



EQUALITY COMMISSION FOR NORTHERN IRELAND

Human Rights Framework: Equality Considerations

Policy Position Paper

September 2022

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Executive summary

- i. The Equality Commission for Northern Ireland ('the Commission') sets out below our high-level recommendations¹ relating to UK human rights law, including the Human Rights Act 1998 (HRA), and a Bill of Rights for Northern Ireland, reflecting its particular circumstances. These include general overarching principles, as well as recommendations for the UK Government, the Northern Ireland Executive and officials in relation to NI-specific issues.
- ii. We would welcome your support and engagement with colleagues, officials, and elected representatives to raise awareness of our positions, and to secure advocacy of our recommendations, towards ensuring the maintenance and strengthening of a human rights framework which promotes equality of opportunity and prevents discrimination.
- iii. The Commission will continue to engage on its recommendations regarding human rights with the government locally and at UK level, relevant departments, elected officials and wider stakeholders, including international human rights bodies.

Our recommendations

General principles

- The Human Rights Act 1998 should not be reformed without a convincing case that such reform is necessary to further improve access to rights
- Ensure the progressive realisation of rights and that enjoyment of rights does not regress.
- Promote awareness and understanding of equality and human rights and responsibilities
- Ensure rolling impact assessment and stakeholder engagement to inform steps to improve realisation of human rights

¹ The Commission has previously responded to a range of consultations on human rights law in Northern Ireland, and the UK more widely. Recent examples include: ECNI (2022) [Response to consultation: Human Rights Act Reform: a Modern Bill of Rights \(Ministry of Justice\)](#); ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#).

- Ensure the domestic human rights framework reflects international human rights standards

NI specific recommendations

- Ensure human rights law reflects the particular circumstances in Northern Ireland
- Introduce a NI Bill of Rights, reflecting Northern Ireland's particular circumstances
- Include a principle of equality in the NI Bill of Rights
- Strengthen NI equality laws through single equality legislation
- Strengthen NI equality and human rights post Brexit

1 Introduction

- 1.1 The Equality Commission for Northern Ireland ('the Equality Commission') is an independent public body established under the Northern Ireland Act 1998, with responsibility for implementing equality legislation across a range of grounds. It has specific powers and duties regarding Article 2(1) of the Ireland/Northern Ireland Protocol to the UK-EU Withdrawal Agreement; and has also been designated as an 'independent mechanism' under the UN Convention on the Rights of Persons with Disabilities (UNCRPD).
- 1.2 In this paper, we set our high-level recommendations relating to the UK's domestic human rights framework, including the Human Rights Act 1998 (HRA), and a Bill of Rights for Northern Ireland, reflecting its particular circumstances.

Context

- 1.3 The domestic human rights framework in the UK has played an important role in preventing discrimination and promoting equality of opportunity.
- 1.4 The HRA effectively incorporated the European Convention on Human Rights (ECHR) into UK law. Both the European Court of Human Rights (ECtHR) and the UK Supreme Court have provided judgments that are of significance across the protected grounds / groups of Section 75 of the Northern Ireland Act (1998). This includes judgments on age,² race and ethnicity,³ sexual orientation,⁴ disability,⁵ gender,⁶ religion and

² Schwizgebel v Switzerland, application no 25762/07, 10 June 2010.

³ Timishev v Russia, application nos 55762/00 and 55974/00, 13 December 2005; Sejdic and Finci v Bosnia-Herzegovina, application nos. 27996/06 and 34836/06, GC, 22 December 2009.

⁴ Salgueiro da Silva Mouta v Portugal, application no 33290, 21 December 1999; L and V v Austria, application nos 39392/98 and 39829/98; Schalk and Kopf v Austria, application no 30141/04, 24 June 2010.

⁵ Alajos Kiss v Hungary, application no 38832/06, 20 May 2010; Glor v Switzerland, application no 13444/04, 30 April 2009; Mathieson v Secretary of State for Work and Pensions [2015] UKSC 47.

⁶ Abdulaziz, Cabales and Balkandali v United Kingdom, application nos 9214/80, 9473/81 and 9474/81; Konstantin Markin v Russia, application no 30078/06, 22 March 2010;

belief,⁷ and dependents⁸. In Northern Ireland, there have been a number of important cases where individuals have successfully challenged the actions of public authorities as being contrary to their rights under the HRA⁹.

- 1.5 In 2021, the Joint Committee on Human Rights (JCHR) advised that the *'HRA has had an enormously positive impact on the enforcement of human rights in the UK'*¹⁰.
- 1.6 In 2022, the UK Government consulted on plans to repeal the HRA and replace it with a 'Bill of Rights'¹¹. A proposed Bill was laid before Parliament in June 2022. However, following the change of Prime Minister in September 2022, the Bill was put on hold¹² before its scheduled Second Reading in Parliament.
- 1.7 In Northern Ireland, the Belfast/Good Friday Agreement included a commitment to a Northern Ireland Bill of Rights that reflects the particular circumstances of Northern Ireland. Despite efforts to develop a Bill of Rights¹³, including the work of the NIHRC to provide advice to Government and a recent Ad-Hoc Assembly Committee on a Bill of Rights from 2020-2022¹⁴, a consensus on the contents of the Bill has not yet been reached, and draft legislation never introduced.

Previous Commission engagement

- 1.8 The Commission has had long standing engagement in this area. For example, the Commission had previously responded

⁷ Hoffmann v Austria, application no 12875/87, 23 June 1993; Vojnity v Hungary, application no 29617/07, 12 February 2013; Eweida v United Kingdom, application nos 48420/10, 59842/10, 51671/10 and 36516/10.

⁸ DA [2019] UKSC 21.

⁹ See for example, RG (Adoption; unmarried couple) [2008] UK House of Lords 38, involving restrictions in Northern Irish law on the ability of unmarried partners to adopt children.

¹⁰ Joint Committee on Human Rights (2021) [The Government's Independent Review of the Human Rights Act](#), Third Report of Session 2021–22, HC 89 HL Paper 31, para 25.

¹¹ MOJ (2021) [Human Rights Act Reform: A Modern Bill Of Rights A consultation to reform the Human Rights Act 1998](#), CP 588

¹² BBC (2022) [Bill of Rights: Liz Truss shelves plans to reform human rights law](#) (accessed 09/09/2022).

¹³ For an overview, see NI Assembly (2020) [Key Issues for a Bill of Rights](#), Research and Information Service Briefing Paper NIAR 055-20.

¹⁴ NI Assembly (2022) [Report of the Ad Hoc Committee on a Bill of Rights](#), NIA 156/17-22.

to consultations on both a Northern Ireland Bill of Rights¹⁵ and a UK-wide Bill of Rights¹⁶.

- 1.9 More recently, we provided evidence to the NI Assembly Ad-Hoc Committee on a Bill of Rights for Northern Ireland¹⁷. We outlined our support for the adoption of a Bill of Rights for Northern Ireland, reflecting the particular circumstances of Northern Ireland. We believe such a Bill of Rights could provide a clear statement of a society's commitment to certain values and a legal framework for ensuring that those values are advanced by all of society's institutions.
- 1.10 In 2022, the Commission engaged with the UK Government's proposals in relation to the HRA, through direct engagement and written response to the Ministry of Justice's consultation¹⁸; and by responding to a call for evidence by the JCHR of the UK Parliament¹⁹. We raised significant concerns about the equality implications of the proposals put forward.

Equality and human rights

- 1.11 The recommendations set out below outline our high level views on what decision-makers in Northern Ireland and the UK Government should consider to further promote equality of opportunity and prevent discrimination through the domestic human rights framework.
- 1.12 By way of **general principles** that all decision-makers should adhere to, we recommend that action is taken to:
- The Human Rights Act 1998 should not be reformed without a convincing case that such reform is necessary to further improve access to rights
 - Ensure the progressive realisation of rights and that enjoyment of rights does not regress.
 - Promote awareness and understanding of equality and human rights and responsibilities

¹⁵ ECNI (2010) [Response to Northern Ireland Office's consultation on a Bill of Rights for Northern Ireland](#)

¹⁶ ECNI (2011) [Response to the Commission on a Bill of Rights' Consultation: 'Do we need a UK Bill of rights?'](#)

¹⁷ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#)

¹⁸ ECNI (2022) [Response to consultation: Human Rights Act Reform: a Modern Bill of Rights, Ministry of Justice](#)

¹⁹ ECNI (2022) [Response to the UK Joint Committee on Human Rights call for evidence Legislative Scrutiny: Bill of Rights Bill](#)

- Ensure rolling impact assessment and stakeholder engagement to inform steps to improve realisation of human rights
- Ensure the domestic human rights framework reflects international human rights standards

1.13 We also draw attention to **recommendations specifically relating to human rights in Northern Ireland**, including:

- Ensure human rights law reflects the particular circumstances in Northern Ireland
- Introduce a Northern Ireland Bill of Rights reflecting Northern Ireland's particular circumstances
- Include a principle of equality in the NI Bill of Rights
- Strengthen Northern Ireland equality laws through single equality legislation
- Strengthen Northern Ireland equality and human rights post Brexit

1.14 It is important to note that although these recommendations focus on the domestic human rights framework, the Commission also engages with international human rights bodies to advance key policy priorities and recommendations for equality in Northern Ireland.

1.1 We would welcome any action you can take to help us work to protect and improve equality and human rights provisions. In particular, we would welcome your support and engagement with colleagues, officials, and elected representatives to raise awareness of our positions, and to secure advocacy of our recommendations, towards ensuring the maintenance of a strong human rights framework which promotes equality of opportunity and prevents discrimination.

2 General principles

- 2.1 The Commission strongly advises that the existing human rights framework at the UK level should not be reformed without a convincing case that such reform is necessary to further improve access to rights.
- 2.2 This section provides recommendations relating to general principles of equality and human rights.

The Human Rights Act 1998 should not be reformed without a convincing case that such reform is necessary to further improve access to rights

- 2.3 In June 2022, the UK Government introduced a Bill of Rights Bill in Parliament²⁰. Following the appointment of a new Prime Minister in September 2022, the Bill was put on hold just ahead of its scheduled Second Reading²¹ in Parliament.
- 2.4 The Commission was not persuaded that the Government had demonstrated, through the June 2022 Bill or earlier consultation, that there was a need for reform of the 1998 Human Rights Act.
- 2.5 The Commission also considered that the specific outworkings of the Government's June 2022 Bill proposals in practice were generally unclear.
- 2.6 There must be a convincing case for reform and any reform should serve to improve rights. Government should be specific about the intended and anticipated impact(s) of proposed changes, conveying their case for any changes via an explicit presentation of relevant evidence and stakeholder input.

²⁰ UK Government (June 2022) [Bill of Rights Bill \[as introduced\]](#)

²¹ BBC (2022) [Bill of Rights: Liz Truss shelves plans to reform human rights law](#) (accessed 09/09/2022).

Supporting rationale

- 2.7 The HRA incorporated, in part, the ECHR into UK law. Both the European Court of Human Rights (ECtHR) and the UK Supreme Court have provided judgments that are of significance across the protected grounds/groups of Section 75 of the Northern Ireland Act (1998). This includes judgments on age,²² race and ethnicity,²³ sexual orientation,²⁴ disability,²⁵ gender,²⁶ religion and belief,²⁷ and dependents²⁸. In Northern Ireland, there have been a number of important cases where individuals have successfully challenged the actions of public authorities as being contrary to their rights under the HRA²⁹.
- 2.8 Given these benefits, a clear and meaningful case must be made for reform, and reform should only be taken forward to improve access to rights.
- 2.9 We note the Government's June 2022 view that *'reform is now required to ensure public confidence in the human rights system, to balance the rights of the individual with the diverse interests of society, to curb risk aversion for those delivering public services on the frontline, to address concerns with how the Human Rights Act operates in practice and to address democratic deficits caused by the Human Rights Act's framework'*³⁰.
- 2.10 However, there is no indication that reform will improve access to rights, and the Government's June 2022 Human Rights memorandum suggested that much of the Bill will allow courts

²² *Schwizgebel v Switzerland*, application no 25762/07, 10 June 2010.

²³ *Timishev v Russia*, application nos 55762/00 and 55974/00, 13 December 2005; *Sejdic and Finci v Bosnia-Herzegovina*, application nos. [27996/06](#) and [34836/06](#), GC, 22 December 2009.

²⁴ *Salgueiro da Silva Mouta v Portugal*, application no 33290, 21 December 1999; *L and V v Austria*, application nos 39392/98 and 39829/98; *Schalk and Kopf v Austria*, application no 30141/04, 24 June 2010.

²⁵ *Alajos Kiss v Hungary*, application no 38832/06, 20 May 2010; *Glor v Switzerland*, application no 13444/04, 30 April 2009; *Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47.

²⁶ *Abdulaziz, Cabales and Balkandali v United Kingdom*, application nos 9214/80, 9473/81 and 9474/81; *Konstantin Markin v Russia*, application no 30078/06, 22 March 2010;

²⁷ *Hoffmann v Austria*, application no 12875/87, 23 June 1993; *Vojnity v Hungary*, application no 29617/07, 12 February 2013; *Eweida v United Kingdom*, application nos 48420/10, 59842/10, 51671/10 and 36516/10.

²⁸ *DA* [2019] UKSC 21.

²⁹ See for example, *RG (Adoption; unmarried couple)* [2008] UK House of Lords 38, involving restrictions in Northern Irish law on the ability of unmarried partners to adopt children.

³⁰ MOJ (2022) [Draft Bill of Rights: Impact Assessment](#), p. 1.

to interpret and apply the Convention rights more restrictively than the ECtHR³¹.

- 2.11 Further, any case for change should be based on robust evidence and stakeholder input. We note that the Government has not published the responses to its consultation on Human Rights Act Reform, instead providing a quantitative analysis³².
- 2.12 We also note the concerns raised by numerous legal academics and professionals that such significant reform is unnecessary³³, including the NI Human Rights Commission's rejection of the premise of the proposals for reform³⁴.

Ensure the progressive realisation of rights and that enjoyment of rights does not regress

- 2.13 Human rights protections must be compliant with international law and commitments.
- 2.14 Government must adhere to the principle of 'non-regression' and ensure that current levels of protection under the HRA and ratified human rights instruments are not eroded³⁵.
- 2.15 Any regression of human rights could adversely impact on individuals from across the grounds covered by Section 75 of the Northern Ireland Act (1998), with potentially negative impacts for legislation supporting the elimination of discrimination in Northern Ireland.

Supporting rationale

- 2.16 The Commission welcomes the Government's express commitment to the ECHR³⁶. However, we have previously

³¹ MOJ (2022) [Bill of Rights: European Convention on Human Rights Memorandum](#), para 10.

³² [Human Rights Act Reform: A Modern Bill of Rights \(parliament.uk\)](#)

³³ For instance: QUB Human Rights Centre (2022) [Response to the Ministry of Justice's Consultation Paper on Human Rights Act Reform](#), paras 3, 110; CAJ (2022) [CAJ Response to the Ministry of Justice Consultation 'Human Rights Act Reform: A Modern Bill of Rights'](#)

³⁴ NIHRC (2022) [NIHRC response to the consultation on Human Rights Act Reform: a Modern Bill of Rights](#)

³⁵ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), para 2.7

³⁶ MOJ (2021) [Human Rights Act Reform: A Modern Bill Of Rights A consultation to reform the Human Rights Act 1998](#), CP 588, p.3.

raised concerns^{37 38} that UK Government plans (on hold, as of September 2022) to replace the HRA would have amounted to a regression of rights.

- 2.17 The Government's broader international human rights commitments are also of importance. Human rights protections should be in line with the UK Government's international human rights law commitments beyond the ECHR, such as the UN CRPD, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Elimination of All Forms of Racial Discrimination and the Convention of the Rights of the Child.
- 2.18 The Commission has advised³⁹ that human rights legislation, such as the HRA, should not be reformed without a convincing case that such reform is necessary to further improve access to rights. Any reforms should not be retrogressive, and reform should only be taken forward to improve access to rights.

Promote awareness and understanding of equality and human rights and responsibilities

- 2.19 We recommend both the UK Government and the NI Executive take appropriate measures to raise awareness and promote understanding, including across and within departments and the wider public, of the Human Rights Act and the UK Government's obligations under a range of international human rights Conventions and the UN Sustainable Development Goals ('SDGs')⁴⁰.
- 2.20 Additional benefits will accrue for individuals and society as a whole if individuals and service providers are aware of and understand their respective rights and responsibilities.

³⁷ ECNI (2022) [Response to consultation: Human Rights Act Reform: a Modern Bill of Rights](#)

³⁸ ECNI (2022) [Response to the UK JCHR Call for Evidence: Legislative Scrutiny: Bill of Rights Bill](#), paras 4.11-4.17

³⁹ ECNI (2022) [Response to consultation: Human Rights Act Reform: a Modern Bill of Rights](#), paras 3.3-3.12.

⁴⁰ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), paras 8.1-8.4.

Supporting rationale

- 2.21 It is vital that people in Northern Ireland, and the UK more broadly, are aware of and understand what their rights are and the difference that these rights can make to their day-to-day lives. It is also essential that public authorities have clear guidance on their responsibilities under the HRA and the measures they are required to take in order to comply.
- 2.22 This view has been echoed by the Independent Human Rights Act Review (IHRAR)⁴¹ which recommended ‘consideration is given by Government to developing an effective programme of civic and constitutional education in schools, universities and adult education. Such a programme should, particularly, focus on questions about human rights, the balance to be struck between such rights, and individual responsibilities’.
- 2.23 The SDGs include goals and targets on tackling poverty and reducing inequalities, and a specific goal on achieving gender equality (Goal 5).

Ensure rolling impact assessment and stakeholder engagement to inform steps to improve realisation of human rights

- 2.24 Government should take steps, on a rolling basis, to identify how individuals from across the full range of equality categories and service providers take account, and make use, of the human rights framework with a view to seeking out opportunities to promote equality of opportunity and mitigating any negative impacts.
- 2.25 Rolling impact assessment and stakeholder engagement should be a key element of such ongoing review, and may suggest how, and where there is scope to better to improve access to rights – in Northern Ireland and across the UK.

⁴¹ MOJ (2021) [The Independent Human Rights Act Review](#) CP586, paras 52-57.

- 2.26 Action should be taken to encourage and secure the participation of under-represented groups, such as disabled people, in accessing rights.

Supporting rationale

- 2.27 It is clear that the ECHR and the HRA have been important routes for equality groups to access rights. Both the European Court of Human Rights (ECtHR) and the UK Supreme Court have provided judgments that are of significance across the protected grounds/groups of Section 75 of the Northern Ireland Act (1998): age,⁴² race and ethnicity,⁴³ sexual orientation,⁴⁴ disability,⁴⁵ gender,⁴⁶ religion and belief,⁴⁷ and dependents⁴⁸.
- 2.28 On a rolling basis, the Government should, underpinned by data and informed by engagement with equality groups, seek to assess and identify opportunities to better advance equality through the human rights framework.
- 2.29 Such an assessment should consider key barriers and enablers to advancing the realisation of rights and responsibilities.
- 2.30 In this context, it should be noted that the UNCRPD (Article 4(3)) places an obligation on the UK Government to ensure that *“in the development and implementation of legislation and policies ... States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations”*.

⁴² *Schwizgebel v Switzerland*, application no 25762/07, 10 June 2010.

⁴³ *Timishev v Russia*, application nos 55762/00 and 55974/00, 13 December 2005; *Sejdic and Finci v Bosnia-Herzegovina*, application nos. [27996/06](#) and [34836/06](#), GC, 22 December 2009.

⁴⁴ *Salgueiro da Silva Mouta v Portugal*, application no 33290, 21 December 1999; *L and V v Austria*, application nos 39392/98 and 39829/98; *Schalk and Kopf v Austria*, application no 30141/04, 24 June 2010.

⁴⁵ *Alajos Kiss v Hungary*, application no 38832/06, 20 May 2010; *Glor v Switzerland*, application no 13444/04, 30 April 2009; *Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47.

⁴⁶ *Abdulaziz, Cabales and Balkandali v United Kingdom*, application nos 9214/80, 9473/81 and 9474/81; *Konstantin Markin v Russia*, application no 30078/06, 22 March 2010;

⁴⁷ *Hoffmann v Austria*, application no 12875/87, 23 June 1993; *Vojnity v Hungary*, application no 29617/07, 12 February 2013; *Eweida v United Kingdom*, application nos 48420/10, 59842/10, 51671/10 and 36516/10.

⁴⁸ DA [2019] UKSC 21.

Ensure the domestic human rights framework reflects international human rights standards

- 2.31 We recommend that consideration be given to how best to ensure that the international human rights standards as set out in a range of international human rights conventions are reflected domestically.
- 2.32 These conventions include, for example, the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the UN Convention on the Elimination of all forms of Racial Discrimination (UNCERD); the UN Convention for the Elimination of all forms of Discrimination against Women (CEDAW); the UN Convention on the Rights of the Child (UNCRC); and the Framework Convention for the Protection of National Minorities (FCNM).

Supporting rationale

- 2.33 It is of note that in the New Decade, New Approach agreement, the parties⁴⁹: *‘acknowledge the importance of promoting and protecting the rights and identity of individuals and are agreed that the Executive should seek to build a society that reflects the best international standards of human rights’*.
- 2.34 International human rights monitoring Committees have made clear that action is needed to address shortfalls in its compliance with the obligations set out in particular Conventions. This includes for example, most recently the UN CEDAW Concluding Observations on the UK (2019)⁵⁰, which called for the NI Executive to strengthen gender equality law in Northern Ireland, and the UNCRPD 2017 Concluding Observations⁵¹. We have also highlighted, over a number of years, that there are key gaps, in terms of policies and programmes, aligned to a number of UNCRPD Articles that need addressed⁵².

⁴⁹ NIO (2020) [New Decade, New Approach](#), para 4.4.

⁵⁰ CEDAW (2019) [Concluding Observations on UK CEDAW/C/GBR/CO/8](#)

⁵¹ CRPD (2017) [Concluding Observations on UK CRPD/C/GBR/CO/1](#)

⁵² See ECNI, www.equalityni.org/CRPD

- 2.35 The devolved administration in Wales has introduced additional legislative measures to ensure that Welsh Ministers when exercising their functions have due regard to the provisions in the UN Convention on the Rights of the Child⁵³.
- 2.36 In Scotland, following a Scottish Government Bill to incorporate the UNCRC, a 2021 Supreme Court case⁵⁴ confirmed that the Scottish Parliament could incorporate UN treaties, within the limits of what is within its legislative competence under the Scotland Act. However, the case also confirmed that the sovereignty of the UK Parliament cannot be qualified by Scottish legislation, and therefore there are limitations as to how any incorporated Conventions interact with Acts of Parliament. The Scottish Government remains ‘committed to the incorporation of the UNCRC to the maximum extent legally possible as soon as practicable’⁵⁵.
- 2.37 The need to reflect international human rights standards and to address shortfalls in compliance is of particular importance in light of the range of inequalities experienced by equality groups in Northern Ireland, including in the areas of employment⁵⁶, education⁵⁷, housing and accommodation⁵⁸, and participation in public life⁵⁹.

⁵³ The [Rights of Children and Young Persons \(Wales\) Measure 2011](#). This requires the Welsh Ministers, when exercising any of their functions to have due regard to Part 1 of the CRC as well as select articles of its first and second optional protocols,[vi] both of which are listed as a schedule to the Measure.

⁵⁴ [\[2021\] UKSC 42](#). The Supreme Court unanimously decided that some sections of the Bill would be outside the legislative competence of the Scottish Parliament. It therefore returned to the Scottish Parliament for further consideration.

⁵⁵ Scottish Government (2021) [Supreme Court Judgement: statement by Deputy First Minister John Swinney - 6 October 2021](#)

⁵⁶ ECNI (2018) [Statement on Key Inequalities in Employment](#)

⁵⁷ ECNI (2018) [Statement on Key Inequalities in Education](#)

⁵⁸ ECNI (2017) [Statement on Key Inequalities in Housing](#)

⁵⁹ ECNI (2018) [Statement on Key Inequalities in Participation in Public Life](#)

3 Human rights in Northern Ireland

- 3.1 This section outlines recommendations on human rights in a Northern Ireland specific context.

Ensure human rights law reflects the particular circumstances in Northern Ireland

- 3.2 Any consideration of the human rights framework in the UK and Northern Ireland, including the HRA, must take full account of the specific history and circumstances of Northern Ireland and of the 1998 Agreement and devolution settlement.
- 3.3 We highlight the importance of the 1998 Belfast/Good Friday Agreement and note our concerns that any changes to the human rights framework have the potential to have far reaching impacts on the underpinnings of the improved society in Northern Ireland in which we now live.

Supporting rationale

- 3.4 We have previously recommended⁶⁰ that the Human Rights Act should not be reformed in such a way as to breach or undermine the Belfast/Good Friday Agreement.
- 3.5 Any changes to the human rights framework should consider the effect on Northern Ireland. For instance, the Commission has previously raised concerns⁶¹ about Government proposals to reform the HRA, relating to how this would interact with the Belfast/Good Friday Agreement.
- 3.6 We have noted⁶² that research commissioned by the Equality and Human Rights Commission (EHRC)⁶³, prior to BREXIT, highlighted that *'it appears highly likely that if the Human Rights Act 1998 were amended or repealed, and/or a Bill of Rights were enacted covering the devolved jurisdictions, there would*

⁶⁰ ECNI (2022) [Response to consultation: Human Rights Act Reform: a Modern Bill of Rights](#), para 7.8-7.14.

⁶¹ ECNI (2022) [Response to consultation: Human Rights Act Reform: a Modern Bill of Rights](#), paras 7.8-7.14.

⁶² ECNI (2011) [Response to the Commission on a Bill of Rights' Consultation: 'Do we need a UK Bill of rights?'](#) para 40.

⁶³ EHRC (2011) [Developing a Bill of Rights for the UK](#), section 5.2.

be a need for amendments to the devolution statutes. Further, such a decision would almost certainly require the consent of the devolved legislators in Scotland and Northern Ireland’.

- 3.7 We also note that the QUB Human Rights Centre, in its response to the Government consultation on a Bill of Rights⁶⁴, advised that:

‘given the centrality of human rights to the Northern Ireland peace settlement, a weakening of the rights currently protected by the Human Rights Act threatens that settlement. From the perspective of the need to safeguard peace and ensure stability in Northern Ireland, therefore, any move that would be widely viewed as undermining the Belfast (Good Friday) Agreement and its strong commitment to the advancement and protection of human rights would be highly regrettable’.

Introduce a NI Bill of Rights reflecting Northern Ireland’s particular circumstances

- 3.8 The Commission’s long-standing position is in support⁶⁵ of the adoption of a strong and inclusive NI Bill of Rights, reflecting the particular circumstances of Northern Ireland.
- 3.9 A Northern Ireland Bill of Rights would provide an opportunity to make a clear statement of society’s commitment to certain values and a legal framework for ensuring that those values are advanced by all of society’s institutions. It also has the potential to be an important opportunity to strengthen the human rights protection afforded to the most vulnerable and marginalised people in Northern Ireland society, and to increase protection where existing law is inadequate.
- 3.10 Mindful of significant and increasing levels of race hate crime in Northern Ireland⁶⁶, we recommend that a NI Bill of Rights recognises and strengthens protection of the human rights of all

⁶⁴ QUB Human Rights Centre (2022) [Response to the Ministry of Justice’s Consultation Paper on Human Rights Act Reform](#), para 110.

⁶⁵ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), para 1.2.

⁶⁶ ECNI (2020) [Hate Crime in Northern Ireland: Policy Recommendations and Supporting Rationales](#)

communities in Northern Ireland, including minority ethnic communities.

Supporting rationale

- 3.11 A Bill of Rights could play an important role in underpinning the peace, prosperity and political progress of Northern Ireland. The importance of the rights and equality protections in the Belfast/Good Friday Agreement, and the need to put rights and equality central to creating a peaceful and shared future in Northern Ireland has been recognised by the UK Government⁶⁷.
- 3.12 A NI Bill of Rights could also provide greater clarity for people in Northern Ireland about their human rights and create legally enforceable standards which public authorities must adhere when delivering services to the public or carrying out public functions. If a NI Bill of Rights is introduced, it is important that any steps taken in the wider UK context should not undermine or diminish those protections.
- 3.13 In bringing forward a NI Bill of Rights, it is also essential that there should be a policy of 'non-regression' from current levels of protection under the HRA and other ratified human rights instruments. In addition, any provisions in a NI Bill of Rights relating to equality and good relations must not weaken existing levels of protection under current equality legislation.
- 3.14 It is critical that a NI Bill of Rights delivers positive and tangible outcomes for the people of Northern Ireland.
- 3.15 A NI Bill of Rights should include a recognition of the increasing diversity in the Northern Ireland population since 1998 and the significant demographic changes that have taken place since that date, including the increase in new residents in Northern Ireland.
- 3.16 There must also be a visible commitment by public bodies to comply fully with any supplementary rights to the HRA contained in a NI Bill of Rights, with effective mechanisms in place to ensure accountability, monitoring and enforcement. As

⁶⁷ NIO (2020) [UK Government commitment to “no diminution of rights, safeguards, and equality of opportunity” in NI: What does it mean and how will it be implemented](#)

with the implementation of the Section 75 duties⁶⁸, the Commission considers that the role of Government departments in driving change is critical.

- 3.17 Finally, we consider that a NI Bill of Rights should be ‘fit for purpose’ for both present and future generations of people in Northern Ireland, particularly in light of the potential difficulties in amending provisions within a Bill of Rights. Any changes to a NI Bill of Rights would, for example, require a consultation process to be carried out and would need to allow sufficient time for consideration and scrutiny.

Include a principle of equality in the Northern Ireland Bill of Rights

- 3.18 We recommend that a principle of equality includes a statement that everyone is equal before and under the law and has the right to equal protection and equal benefit of the law, including the full and equal enjoyment of all rights and freedoms.
- 3.19 The principle could also make clear that individuals should not be discriminated against across a range of equality grounds.

Supporting rationale

- 3.20 The general principle of equality is a fundamental element of international human rights law⁶⁹ and an important inclusion for a NI Bill of Rights.
- 3.21 The inclusion of a principle of equality could, for example, provide the framework for more specific anti-discrimination legislation which can spell out in more detail the matrix of legal rights and duties necessary to give effect to a principle of equality. Such a principle would therefore underpin Northern

⁶⁸ Duties under Section 75 of the NI Act 1998.

⁶⁹ The principle of equality is recognised by many international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Rights of the Child (UNCRC), and the UN Convention on the Rights of Persons with Disabilities (Disability Convention).

Ireland's equality legislation which provides the detail in terms of respective equality rights and responsibilities.

- 3.22 The principle could also be used as an interpretative principle to which courts and public authorities must have regard.
- 3.23 As regards current provisions on equality, the HRA effectively incorporated Article 14 of the ECHR. Article 14 makes it clear that the rights and freedoms set out in the ECHR should be secured without discrimination on a range of grounds. However, this protection against discrimination cannot be invoked unless another Convention right is engaged. In addition, whilst Optional Protocol 12 to the ECHR does contain a freestanding equality protection, this Protocol has not been either signed or ratified by the UK.
- 3.24 It is also the case that, in general, equality legislation in Northern Ireland does not take priority over other legislation. Apart from Section 76 of the Northern Ireland Act 1998, the equality legislation does not apply to the making, confirmation or approval of subordinate legislation by the Northern Ireland Assembly⁷⁰. This important safeguard under Section 76 only applies to the grounds of religious belief and political opinion and not to other equality grounds, such as race, disability, sex, sexual orientation or age. Section 76 is also limited in that it only applies to direct discrimination only, it does not cover indirect discrimination.
- 3.25 In addition, including a principle of equality in a NI Bill of Rights would be a recognition of the importance and centrality of rights and equality protections in the Belfast/Good Friday Agreement. For example, in the Belfast/Good Friday Agreement 1998, the parties committed to equality and mutual respect as the basis of their 'relationships within Northern Ireland, between North and South and between these islands'⁷¹. Further, additional rights, safeguards, and equality of opportunity provisions are specifically set out in the chapter of the same name in the Belfast Good Friday Agreement.

⁷⁰ Under Section 76 of the Northern Ireland Act 1998, it is unlawful for a public authority when carrying out its functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of persons on the ground of religious belief or political opinion.

⁷¹ [Belfast/Good Friday Agreement](#) 1998, Declaration of Support, paragraph 3

- 3.26 Including a principle of equality would also be in keeping with the fact that the UK Government has recognised the importance of ensuring that these rights and equality protections continue to be upheld in Northern Ireland post Brexit. In particular, it has committed under Article 2(1) of the Ireland/Northern Ireland Protocol ('the Protocol') to ensure there is no reduction of these rights, safeguards, and equality of opportunity provisions as a result of Brexit.
- 3.27 We also note that the Belfast/Good Friday Agreement made it clear that one particular issue which the NI Human Rights Commission (NIHRC) should consider in a Bill of Rights was a clear formulation of the right not to be discriminated against and to equality of opportunity in both the public and private sectors.
- 3.28 We further note that the UK Commission on a Bill of Rights concluded⁷² in 2012 *'that amongst the additional rights which might be most readily considered in any UK Bill of Rights are those which relate to people's fundamental rights to be treated equally irrespective, for example, of their innate characteristics such as their gender or ethnic origin', and that the 'most obvious candidate for inclusion would be the right to equality and non-discrimination'*.

Strengthen Northern Ireland equality laws through single equality legislation

- 3.29 Equality law in Northern Ireland should be harmonised, simplified and updated so as to address significant inconsistencies and complexities and to ensure uniform protection against discrimination across the full range of equality grounds.
- 3.30 Equality law should be harmonised upwards, so as to strengthen equality rights and protections.

⁷² Commission on a Bill of Rights (2012) [A UK Bill of Rights? The Choice Before Us](#), para 8.15.

Supporting rationale

- 3.31 It is important to recognise the significant contribution that updated and strengthened equality legislation could have in enhancing the protection of human rights in Northern Ireland.
- 3.32 The Commission continues to express concerns about the lack of legislation in Northern Ireland to provide protection from age discrimination in the fields of goods, facilities, and services, despite inclusion in the New Decade, New Approach Agreement of 2020⁷³.
- 3.33 There are significant gaps between equality law in Great Britain (GB) and Northern Ireland. These gaps have widened following the introduction of single equality legislation – the Equality Act 2010 - in GB. These differences mean that, in a number of key areas, individuals in Northern Ireland have less protection against discrimination and harassment than people in other parts of the United Kingdom⁷⁴. In the absence of single equality legislation, we have set out previously proposals for reform in key areas, including under the equality legislation relating to age, race, disability, sex, fair employment, and sexual orientation.
- 3.34 Importantly, there are also gaps in protection, between Northern Ireland and GB in relation to obligations placed on public bodies not to discriminate under anti-discrimination legislation. We have recommended the extension of current Northern Ireland equality legislation so that public authorities are prohibited from discriminating on the grounds of sex, age⁷⁵, gender reassignment, pregnancy and maternity and colour and nationality when exercising their public functions.
- 3.35 We consider that single equality legislation in Northern Ireland would best harmonise and simplify the protections available, both now and in the future.
- 3.36 Such harmonisation and simplification would provide a range of benefits to a range of users. For example, individuals could

⁷³ NIO (2020) [New Decade, New Approach](#), para xxii, states ‘An Age, Goods and Facilities and Services Bill should also be brought forward by the Executive as basis for ensuring that no one is discriminated against because of their age’.

⁷⁴ ECNI (2014) [Gaps in Equality Law between Great Britain and NI](#)

⁷⁵ Legislation in GB relating to the prohibition of age discrimination outside employment only relates to older people.

more readily understand rights and protections if these were more consistent across the multiple protected aspects of their identity. Employers and services providers could more easily understand and more effectively implement more harmonised obligations and responsibilities, with associated time and cost savings. Those providing advice or support services would also benefit from the efficiencies of a simplified and harmonised framework of protections, as would those tasked with keeping the legislation under review or updating the legislative framework.

- 3.37 We note that the St Andrew's Agreement made it clear that the Government accepted the need for a Single Equality Bill and *"will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an early date"*⁷⁶. Despite that commitment, there has been no further progress in relation to a Single Equality Bill by the Executive.

Strengthen Northern Ireland equality and human rights post Brexit

- 3.38 The need for additional measures to better protect equality and human rights is particularly important in the context of the impact of Brexit on equality and human rights protections in Northern Ireland.
- 3.39 In terms of specific additional measures to better protect equality and human rights after Brexit, we continue⁷⁷ to recommend that:
- human rights impact assessments are conducted in respect of any future trade agreements, to the standard set out in UN Office of the High Commissioner for Human Rights Guidelines;
 - legislation should be passed to preclude conclusion or ratification of any international trade or investment agreement that would require or permit the reduction of any protections for human rights and fundamental

⁷⁶ [St Andrews Agreement](#), (2006) Annex B (Human Rights, Equality, Victims and Other Issues)

⁷⁷ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), para 5.12.

freedoms in Northern Ireland, including those relating to non-discrimination and equality, ensured under UK law.

- 3.40 In addition, whilst we recognise the UK Government's commitment contained in Article 2 of the Protocol, as set out below, the Article 2 commitment has its limitations. Therefore, we continue to call on the UK Government, and the NI Assembly as regards areas within its devolved competence, to ensure that Northern Ireland keeps pace with all EU laws, introduced on or after 1 January 2021, that strengthen equality and human rights. This should include rights introduced as a result of EU laws that do not amend or replace the Protocol Annex 1 Directives.
- 3.41 Further, in the development of any laws or policies relating to human rights reform in NI, the UK Government and NI Executive should consider, and set out in detail, the extent to which any change/s engages Protocol Article 2 and ensure that there is no diminution to the rights and safeguards which fall within its scope.

Supporting rationale

- 3.42 As recognised by the UK Government, EU laws, particularly on anti-discrimination, have formed an important part of the framework for delivering the guarantees on rights and equality in Northern Ireland⁷⁸.
- 3.43 EU laws have provided a minimum level of rights and protection below which domestic legislation in Member States, including the UK, must not fall. These EU laws have covered areas such as equality rights, as well other areas such as employment rights of part-time workers, pregnant workers, and victims.
- 3.44 The Commission remains concerned about the negative impact on equality and human rights as a result of the EU Charter of Fundamental Rights no longer forming part of UK domestic law, including in Northern Ireland, post Brexit, although we note that

⁷⁸ NIO (2020) [UK Government commitment to “no diminution of rights, safeguards, and equality of opportunity” in NI: What does it mean and how will it be implemented.](#)

it will continue to play an important role in the interpretation of the Withdrawal Agreement and the Protocol.

- 3.45 We consider that the exclusion of the Charter from domestic law despite the retention of underlying ‘fundamental rights and principles’ has resulted in a weakening of the protection of human rights⁷⁹.
- 3.46 As mentioned above, the UK Government has committed under Article 2(1) of the Protocol to ensure there is no reduction of the rights, safeguards and equality of opportunity provisions set out in the chapter of the same name in the Belfast/ Good Friday Agreement as a result of Brexit, including the rights set out in the EU equality Directives in Annex 1 to the Protocol. It has also committed in the Protocol to keep pace with any future EU changes to these Annex 1 Directives.
- 3.47 However, there are important limitations to these commitments in terms of the continued application of EU equality and human rights standards in Northern Ireland. For example, the ‘keeping pace’ commitment only applies to the equality Directives set out in Annex 1 to the Protocol and not to other existing EU Directives that provide rights for equality groups, such as the EU law relating to part-time workers or pregnant workers. Further, it does not cover future EU equality related Directives that may be introduced, except to the extent that they might result in changes to the Annex 1 Directives. This could mean, for example, that whilst equality laws in other EU countries, including the Republic of Ireland, are strengthened to keep pace with those future EU equality laws, Northern Ireland equality laws may not similarly be strengthened⁸⁰.
- 3.48 It will also be noted that the Annex 1 Directives do not cover all equality areas, including some areas which are already currently covered by Northern Ireland equality law, but not EU law. For example, the Annex 1 Directives do not cover equality protections in areas outside employment and vocational

⁷⁹ We recognise that where the rights and principles underpinning the EU Charter have been implemented into UK law as retained EU law, that law will continue to be operational, and that the EU Charter will have continued relevance those parts of the UK-EU Withdrawal Agreement that relate to EU law. However, the Joint Committee on Human Rights (2018) raised various reasons as to why the protection of rights under the Charter may be diminished. See Joint Committee on Human Rights (2018) [Legislative Scrutiny: The EU \(Withdrawal\) Bill: A Right by Right Analysis](#)

⁸⁰ Except to the extent that they might result in changes to the Annex 1 Directives

training on the grounds of sexual orientation, disability or religion or belief.

- 3.49 We also consider that long-term North-South equivalence of rights is important to ensure there is no diminution of rights in NI and to ensure that human rights and equality protections are subject to continual improvement.
- 3.50 We also remain concerned that equality and human rights currently enshrined in NI domestic law that are not covered by the non-diminution commitment in Article 2 (1) could be subject to change, both in relation to devolved and non-devolved matters. We have, for example, expressed concern about the wide-ranging powers ('Henry VIII' powers) of Ministers of the Crown to make changes to EU retained equality law in Northern Ireland⁸¹.
- 3.51 In addition, prior to the UK-EU Trade and Cooperation Agreement being signed at the end of December 2020⁸², the Commission, along with the NIHRC, called on the UK Government to ensure that any future trade agreement with the EU should include a commitment to the non-regression of fundamental rights at work, as well as a commitment to keep pace with future EU laws that strengthen equality and human rights in Northern Ireland, including protections that enhance equality and human rights in the workplace. This would include rights such as non-discrimination and equal pay, fair working conditions and employment standards.
- 3.52 Whilst the UK-EU Trade and Cooperation Agreement includes non-regression provisions on the level playing field, including for labour and social rights, concerns have been raised that the oversight mechanism is relatively weak as it can only be triggered where the reduction of standards may impact on trade or investment, which can be very difficult to prove⁸³. Further the Agreement did not contain a commitment to keep pace with future EU laws that strengthen equality and human rights in Northern Ireland, though, as noted above, the UK Government has, under Article 2 of the Protocol, committed to keeping pace

⁸¹ ECNI (2017) [Recommendations on EU Withdrawal Bill](#)

⁸² [UK-EU Trade and Cooperation Agreement](#), 24 December 2020.

⁸³ Morris, M. (2020) [The Agreement on the Future Relationship: A First Analysis](#) (IPPR).

with any EU changes to the six EU equality laws set out in Annex 1 of the Protocol.

- 3.53 Finally, it is essential the UK Government remains committed to upholding its commitment set out in Protocol Article 2. Further the NI Assembly cannot act in a way that is incompatible with the UK Government's commitment. Therefore, in the development of any laws or policies relating to human rights reform in NI, the UK Government and NI Executive must consider, and set out in detail, the extent to which any change/s engages Protocol Article 2 and ensure that there is no diminution to the rights and safeguards which fall within its scope.
- 3.54 Any assessment of compliance with Article 2 should not be limited to the impact of the proposals on the substantive rights but should also include the remedial dimensions of those rights.

4 Conclusion

- 4.1 The Commission has made a range of recommendations relating to human rights, relating both to general principles, and with regards to Northern Ireland specific issues.
- 4.2 We would welcome your support and engagement with colleagues, officials, and elected representatives to raise awareness of our positions, and to secure advocacy of our recommendations, towards ensuring the maintenance and strengthening of a human rights framework which promotes equality of opportunity and prevents discrimination.
- 4.3 The Commission will continue to engage on its recommendations regarding human rights with the government locally and at UK level, relevant departments, elected officials and wider stakeholders both locally and including international human rights bodies.
- 4.4 We also continue to engage with international human rights bodies to advance key policy priorities and recommendations for equality in Northern Ireland⁸⁴, including as with regards to our joint role, with the NI Human Rights Commission, as the Independent Mechanism for Northern Ireland (IMNI) to promote, protect and monitor implementation of UNCRPD⁸⁵.
- 4.5 For further information on the Commission's recommendations relating to human rights, please see www.equalityni.org/HumanRights

September 2022.

⁸⁴ See, for example, www.equalityni.org/CEDAW ; www.equalityni.org/UNCERD and www.equalityni.org/FCNM

⁸⁵ See www.equalityni.org/UNCRPD