

INTRODUCTION

I fully support the introduction of a N. Ireland specific Bill of Rights believe that it will;

- Ensure that everyone in NI is treated equally before the law.
- Help tackle the key inequalities the Commission has identified in Northern Ireland.
- Promote good relations between Northern Ireland's two main communities by improving mutual respect on the basis of Equality Treatment, for the identity ethos and culture of those communities.

I therefore welcome the creation of the Northern Ireland Assembly Ad Hoc Committee to consider and consult upon the creation of such a Bill and the opportunity that affords to allow everyone an opportunity to input to the process.

BACKGROUND

A Northern Ireland Bill of Rights was originally contemplated in the Belfast/Good Friday Agreement to:

- Contain rights supplemental to those provided by European Convention on Human Rights/The Human Rights Act.
- Reflect the particular circumstances of Northern Ireland.
- Reflect the principles of mutual respect for identity/ethos of both communities and parity of esteem.

Importantly the Belfast/Good Friday Agreement identified specific equality issues for potential inclusion, i.e.:

1. The formulation of a general obligation on Government and Public Bodies to respect, on the basis of Equality Treatment, the identity/ethos of both communities.
2. A clear formulation of the right not to be discriminated against and to Equality of Opportunity in both the public and private sectors.

The Northern Ireland Assembly was restored in January 2020 based on a deal agreed by all the political parties represented in the previous devolved administration, titled "New Decade New Approach" (NDNA). Part of that agreement was to reconsider the creation of Northern Ireland Bill of Rights as envisaged originally in the Belfast/Good Friday Agreement. The Ad Hoc Committee on a Bill of Rights was established to hear evidence and consult on the issue.

Since 2016 Brexit has increased the significance of NI sharing a land border with Rep of Ireland, and therefore with the EU. This will undoubtedly prevent challenges

in terms of a Bill of Rights commitment to both the principles of mutual respect for identity/ethos of both communities and parity of esteem and any specific Equality /Non-Discrimination provisions. One example might be the extent to which possession of a British or Irish passport, a decision which may be partly based on community background, may impact upon the rights enjoyed by Northern Ireland residents.

Brexit has impacted on N. Ireland in ways it will not in Great Britain and therefore may be very relevant to the question of what is Northern Ireland's "*particular circumstances*". Indeed the Withdrawal Agreement¹ reached between the UK and the EU provided that whilst N. Ireland continues to legally remain part of the UK's Customs Union, it nevertheless remains aligned to the EU's Single Market for goods, which England Scotland and Wales has left. The EU's rules on customs and the regulation of agri-food products therefore continue to apply to goods arriving in N. Ireland, and a trade border now operates between N. Ireland and GB.

Article 2 of the Ireland/Northern Ireland Protocol to the Withdrawal Agreement also commits the UK government to ensure that there is no diminution of rights, safeguards and equality of opportunity in Northern Ireland as set out in the Belfast/Good Friday Agreement and currently existing, as a result of its departure from the EU. It recognises that EU anti-discrimination law has formed an essential part of the framework for delivering the guarantees on Rights and Equality contained in the B/GF Agreement. Accordingly these EU Directives² are included in the commitment. The Withdrawal Agreement established a Dedicated Mechanism to monitor, supervise, report on, and enforce the "no diminution" commitment.

Potential developments that will have to be carefully considered when drafting a Bill of Rights could include;

- The impact and application of the Ireland/NI Protocol

¹ Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community- 24 January 2020.

² The directives included are as follows:

Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services;

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);

Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;

Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC;

Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

- The potential of increased alignment with Rep of Ireland and increased departure from GB.
- Identity- both of being British or Irish, and being a European Union citizen or not.
- Individual citizen's right to Freedom of movement within the European Union.

One should of course not conflate the European Convention on Human Rights with Brexit. The ECHR is not connected to membership of the EU and its provisions continued to apply in the UK after its departure from the EU. However there may be some doubt about its continued application and the authority of the European Court of Human Rights in GB (and potentially N. Ireland). A parliamentary review has just commenced in relation to the ECHR in England & Wales). The Conservative manifesto has pledged to establish a British Court for Human Rights matters to replace the European Court. This could create problems in terms of identifying matters that could be provided for in N. Ireland by way of a UK wide Bill Of Rights rather than be included in the Northern Irish Bill. Obviously therefore the Adhoc Committee must keep a careful watch on UK developments to finalise what is appropriate for inclusion in the Northern Irish Bill

Legislative Arrangements

In terms of its enactment, it is important that a Northern Ireland Bill of Rights is passed by the UK Parliament at Westminster. The subsequent enactment of legislation to give effect to those rights could be undertaken by the Northern Ireland Assembly when the matter fell within its devolved powers, or Westminster.

SHOULD THERE BE A NORTHERN IRELAND BILL OF RIGHTS

Absolutely. A Bill of Rights would help;

- ensure that everyone in Northern Ireland is treated equally before the law.
- tackle the key inequalities the Commission has identified in Northern Ireland.
- promote good relations between Northern Ireland's two main communities by improving mutual respect on the basis of Equality Treatment, for the identity ethos and culture of those communities.
- send a very positive message, both internally and externally, regarding the Northern Ireland peace process.

The Bill should supplement the Human Rights Act 1998 with provisions that address the remaining issues that led to a call for a Bill of Rights in the Belfast/Good Friday Agreement. The Rights enshrined in such a Bill which fall within the ambit of the Northern Ireland Assembly's devolved powers should normally be provided for by separate legislation tabled and debated within the Assembly. (I have used word "normally" in case it is not a devolved matter, or the Assembly isn't sitting or is not willing to enact legislation that is necessary to fulfil a commitment contained in the NI Bill Of Rights.

ISSUES FOR POTENTIAL INCLUSION IN A NORTHERN IRELAND BILL OF RIGHTS

During previous consultation on a Northern Ireland Bill of Rights in 2009 the UK Government indicated five areas that were appropriate for inclusion;

1. Equality, rep in public life
2. Identity culture & language
3. Sectarianism/Segregation
4. Victims/Legacy of Conflict
5. Criminal Justice³

Strong Equality Legislation together with a greater emphasis on Sharing, particularly in the areas of Education and Housing are essential to move Northern Ireland away from the divisions of its past, and are essential prerequisites for a Bill Of Rights as envisaged in New Decade New Approach

1. AN EQUALITY CLAUSE

The issue of Equality is clearly appropriate for inclusion; Equality is listed in the Belfast/Good Friday Agreement as one of 5 important principles appropriate for inclusion in a N. Irish Bill of Rights. The Agreement sets out a number of specific rights that are pertinent to Northern Ireland's "particular circumstances";

- Free Political thought
- Freedom & expression of religion
- Pursuit of democratic national/political aspirations
- Choice of place of residence
- Equality of opportunity in all social and economic activity regardless of class, creed, disability, gender, ethnicity.
- Freedom from sectarian harassment
- Women to have full and equal political participation.

³ A Bill of Rights for Northern Ireland. Next Steps. 2009 (A NIO Consultation Paper) para 1.3

During previous consultation on a potential Northern Irish Bill of Rights, the UK government was supportive of including an equality provision confirming that ‘everyone in Northern Ireland is equal before the law and has the right to the equal protection and benefit of the law’. Importantly the UK Government also recognised at that time that there was scope for updating the equality laws in Northern Ireland.⁴ The inclusion of an Equality Clause is an essential element of a Northern Ireland Bill of Rights.

The Northern Ireland Bill of Rights should therefore include a Right to Equality of Treatment and Non- Discrimination to ensure that all citizens in Northern Ireland are treated equally before the law on the grounds of Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex, and Sexual Orientation.

Equality should also be proactively promoted. Accordingly the Bill of Rights should also include a **general obligation on Government and Public Bodies to afford Equality of Treatment** on the grounds of Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex, and Sexual Orientation.

I suspect the need to include such a Clause is almost universally accepted. However it will not be sufficient for such a Clause to be adopted in isolation, our Equality safeguards and protections must fully reflect that principle. Unfortunately however the standard of protection afforded in N. Irish Equality legislation is deficient to that provided by the Equality Act 2010 in GB. One clear example of how our laws are unsatisfactory is the fact that persons with a Disability who experience direct discrimination in the provision of goods, facilities and services currently have to frame any Discrimination complaint within the confines of an allegation that the service provider has failed to make reasonable adjustments! Clearly it would not be acceptable for a Bill of Rights in N. Ireland to guarantee a right to Equality that would be demonstrably inferior to the protections existing in Great Britain.

If the Bill of Rights does include an Equality provision, the Assembly would be obliged to introduce legislation to ensure that the protection from unlawful discrimination guaranteed by Northern Ireland Bill of Rights is equal to that afforded in Great Britain under the Equality Act 2010.

2. AN IDENTITY CLAUS

The UK government wanted a Bill of Rights to enshrine the right of the people of Northern Ireland to identify themselves and be accepted as Irish or British,

⁴ A Bill of Rights for N. Ireland. Next Steps (NIO Consultation Paper)

or both. It also agreed that people in Northern Ireland should not be required to swear an oath that is contrary to their religion or belief.⁵

The New Decade New Approach deal states at paragraphs 25-27:

*“The parties affirm the need to **respect the freedom of all persons in Northern Ireland to choose, affirm, maintain and develop their national and cultural identity** and to celebrate and express that identity in a manner which takes into account the sensitivities of those with different national or cultural identities and respects the rule of law. They also affirm the need to **encourage and promote reconciliation, tolerance and meaningful dialogue** between those of different national and cultural identities in Northern Ireland with a view to promoting **parity of esteem, mutual respect, understanding and cooperation** . These principles will be reflected in legislation.*

The First Minister and deputy First Minister, supported by Junior Ministers in The Executive Office, will sponsor and oversee a new framework both recognising and celebrating Northern Ireland’s diversity of identities and culture, and accommodating cultural difference.

The framework will be underpinned by an affirmation of the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, while acknowledging and accommodating those within our community who define themselves as ‘other’ and those who form our ethnic and newcomer communities”. (Emphasis added).

The issue of identity is possibly even more pronounced than ever in Northern Ireland due to the UK leaving the European Union. Since 2016 Brexit has increased the significance of Northern Ireland sharing a land border with the Republic of Ireland, and therefore with the EU. This will present challenges in terms of reconciling NIBOR’S commitment to both the principles of mutual respect for identity/ethos and parity of esteem, with specific Equality /Non-Discrimination provisions if, e.g. possession of a British or Irish passport, a decision which may be partly based on community background, may determine the rights enjoyed by NI residents.

Accordingly the Northern Ireland Bill of Rights should enshrine the right of people in Northern Ireland to identify and be recognised as British, Irish, or both and to be entitled to a British or Irish passport, or both.

In the recent De Sousa case UK Government argued that a person who had identified as Irish was nevertheless British. The Irish Government strongly disagreed. The Bill of Rights should therefore acknowledge that NI people **ARE** British, Irish or both in accordance with how they identify themselves in a way that is legally enforceable.

⁵ A Bill of Rights for N. Ireland. Next Steps (NIO Consultation Paper)

Promotion of Sharing of Public Services

In his submission to the Ad Hoc Committee, Brice Dickson⁶ has drawn attention to, inter alia, the high degree of segregation that has existed in Northern Ireland;

“I submit that what both governments intended by the phrase ‘the particular circumstances of Northern Ireland’ were the circumstances connected to the fact that Northern Ireland is a divided society, one which experiences difficulties not encountered to the same degree in either Great Britain or the Republic of Ireland concerning the rights of two ‘sides’ (i.e. unionists and nationalists, although of course there are many people in Northern Ireland who do not see themselves as falling into either of those camps). The difficulties in question relate to the sorts of areas ... namely difficulties over equality, representation and participation in public life, identity, culture and language, sectarianism and segregation, victims and the legacy of the troubles”.

As previously stated the UK Government has identified the promotion of sharing as an appropriate matter for inclusion in a Northern Ireland Bill of Rights. The New Decade New Approach Deal also specifically commits the Executive to enact legislation to promote reconciliation and tolerance;

*‘Reconciliation will be central to the Executive’s approach and there will be a focus on building a **united** community in a way that has equality and mutual respect to the fore... [The parties] affirm the need to encourage and promote reconciliation, tolerance and meaningful dialogue between those of different national and cultural identities in Northern Ireland with a view to promoting parity of esteem, mutual respect, understanding and cooperation. These principles will be reflected in legislation.’* (Pages 13-15, emphasis added).

The New Decade New Approach Deal clearly envisages Northern Ireland moving to a more shared future (Paragraph 24). In respect of Education the Deal includes the following specific commitments;

“To help build a shared and integrated society, the Executive will support educating children and young people of different backgrounds together in the classroom”.
(Page 7)

A greater emphasis on sharing in public services⁷, particularly in the areas of education and housing, are essential to move Northern Ireland away from the divisions of its past, and are essential prerequisites for a Northern Ireland Bill of Rights as envisaged in New Decade New Approach.

⁶ Getting to yes on a Bill of Rights for Northern Ireland. 22 November 2020. Brice Dickson para 15

⁷ New Decade New Approach Deal. 2020.

Social cohesion can be limited by separation in Education. Sharing in Education has a key role to play in advancing a shared society with the development of an Education system which routinely teaches pupils together via a shared curriculum in shared classes, encompassing all stages of educational provision

Sharing in Education would promote good relations and help build the more unified community and shared future envisaged in the New Decade New Approach Deal by allowing pupils to access a wider range of educational, cultural and sporting experiences and increasing awareness, understanding, and experience of the value of diverse cultures, identities and backgrounds in Northern Ireland.

Sharing in education, across the full range of Equality categories, has the potential to improve educational access and attainment for pupils from a diverse range of backgrounds and abilities. Increased educational sharing could be an important factor in addressing the issue of persistent educational underachievement and socio-economic background identified in New Decade New Approach (paragraph 40 ix) and ensure that all children, regardless of background, are given the best start in life.

Many commentators have highlighted the significant level of segregation of Housing that continues to persist in Northern Ireland, and the importance of shared Housing in promoting mutual respect and tolerance, and thereby building a more unified society;

“Housing is a basic human need and provides the foundation for family and community life. In many areas of Northern Ireland housing continues to be segregated on the basis of community background, particularly in the social housing sector. Such segregation in housing polarises communities and perpetuates segregation in social and other spheres.”⁸

Accordingly the Bill of Rights should recognise the importance of building a united Community and present Northern Ireland as a shared space. To avoid this simply being empty rhetoric, as is the case for the Equality Clause, this will have to be supported by Assembly legislation and actions by appropriate public authorities to increase the sharing of services, particularly in Education and Housing.

⁸ Key Inequalities in Northern Ireland. ECNI 2007

SUMMARY OF RECOMMENDATIONS

There should be a Bill of Rights for Northern Ireland supplementing the Human Rights Act 1998 with provisions that address the remaining issues that led to a call for a Bill of Rights in the Belfast/Good Friday Agreement. That Bill should be passed at Westminster.

The Rights enshrined in such a Bill which fall within the ambit of the Northern Ireland Assembly's devolved powers should normally be provided for by separate legislation tabled and debated within the Assembly.

The Bill should include a Right to Equality of Treatment to ensure that all citizens in Northern Ireland are treated equally before the law on the grounds of Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex, and Sexual Orientation.

The Bill should include a **general obligation on Government and Public Bodies to afford Equality of Treatment** on the grounds of Age, Disability, Gender Re-assignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex, and Sexual Orientation.

The Assembly must introduce legislation to ensure that the protection from unlawful discrimination guaranteed by the Bill is equal to that afforded in Great Britain under the Equality Act 2010.

The Bill should enshrine the right of people in Northern Ireland to identify and be recognised as British, Irish, or both and to be entitled to a British or Irish passport, or both.

The Bill should recognise the need to build a united Community in Northern Ireland. This needs to be supported by actions from the Assembly and appropriate public authorities to increase the saring of public services, particularly in respect of Housing and Education.