



EQUALITY COMMISSION FOR NORTHERN IRELAND

Human Rights Framework: Equality Considerations

Summary 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

Northern Ireland specific recommendations

- 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 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). 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 HRA².
- 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*'³.

² 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.

³ 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.

- 1.6 In 2022, the UK Government consulted on plans to repeal the HRA and replace it with a 'Bill of Rights'⁴. 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 hold⁵ 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 Rights⁶, including the work of the NIHRC to provide advice to Government and a recent Ad-Hoc Assembly Committee on a Bill of Rights from 2020-2022⁷, 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 to consultations on both a Northern Ireland Bill of Rights⁸ and a UK-wide Bill of Rights⁹.
- 1.9 More recently, we provided evidence to the NI Assembly Ad-Hoc Committee on a Bill of Rights for Northern Ireland¹⁰. 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 consultation¹¹;

⁴ MOJ (2021) [Human Rights Act Reform: A Modern Bill Of Rights A consultation to reform the Human Rights Act 1998](#), CP 588

⁵ BBC (2022) [Bill of Rights: Liz Truss shelves plans to reform human rights law](#) (accessed 09/09/2022).

⁶ For an overview, see NI Assembly (2020) [Key Issues for a Bill of Rights](#), Research and Information Service Briefing Paper NIAR 055-20.

⁷ NI Assembly (2022) [Report of the Ad Hoc Committee on a Bill of Rights](#), NIA 156/17-22.

⁸ ECNI (2010) [Response to Northern Ireland Office's consultation on a Bill of Rights for Northern Ireland](#)

⁹ ECNI (2011) [Response to the Commission on a Bill of Rights' Consultation: 'Do we need a UK Bill of rights?'](#)

¹⁰ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#)

¹¹ ECNI (2022) [Response to consultation: Human Rights Act Reform: a Modern Bill of Rights, Ministry of Justice](#)

and by responding to a call for evidence by the JCHR of the UK Parliament¹². 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
- 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

¹² ECNI (2022) [Response to the UK Joint Committee on Human Rights call for evidence Legislative Scrutiny: Bill of Rights Bill](#)

- 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 Parliament¹³. Following the appointment of a new Prime Minister in September 2022, the Bill was put on hold just ahead of its scheduled Second Reading¹⁴ 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.

¹³ UK Government (June 2022) [Bill of Rights Bill \[as introduced\]](#)

¹⁴ BBC (2022) [Bill of Rights: Liz Truss shelves plans to reform human rights law](#) (accessed 09/09/2022).

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

- 2.7 Human rights protections must be compliant with international law and commitments.
- 2.8 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 eroded¹⁵.
- 2.9 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.

Promote awareness and understanding of equality and human rights and responsibilities

- 2.10 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’)¹⁶.
- 2.11 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.

¹⁵ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), para 2.7

¹⁶ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), paras 8.1-8.4.

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

- 2.12 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.
- 2.13 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.
- 2.14 Action should be taken to encourage and secure the participation of under-represented groups, such as disabled people, in accessing rights.

Ensure the domestic human rights framework reflects international human rights standards

- 2.15 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.
- 2.16 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).

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.

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

- 3.4 The Commission's long-standing position is in support¹⁷ of the adoption of a strong and inclusive NI Bill of Rights, reflecting the particular circumstances of Northern Ireland.
- 3.5 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.
- 3.6 Mindful of significant and increasing levels of race hate crime in Northern Ireland¹⁸, we recommend that a NI Bill of Rights recognises and strengthens protection of the human rights of all

¹⁷ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), para 1.2.

¹⁸ ECNI (2020) [Hate Crime in Northern Ireland: Policy Recommendations and Supporting Rationales](#)

communities in Northern Ireland, including minority ethnic communities.

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

- 3.7 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.
- 3.8 The principle could also make clear that individuals should not be discriminated against across a range of equality grounds.

Strengthen Northern Ireland equality laws through single equality legislation

- 3.9 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.
- 3.10 Equality law should be harmonised upwards, so as to strengthen equality rights and protections.

Strengthen Northern Ireland equality and human rights post Brexit

- 3.11 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.

- 3.12 In terms of specific additional measures to better protect equality and human rights after Brexit, we continue¹⁹ 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 freedoms in Northern Ireland, including those relating to non-discrimination and equality, ensured under UK law.
- 3.13 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.
- 3.14 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.

¹⁹ ECNI (2021) [Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland](#), para 5.12.

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 Ireland²⁰, 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 UNCRPD²¹.
- 4.5 For further information on the Commission's recommendations relating to human rights, please see www.equalityni.org/HumanRights

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²⁰ See, for example, www.equalityni.org/CEDAW ; www.equalityni.org/UNCERD and www.equalityni.org/FCNM

²¹ See www.equalityni.org/UNCRPD