



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**EVIDENCE TO THE
JOINT COMMITTEE ON HUMAN RIGHTS
A BILL OF RIGHTS FOR THE UK?**

Summary

In this submission to the Joint Committee on Human Rights' inquiry into 'A Bill of Rights for the UK?', the Commission expresses its disappointment at the way in which the Government is approaching human rights protections in the UK.

The Commission handed its advice on what should be included in a Bill of Rights for Northern Ireland to the Secretary of State for Northern Ireland in December 2008. It believes that the Government should have made its intentions in relation to that advice clear in the Green Paper on a Bill of Rights for the UK. In particular, the Commission believes there has been a loss of an important opportunity to commit to enshrining rights protections in primary legislation that go beyond those in the Human Rights Act 1998. The Commission also stresses the importance of justiciable economic and social rights for Northern Ireland and asserts that the way in which the Government is approaching the issue of responsibilities is disingenuous.

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes this opportunity to submit evidence to the Joint Committee on Human Rights (the Committee) on the Government's Green Paper "Rights and Responsibilities: developing our constitutional framework". The Committee will be aware that this Commission submitted its advice to the Secretary of State for Northern Ireland in December 2008 on what provisions ought to be contained in a Bill of Rights for Northern Ireland.⁵ The advice was a result of 10 years of work, consultation and deliberations on the part of this Commission and it is unfortunate that Government has published this Green Paper prior to consulting formally on a Bill of Rights for Northern Ireland.
3. While the Green Paper states that Government "does not wish the public debate around a UK instrument to detract from the process relating to a potential Bill relating to the particular circumstances of Northern Ireland", it fails to explore or explain, in any meaningful way, how a Bill of Rights for Northern Ireland would dovetail with one for the rest of the UK. Nor does the Green Paper shed any light on Government's thinking with regards to the Commission's advice.
4. Overall, the Commission notes the confused messages contained in the Green Paper. The need for a genuine consultation, in which stakeholders are given both the time and resources to express their views is extremely important. Equally, however,

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid*, s.69(3).

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(6).

⁵ The full advice can be viewed at www.nihrc.org.

Government must set the context and parameters in which the debate takes place. Having given considerable thought to the human rights debate in the UK, it was vital that Government gave some indication of what it is minded to do in terms of strengthening human rights protections. Instead, this document does not explore any meaningful possibilities but discusses at considerable length philosophical thoughts on human rights and responsibilities, existing policy positions, and Bills of Rights in other jurisdictions. What was needed was a stock-take of human rights protections currently in the UK along with a checklist of the gaps in those protections, particularly in relation to the UK's treaty commitments. Most notably, Government has even failed to commit to enshrining further rights in primary legislation, referring instead to an "accessible document". The Commission will not comment on what is needed in Great Britain but emphasises robustly that there is a paramount need for further justiciable rights in Northern Ireland to be enshrined in primary legislation.

5. The starting point for any discussion around human rights must be that there will be no repealing or weakening of the Human Rights Act 1998. Indeed, under the terms of the Good Friday Agreement, the Commission was mandated to consider rights supplementary to the European Convention on Human Rights.
6. The Commission's position on those areas of concern to the Committee has been made clear in the advice document. These are revisited and summarised below.

Responsibilities

7. Government is of course correct to point out that human rights treaties, including the European Convention on Human Rights, already include the notion of duties and responsibilities. The Commission is therefore disappointed that Government is suggesting that there is a need for further responsibilities to be explicitly included in any Bill of Rights. The Commission is aware of the various arguments made in relation to including responsibilities in any Bill of Rights. These range from the need to mitigate the perceived negative impacts of the Human Rights Act 1998 to simply being an 'add-on' to make the concept of human rights more palatable to critics. In the section 'The case for change', Government in fact fails to articulate a substantiated, evidence-based case for change. For example, the Green Paper refers to a danger "if there is a deficit in relation to responsibilities" which can "have an impact on individuals' behaviour, with the selfish and sometimes aggressive assertion

of rights, in a way which may damage others' enjoyment of their own rights". So Government concludes with suggesting that "an accessible document which promotes the importance of rights and responsibilities might assist the process of continuing to build a secure and flourishing society". This sentiment fails to show awareness of the limitations on many of the rights enshrined in treaties which are designed to ensure that others rights are not damaged. It would appear disingenuous for Government to be suggesting that the UK courts do not apply appropriate limitations on rights at present. The Commission's position is that Government is attempting to fix a problem that does not exist in terms of its articulation of the need for 'responsibilities'.

Economic, social and cultural rights

8. The United Nations' Committee on Economic, Social and Cultural Rights published its Concluding Observations on the UK in May 2009. The UN Committee noted the advice to Government on the Bill of Rights for Northern Ireland, which "includes economic, social and cultural rights which are justiciable and calls for its enactment without delay".
9. The Commission notes the different approach of the Committee in relation to economic, social and cultural rights to that advanced in our advice to the Secretary of State for Northern Ireland. The Commission was tasked to advise on rights that were supplementary to the ECHR and reflected the particular circumstances of Northern Ireland.
10. Discrimination, exclusion and poverty in the areas of employment and housing were significant factors in the conflict in Northern Ireland. The 1969 Cameron Commission⁶ makes specific and repeated reference to social and economic grievances. Despite the progress that has been made in addressing those grievances, the UN Committee on Economic, Social and Cultural Rights has singled out Northern Ireland from the rest of the UK as requiring particular attention. In its Concluding Observations of 2002, the UN Committee "strongly recommends the inclusion of effective protection for economic, social and cultural rights, consistent with the provisions of the Covenant, in any bill of rights enacted in Northern Ireland".
11. The Commission's advice does not call for wholesale domestic enactment of the International Covenant on Economic Social

⁶ Report by Lord Cameron (1969) *Disturbances in Northern Ireland: Report of the Governor of Northern Ireland*.

and Cultural Rights but nor does it suggest that all economic, social and cultural rights cannot be made justiciable in the same manner that civil and political rights are. The Commission envisages a central role for the courts in relation to the protection of core economic, social and cultural rights including health, housing, employment and language, all with appropriate limitations. The Commission believes that with appropriate planning, education and training decisions around economic, social and cultural rights are well within the competency of the courts in Northern Ireland.

12. In addition, in order to meet the requirements of the progressive realisation of such rights, the Commission envisages a role for the Northern Ireland Executive and UK Government. The Commission therefore advises that both report annually to the Northern Ireland Assembly and Parliament respectively on the progress made during the previous year in realising these rights in Northern Ireland.
13. The Commission is of course aware of the criticisms of this approach. One being that to make economic, social and cultural rights justiciable is to give too much power to unelected judges who should not be making decisions around resource allocation, which is the role of the legislature.
14. The Commission's position is informed by international human rights standards and therefore it does not agree that the criticism is a valid one. First, judges rightly and routinely already make decisions that have resource implications for the state. Punitive measures against individuals whether they be prison sentences or fines, of course have resource implications. The courts also routinely decide on issues around access to medication, discrimination in employment, and housing provision by the state.
15. Second, the Commission's advice gives each section of a functioning democracy its place in the protection of human rights. The judiciary, the executive and the legislature as with civil and political rights all have a role to play in the protection of economic, social and cultural rights. Justiciable economic, social and cultural rights do not involve usurping power from one branch but rather allocating responsibility appropriately across the branches in order to ensure the highest possible level of protection to individuals.

Process

16. Another area of interest to the Committee was what the process should be for arriving at a UK Bill of Rights. The Commission cannot urge strongly enough the need for extensive and meaningful consultation and an end result that reflects on the real circumstances of people's lives. Equally, in consulting on this fundamental issue Government ought not to lose the opportunity to raise awareness of the fundamental role human rights have in a democratic society. It is unfortunate that Government has not seized that opportunity in this Green Paper.
17. A recent survey conducted in Northern Ireland⁷ found that 83% supported a bill of rights for Northern Ireland. 96% of those supported the inclusion of economic, social and cultural rights in Northern Ireland and the results indicate little difference of opinion between the two main communities in Northern Ireland. The Commission hopes the Committee will ask Government to respond positively to those results and begin consulting on what should be contained in a Bill of Rights for Northern Ireland as a matter of urgency. That is the vital component of any UK wide Bill of Rights process.

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⁷ Survey commissioned by Human Rights Consortium and conducted by Millward Brown Ulster – results published 1 July 2009 at: <http://www.billofrightsni.org>.