

## Summary - House of Lords EU Justice Sub-Committee



### **Inquiry: *Potential Impact on EU Law of Repealing the Human Rights Act***

Evidence session No. 4: Marco Biagi MSP, Minister for Local Government and Community Empowerment from the Scottish Government.

**Summary:** To gain a Scottish perspective of the Human Rights Act and the plans of the UK government to repeal this, the committee took evidence from Marco Biagi MSP in this session. Mr Biagi answered questions on subjects including the jurisdiction over human rights policy with regard to devolution and the Sewel Convention's role in HRA repeal. Mr Biagi reaffirmed the SNP's unequivocal opposition to HRA repeal, and warned that it was their interpretation that human rights is a devolved matter, and any legislation would require the consent of the Scottish Parliament. If Westminster bypassed Edinburgh in this, Biagi warned of "considerable consequences" in terms of public opinion and the relationship between the two bodies.

A subject of considerable attention in this session was the debate concerning whether or not human rights as a policy area falls within the competences of Westminster or Edinburgh. Marco Biagi was very clear in presenting the position of the SNP in this area, stating that "Schedule 5 to the Scotland Act, which sets out what reserved issues are, does not mention human rights, it does not reserve human rights, and the principle of the Scotland Act is that if it is not mentioned there, it is devolved."

In answer to a question put forward by Lord Blair, Biagi asserted his belief that in the case of HRA repeal, the Scottish Parliament would indeed need to consent as per the Sewel Convention. Going further, Mr Biagi stated that should the Sewel Convention come into effect, "the Scottish Parliament would be invited by the Scottish Government to refuse legislative consent" and, given the current inclinations of the SNP and the main opposition party (Labour), "that would be passed." Mr Biagi added that, on the back of the Smith Commission, the Sewel Convention was recommended to be put into statute making it a legal requirement and strengthening the process from the point of view of Scottish Parliament.

Due to the potential difficulty that the UK Government could encounter in acquiring legislative consent from the Scottish Parliament, Marco Biagi raised the suggested possibility of a "selective repeal of the Human Rights Act" in which the HRA would remain in place in Scotland, yet be repealed in England and Wales. On this subject, Biagi conceded that parliamentary sovereignty enabled this to be a possibility. He did, however, note the considerable institutional complications that would arise in this unprecedented eventuality. "You could end up with a situation where a British Bill of Rights applied in Scotland to public bodies that responded to Westminster, while a separate human rights framework was in place for devolved functions." Biagi concluded: "however you go here, it is not easy to come up with a system that is coherent if the Human Rights Act is withdrawn from Scotland."

**Source:** <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-justice-subcommittee/potential-impact-of-repealing-the-human-rights-act-on-eu-law/oral/24690.html>