

EQUALITY COMMISSION FOR NORTHERN IRELAND

Submission to Ad Hoc Committee on a Bill of Rights for Northern Ireland

March 2021

1 Introduction

- 1.1 The Equality Commission for Northern Ireland ('the Commission') welcomes the opportunity to submit evidence to the Northern Ireland Assembly Ad Hoc Committee on a Bill of Rights ('the Committee') in the context of its consideration of a Bill of Rights for Northern Ireland ('NI Bill of Rights').
- 1.2 The Commission supports the adoption of a strong and inclusive NI Bill of Rights, reflecting the particular circumstances of Northern Ireland. We made this clear in our responses to earlier consultation on a NI Bill of Rights by the NIO in 2010¹, and to a subsequent consultation on a separate United Kingdom Bill of Rights².
- 1.3 Our evidence to the Committee builds on the earlier recommendations we have made on a NI Bill of Rights, as they remain valid and relevant today. It also reflects the political and legislative developments that have taken place since we responded to earlier consultations, including the developments relating to the UK's exit from the European Union (EU).
- 1.4 Aligned to our role and remit, we have primarily focused in our submission on a number of key recommendations relating to how a NI Bill of Rights could help promote equality of opportunity and strengthen equality protections for people in Northern Ireland.
- 1.5 In addition to a number of general comments and recommendations, we highlight the need to:
- include a principle of equality in a NI Bill of Rights;

¹ ECNI (2010) [Response to NI Office Consultation on a Bill of Rights for Northern Ireland](#)

² ECNI (2011) [Response to UK Bill of Rights Consultation](#)

- strengthen and harmonise NI equality laws;
- strengthen equality and human rights post Brexit;
- recognise increasing diversity of NI population;
- reflect international human rights standards and address shortfalls in compliance; and
- promote awareness and understanding of human rights.

2 General comments

- 2.1 The Commission considers that a NI Bill of Rights would provide an opportunity to make a clear statement of society's commitment to certain values and a legal framework for ensuring that those values are advanced by all of society's institutions. It also has the potential to be an important opportunity to strengthen the human rights protection afforded to the most vulnerable and marginalised people in Northern Ireland society, and to increase protection where existing law is inadequate.
- 2.2 A NI Bill of Rights could also provide greater clarity for people in Northern Ireland about their human rights and create legally enforceable standards which public authorities must adhere to when delivering services to the public or carrying out public functions.
- 2.3 If a NI Bill of Rights is introduced, it is important that any steps taken in the wider UK context should not undermine or diminish those protections. This is particularly important in light of the UK Government's current independent review of the Human Rights Act, which is examining the relationship between domestic courts and the European Court of Human Rights, and the impact of the Human Rights Act on the relationship between the judiciary, the executive and the legislature³.
- 2.4 The UK Government recognises that the key rights and equality provisions in the Belfast (Good Friday) Agreement are supported by the European Convention on Human Rights

³ Further information on the Independent Human Rights Act Review is available [here](#). It is noted that the UK Government has stated that the review will not consider the scope of the substantive rights scheduled to the Human Rights Act.

(ECHR), which was incorporated into Northern Ireland law pursuant to the commitment in the Agreement⁴. It also stated that it is committed to the ECHR and to protecting and championing human rights⁵.

- 2.5 In addition, in the UK-EU Trade and Cooperation Agreement (2020) ⁶, the UK Government restated its commitment to uphold respect for human rights, to underpin cooperation under that Agreement.
- 2.6 We consider that any measures by the UK Government that may be taken forward following the independent review that would result in protections in the Human Rights Act, or the way in which they are protected, being undermined or diminished, would be inconsistent with those stated commitments.
- 2.7 In bringing forward a NI Bill of Rights, it is also essential that there should be a policy of ‘non-regression’ from current levels of protection under the Human Rights Act 1998 (‘HRA’) and other ratified human rights instruments.
- 2.8 In addition, any provisions in a NI Bill of Rights relating to equality and good relations must not weaken existing levels of protection under current equality legislation.
- 2.9 We also consider it critical that a NI Bill of Rights delivers positive and tangible outcomes for the people of Northern Ireland.
- 2.10 We consider that a Bill of Rights could play an important role in underpinning the peace, prosperity and political progress of Northern Ireland. The importance of the rights and equality protections in the Belfast (Good Friday) Agreement, and the need to put rights and equality central to creating a peaceful and shared future in Northern Ireland is recognised by the UK Government⁷.
- 2.11 There must also be a visible commitment by public bodies to comply fully with any supplementary rights to the HRA

⁴ NIO (2020) Explainer Document: [UK Government’s commitment to the non-diminution of rights, safeguards and equality of opportunity provisions in NI.](#)

⁵ Ibid

⁶ UK-EU Trade and Cooperation [Agreement](#), 24 December 2020.

⁷ NIO (2020) Explainer Document: [UK Government’s commitment to the non-diminution of rights, safeguards and equality of opportunity provisions in NI.](#)

contained in a NI Bill of Rights, with effective mechanisms in place to ensure accountability, monitoring and enforcement. As with the implementation of the Section 75 duties⁸, we are of the view that the role of Government departments in driving change is critical.

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

3 Include a principle of equality in a NI Bill of Rights

- 3.1 We recommend the inclusion of a principle of equality in a NI Bill of Rights. In particular, we recommend that this principle includes a statement that everyone is equal before and under the law and has the right to equal protection and equal benefit of the law, including the full and equal enjoyment of all rights and freedoms. The principle could also make clear that individuals should not be discriminated against across a range of equality grounds.
- 3.2 The general principle of equality is a fundamental element of international human rights law⁹ and an important inclusion for a NI Bill of Rights.
- 3.3 The inclusion of a principle of equality could, for example, provide the framework for more specific anti-discrimination legislation which can spell out in more detail the matrix of legal rights and duties necessary to give effect to a principle of equality. Such a principle would therefore underpin Northern Ireland’s equality legislation which provides the detail in terms of respective equality rights and responsibilities.

⁸ Duties under Section 75 of the NI Act 1998.

⁹ The principle of equality is recognised by many international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Rights of the Child (UNCRC), and the UN Convention on the Rights of Persons with Disabilities (Disability Convention).

- 3.4 The principle could also be used as an interpretative principle to which courts and public authorities must have regard.
- 3.5 As regards current provisions on equality, the Human Rights Act 1998 effectively incorporated Article 14 of the European Convention on Human Rights (ECHR). Article 14 makes it clear that the rights and freedoms set out in the ECHR should be secured without discrimination on a range of grounds. However, this protection against discrimination cannot be invoked unless another Convention right is engaged. In addition, whilst Optional Protocol 12 to the ECHR does contain a freestanding equality protection, this Protocol has not been either signed or ratified by the UK.
- 3.6 It is also the case that, in general, equality legislation in Northern Ireland does not take priority over other legislation. Apart from Section 76 of the Northern Ireland Act 1998, the equality legislation does not apply to the making, confirmation or approval of subordinate legislation by the Northern Ireland Assembly¹⁰. This important safeguard under Section 76 only applies to the grounds of religious belief and political opinion and not to other equality grounds, such as race, disability, sex, sexual orientation or age. Section 76 is also limited in that it only applies to direct discrimination only, it does not cover indirect discrimination.
- 3.7 In addition, including a principle of equality in a NI Bill of Rights would be a recognition of the importance and centrality of rights and equality protections in the Belfast (Good Friday) Agreement. For example, in the Belfast (Good Friday) Agreement 1998, the parties committed to equality and mutual respect as the basis of their 'relationships within Northern Ireland, between North and South and between these islands'¹¹. Further, additional rights, safeguards, and equality of opportunity provisions are specifically set out in the chapter of the same name in the Belfast (Good Friday) Agreement.
- 3.8 Including a principle of equality would also be in keeping with the fact that the UK Government has recognised the importance of ensuring that these rights and equality

¹⁰ Under Section 76 of the Northern Ireland Act 1998, it is unlawful for a public authority when carrying out its functions relating to Northern Ireland to discriminate, or to aid or incite another person to discriminate, against a person or class of persons on the ground of religious belief or political opinion.

¹¹ [Belfast \(Good Friday\) Agreement](#) 1998, Annex, paragraph 3.

protections continue to be upheld in Northern Ireland post Brexit. In particular, it has committed under Article 2(1) of the Ireland/Northern Ireland Protocol ('the Protocol') to ensure there is no reduction of these rights, safeguards, and equality of opportunity provisions as a result of Brexit.

3.9 We also note that the Belfast (Good Friday) Agreement made it clear that one particular issue which the NI Human Rights Commission (NIHRC) should consider in a Bill of Rights was a clear formulation of the right not to be discriminated against and to equality of opportunity in both the public and private sectors.

3.10 We further note that the UK Commission on a Bill of Rights (2012) concluded 'that amongst the additional rights which might be most readily considered in any UK Bill of Rights are those which relate to people's fundamental rights to be treated equally irrespective, for example, of their innate characteristics such as their gender or ethnic origin', and that the 'most obvious candidate for inclusion would be the right to equality and non-discrimination'.

4 Strengthen and harmonise NI equality laws

4.1 We recommend that a NI Bill of Rights is underpinned by measures to strengthen NI equality laws and address gaps in equality legislation.

4.2 The Commission has consistently called for the harmonisation 'upwards' of equality law, in a way that strengthens equality rights and protections. We have also called for the simplification of discrimination law in Northern Ireland, as well as the strengthening of protection from discrimination across a number of grounds. Although we support the adoption of a NI Bill of Rights, it is important to recognise the significant contribution that updated and strengthened equality legislation could also have in enhancing the protection of human rights in Northern Ireland.

4.3 There are significant gaps between equality law in Great Britain (GB) and Northern Ireland. These gaps have widened following the introduction of single equality legislation – the Equality Act 2010 - in GB. These differences mean that in a number of key areas, individuals in Northern Ireland have less protection

against discrimination and harassment than people in other parts of the United Kingdom¹².

- 4.4 Importantly, there are also gaps in protection, between Northern Ireland and GB in relation to obligations placed on *public bodies* not to discriminate under anti-discrimination legislation. We have recommended the extension of current Northern Ireland equality legislation so that public authorities are prohibited from discriminating on the grounds of sex, age¹³, gender reassignment, pregnancy and maternity and colour and nationality when exercising their public functions.
- 4.5 The Committee will note, for example, that, unlike in GB, there is no legislation in Northern Ireland prohibiting public bodies from unlawfully discriminating against older people on the grounds of age, when carrying out their functions, or when providing services to the public. The Commission is concerned about the lack of legislation to provide protection from age discrimination in the fields of goods, facilities, and services, particularly at a time when the significant impact that COVID-19 is having on older people is apparent.
- 4.6 It will be noted that there are additional gaps in protection between Northern Ireland and GB in relation to obligations not to discriminate on the grounds of age in the provision of goods and services *apart from* as regards those on public bodies; for example, in relation to private clubs and private providers of goods and services.
- 4.7 We consider that single equality legislation in Northern Ireland would best harmonise and simplify the protections available. In the absence of single equality legislation, we have set out previously proposals for reform in key areas, including under the equality legislation relating to age, race, disability, sex, fair employment, and sexual orientation.
- 4.8 We note that the St Andrew's Agreement made it clear that the Government accepted the need for a Single Equality Bill and "will work rapidly to make the necessary preparations so that legislation can be taken forward by an incoming Executive at an

¹² Equality Commission NI (2014), '[Gaps in Equality Law between Great Britain and NI](#)'.

¹³ Legislation in GB relating to the prohibition of age discrimination outside employment only relates to older people.

early date”¹⁴. Despite that commitment, there has been no further progress in relation to a Single Equality Bill by the Executive.

5 Strengthen equality and human rights post Brexit

- 5.1 The need for additional measures to better protect equality and human rights is particularly important in the context of the impact of Brexit on equality and human rights protections in Northern Ireland.
- 5.2 As recognised by the UK Government, EU laws, particularly on anti-discrimination, has formed an important part of the framework for delivering the guarantees on rights and equality in Northern Ireland¹⁵.
- 5.3 EU laws have provided a minimum level of rights and protection below which domestic legislation in Member States, including the UK, must not fall below. These EU laws have covered areas such as equality rights, as well other areas such as employment rights of part-time workers, pregnant workers, and victims.
- 5.4 The Commission remains concerned about the negative impact on equality and human rights as a result of the EU Charter of Fundamental Rights no longer forming part of UK domestic law, including in Northern Ireland, post Brexit, although we note that it will continue to play an important role in the interpretation of the Withdrawal Agreement and the Protocol.
- 5.5 We consider that the exclusion of the Charter from domestic law despite the retention of underlying ‘fundamental rights and principles’ has resulted in a weakening of the protection of human rights¹⁶.
- 5.6 As mentioned above, the UK Government has committed under Article 2(1) of the Protocol to ensure there is no reduction of the

¹⁴ St Andrews Agreement, Annex B (Human Rights, Equality, Victims and Other Issues)

¹⁵ NIO (2020) Explainer document on Article 2 of the Ireland/Northern Ireland Protocol.

¹⁶ We recognise that where the rights and principles underpinning the EU Charter have been implemented into UK law as retained EU law, that law will continue to be operational, and that the EU Charter will have continued relevance those parts of the UK-EU Withdrawal Agreement that relate to EU law.

However, the Joint Committee on Human Rights (2018) raised various reasons as to why the protection of rights under the Charter may be diminished. See Joint Committee on Human Rights (2018) [Legislative Scrutiny: The EU \(Withdrawal\) Bill: A Right by Right Analysis](#).

rights, safeguards and equality of opportunity provisions set out in the chapter of the same name in the Belfast (Good Friday) Agreement as a result of Brexit, including the rights set out in the EU equality Directives in Annex 1 to the Protocol. It has also committed in the Protocol to keep pace with any future EU changes to these Annex 1 Directives.

- 5.7 However, there are important limitations to these commitments in terms of the continued application of EU equality and human rights standards in Northern Ireland. For example, the ‘keeping pace’ commitment only applies to the equality Directives set out in Annex 1 to the Protocol and not to other existing EU Directives that provide rights for equality groups, such as the EU law relating to part-time workers or pregnant workers. Further, it does not cover future EU equality related Directives that may be introduced, except to the extent that they might result in changes to the Annex 1 Directives. This could mean, for example, that whilst equality laws in other EU countries, including the Republic of Ireland, are strengthened to keep pace with those future EU equality laws, Northern Ireland equality laws may not similarly be strengthened¹⁷.
- 5.8 It will also be noted that the Annex 1 Directives do not cover all equality areas, including some areas which are already currently covered by Northern Ireland equality law, but not EU law. For example, the Annex 1 Directives do not cover equality protections in areas outside employment and vocational training on the grounds of sexual orientation, disability or religion or belief.
- 5.9 We also remain concerned that equality and human rights currently enshrined in NI domestic law that are *not* covered by the non-regression commitment in Article 2 (1) could be subject to change; both in relation to devolved and non-devolved matters. We have, for example, expressed concern about the wide-ranging powers ('Henry VIII' powers) of Ministers of the Crown to make changes to EU retained equality law in Northern Ireland¹⁸.

¹⁷ Except to the extent that they might result in changes to the Annex 1 Directives

¹⁸ See ECNI (2017) [Recommendations on EU Withdrawal Bill](#)

- 5.10 In addition, prior to the UK-EU Trade and Cooperation Agreement being signed at the end of December 2020¹⁹, the Commission, along with the NIHRC, called on the UK Government to ensure that any future trade agreement with the EU should include a commitment to the non-regression of fundamental rights at work, as well as a commitment to keep pace with future EU laws that strengthen equality and human rights in Northern Ireland, including protections that enhance equality and human rights in the workplace. This would include rights such as non-discrimination and equal pay, fair working conditions and employment standards.
- 5.11 Whilst the UK-EU Trade and Cooperation Agreement includes non-regression provisions on the level playing field, including for labour and social rights, concerns have been raised that the oversight mechanism is relatively weak as it can only be triggered where the reduction of standards may impact on trade or investment, which can be very difficult to prove²⁰. Further the Agreement did not contain a commitment to keep pace with future EU laws that strengthen equality and human rights in Northern Ireland, though, as noted above, the UK Government has, under Article 2 of the Protocol, committed to keeping pace with any EU changes to the six EU equality laws set out in Annex 1 of the Protocol.
- 5.12 In terms of some specific additional measures that could be taken to better protect equality and human rights after Brexit, as set out in our submission to the NI Affairs Committee's Inquiry into the Protocol (2020)²¹, we recommend that:
- human rights impact assessments are conducted in respect of any future trade agreements, to the standard set out in UN Office of the High Commissioner for Human Rights Guidelines;
 - legislation should be passed to preclude conclusion or ratification of any international trade or investment agreement that would require or permit the reduction of any protections for human rights and fundamental freedoms in Northern Ireland, including those relating

¹⁹ UK-EU Trade and Cooperation [Agreement](#), 24 December 2020.

²⁰ Marley Morris (2020), [The Agreement on the Future Relationship: A First Analysis](#) (IPPR, 2020).

²¹ ECNI, NIHRC, 2020, [Submission to the NI Affairs Committee's Inquiry on the NI Protocol](#).

to non-discrimination and equality, ensured under UK law.

- 5.13 In addition, whilst we recognise the UK Government's commitment contained in Article 2 of the Protocol, as set out above, the Article 2 commitment has its limitations. Therefore, we continue to call on the UK Government, and the NI Assembly as regards areas within its devolved competence, to ensure that Northern Ireland keeps pace with all future EU laws that strengthen equality and human rights, including protections that enhance equality and human rights in the workplace.

6 Recognise increasing diversity of NI population

- 6.1 We consider that a NI Bill of Rights should include a recognition of the increasing diversity in the Northern Ireland population since 1998 and the significant demographic changes that have taken place since that date, including the increase in new residents in Northern Ireland.
- 6.2 Mindful of significant and increasing levels of race hate crime in Northern Ireland²², we recommend that a NI Bill of Rights recognises and strengthens protection of the human rights of all communities in Northern Ireland, including minority ethnic communities.

7 Reflect international human rights standards and address shortfalls in compliance

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

²² See ECNI (2020), [Hate crime policy position paper](#).

7.3 It is of note that in the *New Decade, New Approach* agreement, the parties:

‘acknowledge the importance of promoting and protecting the rights and identity of individuals and are agreed that the Executive should seek to build a society that reflects the best international standards of human rights’.

7.4 We recommend consideration be given to the inclusion in a NI Bill of Rights of a set of *interpretative principles* which reflect human rights standards in international law and which courts and public authorities must have regard to, together with an obligation on Government to achieve the progressive realisation of the relevant rights.

7.5 This would include specific reference to the particular instruments which set standards in the areas of civil and political rights; economic, social and cultural rights; discrimination against women; elimination of racial discrimination; children’s rights; older people’s rights, and the rights of persons with disabilities.

7.6 We draw the Committee’s attention to the recommendations of international human rights monitoring Committees that have made clear that the NI Executive needs to take further action to address shortfalls in its compliance with the obligations set out in particular Conventions. This includes for example, most recently the UN CEDAW Concluding Observations on the UK (2019)²³, which called for the NI Executive to strengthen gender equality law in Northern Ireland and the UNCRPD 2017 Concluding Observations²⁴.

7.7 We also recommend actions to address key shortfalls in Northern Ireland so as to ensure compliance with the UK Government’s obligations under international human rights conventions. We have, for example, over a number of years highlighted that there are key gaps, in terms of policies and

²³ UNCEDAW Committee’s Concluding Observations on UK (2019)

²⁴ UNCRPD Committee Concluding Observations (Aug 2017)

programmes, aligned to a number of UNCRPD Articles that need addressed²⁵.

7.8 In terms of potential areas for further consideration by the Committee regarding the legislative steps that could be taken to underpin a NI Bill of Rights, we draw the Committee's attention to the approach taken in Wales. The devolved administration there has introduced additional legislative measures to ensure that Welsh Ministers when exercising their functions have due regard to the provisions in the UN Convention on the Rights of the Child.²⁶

7.9 We further ask the Committee to note that, in Scotland, consideration is being given to a Bill which would make it unlawful for public authorities to act incompatibly with the UNCRC requirements. This would also give the courts powers to decide if legislation is compatible and empower the Children and Young People's Commissioner to take legal action if the rights under the UNCRC are breached.²⁷

7.10 The need to reflect international human rights standards in a NI Bill of Rights and to address shortfalls in compliance is of particular importance in light of the range of key inequalities experienced by equality groups in Northern Ireland, including in the areas of employment²⁸, education²⁹, housing and accommodation³⁰, and participation in public life³¹.

8 Promote awareness and understanding of human rights

8.1 We consider that, in taking forward a NI Bill of Rights, the NI Executive should take measures to promote awareness and understanding of equality and human rights, including those contained in international human rights Conventions and the UN Sustainable Development Goals ('SDGs')³². These SDGs include goals and targets on tackling poverty and reducing

²⁵ See ECNI, www.equalityni.org/crpd

²⁶ The Rights of Children and Young Persons (Wales) 2011 Measure. This requires the Welsh Ministers, when exercising any of their functions to have due regard to Part 1 of the CRC as well as select articles of its first and second optional protocols, [vi] both of which are listed as a schedule to the Measure.

²⁷ [United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Bill](#) 2020.

²⁸ ECNI (2018) [Statement on Key Inequalities in Employment](#)

²⁹ ECNI (2018) [Statement on Key Inequalities in Education](#)

³⁰ ECNI (2017) [Statement on Key Inequalities in Housing and Communities](#)

³¹ ECNI (2018) [Statement on Key Inequalities in Participation in Public Life](#).

³² UN SDGs

inequalities, and a specific goal on achieving gender equality (Goal 5).

- 8.2 It is vital that people in Northern Ireland are aware of and understand what their rights are and the difference that these rights can make to their day-to-day lives. It is also essential that public authorities have clear guidance on their responsibilities under a NI Bill of Rights and the measures they are required to take in order to comply with the Bill of Rights.
- 8.3 We also recommend measures to raise awareness and promote understanding, including across and within departments and the wider public, of the UK Government's obligations under a range of international human rights Conventions and the UN SDGs.
- 8.4 We consider it is essential, should a NI Bill of Rights be introduced, that the Government ensures that any misconceptions as regards the effect or potential effect of any supplementary rights which may be thought likely to fuel divisions, are effectively addressed and dispelled.

9 Conclusion

- 9.1 In conclusion, the Commission considers that the introduction of a strong and inclusive NI Bill of Rights, that includes a principle of equality, and is underpinned by measures to strengthen equality law in Northern Ireland, could play an important role in promoting equality and in underpinning the peace, prosperity and political progress of Northern Ireland.

**Equality Commission for Northern Ireland
March 2021**