

# Northern Ireland as “a legal jurisdiction”

## Submissions to the Commission for Justice in Wales

Gordon Anthony \*

### I. Introduction

1. This note has been written for the assistance of the Commission for Justice in Wales (“the Commission”), which issued an open call for evidence on 27 February 2018.<sup>1</sup> It focuses on Northern Ireland’s experience as a legal jurisdiction within the UK and on the nature and role of its main legal institutions.<sup>2</sup> In doing so, it hopes to contribute to the Commission’s work in reviewing “the operation of the justice system in Wales ... with a view to ... ensuring the jurisdictional arrangements and legal education address and reflect the role of justice in the governance and prosperity of Wales as well as distinct issues that arise in Wales”.
2. The comments within this note are made on the understanding that the term “jurisdiction” can be defined in a number of ways.<sup>3</sup> Certainly, a first definition would link the term to the simple fact of distinct legal/court systems, where the UK has (of course) long had existing jurisdictions in England and Wales, Northern Ireland, and Scotland. However, the term can also be defined with reference to ideas of “territory” and devolved law-making functions, where the exercise of those functions can create unique legal rules for adjudication within a devolved setting. This is the definitional approach that plainly animated a recent Welsh government paper for the Commission, which traced the evolution of Welsh devolution towards the reserved powers model that is contained in the Wales Act 2017.<sup>4</sup> That paper noted at paragraph 61 that: “In view of the body of Welsh law that already exists, the different demands on courts in Wales (different law and a different language), the move to a reserved powers model of devolution, the need to make arrangements which better serve people in Wales and the essential requirement not to constrain the Welsh legislature, the creation of a distinct Welsh jurisdiction is essential”. When making this point, it referred in some detail to provisions in the draft *Government and Laws in Wales Bill*, including those that propose the creation of two jurisdictions in “Wales” and “England”.

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\* Professor of Public Law, School of Law, Queen’s University of Belfast; Barrister-at-Law.

<sup>1</sup> Available at <https://beta.gov.wales/sites/default/files/publications/2018-02/180227-commission-justice-wales-call-for-evidence.pdf>.

<sup>2</sup> For a comprehensive account see B Dickson, *Law in Northern Ireland* (Bloomsbury/Hart Publishing, Oxford, 3<sup>rd</sup>, 2018), p 85.

<sup>3</sup> For some perspectives see *National Assembly for Wales Constitutional and Legislative Affairs Committee: Inquiry into a Separate Welsh Jurisdiction*, Part 3, available at <http://www.assembly.wales/Laid%20Documents/CR-LD9135%20-%20Constitutional%20and%20Legislative%20Affairs%20Committee%20-%20Inquiry%20into%20a%20Separate%20Welsh%20Jurisdiction-12122012-241484/cr-ld9135-e-English.pdf>.

<sup>4</sup> “Law and the Constitution”, Supplementary Evidence of the Welsh Government to the Commission on Justice in Wales”, by Jeremy Miles AM, Counsel General, 5 July 2018.

3. The comments within this note are also made on the understanding that there are (obvious) limits to the comparative insights that might be drawn from the Northern Ireland experience. Clearly, the fact that the Northern Ireland legal system first came into being under the Government of Ireland Act 1920 means that it is difficult to compare the financial and institutional “start-up” costs of creating a legal jurisdiction, as the court system that was then put in place has since been reformed and modernised, including through the creation of discrete tribunals in areas such as discrimination and educational needs. In this regard, it can be noted that the *Government and Laws in Wales Bill* makes detailed provision for the creation of new court structures, including through the separation of the Senior Courts in England and Wales and the creation of the Senior Courts of England and the Senior Courts of Wales (clause 79).
4. Another potential difficulty lies in the Commission’s mention of “distinct issues” arising as, in Northern Ireland, many of these have been associated with Northern Ireland’s violent past, as well as the nature of its devolution settlement. While there are some areas of Northern Irish law that truly are distinct from elsewhere in the UK – land law is the primary example – many other aspects of substantive law (and even some procedural law) have tracked developments in England and Wales. This has meant that many of the “distinct” challenges for the courts have been concerned with emergency laws, how to deal with the legacy of “the past”, and how to interpret the Northern Ireland Act 1998 that is founded upon the Belfast Agreement.<sup>5</sup> Plainly, these are not matters that lend themselves to an immediate analysis of how a Welsh jurisdiction may, or may not, best function – albeit the question of how the devolution statutes are to be interpreted has long been of common interest throughout Northern Ireland, Scotland and Wales.<sup>6</sup>
5. On the other hand, it is clear from earlier studies on Wales that Northern Ireland’s geographical size and common law tradition, not to mention its reserved powers model of devolution, make it an interesting reference point.<sup>7</sup> In seeking to complement those earlier studies, this note thus divides into five sections that describe: the court structures in Northern Ireland; the position of law officers; provision for legal training and the

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<sup>5</sup> See B Dickson, *The European Convention on Human Rights and the Northern Ireland Conflict* (Oxford University Press, 2010); and G Anthony, ‘The Uniqueness of Northern Ireland Public Law’ (2012) *Legal Information Management* 262, at 262-264.

<sup>6</sup> The leading cases include *Robinson v Secretary of State for Northern Ireland* [2002] UKHL 32, [2002] NI 390; *Attorney General v National Assembly for Wales Commission* [2012] UKSC 53, [2013] 1 AC 792; *Imperial Tobacco Ltd v Lord Advocate* [2012] UKSC 61, (2013) SC (UKSC) 153; *Re Agricultural Sector (Wales) Bill* [2014] UKSC 43, [2014] 1 WLR 2622; and *Recovery of Medical Costs for Asbestos Diseases (Wales) Bill* [2015] UKSC 3, [2015] 1 AC 1016.

<sup>7</sup> N 3 above. Though it should be noted that use of the term “reserved” under the Northern Ireland Act 1998 differs from that under the Scotland Act 1998. This is because the Northern Ireland Act 1998 makes a three-way distinction between “transferred”, “reserved” and “excepted” matters, whereby “excepted matters” are the constitutional equivalent of “reserved matters” under the Scotland Act 1998. “Reserved matters” under the Northern Ireland Act 1998 are those which may be transferred to the competence of the Northern Ireland institutions in accordance with section 4 of the Act. The outstanding example of a reserved matter becoming a transferred matter is policing and criminal justice: see further G Anthony, ‘The Devolution of Policing and Criminal Justice’ (2011) 17 *European Public Law* 197.

professions; the place of a local Law Commission; and the relevance of law reporting (including statute books) and a local “textbook tradition”.<sup>8</sup> In doing so, the note does not offer any view on the conclusions that were reached in earlier studies, and nor does it offer any view on the correctness of the Welsh government’s position as expressed in the above-mentioned paper. It does, however, include several references to that paper for the purposes of making some comparative points about Northern Ireland’s experience as a jurisdiction. This is true, in particular, of paragraphs 67-79 of the Welsh government’s paper, which discuss the “implications of creating a Welsh legal jurisdiction”.

6. One further introductory point concerns the availability of legal aid and the existence of court fees as part of the administration of a justice system. Here, the note recognises that there can be different governmental approaches to such matters, but it offers no view on the merits or otherwise of the existing approaches within the UK’s jurisdictions. It does, however, work on the assumption that there is a constitutional right of access to justice in the UK and that this requires the provision of legal aid in appropriate cases and fees arrangements that do not offend that core constitutional right.<sup>9</sup> (The issue of fees is touched upon at paragraph 77 of the Welsh government’s paper.)

## II. The court structures

7. The starting point for analysing the court structures in Northern Ireland is the Judicature (Northern Ireland) Act 1978, which established a Court of Judicature that comprises the Northern Ireland Court of Appeal, the High Court, and the Crown Court. These are the courts that most obviously mark Northern Ireland out as a separate legal jurisdiction, where the Crown Court hears all criminal trials on indictment and the High Court has three main divisions – Chancery, Queen’s Bench, and Family. Within those divisions, there is a “commercial list” and a “judicial review court”, although there is nothing to parallel the extensive sub-divisions that have been created within the High Court in England and Wales. Appeals from the High Court in Northern Ireland are to the Court of Appeal, save for applications for judicial review in “criminal causes or matters” – such applications are heard by a Divisional Court of up to three judges and appeals lie directly to the UK Supreme Court.<sup>10</sup> Decisions of the Court of Appeal in any case can be appealed to the UK Supreme Court where statute makes provision for appeals and where permission to appeal has been granted.
8. The workings of the Court of Judicature are underpinned by a detailed set of rules,<sup>11</sup> and this is also the case for the courts and tribunals that exist beneath the level of the High

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<sup>8</sup> See further n 3 above, Annex 4, ‘Requirements of a Separate Legal Jurisdiction’, Rt Hon the Lord Carswell.

<sup>9</sup> On which see *R (Public Law Project) v Secretary of State for Justice* [2016] UKSC 39, [2016] AC 1531 and *R (UNISON) v Lord Chancellor* [2017] UKSC 51, [2017] 3 WLR 409.

<sup>10</sup> See, eg, *Re Loughlin’s Application for Judicial Review* [2017] UKSC 63, [2017] 1 WLR 3963.

<sup>11</sup> The Rules of the Court of Judicature (NI) 1980, as amended (available at [https://www.justice-ni.gov.uk/sites/default/files/publications/justice/COJ\\_Rules.pdf](https://www.justice-ni.gov.uk/sites/default/files/publications/justice/COJ_Rules.pdf)).

Court and Crown Court (notably the County Court; the Magistrates Court; NI specific tribunals such as the Industrial Tribunal, the Fair Employment Tribunal, and the Mental Health Tribunal; and UK wide tribunals such as the Investigatory Powers Tribunal).<sup>12</sup> This is perhaps where efforts to create a new legal jurisdiction “from the beginning” would initially face their greatest challenge, as the need to legislate to create a range of courts and to supplement that legislation with detailed rules would require a significant diversion of resources and expertise. However, it would appear from the “separation” approach that is envisaged in the *Government and Laws in Wales Bill* that such challenges will be dealt with in Wales in a phased manner that will avoid shocks within the legal system. It is also the case that rules, once made, can quickly be amended – for instance, Northern Ireland has a Court of Judicature Rules Committee that can make amendments by way of statutory rules made under the Judicature (Northern Ireland) Act 1978.

9. Appointments to all judicial positions in Northern Ireland, with the exception of Lord Chief Justice and Lord Justices of Appeal, are made by the Lord Chancellor on the recommendation of the Northern Ireland Judicial Appointments Commission. This body was established under the Justice (Northern Ireland) Act 2002 and it seeks to make appointments on the basis of “merit” and in a manner that is reflective of the community in Northern Ireland.<sup>13</sup> Appointments to the most senior positions of Lord Chief Justice and Lord Justice of Appeal are made by Her Majesty on the recommendation of the Prime Minister of the UK, albeit the Prime Minister must consult both the sitting Lord Chief Justice and the Northern Ireland Judicial Appointments Commission before making a recommendation (if the position of Lord Chief Justice is vacant, the Prime Minister must consult the longest serving Lord Justices of Appeal).<sup>14</sup> All judges, once appointed, enjoy a statutory guarantee of continued judicial independence.<sup>15</sup>
10. In terms of the case of law of the Northern Ireland courts, there are two points that might be made.
11. The first concerns an issue that was discussed at paragraph 70 of the Welsh government’s paper to the Commission and which would arise in the event of the creation of a Welsh jurisdiction: how “to determine what is a ‘Welsh’ case and what is an ‘English’ case, and whether the applicable law is the law of Wales or of England”. Later in that same paragraph, reference is made to evidence given by Professor Gerry Maher QC, who suggested that “the solution to these issues is not difficult”. To the extent that such issues arise in Northern Ireland, there is anecdotal evidence that just such a view is justified: see, by way of example, the High Court’s recent ruling in *Frampton* (private law claim for, *inter alia*, breach of fiduciary duty and unjust enrichment) and *McVeigh* (application for judicial review

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<sup>12</sup> See further Dickson, *Law of Northern Ireland*, n 2 above, ch 4.

<sup>13</sup> On the meaning of “merit” see, *Rewarding Merit in Judicial Appointments*, 2013, available at: [https://pure.qub.ac.uk/ws/files/16480169/NijacReportJan16\\_1\\_.pdf](https://pure.qub.ac.uk/ws/files/16480169/NijacReportJan16_1_.pdf).

<sup>14</sup> Judicature (NI) Act 1978, s 12.

<sup>15</sup> Justice (NI) Act 2002, s 1; Constitutional Reform Act 2005, s 1.

brought by a prisoner who had been transferred to prison in Northern Ireland, from England).<sup>16</sup>

12. The second point concerns the rules of precedent that apply in Northern Ireland. Here, the basic position is that the Northern Ireland Court of Appeal and High Court are bound with the hierarchy of the Northern Ireland courts and that decisions of the courts in England and Wales and Scotland have the force of only persuasive precedents. That said, it is important not to overstate the extent to which Northern Ireland case law develops within its own terms of reference, as the case law of the High Court and Court of Appeal in England and Wales will in practice be followed unless there is good reason not to do so (it is also the case that decisions of the UK House of Lords and Supreme Court heard on appeal from England and Wales and Scotland are binding throughout the UK).<sup>17</sup> A note of caution might also be sounded about how far the decisions of Northern Ireland courts can have impacts “the other way”: while they could plainly have persuasive force in England and Wales and Scotland, even a cursory glance at the law reports reveals that reliance on Northern Ireland authorities is rare (at best).

### III. Law Officers

13. Devolution throughout the UK (of course) means that there already are Law Officers in place in Northern Ireland, Scotland and Wales and that there is, in that sense, the semblance of three legal jurisdictions at the devolved levels. However, in terms of Northern Ireland’s particular experience as a separate legal jurisdiction, there are two points that might be made about the role of Law Officers and the Attorney General for Northern Ireland in particular.
14. The first concerns the role that the Attorney General for Northern Ireland plays at the apex of the criminal justice system. Under the extant arrangements, the Attorney General is appointed by the First and Deputy First Ministers acting jointly, and he (the current holder of the office is John Larkin QC) is thereafter responsible for, among other things, the appointment of the Director of Public Prosecutions (DPP).<sup>18</sup> While there has been some debate about the nature of the powers that the Attorney General should enjoy in relation to prosecutions – he does not have a power of superintendence over the DPP – the point to be noted here is that the office (and that of the DPP) is synonymous with the separateness of the criminal legal system in Northern Ireland. It is understood that this is a matter of potential significance in Wales given debates about the devolution of competence in criminal justice.

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<sup>16</sup> *Frampton v McGuigan* [2018] NIQB 52 and *Re McVeigh’s Application for Judicial Review* [2014] NICA 23.

<sup>17</sup> Dickson, *Law of Northern Ireland*, n 2 above, p 103. For an example of a case in which the Northern Ireland High Court adopted a different approach see *Re Connelly’s Application* [2011] NIQB 62, as compared to *R (Chief Constable of Great Manchester Police) v Salford Magistrates’ Court* [2011] EWHC 1578 (Admin), [2011] 3 All ER 521.

<sup>18</sup> Justice (NI) Act 2002, Part 2. See further G Anthony, ‘The Devolution of Policing and Criminal Justice’ (2011) 17 *European Public Law* 197.

15. The second point concerns overlap between the roles of the Attorney General for Northern Ireland and the Advocate General for Northern Ireland, who is the Attorney General for England and Wales.<sup>19</sup> This, again, is a point that already takes form around the devolution settlement where, for instance, the Attorney General for Northern Ireland and Advocate General for Northern Ireland can both play a role in scrutinising the vires of Acts of the Northern Ireland Assembly (for Wales read “Counsel General” and “Attorney General for England and Wales”).<sup>20</sup> However, there is scope for the offices to overlap in other ways as well, for instance where legal proceedings touch upon matters of national security.<sup>21</sup> Such matters are “excepted matters” for the purposes of the Northern Ireland Act 1998, which means that they fall exclusively within the competence of the UK government.<sup>22</sup> Terrorism cases therefore provide one obvious example of proceedings that could give rise to evidential issues of concern to the Advocate General/UK government.
16. The Advocate General for Northern Ireland also performs a range of other functions in relation to the Northern Ireland legal system. One relates to the appointment of the Crown Solicitor for Northern Ireland,<sup>23</sup> whose office acts for a number of Northern Ireland public bodies (most notably the Police Service of Northern Ireland) as well as UK government departments. The Crown Solicitor’s office is a part of the Northern Ireland Office, and it does not act on behalf of Northern Ireland Departments. They are represented by a separate Departmental Solicitor’s Office.

#### **IV. Legal training and the professions**

17. Legal training in Northern Ireland – in terms of training to qualify for the professions – is governed by the Institute of Professional Legal Studies (IPLS) at Queen’s University Belfast. (There was also a provider at the University of Ulster, but it is no longer in existence.) While it is possible for lawyers who have qualified in other jurisdictions to be called in Northern Ireland, subject to recognition of qualifying criteria, the typical route is through a period of study at IPLS. Study there requires a student to have a qualifying law degree – essentially one that traverses core subjects in the fields of public law, private law, and criminal law – and to choose whether to qualify as a barrister or solicitor. An entrance exam is used to match numbers to places available at IPLS; progression across the programme is examined at various stages and ends with an exit exam.
18. The solicitor’s profession is regulated by the Law Society for Northern Ireland, the existence of which can be traced to a Royal Charter from 1922. The Society has a President, Vice-

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<sup>19</sup> Justice (NI) Act 2002, s 27.

<sup>20</sup> Northern Ireland Act 1998, s 11; Government of Wales Act 2006, s 112.

<sup>21</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-21402359>.

<sup>22</sup> Northern Ireland Act 1998, Sch 2, para 17.

<sup>23</sup> Northern Ireland Constitution Act 1973, s 35.

President, and Council of 30 practising solicitors, and it oversees the training of solicitors both through IPLS and, post-qualification, through Continuing Professional Development (CPD) programmes. All solicitors are required to register with the Society on an annual basis, which can hear complaints against solicitors. In the most serious cases, complaints can be referred to the (independent) Solicitors Disciplinary Tribunal, where either the complainant or the solicitor will have a subsequent right of appeal to the High Court. A Legal Services Oversight Commissioner reviews the manner in which the Law Society handles complaints.<sup>24</sup>

19. The barrister's profession is regulated by the Bar Council for Northern Ireland. Unlike barristers in England and Wales, barristers in Northern Ireland do not work through chambers but rather are self-employed and work out of the Bar Library in Belfast. As with the Law Society, the Bar Council has a role in overseeing training through IPLS and subsequent CPD programmes, and all barristers must engage in training on an annual basis. Barristers must work in accordance with the Bar Council's Code of Conduct and any complaint that a barrister has breached the Code will be considered by the Bar's Professional Conduct Committee. Serious cases can be referred to a Disciplinary Committee of the Executive Council of the Inn of Court of Northern Ireland, where any decision to suspend or disbar a barrister can be taken only by the benchers of the Inn of Court. The Legal Services Oversight Commissioner will also have a role in assessing how complaints against barristers are processed.<sup>25</sup>

20. It is understood from the Welsh government's paper to the Commission that legal training in Wales would centre upon "dual focussed education, dual qualification, dual focussed expertise, and dual experience" (paragraph 78). This is not the formal position in Northern Ireland. While legal training can include study of substantive and procedural law from England and Wales and (less frequently) Scotland, professional study focuses very much on the rules of court that apply in Northern Ireland and the corresponding case law. That said, undergraduate degree programmes in Northern Ireland often use "English" textbooks, and the majority of cases that are studied at university are from England and Wales (at least in subjects outside land law). It is also the case that, in legal practice, the case law of England and Wales is given a position of prominence not just in legal submissions but also in the rulings of the Northern Ireland courts (see further paragraph 12, above, on precedent).

## **V. Law Commission**

21. Northern Ireland has a history of having had bodies to consider questions of law reform, though the most recent such body, the Northern Ireland Law Commission, was closed in 2015 due to budgetary pressures.<sup>26</sup> That body, which was established under the Justice (Northern Ireland) Act 2002, was chaired by a High Court judge and had four other Commissioners who included a solicitor, a barrister and a university law teacher. The

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<sup>24</sup> See further Dickson, *Law of Northern Ireland*, n 2 above, pp 376-381.

<sup>25</sup> See further Dickson, *Law of Northern Ireland*, n 2 above, pp 381-383.

<sup>26</sup> See further Dickson, *Law of Northern Ireland*, n 2 above, pp 78-81.

Commission had a statutory duty to keep under review the law in Northern Ireland and, in so doing, was required to, among other things, “obtain such information as to the legal systems of other countries as appears to the Commission likely to facilitate the performance of its other duties”.<sup>27</sup> It came into existence in 2007 and produced reports in areas that included land law and bail law (it had also started considering the law on defamation – the Defamation Act 2013 that modernised the law in England and Wales and partly in Scotland does not extend to Northern Ireland).

22. There is little doubt that a local law commission or some such body helps to mark out the distinctiveness of a legal system – indeed, Dickson notes that, “In modern times most legal systems have a body which is specifically tasked with considering which parts of the law are in need of reform and what shape the reform should take”.<sup>28</sup> In the absence of the Northern Ireland Law Commission, it is understood that questions of law reform are now considered internally within the Department of Justice. While this means that such questions will still receive consideration, it might be surmised that the absence of a dedicated statutory body will have implications for the manner in which they are prioritised. It remains to be seen whether the Commission will be re-established at some time in the future.

## VI. Law reporting, the statute book, and a “textbook tradition”

23. The remaining matter to be addressed is that of law reporting, the statute book, and a “textbook tradition” in Northern Ireland.
24. In terms of law reporting – a feature which links back to the existence of separate court structures – there are two points that might be made. The first is that almost all decisions of the superior courts in Northern Ireland are now available on-line, whether through the Northern Ireland Courts and Tribunals Service’s website,<sup>29</sup> the BAILLI platform,<sup>30</sup> or Westlaw and/or LexisNexis. The Northern Ireland jurisdiction is, in that sense, highly visible, even if it might again be cautioned that the decisions of its courts have only a limited impact in other jurisdictions (see paragraph 12, above).
25. The second point concerns the official reports for Northern Ireland, namely the *Northern Ireland Law Reports* and the *Northern Ireland Judgments Bulletin*. While Northern Ireland cases can also be reported in (for instance) the Appeal Cases – most obviously those that have been heard on appeal in the Supreme Court – the official reports contain the most significant rulings of the Northern Ireland courts. The words “most significant” might here be highlighted, as the official reports will contain the rulings that will be most reflective of Northern Ireland’s unique experience as a jurisdiction. While some of these rulings will, again, be associated with Northern Ireland’s difficult and contested past, others will be

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<sup>27</sup> Justice (NI) Act 2002, s 51(2)(f).

<sup>28</sup> *Law of Northern Ireland*, n 2 above, p 78.

<sup>29</sup> <https://www.judiciary-ni.gov.uk/judicial-decisions>.

<sup>30</sup> <http://www.bailii.org/databases.html#nie>.



concerned with matters of procedure and/or issues of substantive law that are either distinct to Northern Ireland or which have not been the subject of judicial determination in England and Wales.

26. On the matter of a Northern Ireland statute book, this has existed since the time of the creation of the Stormont Parliament under the Government of Ireland Act 1920. The nature of Northern Ireland's experience with devolution since then has, of course, been one of periodic episodes of direct rule, and Northern Ireland law at such times has been made by way of Order of Council under Westminster legislation.<sup>31</sup> At the time of writing, it is also the case that government in Northern Ireland is beset by a political impasse that means that primary legislation cannot be enacted, even if some species of statutory rules (apparently) can.<sup>32</sup> It remains to be seen whether that impasse will be broken by way of a further political agreement between the local political parties, or whether direct rule will be reintroduced by way of an Act of the Westminster Parliament.
27. The issue of a statute book has received some attention in the Welsh government's paper to the Commission, where the perceived benefits were said to include the accessibility of local law. There is little doubt that the existence of a discrete statute book can have that effect, even if there will inevitably be some areas of continued complexity. In this regard, it is interesting that the Welsh government's paper used the Care Act 2014 to illustrate the benefits of having separate statute books. As the government's paper notes at paragraph 50, that Act has only very limited application to Northern Ireland, where much of the social care regime continues to be governed by the Health and Personal Social Services (Northern Ireland) Order 1972 and the Health and Social Care (Reform) Act (Northern Ireland) 2009. However, to the extent that this recognises the separateness of the Northern Ireland regime, it is also the case that the Care Act's application to Northern Ireland can be understood only with reference to related transitional provisions orders and other regulations that have primary effect in England. The Northern Ireland statute book, in that sense, can be understood only with detailed reference to the extant statute book in England and Wales.
28. On the question of a textbook tradition, this is perhaps one (anecdotal) way in which the uniqueness of any legal system may be measured. Certainly, in Northern Ireland, references are still often made to leading texts from England and Wales, for instance, *Bennion on Interpretation*, or Craig on *Administrative Law*. However, there are now also many "local" publications that centre upon procedural and substantive law in the Northern Ireland, and these are often cited by the courts. There are many examples that might be given, but leading accounts include those produced by Valentine<sup>33</sup> and Dickson,<sup>34</sup> as well as

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<sup>31</sup> For an account of such law-making under the (now repealed) Northern Ireland Act 2000 see G Anthony and J Morison, 'Here, There, and (Maybe) Here Again: The Story of Law Making for Post-1998 Northern Ireland' in R Hazell and R Rawlings (eds), *Devolution, Law Making and the Constitution* (Imprint Academic, 2005) p 155.

<sup>32</sup> <https://www.legislation.gov.uk/nisr>. On the constitutional complications caused by the impasse see *Re Buick's Application* [2018] NICA 26.

<sup>33</sup> See, most notably, his *All the Law of Northern Ireland*, available through Lexis.

commentaries on topics such as the Northern Ireland constitution,<sup>35</sup> planning law,<sup>36</sup> property law,<sup>37</sup> criminal procedure,<sup>38</sup> and judicial review.<sup>39</sup> Taken together, such books perhaps provide something of an historical and contemporary account of much of the law that defines the Northern Ireland jurisdiction.

## VII. Conclusion

29. The above comments have been intended to provide a snap-shot of the nature of the Northern Ireland legal jurisdiction and how it is configured. The comments are, in that sense, inevitably limited in their scope, and a comprehensive account of the nature of the jurisdiction can be found in Dickson's book, as referenced above. That said, it is hoped that this note will still be of some assistance to the Commission as it moves towards its final report on the Welsh justice system. While Northern Ireland's experience as a legal jurisdiction within a devolved setting has inevitably been affected by its contested past, there are many features of it that shed light on the challenges and benefits of having local legal institutions. It is hoped that this note has given some insight into the nature of those challenges and benefits, as have arisen in Northern Ireland and as may soon arise in Wales.

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<sup>34</sup> *Law in Northern Ireland*, n 2 above.

<sup>35</sup> Eg, B Hadfield, *The Constitution of Northern Ireland* (SLS Legal Publications, Belfast, 1989).

<sup>36</sup> S McKay and M Murray (eds), *Planning Law and Practice in Northern Ireland* (Routledge, 2017).

<sup>37</sup> C Turner, L Quinn and T Murphy, *The Law of Property in Northern Ireland* (Colourprint Educational, 2014).

<sup>38</sup> J Stannard, *Northern Ireland Criminal Procedure: An Introduction* (Roundhall Press, Dublin, 2000).

<sup>39</sup> G Anthony, *Judicial Review in Northern Ireland* (Hart Publishing, Oxford, 2<sup>nd</sup> ed, 2014) and J Larkin and D Scofield, *Judicial Review in Northern Ireland: A Practitioner's Guide* (SLS Legal Publications, 2007).