

# **EQUALITY COMMISSION FOR NORTHERN IRELAND**

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

**April 2021**

### **1 Introduction**

- 1.1 The Equality Commission for Northern Ireland ('the Commission') welcomes the opportunity to submit further 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') and the implications of Brexit for human rights.
- 1.2 The Committee will be aware that we previously submitted written evidence, and subsequently provided oral evidence, to the Committee on 18 March 2021.
- 1.3 Our submission summarises the recommendations in our earlier submission and evidence to the Committee that relate primarily to the impact of Brexit on equality and human rights.
- 1.4 The recommendations in our submission are made further to our role and remit under the equality legislation, and as part of the 'dedicated mechanism', established under Article 2 of the Ireland / Northern Ireland Protocol ('the Protocol')
- 1.5 In particular, the Commission, together with the Northern Ireland Human Rights Commission, as the dedicated mechanism, has been given additional powers and responsibilities to ensure that the UK Government's commitment under Article 2 of the Protocol is met.
- 1.6 Under Article 2 of the Protocol, the UK Government committed to ensure there is no reduction of the 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 the UK leaving the EU, including the rights set out in the EU equality Directives in Annex 1 to the Protocol. The UK Government has also committed in the Protocol to keep pace with any future EU changes to these Annex 1 Directives.

1.7 In summary, in addition to a number of general comments, we highlight the following:

- We consider that 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.
- We remain 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.
- We highlight that there are important limitations to the UK Government's commitments under Article 2 of the Protocol.
- We recommend some specific additional measures that could be taken to better protect equality and human rights after Brexit, including in the context of the ratification of future international trade or investment agreements.
- We reiterate our wider recommendations including on: the inclusion of an equality principle in a NI Bill of Rights; the need for a NI Bill of Rights to reflect international human rights standards and address shortfalls in compliance; and the need to strengthen and harmonise NI equality laws.

## 2 General comments

2.1 As we have previously advised, the Commission considers that a NI Bill of Rights would provide an opportunity to make a clear statement of society's commitment to advancing certain values; has the potential to increase protection where existing law is inadequate and strengthen the human rights protection afforded to the most vulnerable and marginalised people in Northern Ireland society; and to provide greater clarity about

human rights and create legally enforceable standards for public authorities delivering services or functions to the public.

- 2.2 We therefore consider it particularly important that consideration is given how a NI Bill of Rights might strengthen equality and human rights in the context of the impact of Brexit on equality and human rights.
- 2.3 The need for this consideration is also essential in the context of our previous recommendation to the Committee 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.
- 2.4 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.
- 2.5 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.
- 2.6 We consider that adopting a policy of ‘non-regression’ from current levels of equality and human and equality rights in the bringing forward a NI Bill of Rights, is consistent with the UK Government’s commitment under Article 2 of the Protocol to the non-regression of certain equality and human rights in Northern Ireland as a result of Brexit.
- 2.7 We have also highlighted to the Committee that 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<sup>1</sup>.
- 2.8 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 (ECHR), which was incorporated into Northern Ireland law

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<sup>1</sup> 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.

pursuant to the commitment in the Agreement<sup>2</sup>. It also stated that it is committed to the ECHR and to protecting and championing human rights<sup>3</sup>.

- 2.9 In addition, in the UK-EU Trade and Cooperation Agreement (2020)<sup>4</sup>, the UK Government restated its commitment to uphold respect for human rights, to underpin cooperation under that Agreement.

### **3 Strengthen equality and human rights post Brexit**

- 3.1 As highlighted in our earlier submission and evidence to the Committee, the need for additional measures to better protect equality and human rights is particularly important in the context of the impact of Brexit on equality and human rights protections in Northern Ireland.
- 3.2 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 Ireland<sup>5</sup>.
- 3.3 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.
- 3.4 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.
- 3.5 We consider that the exclusion of the Charter from domestic law despite the retention of underlying ‘fundamental rights and

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<sup>2</sup> NIO (2020) Explainer Document: [UK Government’s commitment to the non-diminution of rights, safeguards and equality of opportunity provisions in NI](#).

<sup>3</sup> Ibid

<sup>4</sup> UK-EU Trade and Cooperation [Agreement](#), 24 December 2020.

<sup>5</sup> NIO (2020) Explainer document on Article 2 of the Ireland/Northern Ireland Protocol.

principles' has resulted in a weakening of the protection of human rights<sup>6</sup>.

- 3.6 As mentioned above, the UK Government has committed under Article 2(1) of the Protocol to ensure there is no reduction of the 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.
- 3.7 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.
- 3.8 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 strengthened<sup>7</sup>.
- 3.9 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.
- 3.10 We also remain concerned that equality and human rights currently enshrined in NI domestic law that are *not* covered by

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<sup>6</sup> 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](#).

<sup>7</sup> Except to the extent that they might result in changes to the Annex 1 Directives

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 Ireland<sup>8</sup>.

- 3.11 In addition, prior to the UK-EU Trade and Cooperation Agreement which was signed at the end of December 2020<sup>9</sup>, 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.
- 3.12 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 prove<sup>10</sup>.
- 3.13 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.
- 3.14 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)<sup>11</sup>, we recommend that:
- human rights impact assessments are conducted in respect of any future trade agreements, to the standard

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<sup>8</sup> See ECNI (2017) [Recommendations on EU Withdrawal Bill](#)

<sup>9</sup> UK-EU Trade and Cooperation [Agreement](#), 24 December 2020.

<sup>10</sup> Marley Morris (2020), [The Agreement on the Future Relationship: A First Analysis](#) (IPPR, 2020).

<sup>11</sup> ECNI, NIHRC, 2020, [Submission to the NI Affairs Committee's Inquiry on the NI Protocol](#).

set out in UN Office of the High Commissioner for Human Rights Guidelines;

- legislation should be passed to preclude conclusion or ratification of any international trade or investment agreement that would require or permit the reduction of any protections for human rights and fundamental freedoms in Northern Ireland, including those relating to non-discrimination and equality, ensured under UK law.

3.15 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.

#### **4 Additional recommendations**

4.1 In addition to our specific recommendations set out above in relation to strengthening equality and human rights post Brexit, we wish to draw the Committee's attention again to a number of our other recommendations which we raised in our previous submission and which are relevant to strengthening equality and human rights, including in a post Brexit environment; including through a NI Bill of Rights.

4.2 In summary, these include the following recommendations:

##### Inclusion of a principle of equality in a NI Bill of Rights

4.3 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.

- 4.4 The general principle of equality is a fundamental element of international human rights law<sup>12</sup> and an important inclusion for a NI Bill of Rights.
- Reflect international human rights standards and address shortfalls in compliance
- 4.5 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.
- 4.6 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).
- 4.7 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.
- 4.8 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.
- 4.9 We also recommend actions to address key shortfalls in Northern Ireland so as to ensure compliance with the UK

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<sup>12</sup> 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).

Government's obligations under international human rights conventions.

#### Strengthen and harmonise NI equality laws

- 4.10 We recommend that a NI Bill of Rights is underpinned by measures to strengthen NI equality laws and address gaps in equality legislation.
- 4.11 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.
- 4.12 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.

## **5 Conclusion**

- 5.1 In conclusion, the Commission considers that there is a need to strengthen equality and human rights post-Brexit and to give consideration to how best to ensure that the international human rights standards are reflected in a NI Bill of Rights and/or underpinning legislation.
- 5.2 The Commission reiterates our position 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.