specific piece of legislation can propose the establishment of the Ad Hoc Committee. One of the issues that I found when it was established previously — the one time that it was used here was around the welfare reform legislation — was that it was largely members of the then Committee for Social Development, who were dealing with the scrutiny of the legislation, who were then placed on the Ad Hoc Committee. It became a bit of an echo chamber, whereby you had parties bringing in the same arguments and largely having their mind made up before hearing from the experts who had been brought in to advise the Ad Hoc Committee. It is a good tool if used correctly. It is a good fallback position.

Dr Boyle: One of the lessons to be learned from the Finnish experience is that this really does rely on independent experts who specialise in constitutional law. It is a non-political Committee, which tries to assess the constitutional compatibility. Ultimately, once a decision is issued by that Committee, the Parliament in Finland complies with it by convention. It almost acts as a form of legal scrutiny early on. As I say, it may not be that the practicality or feasibility of that would work in Northern Ireland. I think, however, that it is important to reflect on the idea that it is about applying non-politicised legal standards and that there is a responsibility to hear from experts who specialise in that area as well. It is not just a political function, so to speak.

Mr Durkan: It is difficult to get anyone here who is viewed as independent. That is the problem. Thanks.

The Chairperson (Ms Sheerin): That is the reality in which we live. John, do you have any questions?

Mr O'Dowd: Yes, please. Katie, thank you very much for your presentation. It has been very interesting. You rightly point out in your presentation that, under the Good Friday Agreement, the British Government had committed to enacting a bill of rights through Westminster. They have not done so, which shows that breaking agreements is not a new trend that they have discovered in the past week or so.

You touched on the issue of devolved institutions passing a bill of rights, or rights legislation, as opposed to Westminster. Where would the best place be for us to have a comprehensive bill of rights passed, in terms of the competences of each institution?

Dr Boyle: Sorry, I am not sure exactly what the question was. Is it how to achieve the best version? Sorry, could you just repeat the end of the question?

Mr O'Dowd: *[Inaudible.]* In terms of the legislator, we have options. We could pass a bill of rights in the Assembly, or we could continue to press the British Government to pass a bill of rights through Westminster. In your opinion, which would be the best path to secure a comprehensive bill of rights?

Dr Boyle: The most comprehensive bill of rights would be one passed at Westminster because it can entrench, in the same way that the Northern Ireland Act 1998 entrenches the ECHR. However, it is contested whether the Northern Ireland Assembly could pass legislation that binds itself. You will see that tested in Scotland with the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, which affords the court power to strike down retrospectively legislation that is incompatible with the UNCRC so that Acts passed by the Scottish Parliament before the UNCRC Bill was passed can be struck down.

The difficulty is that you have a choice between a Northern Ireland Assembly bill of rights, which cannot go as far because you cannot encroach on reserved or excepted areas, and you are therefore only working within devolved competence. Moreover, technically you cannot bind yourself. Therefore future legislation could, essentially, repeal aspects of the bill of rights if it is a bill of rights at Northern

Ireland level, whereas if it was entrenched by Westminster legislation, it would take on a much stronger constitutional footing.

You have a difficulty: how likely is it that you will get a majority in the Westminster Parliament to pass such an Act? There is merit in reflecting on the fact that a Northern Ireland Assembly Act might get more buy-in and help with consensus building and capacity building across communities. That is a difficult question but an important one to reflect on.

One of the suggestions that I made in my paper was to reflect on the idea of having a hybrid approach, where you have a skeletal framework passed by Westminster legislation but with a requirement on the Northern Ireland Assembly to pass further subsequent legislation that gives meaning and content to the rights in the Bill. That is not dissimilar to the Finnish approach: the idea of placing responsibilities back onto the legislator to provide for the rights. *[Inaudible]* what was envisaged in the peace agreement *[Inaudible]* was *[Inaudible]* Westminster legislation *[Inaudible]* required *[Inaudible]* the courts could declare *[Inaudible]* incompatible subsequent legislation by the Assembly null and void if it did not comply with either ECHR or a Northern Ireland bill of rights. That is a crux upon which there is a difference. It is about how entrenched it is constitutionally. A devolved bill of rights can go quite far. When you look at what are reserved and excepted matters *[Inaudible].*

Mr O'Dowd: Sorry, we are having problems. I am not sure whether it is the same with yours, but my screen is jumping all over the place; it is like watching a music video. It is flashing on and off *[Laughter]* and the sound is pretty poor as well, Katie. Hopefully, Hansard has picked up the points that you have made, and I will be able to review the record there.

I think that you covered this, but it was breaking up a bit. The devolved institutions are often asked to pass legislative consent motions for Westminster legislation. You know that that is a courtesy and that they could overrule it if they wished. Is there a scenario where Westminster can say to a devolved institution on the bill of rights, "We are going to allow you to legislate beyond reserved matters on a specific issue relating to ECHR and incorporating that into a Bill", and Westminster would have to ratify that Bill?

Dr Boyle: Sorry, do you mean passing Northern Ireland Assembly legislation and then asking Westminster to mirror that?

Mr O'Dowd: Yes, to ratify or to endorse the powers that the Assembly has included in its Bill.

Dr Boyle: Yes, of course.

Mr O'Dowd: For one specific area, for instance, in this term it is the bill of rights where I suspect that the Westminster Parliament is not going to devolve such rights permanently to any devolved institution. We would be temporarily involving ourselves in that realm of legislation, and then Westminster would endorse it. Maybe there is another constitutional way of doing it.

Dr Boyle: No, you are absolutely right. You already have competence to implement and observe in most economic and social rights areas. There is only social security contributions, pensions and parts of equality law that remain reserved. For example, in section 75, you could make a section 4 order to request competence to modify section 75.

However, the scope of what you can do in a Northern Ireland Assembly Bill goes quite far. For example, you are restricted insofar as you cannot modify protected enactments, but that is not to suggest that you cannot supplement them. That means that you can go beyond ECHR and section 75. You can progress on rights. It is better to reflect on the protected enactments as almost acting as a floor that you cannot go below, but you can certainly progress. There is already vast scope to work in and to broaden out progress in other areas. You can request, through a section 4 order, more issues to be devolved. Of course, you could recommend that, ultimately, it would be preferred that a bill of rights was passed by a Westminster Act. However, there is scope for a Northern Ireland Assembly Act to go quite far.

Mr O'Dowd: OK, thank you very much.

The Chairperson (Ms Sheerin): Thank you, John. That is the presentation finished. Thank you very much, Dr Boyle, for your time this afternoon. Again, apologies for my intervention at the start of your presentation. It did not throw you off, anyway. That was very useful. Thank you very much.

Dr Boyle: Not at all, it was a pleasure and thank you very much. I commend all of you for undertaking the work. It is really important that it is happening. Thank you very much for the opportunity to speak to you about it.
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The Chairperson (Ms Sheerin): Thank you.