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Assembly

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# Equality and Human Rights Legislation in Northern Ireland: A Review

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This paper reviews equality and human rights legislation in Northern Ireland in the light of European Union and international obligations.

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## Key Points

Existing equality protections in Northern Ireland are extensive. However, whilst the recent trend in equality legislation in Great Britain, Ireland and the EU is to streamline standards into a single piece of law or at least fewer individual legislative Acts, in Northern Ireland equality legislation remains unconsolidated, diverse and uneven in implementation.

Development of single equality legislation has the potential to standardise the level of protection across equality grounds and may also be less complex, easier to understand and easier to amend. It is also argued, however, that the process may result in an increased regulatory burden in both the public and private sector.

A Single Equality Bill to harmonise and update the disparate equality legislation in Northern Ireland has been considered in the past, but since a consultation exercise in 2004 and a ministerial statement in 2005 there have been no further public developments.

The Equality Commission has recently outlined areas where equality standards differ between those contained in the Equality Act 2010 and the relevant law relating to Northern Ireland. To bridge these gaps, and to harmonise equality standards across the different grounds, the Equality Commission has made a number of recommendations for legislative change here.

Competence in relation to anti-discrimination law has been devolved to the Northern Ireland Assembly but not to the Scottish Parliament or the National Assembly for Wales. The Assembly, therefore, has the ability to take forward a legislative change such as development of a single equality bill. However, much anti-discrimination legislation is of EU origin and under the devolution agreement of 1998, the Assembly is obliged to implement UK international and European Union obligations where they relate to transferred matters. The manner in which this is done, however, is a matter for local legislators. That said, if the EU standards as set out in the Directives are not complied with, the UK government retains the right to impose legislation to fulfil its obligations.

In addition to protections afforded directly by anti-discrimination law protections, there are national, European and international human rights standards. While these standards are less directly judicable than EU legislation, the UK has obligations to uphold minimum standards that, if not met in Northern Ireland, can lead to international embarrassment, and international law is seen as a normative standard for policy development and can emerge in case law. In extremis, the UK retains the right to impose legislation to fulfil these international obligations.

The establishment of a Bill of Rights for Northern Ireland to reflect the particular circumstances of Northern Ireland as part of a post-conflict settlement, referred to in

the Belfast Agreement, remains a contentious issue. There have been no further public developments since a consultation in 2009 on the government's response to advice on a Bill of Rights by the Northern Ireland Human Rights Commission.

## Executive Summary

This paper briefly examines Northern Ireland equality and human rights protections and compares them with European Union and international standards. The international processes of scrutiny are then reviewed to identify where change has been recommended in Northern Ireland to meet international obligations.

Equality protections are extensive in Northern Ireland, with a duty on public bodies to have due regard for equality between specified groups and legal protection against discrimination against particular identities, although the level of protection varies between groups. In the rest of the UK, the Equality Act 2010 harmonises much of the equality legislation and brings the terminology and protection levels up to EU standards, but this does not extend to Northern Ireland, which retains different pieces of legislation, such as the Sex Discrimination Order 1976, Disability Discrimination Act 1995, Race Relations Order 1997, fair Employment and Treatment Order 1998, Employment Equality (Sexual Orientation) Regulations 2003 and Employment (Age) Regulations 2006.

EU Directives are required to be transposed into UK legislation, otherwise the European Commission can initiate proceedings that may lead to a fine. The UK Government informs the devolved administrations of any obligations that are transferred matters, but retains the power to impose legislation on Northern Ireland to fulfil EU obligations if necessary. Key equality Directives include the Race Directive 2000, the Framework Directive 2000, Gender Directives 2002 and 2004 and the Recast Directive 2006. Plans are under way for a Horizontal Directive to harmonise equality protections across a range of grounds. The diversity of equality legislation in Northern Ireland means that when the EU introduces new cross-cutting equality standards, several pieces of legislation have to be amended to meet them.

Human rights protections are guaranteed by the Human Rights Act 1998, which brings most of the European Convention on Human Rights (ECHR) into UK law. In addition, there are obligations to a range of UN treaties. Northern Ireland has been referred to in a number of examinations of UK compliance, which can lead, at most, to international embarrassment that these basic minimum standards are not being adhered to. However, some treaties have additional mechanisms for complaint and/or investigation procedures, such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention Against Torture, and the adoption by the EU of the Convention on the Protection of Rights of People with Disabilities give these obligations additional weight.

In reality, the justiciability of the UN treaties is questionable, relying on moral and political grounds to compel compliance with international standards, but they remain as reference points for human rights protections in international law and there are opportunities to test some of the additional compliance mechanisms with reference to

Northern Ireland, although domestic and regional (i.e. European) remedies have to be exhausted first.

An additional issue with regard to UN standards is the implementation of UN Security Council Resolution 1325, which deals with the treatment of women in post-conflict contexts, particularly in terms of representation and gender-specific post-conflict reconstruction initiatives. While the Resolution is promoted overseas, Northern Ireland is not deemed by the UK Government to have undergone a conflict that is applicable in this case.

Council of Europe treaties, with the exception of the ECHR, tend to be less well known and their standards are generally at the same level of justiciability as the UN treaties. Application can be made to the European Court of Human Rights in relation to breaches of the ECHR where domestic protection has proven inadequate. The European Social Charter also includes mechanisms for redress that are as yet untested in relation to Northern Ireland.

The EU Charter of Fundamental Rights has been enshrined in the EU legal architecture since the ratification of the Treaty of Lisbon. While there have been some doubts as to its direct justiciability, the status of the Charter in the EU means that future legislation will be tested by its standards and it will be a reference point for rulings at the European Court of Justice, but its full impact in terms of domestic redress remains to be fully realised. A protocol in relation to the UK and Poland does not constitute an opt-out of the Charter.

In terms of equality, the simplification and harmonisation of equality legislation has been undertaken in the rest of the UK with the Equality Act 2010, in the Republic of Ireland with the Equal Status Acts 2000-2004 and in the EU with recent Directives and anticipated in the Horizontal Directive. There are compelling arguments for a Single Equality Act in Northern Ireland. The Equality Commission has recommended amendments to age, race, sex, disability and employment legislation.

Northern Ireland has been named in examinations of the UK by UN committees in the non-compliance with treaty standards, including prison reform, the representation of women, reproductive rights, poverty, deprivation and health issues, community segregation, judicial and policing matters, academic selection, treatment of non-nationals, treatment of Irish Travellers and the status of the Irish language.

Proposals for a Bill of Rights for Northern Ireland have been a matter of contention, but this remains a live issue in terms of where Northern Ireland fits into the wider human rights architecture developing in the UK and EU and what additional rights safeguards are required for the specific circumstances of Northern Ireland.

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# 1 Introduction

Northern Ireland has a mixture of legislation, some originating from direct rule in the form of Orders in Council and some originating in the devolved Northern Ireland Assembly. In addition, there are pieces of legislation in force in Northern Ireland that refer to the whole of the United Kingdom, where competencies are not devolved, such as immigration law. In Northern Ireland, anti-discrimination law is a devolved matter.

This is not the only legislation that impacts upon Northern Ireland, however. European Union Directives are transposed into Member State legislation, which has impacts in terms of UK-wide legislation, but also on devolved matters, necessitating legislation to be introduced into the Northern Ireland Assembly. As far as other international standards are concerned, such as United National conventions, while the standards are recognised where the UK is a signatory, the extent to which they can be enforced is debatable.

Northern Ireland has emerged from conflict with a variety of equality and human rights provisions, primarily through the Northern Ireland Act 1998. Section 75 of the Act requires public bodies to have due regard to promote equality between people on the following grounds:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

The Human Rights Act 1998 brings the European Convention on Human Rights into UK law.

This paper briefly examines European Union and international standards with regard to equality and human rights, assesses the extent to which they are met by legislation in Northern Ireland, determines what adjustments would have to be made to meet European Union and international standards and what sanctions could be brought to bear if the standards are not met.

## 2 Equality Legislation in Northern Ireland

The department responsible for equality in Northern Ireland is the Office of the First Minister and deputy First Minister (OFMdFM)<sup>1</sup>, although Section 75 of the Northern Ireland Act 1998<sup>2</sup> provides that most public bodies have a responsibility for promoting equality according to the grounds specified above. The Equality Commission for Northern Ireland was established under Section 73 of the Act, which has the general duties as follows<sup>3</sup>:

- working towards the elimination of discrimination;
- promoting equality of opportunity and encouraging good practice;
- promoting affirmative/positive action;
- promoting good relations between people of different racial groups;
- overseeing the implementation and effectiveness of the statutory duty on public authorities to promote equality and good relations;
- overseeing the disability duties on public authorities;
- monitoring, jointly with the NI Human Rights Commission, implementation of the UN Convention on the Rights of Persons with Disabilities; and
- keeping the relevant legislation under review.

The existing legislative framework for equality in Northern Ireland is as follows:

### Age

Equality provisions on the grounds of age are a relatively recent development and these are contained within the Employment Equality (Age) Regulations (Northern Ireland) 2006<sup>4</sup>, which were introduced as a response to the EU Employment Framework Directive 2000<sup>5</sup>. This legislation prohibits direct and indirect discrimination, harassment and victimisation based on age in employment and vocational training.

An Older Peoples' Advocate<sup>6</sup> was appointed in December 2008, but a Commissioner for Older People is to be appointed during 2011.

There is no equality legislation specific to children, but the Children (Northern Ireland) Order 1995<sup>7</sup> sets out the rights of children. There is a Strategy for Children and Young

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<sup>1</sup> OFMdFM equality web pages: <http://www.ofmdfmi.gov.uk/index/equality.htm>.

<sup>2</sup> Northern Ireland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

<sup>3</sup> Website of the Equality Commission: <http://www.equalityni.org/sections/default.asp?secid=0>.

<sup>4</sup> Employment Equality (Age) Regulations (Northern Ireland) 2006: <http://www.legislation.gov.uk/nisr/2006/261/contents/made>.

<sup>5</sup> EU Directive 2000/78/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0033:0033:EN:PDF>.

<sup>6</sup> Website of the Older Peoples' Advocate: <http://www.olderpeoplesadvocateni.org/>.

<sup>7</sup> Children (Northern Ireland) Order 1995: <http://www.legislation.gov.uk/nisi/1995/755/contents/made>.

People<sup>8</sup> and a Commissioner for Children and Young People<sup>9</sup> to advocate for their interests.

## Disability

The baseline equality legislation relating to disability is the Disability Discrimination Act 1995 (DDA)<sup>10</sup>, which prohibits discrimination in employment, access to goods and services and in property and land transactions. The Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004<sup>11</sup>, implementing the EU Employment Framework Directive, prohibited harassment and ended the exemption of small employers from the provisions and of certain areas of employment. The Equality Act 2010<sup>12</sup> has superseded the DDA elsewhere in the UK, but the DDA remains the primary disability legislation in Northern Ireland.

The disability legislation has been subject to a range of amendments, as follows:

The Disability Discrimination (Meaning of Disability) Regulations 1996<sup>13</sup>, which exempts certain conditions from the definition of disability

The Special Education Needs and Disability Act 2001<sup>14</sup>, which provides for measures against discrimination in education

The Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003<sup>15</sup>, which defines reasonable adjustments for access to premises

The Special Educational Needs and Disability (Northern Ireland) Order 2005<sup>16</sup>, which makes further provisions against discrimination in education

The Disability Discrimination (Northern Ireland) Order 2006<sup>17</sup>, which introduced provisions against discrimination by local authorities and in public transport

The Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland)

<sup>8</sup> Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016: <http://www.ofmdfmi.gov.uk/ten-year-strategy.pdf>.

<sup>9</sup> Website of the Northern Ireland Commissioner for Children and Young People: <http://www.niccy.org/article.aspx?menuId=554>.

<sup>10</sup> Disability Discrimination Act 1995: <http://www.legislation.gov.uk/ukpga/1995/50/contents>.

<sup>11</sup> Disability Discrimination Act 1995 (Amendment) Regulations (NI) 2004: <http://www.legislation.gov.uk/nisr/2004/55/contents/made>.

<sup>12</sup> Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

<sup>13</sup> The Disability Discrimination (Meaning of Disability) Regulations 1996: <http://www.legislation.gov.uk/nisr/1996/421/contents/made>.

<sup>14</sup> The Special Educational needs and Disability Act 2001: <http://www.legislation.gov.uk/ukpga/2001/10/contents>.

<sup>15</sup> The Disability Discrimination (Providers of Services) (Adjustment of Premises) Regulations (Northern Ireland) 2003: <http://www.legislation.gov.uk/nisr/2003/109/contents/made>.

<sup>16</sup> The Special Educational needs and Disability Northern Ireland) Order 2005: <http://www.legislation.gov.uk/nisi/2005/1117/contents/made>.

<sup>17</sup> The Disability Discrimination (Northern Ireland) Order 2006: [http://www.legislation.gov.uk/uksi/2006/312/pdfs/ukxi\\_20060312\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/312/pdfs/ukxi_20060312_en.pdf).

Order 2006<sup>18</sup>, which extends disability discrimination protection in further and higher education

The Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) 2009<sup>19</sup>, which extends provisions against discrimination to transport

The Autism (Northern Ireland) Act 2011<sup>20</sup>, which seeks to resolve ambiguity regarding the application of the DDA to Autism Spectrum Disorder (ASD)

Public authorities are required to produce disability action plans to the Equality Commission on progress on duties relating to disability under the DDA<sup>21</sup>.

## Gender

Legislation for equality between women and men originates in the Equal Pay Act (Northern Ireland) 1970<sup>22</sup> and the Sex Discrimination (Northern Ireland) Order 1976<sup>23</sup>.

The Equal Pay Act prohibits paying women and men differently for the same or equivalent work. The Act was amended by the Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2004<sup>24</sup> and the Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2005<sup>25</sup>, which make changes to tribunal proceedings relating to equal pay in line with Council Directive 75/117/EEC<sup>26</sup>.

The Sex Discrimination Order (SDO) prohibits discrimination and outlaws harassment on the basis of sex in the fields of employment, education and the provision of goods and services. This has been amended as follows:

Sex Discrimination (Northern Ireland) Order 1988<sup>27</sup>, which removes certain exemptions and increases protection under certain contracts

Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999<sup>28</sup>, which extend protections in the SDO to gender re-assignment.

Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (Northern Ireland) 2001<sup>29</sup>, which implements Directive 97/80/EC<sup>30</sup> on the equal treatment of women and men.

<sup>18</sup> The Special Educational Needs and Disability (Northern Ireland) Order 2005 (Amendment) (Further and Higher Education) Regulations (Northern Ireland) Order 2006: [http://www.legislation.gov.uk/nisr/2006/332/pdfs/nisr\\_20060332\\_en.pdf](http://www.legislation.gov.uk/nisr/2006/332/pdfs/nisr_20060332_en.pdf).

<sup>19</sup> The Disability Discrimination (Transport Vehicles) Regulations (Northern Ireland) 2009: <http://www.legislation.gov.uk/nisr/2009/428/contents/made>.

<sup>20</sup> The Autism (Northern Ireland) Act 2011: [http://www.legislation.gov.uk/nia/2011/27/pdfs/nia\\_20110027\\_en.pdf](http://www.legislation.gov.uk/nia/2011/27/pdfs/nia_20110027_en.pdf).

<sup>21</sup> Disability action plans: <http://www.ofmdfni.gov.uk/index/equality/disability/draft-disability-action-plans.htm>.

<sup>22</sup> Equal Pay Act (Northern Ireland) 1970: <http://www.legislation.gov.uk/apni/1970/32/contents>.

<sup>23</sup> Sex Discrimination (Northern Ireland) Order 1976: <http://www.legislation.gov.uk/nisi/1976/1042/contents>.

<sup>24</sup> Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2004: <http://www.legislation.gov.uk/nisr/2004/171/contents/made>.

<sup>25</sup> Equal Pay Act 1970 (Amendment) Regulations (Northern Ireland) 2005: <http://www.legislation.gov.uk/nisr/2005/145/note/made>.

<sup>26</sup> Directive 75/117/EEC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0117:EN:HTML>.

<sup>27</sup> Sex Discrimination (Northern Ireland) Order 1988: <http://www.legislation.gov.uk/nisi/1988/1303/contents/made>.

<sup>28</sup> Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999: <http://www.legislation.gov.uk/nisr/1999/311/contents/made>.

Sex Discrimination (Northern Ireland) Order 1976 (Amendment) Regulations 2004<sup>31</sup>, which extend the prohibition on discrimination to circumstances when a relationship has ended

Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005<sup>32</sup>, which, on the basis of EU Directive 2002/73/EC<sup>33</sup>, define harassment, indirect discrimination and genuine occupational requirements and extend sex discrimination to pregnancy and maternity

Sex Discrimination (Northern Ireland) Order 1976 (Amendment) Regulations 2008<sup>34</sup>, which more effectively implement Directive 2002/73/EC in terms of the definitions of harassment and discrimination on the grounds of pregnancy and maternity

Sex Discrimination (Amendment of Legislation) Regulations 2008<sup>35</sup>, which extend the principle of equal treatment of women and men to access to goods and services, implementing EU Directive 2004/113/EC<sup>36</sup>

In addition, the Maternity and Parental Leave etc. Regulations 1999<sup>37</sup> extend provisions for parental leave to implement EU Directive 96/34/EC<sup>38</sup> and unfulfilled elements of Directive 92/85/EEC<sup>39</sup>, which impacts mainly on women's equality in employment. The Maternity and Parental Leave (Amendment) Regulations 2002<sup>40</sup> amend the 1999 Regulations by extending maternity leave to 26 weeks and the Employment (Northern Ireland) Order 2002<sup>41</sup> outlines statutory rights to parental leave and pay.

Northern Ireland has a Gender Equality Strategy<sup>42</sup>, which identifies key areas of action to address gender inequalities.

### **Race and Ethnicity**

The Race Relations (Northern Ireland) Order 1997<sup>43</sup> prohibits direct or indirect discrimination or victimisation on the grounds of colour, race, nationality or ethnic or

<sup>29</sup> Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations (Northern Ireland) 2001:

<http://www.legislation.gov.uk/nisr/2001/282/contents/made>.

<sup>30</sup> Directive 97/80/EC (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:014:0006:0008:EN:PDF>) was required to be implemented in the UK by Directive 98/52/EC (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:205:0066:0066:EN:PDF>).

<sup>31</sup> Sex Discrimination (Northern Ireland) Order 1976 (Amendment) Regulations 2004: <http://www.legislation.gov.uk/nisr/2004/172/contents/made>.

<sup>32</sup> Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005: <http://www.legislation.gov.uk/nisr/2005/426/contents/made>.

<sup>33</sup> EU Directive 2002/73/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:269:0015:0020:EN:PDF>.

<sup>34</sup> Sex Discrimination (Northern Ireland) Order 1976 (Amendment) Regulations 2008: <http://www.legislation.gov.uk/nisr/2008/159/contents/made>.

<sup>35</sup> Sex Discrimination (Amendment of Legislation) Regulations 2008: <http://www.legislation.gov.uk/ukSI/2008/963/contents/made>.

<sup>36</sup> Directive 2004/113/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

<sup>37</sup> Maternity and Parental Leave etc. Regulations 1999: <http://www.legislation.gov.uk/ukSI/1999/3312/contents/made>.

<sup>38</sup> EU Directive 96/34/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1996:145:0004:0009:EN:PDF>.

<sup>39</sup> Directive 92/85/EEC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0085:EN:HTML>.

<sup>40</sup> Maternity and Parental Leave (Amendment) Regulations 2002: <http://www.legislation.gov.uk/ukSI/2002/2789/contents/made>.

<sup>41</sup> Employment (Northern Ireland) Order 2002: <http://www.legislation.gov.uk/nisi/2002/2836/contents/made>.

<sup>42</sup> Gender Equality Strategy 2006-2016: <http://www.ofmdfmi.gov.uk/index/equality/gender-equality/our-strategy.htm>.

national origin in employment, education, the provision of goods, facilities or services and property management. Irish Travellers are also named in the legislation as an ethnic group.

This has been amended by the Race Relations (Amendment) Regulations (Northern Ireland) 2003<sup>44</sup>, which, to implement Directive 2000/43/EC<sup>45</sup>, refines the definitions of indirect discrimination and harassment and matters relating to genuine occupational requirements and burden of proof in proceedings. This was amended again by the Race Relations Order (Amendment) Regulations (NI) 2009<sup>46</sup> to give full effect to the Directive in relation to defining indirect discrimination.

A Racial Equality Strategy<sup>47</sup> expired in 2010, with a replacement not yet in place at the time of writing, although a Racial Equality Forum is still operating.

The UK Border Agency is not included as a public body under Section 75 and operates in Northern Ireland as a UK body with non-devolved powers. Under Section 19D of the Race Relations Act 1976<sup>48</sup>, it is not unlawful “to discriminate against another person on grounds of nationality or ethnic or national origins in carrying out immigration functions”.

### **Religious Belief and Political Opinion**

The Fair Employment and Treatment (Northern Ireland) Order 1998<sup>49</sup> makes direct and indirect discrimination and victimisation on the grounds of religious belief or political opinion unlawful. This has been amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003<sup>50</sup>, which implement elements of the Framework Directive<sup>51</sup> in terms of defining indirect discrimination and harassment.

### **Sexual Orientation**

Equality legislation relating to sexual orientation has developed in the last decade. The relevant legislation is as follows:

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<sup>43</sup> Race Relations (Northern Ireland) Order: <http://www.legislation.gov.uk/nisi/1997/869/contents/made>.

<sup>44</sup> Race Relations (Amendment) Regulations (Northern Ireland) 2003:  
<http://www.legislation.gov.uk/nisr/2003/341/contents/made>.

<sup>45</sup> Directive 2000/43/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

<sup>46</sup> Race Relations Order (Amendment) Regulations (Northern Ireland) 2009:  
<http://www.legislation.gov.uk/nisr/2009/410/contents/made>.

<sup>47</sup> Racial Equality Strategy 2005-2010:  
[http://www.ofmdfmi.gov.uk/index/equality/race/race\\_publications.htm#racialequalitystrategy2005](http://www.ofmdfmi.gov.uk/index/equality/race/race_publications.htm#racialequalitystrategy2005).

<sup>48</sup> Race Relations Act 1976: <http://www.legislation.gov.uk/ukpga/1976/74/contents>.

<sup>49</sup> The Fair Employment and Treatment (Northern Ireland) Order 1998  
(<http://www.legislation.gov.uk/nisi/1998/3162/contents/made>) repeals the previous legislation in this field, i.e. the Fair Employment (Northern Ireland) Acts 1976 and 1989.

<sup>50</sup> Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003:  
<http://www.legislation.gov.uk/nisr/2003/520/contents/made>.

<sup>51</sup> Directive 2000/78/EC, see Note 5 above.

Employment (Northern Ireland) Order 2002<sup>52</sup>, which gives same-sex couples the same parental leave rights as other parents

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003<sup>53</sup>, which implements the EU Framework Directive<sup>54</sup> to prohibit direct and indirect discrimination, harassment and victimisation on grounds of sexual orientation.

Civil Partnership Act 2004<sup>55</sup>, which formalises in legal terms same-sex unions

Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006<sup>56</sup>, which outlaw discrimination in the area of goods, facilities and services

A strategy on sexual orientation is forthcoming<sup>57</sup>.

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<sup>52</sup> See Note 40 above.

<sup>53</sup> Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003:  
<http://www.legislation.gov.uk/nisr/2003/497/contents/made>.

<sup>54</sup> See Note 5 above.

<sup>55</sup> Civil Partnership Act 2004: <http://www.legislation.gov.uk/ukpga/2004/33/contents>; Part 4 refers to Northern Ireland.

<sup>56</sup> Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006:  
<http://www.legislation.gov.uk/nisr/2006/439/contents/made>.

<sup>57</sup> See the OFMdfM website: <http://www.ofmdfmi.gov.uk/index/equality/sexual-orientation.htm>.

### 3 European Union Legislation

The legislation outlined in Chapter 2 indicated the extent to which Directives coming from the European Union influence equality law in Northern Ireland, particularly in areas such as age discrimination, equality between women and men and racial equality. The UK, as a Member State, is obliged to transpose EU Directives into domestic law, or other measures for implementation<sup>58</sup>, and is responsible for the implementation of directives in devolved regions.

The powers to implement EU legislation are derived from the European Communities Act 1972<sup>59</sup>, as amended by the Legislative and Regulatory Reform Act 2006<sup>60</sup>. The Memorandum of Understanding on Devolution between the Westminster and devolved administrations states<sup>61</sup>:

*The devolved administrations are responsible for implementing international, ECHR and EU obligations which concern devolved matters. In law, UK Ministers have powers to intervene in order to ensure the implementation of these obligations.*

It is the responsibility of the relevant Whitehall Department to inform the devolved administration of any responsibilities with regard to transferred matters<sup>62</sup>.

EU legislation originates in the European Commission<sup>63</sup> and, following a wider consultation procedure, is usually discussed and adjusted by the European Council<sup>64</sup> and the European Parliament<sup>65</sup>. If passed, and the legislation relates to law that is to be harmonised across the Member States, a Directive is issued, which is to be transposed into domestic law in accordance with the legislative context of each Member State. Failure to do so within a specified time limit can lead to a process where the Commission engages with the Member State to ensure implementation.

The European Commission initially issues a Formal Notice of failure to implement a Directive. The intention is to work with the Member State to co-operate in the implementation of the Directive, but if this is not successful, the Commission issues a Reasoned Opinion. This serves as a warning of legal action through the European court system. If the matter is not resolved, the Commission refers the matter to the

<sup>58</sup> There is a preference for non-regulation based provisions for implementation, see UK Government advice *Guidance for Transposition: How to Implement EU Directives Effectively*, April 2011: <http://www.bis.gov.uk/assets/biscore/better-regulation/docs/t/11-775-transposition-guidance>.

<sup>59</sup> European Communities Act 1972: <http://www.legislation.gov.uk/ukpga/1972/68/contents>.

<sup>60</sup> Legislative and Regulatory Reform Act 2006: <http://www.legislation.gov.uk/ukpga/2006/51/contents>.

<sup>61</sup> Devolution: Memorandum of Understanding and Supplementary Agreements (2010), Paragraph 21: [http://www.ofmdfmi.gov.uk/memorandum\\_of\\_understanding\\_and\\_concordate\\_on\\_co-ordination\\_of\\_eu\\_issues\\_-\\_march\\_2010.pdf](http://www.ofmdfmi.gov.uk/memorandum_of_understanding_and_concordate_on_co-ordination_of_eu_issues_-_march_2010.pdf). Section 24(1) of the Northern Ireland Act 1998 also forbids legislation or actions in Northern Ireland that are incompatible with 'Community law or Convention' and Section 26(1) regarding international obligations.

<sup>62</sup> Memorandum of Understanding, Paragraph B4.16.

<sup>63</sup> Website of the European Commission: [http://ec.europa.eu/index\\_en.htm](http://ec.europa.eu/index_en.htm).

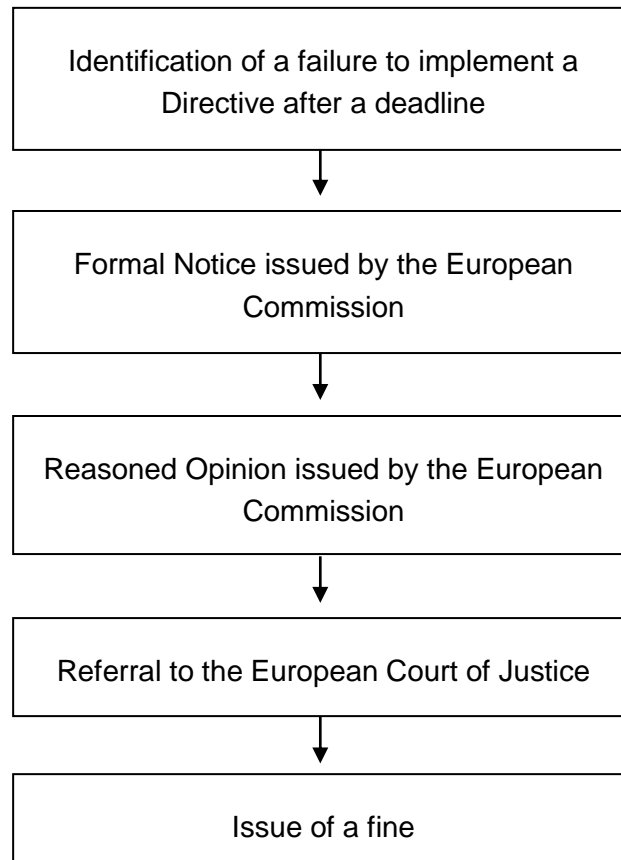
<sup>64</sup> Website of the European Council: <http://www.european-council.europa.eu/home-page.aspx?lang=en>.

<sup>65</sup> Website of the European Parliament: <http://www.europarl.europa.eu/en/headlines/>.



European Court of Justice (ECJ)<sup>66</sup> which, if the Member State is found to be in breach of the Directive, can issue a fine that continues on a daily basis until the Directive is implemented<sup>67</sup>. Individuals and other institutions can also refer cases to the ECJ regarding a failure to implement a Directive.

#### *European Commission Infringement Procedure*



For example, a Formal Notice was issued to the UK in October 2003 regarding implementation of the Race Directive (2000/43/EC) and a Reasoned Opinion in February 2004, but it did not proceed to the fine stage for the UK (but it did for four other states against which similar action had been taken at the same time)<sup>68</sup>.

The Commission has initiated proceedings against the UK on 78 occasions in the past ten years, but none of these cases has reached the stage of a fine being issued<sup>69</sup>. This includes an application against the UK for failing to notify the Commission on the implementation of the Equal Treatment Directive<sup>70</sup> in Gibraltar. Other recent

<sup>66</sup> Website of the European Court of Justice: [http://europa.eu/institutions/inst/justice/index\\_en.htm](http://europa.eu/institutions/inst/justice/index_en.htm).

<sup>67</sup> The infringement process is indicated in Article 258 of the Consolidated Treaty of the European Union: [http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01\\_en08.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01_en08.pdf).

<sup>68</sup> Erica Howard, *The EU Race Directive: developing the protection against racial discrimination within the EU* (2010), pp.33-34.

<sup>69</sup> PQ 1611205 House of Lords, 27 April 2011: <http://services.parliament.uk/hansard/Lords/bydate/20110427/writtenanswers/part012.html>.

<sup>70</sup> Directive 2004/113/EC on the principle of equal treatment between men and women in the access to goods and services.

discrimination-related incidences where a Reasoned Opinion has been issued include the following:

- Reasoned Opinion to 14 states, including the UK, regarding the implementation of the Race Directive, 27 June 2007<sup>71</sup>
- Reasoned Opinion to the UK regarding the incorrect implementation of the Framework Employment Directive, 20 November 2009<sup>72</sup>
- Reasoned Opinion to the UK and Denmark for the incomplete implementation of the Equal Treatment Directive, 20 November 2009<sup>73</sup>
- Reasoned Opinion to the UK and Italy on the failure to communicate implementation of the Recast Directive, 28 January 2010<sup>74</sup>
- Reasoned Opinion to the UK to end discriminatory practices relating to the right to reside for workers from eight of the accession states of 2004, 28 October 2010<sup>75</sup>
- Reasoned Opinion to the UK to amend legislation that permits differential pay to non-UK seafarers, 27 January 2011<sup>76</sup>

Where implementation has not been complete, the Commission may inform the Member State, however, individuals can also raise implementation issues with the Commission, as has been the case with sex discrimination legislation in Northern Ireland, resulting in the introduction of the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2011 in March 2011.

While the EU had issued Directives relating to anti-discrimination measures in employment for many years, the Treaty of Amsterdam in 1997 amended the EU Treaty to require Members States to protect certain groups from discrimination. The new measure led to a number of so-called 'Article 13' Directives<sup>77</sup>, reflecting the relevant Treaty article at the time, which currently exists under Article 19 of the present Treaty, as follows<sup>78</sup>:

*Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after*

<sup>71</sup> Directive 2000/43/EC: <http://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=114&furtherNews=yes>.

<sup>72</sup> Directive 2000/78/EC. Press release: <http://ec.europa.eu/social/main.jsp?catId=423&langId=en&newsId=639&furtherNews=yes>.

<sup>73</sup> Directive 2002/73/EC. Press release: <http://ec.europa.eu/social/main.jsp?catId=418&langId=en&newsId=638&furtherNews=yes>.

<sup>74</sup> Directive 2006/54/EC. Press release: <http://ec.europa.eu/social/main.jsp?catId=418&langId=en&newsId=672&furtherNews=yes>.

<sup>75</sup> Press release: <http://ec.europa.eu/social/main.jsp?catId=457&langId=en&newsId=917&furtherNews=yes>.

<sup>76</sup> Press release: <http://ec.europa.eu/social/main.jsp?catId=89&langId=en&newsId=979&furtherNews=yes>.

<sup>77</sup> Helen Meenan, *Equality Law in an Enlarged European Union: Understanding the Article 13 Directives* (2007), p.3.

<sup>78</sup> Consolidated Versions of the Treaty Establishing European Union and the Treaty on the Functioning of the European Union: [http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01\\_en08.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01_en08.pdf).

*obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*

The consequence of this was the production of a number of Directives relating to non-discrimination<sup>79</sup>, significantly the following:

- The Race Directive 2000<sup>80</sup> - This prohibits discrimination based on racial or ethnic origin and defines direct and indirect discrimination and harassment, covering the fields of employment, training, social protection, education and access to goods and services
- The Framework Employment Directive 2000<sup>81</sup> - This prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation in employment and defines direct and indirect discrimination and harassment
- Gender Directives 2002 and 2004<sup>82</sup> - The first prohibits discrimination in employment on the grounds of sex and defines direct and indirect discrimination, harassment and sexual harassment and the second prohibits discrimination in access to goods and services

The Recast Directive of 2006<sup>83</sup> consolidates sex discrimination law, repealing Directives from before 2000 and also the Equal Treatment Directive of 2002, the detail of which is contained within this Directive. Consequently, there is no intended action to amend domestic legislation as a result of this Directive<sup>84</sup>.

The process of anti-discrimination law development has created inequalities between equality grounds. For example, the Race Directive gives protections beyond employment, but religion and belief, sexual orientation, disability and age are only protected grounds in reference to employment. Similarly, the Directives relating to gender are narrower in scope than the Race Directive with reference to access to social welfare<sup>85</sup>. However, plans for a 'Horizontal Directive' to harmonise the various grounds are under debate in the EU institutions<sup>86</sup>.

<sup>79</sup> Dagmar Shiek, 'From EU Non-Discrimination Law towards Multi-Dimensional Equality Law for Europe' in Dagmar Shiek and Victoria Chege, *European Union Non-Discrimination Law: Comparative Perspectives on Multi-Dimensional Equality Law* (2009), p.4; European Agency for Fundamental Rights, *Handbook on European Non-Discrimination Law* (2010), p.14.

<sup>80</sup> Council Directive 2000/43/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>.

<sup>81</sup> Council Directive 2000/78/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

<sup>82</sup> Council Directive 2002/73/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:269:0015:0020:EN:PDF>; Council Directive 2004/113/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF>.

<sup>83</sup> Council Directive 2006/54/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF>.

<sup>84</sup> The Office of the First Minister and Deputy First Minister has produced a table detailing how this legislation is already transposed into domestic legislation in Northern Ireland: <http://www.ofmdfmi.gov.uk/transposition-table>.

<sup>85</sup> Dagmar Shiek, 'From EU Non-Discrimination Law towards Multi-Dimensional Equality Law for Europe' in Dagmar Shiek and Victoria Chege, *European Union Non-Discrimination Law: Comparative Perspectives on Multi-Dimensional Equality Law* (2009), pp.4-5.

<sup>86</sup> European Agency for Fundamental Rights, *Handbook on European Non-Discrimination Law* (2010), p.14.

One significant critique of EU law is that it applies primarily to EU citizens and by its differential treatment of third country nationals, is not compatible with the effective protection of human rights<sup>87</sup>.

The status of EU law in the UK may be clarified in the future. Clause 18 of the European Union Bill, if passed, provides for an Act of Parliament to be passed before EU law is applicable in UK law<sup>88</sup>. Currently, some interpretations of the European Communities Act 1972 are that EU law has status in domestic law where there are gaps between EU and UK legislation, as reflected in some case law, but this would clarify the requirement that UK legislation under which EU obligations will be fulfilled takes precedence<sup>89</sup>.

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<sup>87</sup> Erica Howard, *The EU Race Directive: developing the protection against racial discrimination within the EU* (2010), p.91.

<sup>88</sup> European Union Bill: <http://services.parliament.uk/bills/2010-11/europeanunion.html>.

<sup>89</sup> See the Explanatory Memorandum to the European Union Bill: <http://www.publications.parliament.uk/pa/bills/lbill/2010-2011/0055/en/2011055en.htm>.

## 4 Human Rights

The concept of human rights in the UK is not new, as the Magna Carta in 1215 and the Bill of Rights of 1689 set historical precedents and the UK was one of the original eight countries to ratify the European Convention on Human Rights (ECHR) in 1950<sup>90</sup>.

However, it was not until 1998 that the substantive articles of the Convention were brought into UK law, as the Human Rights Act 1998<sup>91</sup>, in force from 2 October 2000.

The Human Rights Act places the European Convention on a footing where<sup>92</sup>:

- Legislation must be deemed compatible with the Convention when passed
- Public authorities must not act unlawfully in breach of the Convention
- Courts have power of remedy for a breach of the Convention

The remedies that can be pursued under the Human Rights Act are as follows<sup>93</sup>:

- If the public body is acting lawfully according to primary legislation, a declaration of incompatibility with the Convention can be pursued
- If a decision of a public authority is being challenged, a judicial review can be pursued to quash the decision
- If the complaint refers to an ongoing activity, an injunction can be pursued to stop that activity
- If the action has caused harm, damages can be pursued
- If evidence is obtained in breach of a Convention right, the exclusion of evidence can be pursued

If satisfaction cannot be obtained domestically, a case can be brought to the European Court of Human Rights in Strasbourg. An application can be made by application form or letter and should state the facts and the rights (by Convention Article) that have been breached, which is then considered by the European Court for admissibility<sup>94</sup>. If a case is accepted and pursued and a ruling goes against the state, the following remedies to the judgement of the European Court are applied<sup>95</sup>:

- Just satisfaction – a sum of money to the applicant
- Individual measures – putting the applicant in a position as if the breach of the Convention had not occurred

<sup>90</sup> Mark Janis et al, *European Human Rights Law* (2008), pp.3-4; text of the European Convention on Human Rights: <http://www.hri.org/docs/ECHR50.html>.

<sup>91</sup> Human Rights Act 1998: <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

<sup>92</sup> David Hoffman and John Rowe QC, *Human Rights in the UK* (2006), p.55.

<sup>93</sup> David Hoffman and John Rowe QC, *Human Rights in the UK* (2006), p.80.

<sup>94</sup> Philip Leach, *Taking a Case to the European Court of Human Rights* (2005), pp.19, 47.

<sup>95</sup> Lord Chancellor and Secretary of State for Justice, *Responding to Human Rights Judgements: the Government Response to the Joint Committee on Human Rights' Thirty First Report of Session 2007-2008* (2009), p.4.

- General measures – prevention of the breach of the Convention happening again

In real terms, observers have noted that, while there has been a considerable increase in claims since the Human Rights Act, there is no more willingness by judges to rule against the government than before the Act<sup>96</sup>.

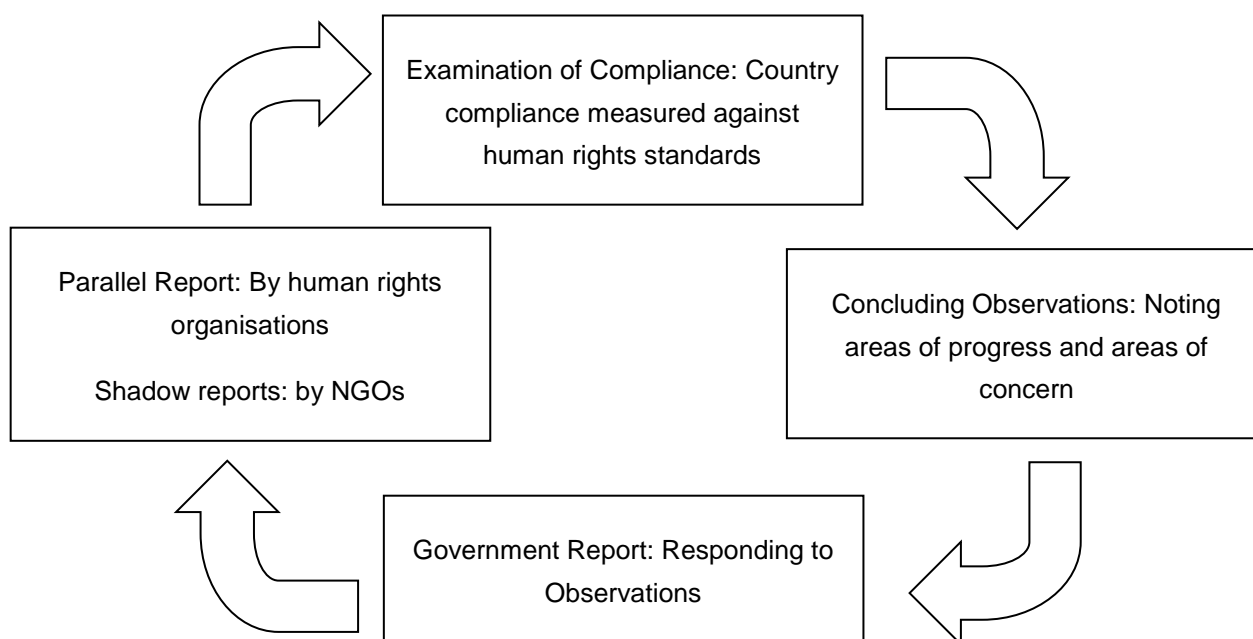
In Northern Ireland, the ECHR is the reference point for defining human rights and the standard by which Bills have to be scrutinised<sup>97</sup>.

While the ECHR is the primary human rights instrument that has been brought into domestic legislation, the UK is signatory to a range of human rights obligations, which are discussed below.

#### 4.1 United Nations Treaties

The primary UN document for human rights is the Universal Declaration of Human Rights in 1948<sup>98</sup>, which provides a baseline minimum for human rights standards globally, although, unlike conventions, it is not a binding treaty. Since then, there has been a range of more binding treaties covering different areas of human rights.

Generally, the implementation of a UN treaty is overseen by a committee, which examines signatory states at periodic intervals. Countries are required to provide a report on progress in adopting the standards, other relevant national organisations, such as NGOs, can contribute to a parallel report, the state is then examined by the committee and concluding remarks are made with any relevant areas for action. This process is summarised below.



<sup>96</sup> David Weiden, 'Examining the Influence of the European Convention on Human Rights in the Northern Ireland Courts' in *Social Science Journal* (2009) 46 pp.150-163.

<sup>97</sup> See the Northern Ireland Act 1998, Articles 13(4), 69(11)(b) and 98(1)(b); Schedule 1 Art.3(c); Schedule 7 Art.69(11)(b).

<sup>98</sup> Universal Declaration of Human Rights: <http://www.un.org/en/documents/udhr/index.shtml>.

Most state reports tend to be overdue, but these are mainly from states that are ranked lower on the Human Rights Development Index. Sessions tend to be delayed by a number of years, but this differs according to treaty. There is some reliance on NGOs to balance state reports when it comes to assessing compliance and a Committee rapporteur would visit the country to gather evidence<sup>99</sup>.

There are two approaches to international human rights standards by states<sup>100</sup>:

1. Monist – upon ratification, international law becomes national law
2. Dualist – national and international law are separate

The UK takes a dualist approach, so unless international standards are transposed into domestic legislation, they are not directly justiciable. However, the standards set by the UN are the basic minimum expected to be implemented universally and as such are aimed towards states which may not have the resources or welfare infrastructure that are available to wealthier countries. Any failure to meet these minimum standards, therefore, is a source of embarrassment to a country like the UK. In addition, international treaties are binding in international law and the standards the UK has signed up to can appear in case law, for example, at the European Court of Human Rights<sup>101</sup>.

Some treaties have different mechanisms for monitoring the implementation of the standards, which are briefly summarised individually below.

## **Disability**

The international standards relating to disability are enshrined in the newest UN treaty, the UN Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>102</sup>, adopted in 2006. The Committee on the Rights of Persons with Disabilities<sup>103</sup> has not yet set a date for the examination of the UK, but a draft report from the UK government is currently out for consultation<sup>104</sup>. This has a separate section on Northern Ireland and references to Northern Ireland are made in each thematic section.

The UNCRPD differs from other UN treaties in that it has been ratified by the EU, which means that it will now be used as a standard in the development of EU legislation relating to disabled people. In Northern Ireland, the independent monitoring

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<sup>99</sup> Anne Bayefsky, *The UN Human Rights Treaty System: Universality at the Crossroads* (2001), pp.8, 42.

<sup>100</sup> Lammy Betten and Nicholas Grief, *EU Law and Human Rights* (1998), p.12.

<sup>101</sup> See, for example, *Opuz v. Turkey* ECHR 33401/02 9 June 2009; *Demir and Baykara v. Turkey* ECHR 34503/97 21 November 2006.

<sup>102</sup> UNCRPD text: <http://www.un.org/disabilities/convention/conventionfull.shtml>.

<sup>103</sup> Website of the Committee: <http://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx>.

<sup>104</sup> Consultation web page at the Office for Disability Issues: <https://www2.dwp.gov.uk/odi/un-convention-on-the-rights-of-disabled-people/have-your-say.asp>.

mechanism for the Convention comprises the Human Rights Commission<sup>105</sup> and the Equality Commission<sup>106</sup>.

## Gender

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)<sup>107</sup>, adopted in 1979 and in force from 1981, is the primary UN treaty governing the treatment of women. The Committee on the Elimination of Discrimination Against Women<sup>108</sup> last examined the UK in 2008. The following action points with particular reference to Northern Ireland were included in the Concluding Observations<sup>109</sup>:

- Dissemination of understanding of the provisions and standards of the Convention in the development of single equality legislation
- Provision of separate facilities and improvement of conditions for women in prison
- Increase of the representation of women in the judiciary
- Full implementation of UN Security Council Resolution 1325<sup>110</sup>
- Initiation of a process of public consultation on the introduction of abortion law

The UK government responded to the Concluding Observations in 2009<sup>111</sup>, but the substantive issues relating to Northern Ireland were not tackled. Indeed, the point that Northern Ireland was congratulated on by the Committee, the proposed introduction of single equality legislation, has not as yet come to pass in Northern Ireland.

The Optional Protocol to CEDAW<sup>112</sup>, to which the UK is signatory, allows for two further mechanisms separate to the periodic examination procedure, as follows:

1. Communication by or on behalf of individuals or groups of complaints to the Committee (Articles 2-4)
2. Inquiry by the Committee into 'systematic or grave' abuse (Articles 8-9)

<sup>105</sup> UNCRPD web pages of the Human Rights Commission:

[http://www.nihrc.org/index.php?option=com\\_content&task=view&id=99&Itemid=107](http://www.nihrc.org/index.php?option=com_content&task=view&id=99&Itemid=107).

<sup>106</sup> UNCRPD web pages of the Equality Commission:

[http://www.equalityni.org/sections/default.asp?secid=6&cms=Policy\\_UNCRPD&cmsid=89\\_733&id=733](http://www.equalityni.org/sections/default.asp?secid=6&cms=Policy_UNCRPD&cmsid=89_733&id=733).

<sup>107</sup> Text of CEDAW: <http://www2.ohchr.org/english/law/cedaw.htm>.

<sup>108</sup> Committee website: <http://www2.ohchr.org/english/bodies/cedaw/index.htm>.

<sup>109</sup> Concluding Observations of the 41<sup>st</sup> Session of the Committee on the Elimination of Discrimination Against Women: United Kingdom of Great Britain and Northern Ireland, 30 June – 18 July 2008:

<sup>110</sup> See the section on Resolution 1325 below.

<sup>111</sup> Government Equalities Office, *Response by the United Kingdom (UK) and Northern Ireland (NI) to Select Recommendations of the United Nations Committee on the Elimination of all forms of Discrimination Against Women following the Examination of the UK and NI's 5<sup>th</sup> and 6<sup>th</sup> Periodic Reports on July 10 2008*, July 2009:

<http://www.equalities.gov.uk/pdf/ONE-YEAR-ON%20REPORT%20TO%20CEDAW%202009.pdf>.

<sup>112</sup> CEDAW Optional Protocol: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/774/73/PDF/N9977473.pdf?OpenElement>.



Recourse to the Optional Protocol can only be undertaken once all domestic and regional remedies have been exhausted. An evaluation of the Optional Protocol in 2008<sup>113</sup> found that it had been used very rarely, and then by complainants in states that were already committed to greater protection under the UNHCR<sup>114</sup> and the two complaints against the UK were inadmissible. Since the evaluation, four more complaints have been processed by the Committee<sup>115</sup>. The inquiry procedure has been invoked once, against Mexico.

While the Optional Protocol has been underused, it remains an instrument by which individuals and NGOs can raise issues that can result in recommendations of individual recompense and/or specific measures being undertaken by the State Party.

### **UN Security Council Resolution 1325 and the Beijing Platform for Action**

The United Nations Security Council passed Resolution 1325 in 2000<sup>116</sup>, relating to the treatment of women in conflict areas. This broadly calls for specific provisions for caring for the needs of women and girls, recognition of the differential impact of conflict on women and girls and the increased representation of women at all levels of decision-making.

The UK Government promotes Resolution 1325 abroad, but this is not applied to Northern Ireland. However, research evidence indicates the differential impact of the conflict on women and the need for women's involvement in peacebuilding<sup>117</sup> and initiatives for building peace, such as the Programme for Peace and Reconciliation in Northern Ireland and the Border Regions of Ireland, have referred to the Resolution for specific actions relating to women<sup>118</sup>. Women's NGOs in Northern Ireland have also campaigned for the extension of the Resolution to Northern Ireland<sup>119</sup>.

In terms of political representation, the Sex Discrimination (Election Candidates) Act 2002<sup>120</sup> permits political parties to choose women in the place of men where there is underrepresentation, should they chose to do so. However this measure has not been utilised by the parties in Northern Ireland. Current representation in the Northern Ireland Assembly is 20 of the 108 MLAs (18.5%).

<sup>113</sup> Jim Murdoch, *The Optional Protocol to the United Nations Convention for the Elimination of all forms of Discrimination Against Women (CEDAW): The Experience of the United Kingdom* (2008).

<sup>114</sup> Complaints against Austria (2), Germany (1), Hungary (2), Netherlands (1), Spain (1), Turkey (1), UK (2).

<sup>115</sup> Two complaints against France, one against the Netherlands and one against the Philippines.

<sup>116</sup> Text of Resolution 1325 (2000): [http://www.un.org/events/res\\_1325e.pdf](http://www.un.org/events/res_1325e.pdf).

<sup>117</sup> For example, Michael Potter, 'Women, Civil Society and Peacebuilding in Northern Ireland: Paths to Peace Through Women's Empowerment' in Christopher Farrington (ed) *Global Change, Civil Society and the Northern Ireland Peace Process* (2008).

<sup>118</sup> For example, Special EU Programmes Body, *Peace III: EU Programme for Peace and Reconciliation 2007-2013 Northern Ireland and the Border Regions of Ireland – Operational Programme* (2007), pp.44, 72: [http://www.seupb.eu/Libraries/PEACE\\_III\\_Reports\\_Pubs/PEACE\\_III\\_Operational\\_Programme.sflb.ashx](http://www.seupb.eu/Libraries/PEACE_III_Reports_Pubs/PEACE_III_Operational_Programme.sflb.ashx).

<sup>119</sup> For example, the event by the Northern Ireland Women's European Platform (NIWEP) 'UNSCR1325 on Trial': <http://www.niwep.org.uk/id42.html>.

<sup>120</sup> Sex Discrimination (Election Candidates) Act 2002: <http://www.legislation.gov.uk/ukpga/2002/2/contents>.

The Fourth World Conference on Women in Beijing in 1995 resulted in the Platform for Action<sup>121</sup>, a declaration of intent to address fundamental disadvantages experienced by women. The Platform constitutes commitments in terms of women and poverty, health, education and training, violence against women, women in armed conflict, women in the economy, decision making, human rights, gender stereotyping, inequality and discrimination and the violation of the rights of girls. The UK report for the fifteen year review of Beijing states<sup>122</sup>:

*The Beijing Declaration and Platform for Action, alongside the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), constitute the most comprehensive set of international commitments to gender equality and women's rights and will continue play an important role in guiding the UK's work to promote gender equality and women's empowerment across England, Northern Ireland, Scotland and Wales.*

While the Declaration itself may not be directly justiciable, the UK has made a commitment to its implementation.

### **Race and Ethnicity**

The Convention on the Elimination of all forms of Racial Discrimination (CERD)<sup>123</sup> was adopted in 1965 and entered into force in 1969. The Committee on the Elimination of Racial Discrimination<sup>124</sup> last examined the UK in 2003 and is due to examine the UK again in August 2011. The UK has submitted a report on how the provisions of the Convention are being met, with detailed evidence from Northern Ireland<sup>125</sup>.

Article 14 of the Convention enables individuals to submit complaints to the Committee, in the same manner as the procedure for CEDAW, but there is no inquiry system for CERD. However, there is an Early Warning Procedure, where the Committee contacts a state with regard to an impending breach of the Convention. This has occurred on 74 occasions since its adoption in 2007, in respect of 34 states and two international bodies. The UK has been contacted once, in 2010, with regard to the eviction of Romany and Irish Travellers from a site in England<sup>126</sup>.

Northern Ireland was not mentioned specifically in the 2003 Concluding Observations for the UK, however, this precedes the period of significant migration to Northern Ireland from 2004 and the resulting demographic change. The submission of the

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<sup>121</sup> The Beijing Platform for Action 1995: <http://www.un.org/womenwatch/daw/beijing/beijingdeclaration.html>.

<sup>122</sup> Questionnaire to the Governments on the Implementation of the Beijing Declaration and Platform for Action (1995) and the Outcome of the Twenty-Third Special Session of the General Assembly (2000) – UK Response, May 2009, p.25: <http://live.unece.org/fileadmin/DAM/Gender/documents/Beijing+15/UK.pdf>.

<sup>123</sup> CERD text: <http://www2.ohchr.org/english/law/cerd.htm/>

<sup>124</sup> Committee website: <http://www2.ohchr.org/english/bodies/cerd/>.

<sup>125</sup> Reports are available of the Committee session page: <http://www2.ohchr.org/english/bodies/cerd/cerds79.htm>.

<sup>126</sup> CERD Committee letter to the UK Government, 12 March 2010: [http://www2.ohchr.org/english/bodies/cerd/docs/UK\\_12.03.2010.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/UK_12.03.2010.pdf).

Northern Ireland Human Rights Commission to CERD includes the following concerns<sup>127</sup>:

- The differential treatment of non-citizens
- The exclusion of sectarianism as a form of racism, leading to insufficient provisions to address sectarianism
- The level of race hate crimes and the ineffectiveness of the framework to prosecute offenders
- Racial profiling by police and immigration officials
- The situation and treatment of Irish Travellers

The World Conference Against Racism in Durban in 2001 resulted in the Durban Declaration and Programme for Action<sup>128</sup>. Similarly to the Beijing Platform for Action, the Durban Declaration does not constitute an international treaty, but contains a list of internationally agreed principles and actions that states are expected to adhere to. Reviewed at a conference in 2009, Durban does not have the same reporting requirement as Beijing<sup>129</sup>.

In 1990, the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families<sup>130</sup> was adopted. The UK is not a signatory to the Convention, but the standards remain a reference point for the treatment of migrant workers.

The Durban Declaration and Programme for Action and CERD were cited in formulation of the Racial Equality Strategy for Northern Ireland<sup>131</sup>.

## Age

There are no UN treaties separately protecting the rights of older people, but the UN Convention on the Rights of the Child (CRC)<sup>132</sup> was adopted in 1989 and entered into force in 1990. The Committee on the Rights of the Child<sup>133</sup> last examined the UK in 2008 and the following concerns were raised specifically with regard to Northern Ireland in the Concluding Observations<sup>134</sup>:

<sup>127</sup> Northern Ireland Human Rights Commission, *Submission to the Committee for the Elimination of all Forms of Racial Discrimination: Examination of the Eighteenth and Nineteenth Periodic Reports of the United Kingdom of Great Britain and Northern Ireland: List of Themes*, February 2011:

[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/123/Submission\\_on\\_ICERD\\_\(February\\_2011\).pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/123/Submission_on_ICERD_(February_2011).pdf).

<sup>128</sup> Durban Declaration: <http://www.un.org/WCAR/durban.pdf>.

<sup>129</sup> Durban Review Conference 2009: <http://www.un.org/durbanreview2009/>.

<sup>130</sup> Text of the Migrant Workers Convention: <http://www2.ohchr.org/english/law/cmww.htm>.

<sup>131</sup> Office of the First Minister and Deputy First Minister, *A Racial Equality Strategy for Northern Ireland 2005-2010*, p.13.

<sup>132</sup> Text of the Convention on the Rights of the Child: <http://www2.ohchr.org/english/law/crc.htm>.

<sup>133</sup> Committee website: <http://www2.ohchr.org/english/bodies/crc/>.

<sup>134</sup> Committee on the Rights of the Child Forty Ninth Session - Consideration of Reports Submitted by States Parties under Article 44 of the Convention - Concluding Observations: United Kingdom of Great Britain and Northern Ireland, 28 October 2008: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>.

- Riot control methods
- Mental health as a result of the conflict
- Child poverty
- Segregation of education
- Academic selection
- Treatment of asylum seeking and migrant children

The Committee noted that the development of a Bill of Rights for Northern Ireland could be an opportunity to incorporate the Convention rights.

### **Civil and Political Rights**

The International Covenant on Civil and Political Rights (ICCPR)<sup>135</sup> was adopted in 1966 and entered into force in 1976. The UK was last examined by the Committee<sup>136</sup> in 2008 and the Concluding Remarks included the following concerns<sup>137</sup>:

- Inquiries into deaths and ministerial control under the Inquiries Act 2005
- Different court proceedings to the rest of the UK, especially non-jury courts
- The removal of deportation cases to Britain and lack of holding facilities in Northern Ireland

The Covenant does not have any additional monitoring or enforcement mechanisms.

### **Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights (CESCR)<sup>138</sup> was adopted in 1966 and was in force in 1976. The UK was last examined by the Committee in 2009 and the Concluding Remarks<sup>139</sup> included the following concerns specific to Northern Ireland:

- Draft Bill of Rights for Northern Ireland to be enacted
- The lack of comprehensive equality legislation such as the Equality Bill (now Act) in Northern Ireland

<sup>135</sup> Text of the ICCPR: <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>136</sup> Website of the Human Rights Committee: <http://www2.ohchr.org/english/bodies/hrc/index.htm>.

<sup>137</sup> Consideration of Reports Submitted by States Parties under Article 40 of the Covenant – Concluding Observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland, 30 July 2008: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement>.

<sup>138</sup> Text of CESCR: <http://www2.ohchr.org/english/law/cescr.htm>.

<sup>139</sup> Consideration of the Reports by the States Parties under Articles 16 and 17 of the Covenant: Concluding Remarks of the Committee on Economic, Social and Cultural Rights – United Kingdom of Great Britain and Northern Ireland, the Crown dependencies and the Overseas Territories, 12 June 2009: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>.

- Lack of abortion legislation on health grounds to prevent unsafe or clandestine abortions in cases of rape, incest or foetal abnormality
- Discriminatory nature of the Unauthorised Encampments (Northern Ireland) Order 2005<sup>140</sup> and the lack of accommodation provision for Roma/Gypsies and Travellers
- The level of inequality and deprivation in Northern Ireland
- Alarming suicide rates in Northern Ireland
- The lack of protection and promotion of the Irish language, lacking statutory equivalence with Welsh or Scottish Gaelic

### Other Rights

The Convention Against Torture was adopted in 1984 and entered into force in 1987<sup>141</sup>. The Committee<sup>142</sup> last examined the UK in 2004, the Concluding Observations of which included that the UK should investigate all deaths by lethal force in Northern Ireland and consider designating the Northern Ireland Human Rights Commission as a monitoring body under the Optional Protocol<sup>143</sup>. The Optional Protocol in 2002 (in force 2006)<sup>144</sup> established a Sub-Committee on Prevention which can visit states to investigate allegations of torture and advise states in the prevention of torture.

The Universal Periodic Review was introduced in 2006 and looks at compliance with all the human rights treaties at once<sup>145</sup>. The outcomes are very general and, at the examination of the UK in 2008, while the outcomes of prosecutions relating to paramilitary activity in Northern Ireland were raised as an issue during the session, there were no recommendations specific to Northern Ireland in the final Working Group report<sup>146</sup>. According to the four year cycle, the UK would be next examined in 2012.

## 4.2 Council of Europe Treaties

The human rights standards established through the Council of Europe<sup>147</sup> are well known through the European Convention on Human Rights, most of which is directly justiciable through the Human Rights Act, with recourse to the European Court of

<sup>140</sup> Unauthorised Encampments (Northern Ireland) Order 2005: <http://www.legislation.gov.uk/nisi/2005/1961/contents>.

<sup>141</sup> Text of CAT: <http://www2.ohchr.org/english/law/cat.htm>.

<sup>142</sup> Committee website: <http://www2.ohchr.org/english/bodies/cat/>.

<sup>143</sup> Consideration of Reports by States Parties under Article 19 of the Convention - Conclusions and recommendations of the Committee against Torture - United Kingdom of Great Britain and Northern Ireland, Crown Dependencies and Overseas Territories 10 December 2004: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/451/02/PDF/G0445102.pdf?OpenElement>.

<sup>144</sup> Optional Protocol to the Convention Against Torture: <http://www2.ohchr.org/english/law/cat-one.htm>.

<sup>145</sup> Office of the High Commissioner for Human Rights web pages on the Universal Periodic Review: <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

<sup>146</sup> Reports from the UK examination in 2008 are available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/GBSession1.aspx>.

<sup>147</sup> Council of Europe website: <http://www.coe.int/>.

Human Rights (see above)<sup>148</sup>. However, there are other Council of Europe Treaties that are less well known, and although they do not carry the same legal weight as the ECHR, they would have a similar status to the UN treaties.

Some of the Council of Europe treaties have associated monitoring systems and committees which operate in a similar way as the UN treaties, the main ones being the Charter on Regional or Minority Languages, Framework Convention for the Protection of National Minorities and the European Social Charter. However, the relevant committee visits the country being examined, rather than only sending a rapporteur, and there is an active Commissioner for Human Rights<sup>149</sup>, who promotes human rights standards among the 47 member states. There are 210 Council of Europe treaties<sup>150</sup>, including additional protocols, so only some significant ones are outlined below.

### **Age**

There are no treaties relating specifically to old age, but the UK has ratified the Convention on the Legal Status of Children Born out of Wedlock<sup>151</sup>, Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children<sup>152</sup> and the Convention on the Adoption of Children<sup>153</sup> (a revised Convention on the Adoption of Children<sup>154</sup> and a Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>155</sup> have been signed but not ratified).

### **Gender**

A Convention on Preventing and Combating Violence against Women and Domestic Violence<sup>156</sup> was adopted on 11 May 2011. The UK is not one of the initial 13 signatories.

### **Indigenous Language Rights**

The UK has ratified the Charter on Regional or Minority Languages<sup>157</sup>, which has an associated committee and monitoring system, examining state compliance every three years. The UK was last examined in 2009, during which it was recommended that the UK “adopt and implement a comprehensive Irish language policy, preferably through

<sup>148</sup> The European Court of Human Rights only rules on the civil and political rights of the ECHR.

<sup>149</sup> Currently Thomas Hammarberg; Commissioner’s website: [http://www.coe.int/t/commissioner/default\\_en.asp](http://www.coe.int/t/commissioner/default_en.asp).

<sup>150</sup> Full list of Council of Europe Treaties: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>.

<sup>151</sup> Convention on the Rights of Children Born out of Wedlock 1975: <http://conventions.coe.int/Treaty/en/Treaties/Html/085.htm>.

<sup>152</sup> Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children 1980: <http://conventions.coe.int/Treaty/en/Treaties/Html/105.htm>.

<sup>153</sup> Convention on the Adoption of Children 1967: <http://conventions.coe.int/Treaty/en/Treaties/Html/058.htm>.

<sup>154</sup> Convention on the Adoption of Children (Revised) 2008: <http://conventions.coe.int/Treaty/en/Treaties/Html/202.htm>.

<sup>155</sup> Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007: <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm>; see also the associated website: [http://www.coe.int/t/dghl/standardsetting/children/default\\_EN.asp?](http://www.coe.int/t/dghl/standardsetting/children/default_EN.asp?).

<sup>156</sup> Convention on preventing and combating violence against women and domestic violence 2011: <http://conventions.coe.int/Treaty/EN/Treaties/Html/210.htm>; this Convention also has an associated Committee: [http://www.coe.int/t/dghl/standardsetting/violence/default\\_EN.asp?](http://www.coe.int/t/dghl/standardsetting/violence/default_EN.asp?).

<sup>157</sup> Charter on Regional or Minority Languages 1992: <http://conventions.coe.int/Treaty/en/Treaties/Html/148.htm>.

the adoption of legislation” and a strategy for Ulster Scots<sup>158</sup>. The next examination is in 2012.

The UK has also ratified the Framework Convention for the Protection of National Minorities<sup>159</sup>, which likewise has a monitoring mechanism<sup>160</sup>. The last examination was in 2007, including the following recommendations relating to Northern Ireland<sup>161</sup>:

- Further efforts to collect data on minority ethnic groups
- Promote more awareness of the benefits of shared housing and shared education between the two main communities in Northern Ireland
- Enhance the promotion of languages and cultures of the people of Northern Ireland, noting the lack of clarity of the status of the Irish language

The next examination process for the UK is under way, with the UK making commitments to cross-border broadcasting and an Irish Language Strategy in Northern Ireland<sup>162</sup>.

### Other Rights

There are no Council of Europe treaties relating specifically to disability, religious belief, political opinion or sexual orientation, other than where they are mentioned in other treaties, such as the ECHR.

The European Social Charter was ratified by the UK and contains specific rights to work and working conditions, protection of children, young people and women, vocational training, protection of health, access to social protection and welfare, economic protection and to work in the states of other Contracting Parties<sup>163</sup>. The Committee<sup>164</sup> examines different articles of the Charter annually and there have been no conclusions specific or exclusive to Northern Ireland in recent reports, although non-conformity with Article 16<sup>165</sup> of the Charter was raised in 2006 in respect of the lack of guaranteed accommodation for Roma/Travellers/Gypsies<sup>166</sup>.

<sup>158</sup> Recommendation RecChL(2010)4 of the Committee of Ministers on the Application of the European Charter for Regional and Minority Languages 21 April 2010:

[http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec3\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/Recommendations/UKCMRec3_en.pdf).

<sup>159</sup> Framework Convention on the Protection of National Minorities 1995:

<http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>.

<sup>160</sup> Advisory Committee website: [http://www.coe.int/t/dghl/monitoring/minorities/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/minorities/default_en.asp).

<sup>161</sup> Resolution CM/ResCMN(2008)7 on the Implementation of the Convention on the Protection of Regional Minorities by the United Kingdom, 9 July 2008:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_UK\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_UK_en.pdf).

<sup>162</sup> Third Report Submitted by the United Kingdom Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, pp.70-71:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_UK\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_UK_en.pdf).

<sup>163</sup> European Social Charter 1961: <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm>.

<sup>164</sup> Committee website: [http://www.coe.int/t/dghl/monitoring/socialcharter/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp).

<sup>165</sup> The right of the family to social, legal and economic protection.

<sup>166</sup> European Committee for Social Rights Conclusions XVIII-1 (United Kingdom) Articles 1, 5, 6, 12, 13, 16 and 19 of the Charter, 2006, p.18: [http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/UKXVIII1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/UKXVIII1_en.pdf).

There is a collective complaints system where employers' organisations, trades unions and registered international NGOs can make submissions to the Committee, but the UK is not a signatory to the Additional Protocol that established this<sup>167</sup>. The UK is a signatory to another Protocol to improve the reporting mechanisms of the Charter<sup>168</sup> and to the revised Social Charter<sup>169</sup>, but neither has been ratified.

The Convention for the Prevention of Torture<sup>170</sup> has been ratified by the UK and the associated Committee<sup>171</sup> visited Northern Ireland in 2008. While there were recommendations with regard to policies and procedures in the prison system in Northern Ireland, there were no recommendations relating to legislative change<sup>172</sup>.

The Convention Against Trafficking in Human Beings<sup>173</sup> has been ratified by the UK. Monitoring of the Convention is through a visit to the state by the Group of Experts on Action against Trafficking in Human Beings (GRETA)<sup>174</sup>, the evidence from which is considered by the Committee of the Parties to the Convention<sup>175</sup>. GRETA is to visit the UK in the First Evaluation Round (2010-2013), for which an evaluation questionnaire was sent in February 2011 with a deadline for response by September 2011.

#### 4.3 Human Rights in the European Union

The European Union has long been concerned with employment rights, extending to economic and social rights, rather than civil and political rights<sup>176</sup>. However, a Charter of Fundamental Rights was developed and adopted by the EU in 2000, covering a range of economic, social, civil and political rights<sup>177</sup>. According to some writers, the ratification of the Treaty of Lisbon made the Charter binding in Member States Article 6 of the Treaty of the European Union<sup>178</sup>, as amended by Lisbon<sup>179</sup>:

*now refers to the obligatory Charter of Fundamental Rights and thus provides the European Union with a modern set of largely justiciable rights which can be applied together with the fundamental rights derived by the European*

<sup>167</sup> Additional Protocol to the European Charter 1988: <http://conventions.coe.int/Treaty/en/Treaties/Html/128.htm>.

<sup>168</sup> Protocol Amending the Social Charter 1991: <http://conventions.coe.int/Treaty/en/Treaties/Html/142.htm>.

<sup>169</sup> European Social Charter (Revised) 1996: <http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm>.

<sup>170</sup> Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987: <http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm>.

<sup>171</sup> Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: <http://www.cpt.coe.int/en/default.htm>.

<sup>172</sup> Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 18 November to 1 December 2008, 8 December 2009: <http://www.cpt.coe.int/documents/gbr/2009-30-inf-eng.pdf>.

<sup>173</sup> Convention Against Trafficking in Human Beings 2005: <http://conventions.coe.int/Treaty/EN/Treaties/Html/197.htm>.

<sup>174</sup> GRETA web pages: [http://www.coe.int/t/dgh/monitoring/trafficking/Docs/Monitoring/GRETA\\_en.asp#TopOfPage](http://www.coe.int/t/dgh/monitoring/trafficking/Docs/Monitoring/GRETA_en.asp#TopOfPage).

<sup>175</sup> Committee web pages: [http://www.coe.int/t/dgh/monitoring/trafficking/Docs/Monitoring/COP\\_en.asp#TopOfPage](http://www.coe.int/t/dgh/monitoring/trafficking/Docs/Monitoring/COP_en.asp#TopOfPage).

<sup>176</sup> Lammy Betten and Nicholas Grief, *EU Law and Human Rights* (1998), p.70.

<sup>177</sup> Text of the Charter of Fundamental Rights of the European Union: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf).

<sup>178</sup> Consolidated Versions of the Treaty Establishing European Union and the Treaty on the Functioning of the European Union: <http://www.consilium.europa.eu/uedocs/cmsUpload/st06655-re01.en08.pdf>.

<sup>179</sup> Wolfgang Benedek, 'EU Action on Human and Fundamental Rights in 2009' in Wolfgang Benedek et al (eds), *European Yearbook on Human Rights 2010* (2010), p.88.



*Court of Justice from the constitutional traditions of member states as general principles of the law of the European Union*

In terms of implementation, the associated EU Agency for Fundamental Rights lacks teeth, being a research and advisory body only<sup>180</sup>, but the Charter rights are deemed to be justiciable through the European Court of Justice. Indeed, the UK (and Poland) has opted out of the Charter through an Optional Protocol, suggesting these rights are not justiciable in the UK. However, the rationale for the opt-out is that the Charter does not contain any new rights that are not already available in the EU and the opt-out is only based on where the Charter is incompatible with UK law<sup>181</sup>. In reality, regardless of Member States opting out of the Charter, it will still form the basis of case law decisions at the European Court of Justice and therefore will remain the primary reference point for rights within the EU.

The opposition in the UK to the Charter is the same as that opposed to a constitution for the UK, based on the doctrine of parliamentary sovereignty, rather than courts having the decision-making role. The Charter introduces certain economic and social rights that are hard to define in terms of 'adequate', for which there is no absolute standard, for example, of food, clothing, housing, etc.<sup>182</sup> However, while there is no modern Bill of Rights for the UK, the Human Rights Act 1998 substantially brings the European Convention on Human Rights into UK law, indeed, House of Lords European Committee report in 2000 expressed a preference for the EU to adopt the ECHR to the wider-ranging Charter<sup>183</sup>.

The Lords subsequently carried out an assessment of the impact of the Treaty of Lisbon, which concluded in terms of the UK opt-out of the Charter<sup>184</sup>:

*The Protocol is not an opt-out from the Charter. The Charter will apply in the UK, even if its interpretation may be affected by the terms of the Protocol.*

This has been confirmed by the Secretary of State for Justice in a debate in the House of Commons on the Charter, that it is a consolidation of existing rights already established in EU law and that the UK and Polish protocol does not constitute and opt-out<sup>185</sup>. Consequently, the Charter remains a reference point for justiciable human rights in the EU.

<sup>180</sup> Website of the EU Agency for Fundamental Rights: [http://www.fra.europa.eu/fraWebsite/home/home\\_en.htm](http://www.fra.europa.eu/fraWebsite/home/home_en.htm).

<sup>181</sup> Jean Paul Jacqu , 'Les droits fondamentaux dans le Trait  de Lisbonne' in Wolfgang Benedek et al (eds), *European Yearbook on Human Rights 2010* (2010), p.129.

<sup>182</sup> Ellie Palmer, 'The Role of Courts in the Domestic Protection of Socio-Economic Rights: The Unwritten Constitution of the UK' in Fons Coomans (ed), *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (2006), pp.129-131.

<sup>183</sup> House of Lords European Union Committee – Eighth Report (2000), Paragraph 154:

<http://www.publications.parliament.uk/pa/ld199900/ldselect/ldeucom/67/6707.htm#a53>.

<sup>184</sup> House of Lords European Union Committee, *The Treaty of Lisbon: An Impact Assessment – Volume I: Report* (2008), p.102: <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/62/62.pdf>.

<sup>185</sup> House of Commons European Committee B Debate 14 March 2011, Column 5: <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeucom/62/62.pdf>.

## 5 Developments in the Legislation in Northern Ireland

The equality and human rights guarantees are an integral part of the transition from conflict, with safeguards included in the Belfast Agreement<sup>186</sup> and the Northern Ireland Act 1998<sup>187</sup>. In addition, the Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission monitor and advise on equality and human rights issues.

A Single Equality Bill<sup>188</sup> was considered by the Northern Ireland Executive to harmonise and update the disparate equality legislation in Northern Ireland, but to date has not progressed since a consultation in 2004 and a ministerial statement in 2005<sup>189</sup>. Since then, the Equality Act 2010<sup>190</sup> has been passed in the rest of the UK, but does not extend to Northern Ireland. The legislation as it stands is not unchallenged, however, and the UK Government has added equality provisions to its online public policy discussion forum<sup>191</sup>. The result of this has been that there is a disparity between the rest of the UK and Northern Ireland.

The Equality Commission has outlined areas where the equality standards do not match, noting what the Equality Act does in comparison with equality legislation in Northern Ireland<sup>192</sup>:

- Harmonisation of equality law to give uniform protection, e.g. giving the same level of protection on the grounds of colour and nationality as on grounds of race and ethnic origin
- Greater protection for disabled people:
  - from indirect discrimination and ‘discrimination arising from disability’<sup>193</sup>,
  - from discrimination for carers of disabled people and people wrongly perceived to be disabled
  - from employers asking job applicants questions related to disability prior to making a job offer
  - to define themselves as disabled under a broader definition of disability
  - for disabled tenants to have reasonable adjustments to accommodation

<sup>186</sup> Text of the Belfast (Good Friday) Agreement 1998: <http://www.nio.gov.uk/agreement.pdf>.

<sup>187</sup> Northern Ireland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/47/contents>.

<sup>188</sup> The notion of a Single Equality Bill is not unchallenged. See the debate in the Northern Ireland Assembly 22 May 2007: <http://www.niassembly.gov.uk/record/reports2007/070522.htm>.

<sup>189</sup> Single Equality Bill web pages: <http://www.ofmdfmi.gov.uk/index/equality/single-equality-bill.htm>. Successive Assembly Questions, the most recent answered on 25 January 2011 (AQW3477/11), have received the response that no policy decision has been made on the matter.

<sup>190</sup> Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

<sup>191</sup> The Red Tape Challenge: <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/>

<sup>192</sup> Equality Commission for Northern Ireland, *The Gaps between GB and NI Equality Law – Briefing Note*, January 2011: <http://www.equalityni.org/archive/pdf/EqualityAct2010gapsinNI2011.pdf>.

<sup>193</sup> The Disability Discrimination Act 1995 refers to ‘disability-related discrimination’.

- Extension of the prohibition of age discrimination to outside the workplace
- Strengthening of equal pay provisions by prohibiting prevention of employees discussing pay and making certain circumstances of sex discrimination easier to claim
- Provision for employers and service providers to take positive action measures across equality grounds
- Greater protection from harassment and victimisation, for example, harassment by third parties and victimisation of people who have brought a complaint
- Prohibition of direct discrimination on up to two combined grounds
- Prohibition of discrimination by private clubs on additional grounds of sex, religion or belief, pregnancy and maternity, and gender reassignment
- Extended protection against discrimination by public bodies

To bridge these gaps, and to harmonise equality standards across the different grounds, the Equality Commission has made the following recommendations for legislative change in Northern Ireland<sup>194</sup>:

- Extension of age discrimination to non-employment areas
- Amendment to the Race Relations Order 1997<sup>195</sup> to ensure protection from discrimination and harassment on the grounds of colour and nationality at the same level as other racial grounds, including:
  - the exercise of public functions
  - definition of harassment
  - indirect discrimination
  - harassment where a relationship has come to an end
  - burden of proof provisions
  - genuine occupational requirement test
  - mechanism for education complaints
  - protection for office holders
- Amendment to the Sex Discrimination (Northern Ireland) Order 1976 to prohibit discrimination and harassment by public authorities on the grounds of sex<sup>196</sup>

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<sup>194</sup> Equality Commission for Northern Ireland, *Proposals for Legislative Reform*, February 2009: [http://www.equalityni.org/archive/pdf/Priorities\\_for\\_legislative\\_reform0602091.pdf](http://www.equalityni.org/archive/pdf/Priorities_for_legislative_reform0602091.pdf).

<sup>195</sup> The se points, among others, are reiterated in the Paper on the Formal Review of the Race Relations (NI) Order 1997 by the Northern Ireland Council for Ethnic Minorities (NICEM) 2009: [http://www.nicem.org.uk/uploads/publications/NICEM\\_RRO\\_Review\\_Paper\\_final.doc\\_\(no\\_date\\_\)\\_.pdf](http://www.nicem.org.uk/uploads/publications/NICEM_RRO_Review_Paper_final.doc_(no_date_)_.pdf).

- Amendments to the Disability Discrimination Act 1995 (DDA) and the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO), including:
  - Extension of the definition of discrimination in the DDA to outside employment in the SENDO to schools
  - Removal of the justification defence for a failure to make a reasonable adjustment in the DDA to outside employment in the SENDO to schools
  - Alignment of the reasonable adjustment duty in the DDA for outside employment to have the same protection as for in employment
  - Requirement for landlords to make reasonable adjustments to common parts of premises where requested by a disabled tenant or occupier
  - Prohibition of discriminatory advertisements in the DDA outside employment in the SENDO to schools
  - Prohibition of discrimination in respect of relationships that have ended in the DDA to outside employment in the SENDO to schools
  - Amendment of the rules regarding the reversal of the burden of proof in discrimination cases in the DDA to outside employment in the SENDO to schools
- Extension of monitoring requirements to grounds of nationality and ethnic origin<sup>197</sup>
- Removal of the exception in the provisions of the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) regarding secondary schools, and consideration of the same for primary schools

In terms of human rights, international treaty bodies have urged change in the following areas:

- Prison reform, particularly for women in prisons<sup>198</sup>
- Representation of women in the judiciary<sup>199</sup>
- Lack of implementation of UN Security Council Resolution 1325<sup>200</sup>
- Consideration of a public consultation on reforming abortion legislation<sup>201</sup>

<sup>196</sup> The Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2011 extend the definition of indirect discrimination to those who would be affected by an action and extend the provisions for taking a discrimination case in compliance with Council Directive 2006/54 EC (the Recast Directive): <http://www.legislation.gov.uk/nisr/2011/156/made>.

<sup>197</sup> Also a NICEM recommendation, see Note 135, and a recommendation of the Committee on the Framework Convention for the Protection of National Minorities in 2007, see above.

<sup>198</sup> CEDAW 2009.

<sup>199</sup> CEDAW 2009.

<sup>200</sup> CEDAW 2009.

- Public control methods, particularly the use of riot control projectiles and tasers against children<sup>202</sup>
- Mental health strategy, particularly those with conflict-related disorders<sup>203</sup>
- Addressing child poverty<sup>204</sup>
- De-segregation of education along religious/community lines<sup>205</sup>
- Ending of post-primary selection by academic testing<sup>206</sup>
- Consideration of the Bill of Rights for Northern Ireland<sup>207</sup>
- Concerns about the independence of inquiries due to limitations and ministerial control<sup>208</sup>
- Different court proceeding to the rest of the UK, particularly non-jury courts<sup>209</sup>
- The removal of deportation cases from Northern Ireland and the lack of adequate detention facilities<sup>210</sup>
- Consideration of a Single Equality Bill for Northern Ireland<sup>211</sup>
- Treatment of Irish Travellers<sup>212</sup>
- The extent of inequality and deprivation in Northern Ireland<sup>213</sup>
- Suicide rates, particularly among young people<sup>214</sup>
- Lack of progress on the protection and promotion of the Irish language<sup>215</sup>

In addition, the Northern Ireland Human Rights Commission has raised the following points for the forthcoming examination by the Committee on the Elimination of Racial Discrimination<sup>216</sup>:

- The rights of non-citizens to social protection

<sup>201</sup> CEDAW 2009, CESCR 2009.

<sup>202</sup> UNCRC 2008.

<sup>203</sup> UNCRC 2008.

<sup>204</sup> UNCRC 2008.

<sup>205</sup> UNCRC 2008, Framework Convention on the Protection of National Minorities 2007.

<sup>206</sup> UNCRC 2008.

<sup>207</sup> UNCRC 2008, CESCR 2009.

<sup>208</sup> ICCPR 2008.

<sup>209</sup> ICCPR 2008.

<sup>210</sup> ICCPR 2008.

<sup>211</sup> CESCR 2009.

<sup>212</sup> CESCR 2009, European Social Charter 2006.

<sup>213</sup> CESCR 2009.

<sup>214</sup> CESCR 2009.

<sup>215</sup> CESCR 2009, Framework Convention on the Protection of National Minorities 2007, Convention on Regional and Minority Languages 2009.

<sup>216</sup> Northern Ireland Parallel Report on ICERD (2011):

[http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/123/Parallel\\_report\\_on\\_ICERD\\_\(May\\_2011\)\\_Final.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/123/Parallel_report_on_ICERD_(May_2011)_Final.pdf).

- Sectarianism as a form of racism
- Discrimination and racist hate crime in Northern Ireland
- Internal immigration control and racial profiling
- The situation of Irish Travellers

With the exception of sectarianism, these issues were also in the Concluding Observations for the Republic of Ireland in February 2011<sup>217</sup>, and as the experience of recent migration and integration issues in Northern Ireland has been similar to the Republic of Ireland these issues could be raised at the UK examination in August 2011 in respect of Northern Ireland.

In terms of equality legislation, there is a real prospect of further developments in EU legislation that will directly impact upon Northern Ireland. These standards can be met by piecemeal changes to existing legislation, such as the Race Relations Order 1997, the Disability Discrimination Act 1995 and the Sex Discrimination Order 1976. Indeed, the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2011<sup>218</sup> came into effect in March to implement the EU Recast Directive<sup>219</sup>, amongst other things, to include those who would be affected by indirect discrimination to add to those who are actually affected to be able to take a discrimination case.

However, the passing of a Single Equality Act which incorporated current and predicted future protections and definitions and harmonised protections across equality grounds would simplify equality legislation and reduce the need for legislative amendments to a range of existing pieces of equality law. Such a move could also serve to reduce differences between legislation in Northern Ireland and the rest of the UK, and indeed harmonise with the Republic of Ireland in EU standards<sup>220</sup>.

Human rights standards are less judicable than EU legislation, but the UK has obligations to uphold minimum standards that, if not met in Northern Ireland, can lead to international embarrassment. In extremis, the UK retains the right to impose legislation to fulfil these international obligations. Whether or how the rights contained in the EU Charter of Fundamental Rights can be implemented remains to be seen, but the Charter will at the very least influence future EU legislation and be a reference point for standards in the courts, certainly in the European Court of Justice, but potentially in domestic courts also.

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<sup>217</sup> Consideration of reports submitted by States parties under article 9 of the convention - Concluding observations of the Committee on the Elimination of Racial Discrimination – Ireland, 10 March 2011: [http://www2.ohchr.org/english/bodies/cerd/docs/co/Ireland\\_AUV.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/co/Ireland_AUV.pdf).

<sup>218</sup> Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2011: <http://www.legislation.gov.uk/nisr/2011/156/made>.

<sup>219</sup> EU Directive 2006/54/EC.

<sup>220</sup> The Equal Status Act 2000 has been amended in 2004 and 2008 to take account of EU equality Directives: <http://www.irishstatutebook.ie/2000/en/act/pub/0008/index.html>.

The Belfast Agreement states<sup>221</sup>:

*The new Northern Ireland Human Rights Commission (see paragraph 5 below) will be invited to consult and to advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights, to reflect the particular circumstances of Northern Ireland, drawing as appropriate on international instruments and experience. These additional rights to reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem, and - taken together with the ECHR - to constitute a Bill of Rights for Northern Ireland.*

The notion of a Northern Ireland Bill of Rights had been debated before the Agreement and its inclusion in the political settlement raised hopes for those campaigning for such an initiative<sup>222</sup>. A cross-sectoral, cross-party Bill of Rights Forum published its report in March 2008<sup>223</sup> and the Human Rights Commission published its Advice to Government in December of that year<sup>224</sup>. A Government response in November 2009 outlined some additional rights for consideration in Northern Ireland<sup>225</sup>, which was subject to public consultation<sup>226</sup>.

A Northern Ireland Bill of Rights has in some respects been linked to processes for the UK as a whole. The House of Lords and House of Commons Joint Committee on Human Rights recommended a Bill of Rights and Freedoms in 2008<sup>227</sup>. A UK Government Green Paper in 2009 set out a range of options for discussion<sup>228</sup>, but substantive progress on a British Bill of Rights or a UK Bill of Rights has not been in evidence to date, but the UK coalition government's Programme for Government promises the following<sup>229</sup>:

*We will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European*

<sup>221</sup> Belfast Agreement, 1998, Rights, Safeguards and Equality of Opportunity.

<sup>222</sup> For example, the Human Rights Consortium, an alliance of organisations campaigning for a strong and inclusive bill of rights: <http://www.billofrightsnri.org/>.

<sup>223</sup> Bill of Rights Forum, *Final Report: Recommendations to the Human Rights Commission for a Bill of Rights for Northern Ireland*, 31 March 2008: [http://www.billofrightsforum.org/borf\\_final\\_report.pdf](http://www.billofrightsforum.org/borf_final_report.pdf).

<sup>224</sup> Northern Ireland Human Rights Commission, *Advice to Government on a Bill of Rights for Northern Ireland*, 10 December 2008: [http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A\\_Bill\\_of\\_Rights\\_for\\_Northern\\_Ireland\\_%28December\\_2008%29.pdf](http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/51/A_Bill_of_Rights_for_Northern_Ireland_%28December_2008%29.pdf).

<sup>225</sup> Northern Ireland Office, *A Bill of Rights for Northern Ireland: Next Steps*, November 2009:

[http://www.nio.gov.uk/consultation\\_paper\\_-\\_a\\_bill\\_of\\_rights\\_for\\_northern\\_ireland\\_next\\_steps.pdf](http://www.nio.gov.uk/consultation_paper_-_a_bill_of_rights_for_northern_ireland_next_steps.pdf).

<sup>226</sup> Responses to the consultation, Northern Ireland Office website: <http://www.nio.gov.uk/index/public-consultation/archive-consultation/content-responses-bill-of-rights.htm>.

<sup>227</sup> Joint Committee on Human Rights, *A Bill of Rights for the UK?* 21 July 2008:

<http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/165/165i.pdf>.

<sup>228</sup> Ministry of Justice, *Rights and Responsibilities: Developing our Constitutional Framework*, March 2009:

<http://www.justice.gov.uk/publications/docs/rights-responsibilities.pdf>.

<sup>229</sup> Cabinet Office, *The Coalition: Our Programme for Government* (2010), p.11:

[http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition\\_programme\\_for\\_government.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf).

*Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties.*

However, in a debate in the House of Lords, Lord McNally indicated that there was a commitment to a Northern Ireland Bill of Rights and that it was a separate process from the UK Bill of Rights<sup>230</sup>.

A Private Member's Bill to repeal the Human Rights Act and set out principles for a UK Bill of Rights was introduced into the House of Commons in July 2010<sup>231</sup>.

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<sup>230</sup> HL Deb 24 January 2011 Column 677: <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110124-0001.htm>.

<sup>231</sup> The Second Reading and debate is timetabled for 16 December 2011; Rights Bill 2010-2011: <http://services.parliament.uk/bills/2010-11/rights.html>.



## Appendix: Comparative Table of European and International Equality and Human Rights Standards

<b><i>Equality Dimension</i></b>	<b><i>NI Legislation</i></b>	<b><i>EU Standards</i></b>	<b><i>Council of Europe Standards</i></b>	<b><i>UN Standards</i></b>
Religious belief	Fair Employment and Treatment Order 1998 as amended	Employment Framework Directive 2000/78/EC	ECHR Art 9	CERD
Political opinion	Fair Employment and Treatment Order 1998 as amended	CFR Art 10	ECHR Art 10	UDHR Art 19
Racial group	Race Relations Order 1997 as amended	Race Directive 2003/43/EC	Charter on Minority Languages Convention on National Minorities	CERD
Age	Employment Equality Regulations 2006	Employment Framework Directive 2000/78/EC		
Marital status	NI Act 1998 Sect 75	Equal Treatment Directive 2002/73/EC	ECHR Art 12	UDHR Art 16

Sexual orientation	Employment Equality Regulations 2003  Equality Act Regulations 2006	Employment Framework Directive 2000/78/EC		
Men and women	Equal Pay Act 1970 as amended  Sex Discrimination Order 1976 as amended	Equal Treatment Directive 2002/73/EC  Gender Directive 2004/113/EC	Domestic Violence Convention	CEDAW
Disability	Disability Discrimination Act 1995 as amended	Employment Framework Directive 2000/78/EC		CRPD
Dependents	Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005	Pregnant Workers Directive 92/85/EEC  Parental Leave Directive 96/34/EC	ECHR Art 8	CRC