



Bulletin for the APPG on the Rule of Law

11 May 2016

This bulletin for the [APPG on the Rule of Law](#) has three sections: [Rule of Law News and Events](#), [APPG Meetings](#), and [Current Awareness](#), which provides some background reading on topics that raise rule of law issues.

Rule of Law News and Events

New Publication: The Government's policy on the use of drones for targeted killing

The Joint Committee on Human Rights has released a [Report](#) on 10 May examining the Government's policy to 'use lethal force abroad, *outside of armed conflict*... against individuals suspected of planning an imminent terrorist attack against the UK, as a last resort, when there is no other way of preventing the attack'. The Report includes analysis of the legal basis for such use of force, and the international rule of law dimensions relevant to the policy.

Lord Neuberger, Keynote closing address to the International Council of Advocates

President of the Supreme Court The Rt Hon Lord Neuberger gave a [speech](#) at the World Bar Conference 2016 in which he discussed the role of lawyers in upholding the rule of law, the relationship between advocates and judges, and the impact of technology on the legal system.

Event: Brexit: its consequences for devolution and the union

UCL

Experts will explore the possibility of the UK voting to leave the EU while the people of Scotland, Northern Ireland or Wales vote to remain. In this respect, the likelihood of independence referenda will be examined. Further, the broader implications of Brexit for the devolved areas of the UK will be considered.

Thursday, 19 May 2016 18:00 to 17:30

JZ Young LT, Gower Street, London

[More information](#)

APPG Meetings

Next Meeting

The next APPG on the Rule of Law meeting is scheduled for Tuesday 5 July, 17:00 – 18:45, and will include the APPG's Annual General Meeting.

Further information on the topic for discussion and speakers will be circulated in due course.

Current Awareness

The current awareness topics in this bulletin are:

[European Convention on Human Rights](#)

[Parliamentary Sovereignty and Law-Making](#)

[Immigration](#)

[Legal Aid](#)

European Convention on Human Rights

[‘Russia: Constitutional Court Backs Selective Justice’](#), *Human Rights Watch* (19 April 2016)

The Russian Constitutional Court has declared to be “non-executable” a European Court of Human Rights decision that an absolute ban on voting rights for prisoners needed to be reformed. The Russian Court found that the ECtHR’s decision was inconsistent with the Russian Constitution.

[Professor Mark Elliott, ‘Theresa May’s case for withdrawal from the ECHR: politically astute, legally dubious, constitutionally naïve’](#), *Public Law for Everyone* (26 April 2016)

Professor Elliott analyses the Home Secretary’s proposal that the UK withdraw from the European Convention of Human Rights (ECHR), including in relation to devolution, the Good Friday Agreement and the Sewel Convention.

[Alex Massie, ‘Theresa May sells Tory members an empty promise: are they as gullible as she thinks they are?’](#) *The Spectator* (26 April 2016)

This article discusses the difficulties inherent in withdrawing from the ECHR whilst still remaining in the EU.

[David Allen Green, ‘Theresa May, Hillsborough, human rights law and the politics of superficiality’](#) *Financial Times* (27 April 2016)

David Green discusses the role in the Hillsborough verdict played by the ECHR as incorporated into the Human Rights Act.

[Marina Wheeler QC, ‘Straining out a gnat and swallowing a camel: the Convention, the Charter, and Mrs May’](#) *UK Human Rights Blog* (6 May 2016)

Marina Wheeler QC argues that the EU Charter of Fundamental Rights places greater constraints on national decision-making than the ECHR.

See also:

- [Lord Lester, ‘Human rights are under threat at home and abroad – so too is the international reputation of the UK’](#) *Huffington Post* (30 April 2016)
- [Professor Colm O’Cinneide talks to Professor David Feldman FBA about the UK and the European Convention of Human Rights](#), *British Academy* (27 April 2016)

[House of Lords European Union Committee, ‘The UK, the EU and a British Bill of Rights’](#) (9 May 2016)

The House of Lords’ European Union Committee has released a report on the Government’s plans for a British Bill of Rights. The report analyses the likely impact of a British Bill of Rights on three main areas: human rights litigation in national courts under the EU Charter of Fundamental Rights, the UK’s EU obligations and international standing, and the devolved settlements.

[Carl Gardner, ‘Why Michael Gove should drop his Bill of Rights plans’](#) *Head of Legal* (9 May 2016)

Carl Gardner argues that, in light of the House of Lords’ European Union Committee report on the British Bill of Rights, the Government should drop the plans for a Bill of Rights.

[David Allen Green, 'The devastating Lords report on the British Bill of Rights'](#) *Financial Times* (10 May 2016)

This article highlights some of the difficulties with a British Bill of Rights drawing on the Lords' European Union Committee report, especially in relation to the UK's devolution arrangements.

Parliamentary Sovereignty and Law-Making

[Lord Judge, 'Ceding power to the executive; the resurrection of Henry VIII'](#)

The Rt Hon Lord Judge made a speech 12 April 2016 at King's College London in which he argued that the UK has transferred too much power from Parliament to the Executive, through legislation that allows the executive to amend or repeal Acts of Parliament.

See also:

- [Professor Mark Elliott, 'Lord Judge on Henry VII powers and parliamentary sovereignty'](#) *Public Law for Everyone* (14 April 2016)

[Professor Mark Elliott, 'Henry VIII powers: A follow up post'](#) *Public Law for Everyone* (15 April 2016)

On the topic of Henry VIII clauses, Professor Elliott notes an exchange involving the Shadow Human Rights Minister Andy Slaughter MP, the House of Commons Procedure Committee and the Cabinet Office from which it emerged that 'the Government does not keep a central record of the nature of each delegated power taken in each Act of Parliament'.

[Rhodri Thompson QC, 'The impact of EU law on the 'sovereignty' of the United Kingdom and its Parliament'](#) *Matrix Chambers* (21 April 2016)

Rhodri Thompson QC considers the relationship between EU law and parliamentary sovereignty in the UK.

[David Allen Green, 'The fragility of parliamentary sovereignty'](#) *The Financial Times* (3 May 2016)

David Green takes a look at the history behind parliamentary sovereignty, as well as its scope, arguing that the absolute nature of the principle is overstated. He argues that the greatest threat to parliamentary sovereignty comes from ministers and officials in Westminster and Whitehall.

[House of Commons Library, 'Queen's Speech 2016 Briefing Paper'](#) (4 May 2016)

This Commons Library Briefing Paper identifies the implementation of the Strathclyde Review as a potential subject of legislation for 2016-17.

[Judicial Power Project, '50 Problematic Cases'](#) *Policy Exchange* (9 May 2016)

The Judicial Power Project has published a list of 50 cases that it suggests involve judicial overreach. The list includes many well-known cases, such as *Anisminic*, *Jackson v. Attorney General*, and *Hirst v. UK*.

[Professor Mark Elliott, 'Anisminic, AXA, Evans and Nicklinson: Judicial Power's 50 "problematic" cases and the limits of the judicial role'](#) *Public Law for Everyone* (9 May 2016)

Professor Elliott critiques the Judicial Power Project's list of problematic cases, arguing that parliamentary intention must be interpreted in the context of fundamental constitutional principles (such as the rule of law and the separation of powers).

Immigration

[Ian Dunt, 'Secretive legal committee buries ruling against Theresa May'](#), *politics.co.uk* (21 April 2016)

The Reporting Committee of the Immigration and Asylum Chamber of the Upper Tribunal decided against reporting the recent [Qadir case](#), which held that the Home Office failed to prove alleged fraud by students who obtained English language test certificate from Educational Testing Services Ltd (ETS), and were deported on the basis of that alleged fraud.

[Colin Yeo, 'Tribunal rejects Home Office fraud allegation in ETS case but fails to report determination'](#), *Free Movement* (25 April 2016)

Colin Yeo, of Garden Court Chambers, criticises the committee's decision, noting the relevance of the *Qadir* case to other ETS appeals and judicial review applications.

Legal Aid

[R \(on the application of The Public Law Project\) v Lord Chancellor](#) (18 April 2016)

The Supreme Court allowed the appeal and held that the Government's secondary legislation introducing a civil legal aid residence test into the Legal Aid, Sentencing and Punishment of Offenders Act 2012 was *ultra vires*.

[Penelope Gibbs, 'Justice denied? The experience of unrepresented defendants in criminal courts'](#), *Transform Justice* (April 2016)

The report 'suggests that there has been a significant increase in the number of people representing themselves who are not choosing to do so', that unrepresented defendants are disadvantaged in court, and that dealing with unrepresented defendants has an impact on court staff, judges and advocates.

See also:

- ['Rise in DIY defences causing injustice in criminal court'](#), *Solicitors Journal* (25 April 2016)

About the APPG on the Rule of Law

The All-Party Parliamentary Group on the Rule of Law aims to promote parliamentary and public discussion on the rule of law as a practical concept. It is co-chaired by The Rt Hon Dominic Grieve QC MP and Lord Pannick QC. Secretariat support is provided by the Bingham Centre for the Rule of Law.

Join the APPG mailing list: <http://binghamcentre.biicl.org/appg-rule-of-law/members>

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