



United Nations Convention on the Rights of Persons with Disabilities

Home Office - UK Border Agency Review of Immigration Reservation

Consultation Response

June 2011

Introduction

1. The Equality Commission for Northern Ireland ('the Commission') welcomes the opportunity to respond to the Home Office UK Border Agency Review of the Reservation on Article 18 Liberty of Movement with respect to the issue of immigration.
2. Under Article 33(2) of the United Nations Convention on the Rights of Persons with Disabilities ('the Convention'), the UK Government designated the four equality and human rights Commissions to make up the UK's Independent Mechanism. In Northern Ireland, the Independent Mechanism comprises the Equality Commission for Northern Ireland (ECNI)¹ and the Northern Ireland Human Rights Commission (NIHRC)².

¹ The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. It is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age. Its remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and the disability duties under the Disability Discrimination Act 1995.

² The Northern Ireland Human Rights Commission is the national human rights institution (NHRI) for Northern Ireland. It was created in 1999 under the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998.

General Comments

3. On ratifying the Convention, the UK Government lodged a reservation in relation to immigration functions. The previous Government concluded that such a reservation was necessary to retain the right to apply immigration rules, and to maintain the scope to introduce wider health screening for applicants entering or seeking to remain in the United Kingdom.
4. In general, we have consistently made it clear that we are opposed to the UK Government's inclusion of reservations to the Convention. We note that the Joint Committee on Human Rights, in its report in April 2009 on the UK Government's proposed Reservations and Interpretative Declaration to the Convention, was concerned that the breadth of the proposed immigration reservation and its purpose was 'entirely unclear'³.
5. It stated that there was 'nothing in the Convention or domestic law which could justify a reservation of the breadth proposed'. It was of the view that the reservation could disapply the Convention in its entirety in so far as its protection might relate to people subject to immigration control. It concluded that the reservation was both 'unnecessary and inconsistent with the object and purpose of the Convention' and did not constitute a valid reservation. It recommended that the UK Government abandon the reservation.
6. We support the conclusions of the Joint Committee on Human Rights. We are also of the view that the immigration reservation is neither necessary nor compatible with the object and purpose of the Convention and is thus invalid.
7. We also note that a similar reservation by the UK Government on immigration rules previously applied to the UN Convention on the Rights of the Child was removed, and thus in our view further questions the continuation of the reservation being applied to this Convention.

³ Joint Committee on Human Rights: *UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration*, 12th Report 2008/09, www.parliament.uk

Specific considerations

8. As to the specific considerations that the Government has raised, we respond as follows.
 - (i) **There are arguments for and against the continued need in law for the reservation, following the implementation of the Equality Act 2010 (including the disability exception for immigration purposes Schedule 3, Part 4, Section 16)**
9. The Convention requires State Parties to prohibit all discrimination on the basis of disability, to guarantee disabled people protection from discrimination on all grounds and to ensure that reasonable accommodation is provided.
10. The Convention permits restrictions to the rights under the Convention where lawfully justified. As stated above, we concur with the view of the Joint Committee on Human Rights that the reservation is invalid and should be removed. If the reservation is removed, the Commission is of the view that the UK Government can impose some restrictions on the prohibition on disability discrimination for immigration purposes, provided they are justified. If the immigration exemption under the Equality Act 2010 is justified, then it will be consistent with the Convention.
11. The Government will note that the Equality Act 2010 does not apply to Northern Ireland and therefore the disability immigration exception contained within the Equality Act 2010 is not applicable to Northern Ireland.⁴
12. The disability legislation in Northern Ireland, so far as it relates to immigration issues, reflects the law in Great Britain as it was under the Disability Discrimination Act 1995 (as amended) prior to the enactment of the Equality Act 2010. The arguments for and against the continued need in law for the reservation, following the implementation of the Equality Act 2010 (including

⁴The Government has indicated that an express exception was not previously needed in the Disability Discrimination Act 1995; first, because the Act did not prohibit direct disability discrimination in the provision of services or exercise of a public function; and, secondly, because disability-related discrimination, which did apply to the provision of services or exercise of a public function, could be justified if it was necessary for a number of reasons, including not to endanger the health or safety of any person. See *Explanatory Notes to Equality Act 2010*.

the disability immigration exception) do not therefore apply in the context of Northern Ireland.

(ii)The Convention should not affect the Government's ability to apply immigration rules controlling entry to the UK.

13. As stated above, we are of the view that the UK Government can impose some restrictions on the prohibition on disability discrimination for immigration purposes, provided they are justified.

(iii)The Convention should not remove the scope for the introduction of a wider policy of health screening for those seeking leave to enter or remain in the UK, if the Government were to decide that should be necessary at some future point, including for the protection of public health.

14. If the Government should decide to introduce the measures described above, provided that they are objectively justified and proportionate measures with the aim of protecting public health, the Commission is of the view these measures are unlikely to be contrary to the Convention.
15. We agree with and fully endorse the conclusion reached by the Joint Committee on Human Rights that the UK Government already has broad powers to deal with public health emergencies and to control entry into the United Kingdom for the purposes of protecting public health.⁵ We also concur with the Committee's view that the powers referenced already apply to all people, regardless of whether they have disabilities or not.

⁵ See Joint Committee on Human Rights: *UN Convention on the Rights of Persons with Disabilities: Reservations and Interpretative Declaration*, 12th Report 2008/09, www.parliament.uk

16. It is important to note that the Joint Committee on Human Rights, in 2009, having considered the broad powers that the UK Government has to deal with public health emergencies, was of the view that there was 'nothing in the Convention which would require an amendment to the existing law or which could limit its effectiveness.'

(iv) The Optional Protocol to the Convention, which creates a right of individual petition to the UN Committee set up to monitor States' adherence to the Convention, should not create a further avenue of challenge to immigration decisions, including those relating to removal or deportation from the UK.

17. The Optional Protocol allows individuals to submit individual complaints to the UN Committee which monitors the Convention. The Committee has the power to consider admissible complaints and issue non-binding decisions to a State Party. As the Convention has not been incorporated into domestic law, there is no direct remedy for individuals under domestic law. Individuals can not therefore, obtain domestic remedies through the Optional Protocol. We are of the view that individuals will not be able to use the right of individual complaint under the Optional Protocol by itself to prevent removal or deportation from the UK.
18. In addition, if the immigration reservation is considered valid, individuals will be precluded from bringing complaints under the Optional Protocol in relation to immigration decisions. As made clear above, we are of the view that the reservation is not valid. If the reservation is deemed invalid, then, in our view, individuals will not be precluded from bringing a complaint under the Optional Protocol to the UN Committee.

(v) Government is to conduct a further review of arrangements for access by foreign nationals to NHS services in England (see pages 24-25 of the Department of Health document 'Access to the NHS by foreign nationals.

19. As highlighted above, the Commission is of the view that provided the introduction of such measures are objectively justified and proportionate measures, then they are unlikely to be contrary to the provisions of the Convention.

13 June 2011