

POSSIBLE ADD-ONS TO THE EUROPEAN CONVENTION

If it is decided that the best basis for a Northern Ireland Bill of Rights is the incorporation of the European Convention into Northern Ireland law, additional provision on a number of matters of special concern in Northern Ireland may be desirable. Some possible models and formulations for discussion are set out here in respect of (i) the right of self-determination for the people of Northern Ireland, (ii) recognition and protection of the two communities, (iii) education and language rights, (iv) the right of individuals to be Irish or British, and (v) protection against the unjustified use of emergency laws.

(A) Self-Determination

If it is accepted that the consent of the people of Northern Ireland is required for any change in its constitutional status, as provided in the Anglo-Irish Agreement and the Downing Street Declaration, it may be desirable to reflect the wording used in those documents in any constitutional provision for self-determination. A formulation along the following lines might be used:

The status of Northern Ireland as part of the United Kingdom of Great Britain and Northern Ireland shall not be altered without the consent of a majority of the people of Northern Ireland voting freely and democratically and without coercion in a poll held in accordance with the Schedule to this Constitution. If at any time in the future a majority both of the people of Northern Ireland and of the State of Ireland voting concurrently in separate polls consent to the unification of the island of Ireland or to any other constitutional arrangement covering the whole island of Ireland the Government of the United Kingdom shall introduce the legislation necessary to give effect to that arrangement.

It may also be desirable for similar wording to be used in both the Northern Ireland and the Irish Constitution. A more general formulation for this purpose to replace the conflicting claims in the Government of Ireland Act and the Irish Constitution has been suggested in Northern Ireland: The Choice (copy attached).

(A) Current constitutional provisions

Bunreacht na hEireann 1937

1. The Irish nation hereby affirms its inalienable, indefeasible and sovereign right to choose its own form of government, to determine its relations with other nations and to develop its life, political, economic and cultural, in accordance with its own genius and traditions.
2. The national territory consists of the whole island of Ireland, its islands and territorial seas.
3. Pending the reintegration of the national territory, and without prejudice to the right of the Parliament and Government established by this constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Eireann* and the like extra-territorial effect.

* i.e. the 26 counties of the Irish Republic

** Under section 1(1) of the Irish Free State (Consequential Provisions) Act 1922 the 1920 Act applies only to Northern Ireland.

Government of Ireland Act 1920

1(2) For the purposes of this Act, Northern Ireland shall consist of the parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry.

75. Notwithstanding ... anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters and things in [Northern]** Ireland and every part thereof.

Northern Ireland Constitution Act 1973

1. It is hereby declared that Northern Ireland remains part of Her Majesty's dominions and of the United Kingdom, and it is affirmed that in no event will Northern Ireland or any part of it cease to be part of Her Majesty's dominions and of the United Kingdom without the consent of the majority of the people of Northern Ireland voting in a poll held for the purposes of this section in accordance with Schedule 1 of this Act.

(B) A possible reformulation for use in both jurisdictions

1. The territory of the island of Ireland is presently divided into two parts, the state of Ireland and Northern Ireland. The state of Ireland consists of the area over which the laws of Saorstát Eireann applied*, its islands and territorial seas. Northern Ireland consists of the six counties of its islands and territorial seas. (The citizens of the state of Ireland hereby express their aspiration to the coming together of the people of the island of Ireland and the unification of the island by consent and agreement of the people of both parts of Ireland.)

2. The people of the island of Ireland alone hereby affirm that they alone shall have the right to choose, by agreement between the two parts respectively, their own form or forms of government, to determine their relations with the other part, with the United Kingdom and with other states, to develop their natural resources and to pursue their own political, economic and cultural traditions.

3. Northern Ireland presently forms part of the United Kingdom of Great Britain and Northern Ireland by the wish of the greater number of its citizens. If at any time in the future a majority both of the people of the state of Ireland and of Northern Ireland voting freely and democratically and without coercion in concurrent polls held in accordance with the Schedule to this Constitution consent to the unification of the island of Ireland or to any other constitutional arrangement covering the whole island of Ireland the Government of [the United Kingdom][Ireland] shall introduce the legislation necessary to give effect to that arrangement.

[...] Northern Ireland Constitution [...] Irish Constitution