



Bulletin for the APPG on the Rule of Law

14 September 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

Importance of Independent Oversight of Decisions on Social Security

The Social Security Advisory Committee has delivered its [report on Decision Making and Mandatory Reconsideration](#) in the Department for Work and Pensions (DWP) and HM Revenue and Customs (HMRC). The Report examines the success of reforms to the appeals process that introduced Mandatory Reconsideration (MR) before appeal. Amongst other things, the Committee found that training for decision makers needed to better address their needs, written guidance needed to be improved, and recommended 'that the Government consider aspects of the decision making process that could benefit from external oversight and how best this can be carried out.' [Further discussion by Margaret Doyle](#), UK Administrative Justice Institute's Senior Research Officer

Event: Legislating for the Long Goodbye: How will Parliament handle Brexit?

UCL Constitution Unit

The role which Parliament will play in shaping, scrutinising and legitimating the details of the final deal is going to be crucial; with a small government majority in the Commons, and none in the Lords, Parliament cannot be taken for granted. To guide us through the legislative and scrutiny options available to the two Houses we have two senior officials, Paul Evans, Clerk of the Journals in the House of Commons, and Christopher Johnson, Principal Clerk of the EU Select Committee in the House of Lords.

Thursday, 15 September 2016 13:00-14:30
Council Room, UCL, London

[More information](#)

Event: After Brexit: is the EEA an option for the UK?

Centre of European Law, The Dickson Poon School of Law

The Centre of European Law's Annual Lecture in co-operation with King's Forum in International Dispute Resolution. Delivered by Carl Baudenbacher, President, EFTA Court. Chair: Professor Sir Francis Jacobs QC, King's College London, President of the Centre of European Law

Thursday, 13 October 2016 18.30 - 19.30

Chancellor's Hall, Senate House, University of London, Malet Street, London

[More information](#)

APPG Meetings

Last Meeting

The Report from the APPG on the Rule of Law meeting on 5 July concerning The Human Rights Act and European Convention on Human Rights in the Devolved Nations is available [online](#).

Next Meeting

The next APPG on the Rule of Law meeting has not yet been scheduled.

Current Awareness

The current awareness topics in this bulletin are:

[Arms Export by the UK](#)

[Human Rights Act and European Convention on Human Rights](#)

[Legacy Issues from the Troubles](#)

[Brexit](#)

Arms Export by the UK

[Alice Ross, 'British arms exports to Saudi Arabia to be scrutinised in high court'](#), *The Guardian* (30 June 2016)

The High Court has granted permission for a hearing in a judicial review case brought by Campaign Against Arms Trade (CAAT) concerning the sale of arms to Saudi Arabia. CAAT alleges that there is a significant chance that weapons sold to Saudi Arabia are used in human rights abuses in Yemen, meaning that their sale would be illegal under British and European arms export laws.

[Jason Groves, 'Parliament was misled six times over Saudi Arabia forces use of UK-made cluster bombs during incursion into Yemen'](#), *The Daily Mail* (22 July 2016)

Tobias Ellwood (Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs) issued [Corrections](#) on 21 July for statements on the Yemen crisis dating back to February. By way of illustration, statements that 'we have assessed that there has not been a breach of international humanitarian law by the coalition' should have said 'we have been unable to assess that there has been a breach of international humanitarian law by the Saudi-led coalition'.

[Oxfam, 'UK government in 'denial and disarray' over treaty it helped create to regulate the arms trade'](#) (23 August 2016)

Oxfam states that it 'has received a legal opinion that UK arms transfers to Saudi Arabia constitute a clear violation of its national, regional and international arms transfer obligations under the Consolidated EU and National Arms Export Licensing Criteria, the EU Common Position on Arms Exports, and the Arms Trade Treaty'.

[Jon Stone, 'Britain is now the second biggest arms dealer in the world'](#), *The Independent* (5 September 2016)

Government figures show that the UK is the second largest arms dealer globally, and two thirds of weapons were sold to Middle Eastern countries.

[Laura Hughes, 'Senior Tory calls for private investigators to trawl through MPs' emails as part of a 'mole hunt''](#), *The Telegraph* (8 September 2016)

Leaks have reportedly revealed that a Committee Inquiry on arms sales to Saudi Arabia might have recommended that the Government suspend sales, but some committee members have proposed amendments, including removal of that recommendation.

Human Rights Act and European Convention on Human Rights

[Lord Neuberger, 'Has the identity of the English Common Law been eroded by EU Laws and the European Convention On Human Rights?'](#) Speech to the Faculty of Law, National University of Singapore (18 August 2016)

Lord Neuberger sets out developments in the common law attributable to the European Convention on Human Rights causing the common law to accommodate new rights and adjusting courts' approach to judicial review. Lord Neuberger concludes that 'the common law remains as capable as it always was of absorbing new ideas and new principles, always subject to constitutional constraints including parliamentary sovereignty' and that the 'great gift of the English-speaking people to the world is... the rule of law' that the common law exemplifies.

[Professor Colin Harvey, 'Northern Ireland and a Bill of Rights for the United Kingdom'](#), *British Academy* (24 August 2016)

Professor Harvey sets out why proposals to repeal the Human Rights Act and replace it with a Bill of Rights give rise to high levels of concern in Northern Ireland. Human rights are central to the peace process in Northern Ireland, the foundational agreement for which is the Belfast/Good Friday Agreement that directly refers to the European Convention on Human Rights.

[Professor Christine Bell, 'Scotland and the British Bill of Rights'](#), *British Academy* (24 August 2016)

Professor Bell concludes that a constitutional crisis would arise if the UK and Scottish Governments took different views on whether legislative consent by Scotland was required for changes to human rights law in the UK. Such disagreement might lead to litigation under the Scotland Act.

See also:

- [A podcast in which Professors Bell and Harvey discuss the briefings](#)
- [Professor Bell, 'The Human Rights Act'](#), *British Academy* (24 August 2016)

[Michael McHugh, 'Chief Constable Backs Human Rights Act'](#), *Belfast Telegraph* (8 September 2016)

Chief Constable George Hamilton QPM, who is in overall command of the Police Service of Northern Ireland, has spoken in support of the Human Rights Act, saying 'It seems to me a pretty good idea for any democratic society to uphold for its citizens a right to a fair trial, prohibition from any inhumane and degrading treatment, prohibition from torture, to uphold the right of freedom of expression; freedom of religion is not a bad thing to have either'.

See also:

- [Raphael Hogarth, 'It's time to drop the British Bill of Rights for good'](#), *The Spectator: Coffee House* (3 September 2016)
- [Professor Conor Gearty, 'The Human Rights Act Should Not Be Repealed'](#), *LSE Law: Policy Briefing Paper No. 16* (7 September 2016)
- [Professor Mark Elliott, 'The new Justice Secretary, Elizabeth Truss, on a British Bill of Rights'](#), *Public Law for Everyone* (9 September 2016)
- [Alice Donald and Philip Leach, 'A democratic defence of the European Court of Human Rights'](#) *OUP Blog* (12 September 2016)

Legacy Issues from the Troubles

[David Blevins, 'N Ireland's Martin McGuinness: 'I Will Deal With' Questions On Past'](#), *Sky News* (27 August 2016)

If new truth and justice structures are established, then Northern Ireland's Deputy First Minister Martin McGuinness is prepared to answer questions about his past. Concerns that the release of some documents might compromise the UK's national security have stalled plans for a new historical investigations team and a truth recovery process.

[Vincent Kearney, 'Legacy inquests: Judge calls for 'urgent action'', BBC News \(5 September 2016\)](#)
Lord Chief Justice Sir Declan Morgan requested £10 million to fund a five-year programme of inquests to address killings that took place during the Troubles, but the request was not granted by the First Minister. Sir Declan noted his disappointment that the programme could not proceed until wider agreement was reached on new institutions to deal with legacy issues.

['James Brokenshire: Stumbling blocks regarding legacy of Troubles to enter 'more public phase'', BBC News \(9 September 2016\)](#)

Secretary of State for Northern Ireland James Brokenshire has identified legacy issues as a key priority, proposing that the process should next enter into a 'public phase'. Following his meetings with groups representing victims and survivors, the Secretary of State recognised their 'desire for information, for answers and in some cases for justice to be done and to be seen to be done'.

[Nevin Farrell, 'The Republic's Foreign Affairs Minister has said it is time for politicians to step up to the mark and overcome obstacles to dealing with the legacy of the Troubles', Belfast Telegraph \(12 September 2016\)](#)

The Foreign Affairs Minister for the Republic of Ireland has said that politicians in London, Belfast and Dublin have a responsibility to establish a framework to address legacy issues. The framework 'must ensure equality of access for victims and survivors to whatever truth and justice is available in their case and provide a platform for genuine reconciliation in society.'

Brexit

[Kenneth Campbell QC, 'Sand in the Gearbox: Devolution and Brexit', UK Constitutional Law Blog \(5 September 2016\)](#)

Campbell observes that Brexit negotiations and consequential law-making will engage Scotland's devolved competences, and devolved competences will need to be redefined as they are currently defined with reference to the EU. Campbell therefore calls for the devolved institutions to be involved in the negotiation process. Campbell also notes particular issues arising for Northern Ireland in relation to the Belfast/Good Friday Agreement.

[Mark Elliott, 'Constitutional legislation, fundamental rights and Article 50', Public Law for Everyone \(8 September 2016\)](#)

Professor Elliott argues that the arrangements, values, rights and principles resulting from EU membership are not fundamental to the UK constitution sufficient to require that only primary legislation may change them. As such, Professor Elliott maintains his view that legislation is not required to trigger Art 50.

[Rosalind English, 'Juncker's ban on post-Brexit negotiations may be illegal', UK Human Rights Blog \(11 September 2016\)](#)

Fair Deal for Expats, a group of UK expats in the EU, is proposing a legal challenge in the Court of Justice of the EU to EU Commission President Jean-Claude Juncker's forbidding by presidential order Commissioners from negotiating with the UK until notice has been sent under Art 50.

[Laura Hughes and Peter Foster, 'David Davis says process for leaving the EU will be the most complicated negotiation of all time', The Telegraph \(12 September 2016\)](#)

The Rt Hon David Davis, Secretary of State for Exiting the European Union, gave evidence to the House of Lords EU Committee, in which he indicated that the Government does not intend to disclose much information on Brexit negotiations to Parliament in advance of negotiations nor before triggering Article 50. Instead, Mr Davis indicated that disclosure to Parliament would tend to occur 'late' in the process.

[Constitution Committee, Report: The Invoking of Article 50](#) (13 September 2016)

The House of Lords Constitution Committee has concluded that:

27. In our representative democracy, it is constitutionally appropriate that Parliament should take the decision to act following the referendum. This means that Parliament should play a central role in the decision to trigger the Article 50 process, in the subsequent negotiation process, and in approving or otherwise the final terms under which the UK leaves the EU.

The Committee found that it would be constitutionally appropriate for both Houses of Parliament to assent to the triggering of Article 50, and that either legislation or resolution would be a constitutionally appropriate mechanism for such assent.

See also:

- [Mark Elliott, 'The House of Lords Constitution Committee reports on Article 50'](#), *Public Law for Everyone* (13 September 2016)
- [Owen Bowcott, 'PM should seek parliamentary approval over article 50, says Lords committee'](#), *The Guardian* (13 September 2016)

[Dr Charlotte Burns, Professor Andy Jordan, and Viviane Gravey, 'The EU referendum and the UK environment: the future under a 'hard' and 'soft' Brexit'](#), *The UK in a Changing Europe* (2016)

The authors have updated a detailed review of EU influence on UK policies, systems of decision making and environmental quality, looking at two scenarios for the future of the UK: the UK has membership of the European Economic Area, or the UK negotiates a free trade with the EU.

See also:

- [Kenneth Campbell QC, 'Constitutional Discourse Post-referendum: Where Are We, and Where Are We Going Next?'](#), *UK Constitutional Law Blog* (1 September 2016)
- [Daniella Lock and Oliver Patel, 'Brexit: Constitutional and legal requirements'](#), UCL Insights: Research Briefing
- [Scottish Parliament European and External Relations Committee, Report: The EU referendum result and its implications for Scotland: Initial Evidence](#), (12 September 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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