



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Submission to the NI Committee for
Infrastructure on the Display of Flags and
Emblems Bill**

September 2026

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1.0 Introduction

- 1.1 The Northern Ireland Human Rights Commission (NIHRC), pursuant to section 69(1) of the Northern Ireland (NI) Act 1998, is required to review the adequacy and effectiveness of law and practice relating to the protection of human rights in NI.
- 1.2 The NIHRC is also required, under section 78A(1) to monitor the implementation of Article 2(1) of the Windsor Framework¹ (to the UK-EU Withdrawal Agreement), to ensure there is no diminution of rights protected in the 'Rights, Safeguards and Equality of Opportunity' chapter of the Belfast (Good Friday) Agreement 1998 as a result of the UK's withdrawal from the European Union.
- 1.3 In accordance with these duties, the following is submitted to the Committee for Infrastructure in relation to the Display of Flags and Emblems Bill.

2.0 Human Rights Framework

- 2.1 Flags, symbols and emblems may be expressions of cultural and/or national identity. In a public space they may be used to celebrate or memorialise. They may also however be used to identify territory so as to exclude, intimidate or harass individuals or groups.
- 2.2 Everyone enjoys freedom of expression which includes "freedom to hold opinions and to receive and impart information and ideas without interference by public authority".² A person is entitled to express those opinions aloud, for example through newspapers, broadcasting, books, leaflets, social media, pictures, posters and by demonstration and protest. The right to express one's opinions includes the right to express one's culture and identity.³
- 2.3 Article 10 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) has been incorporated into domestic

¹ The Protocol on Ireland/Northern Ireland to the UK-EU Withdrawal Agreement 2020 was renamed by Decision No 1/2023 of the Joint Committee established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023 laying down arrangements relating to the Windsor Framework.

² Article 10, ECHR.

³ Article 10, ECHR.

law by the Human Rights Act 1998 and is enforceable directly in courts and tribunals. It is therefore unlawful for a public authority to infringe the right unless to do so is justified in the terms of Article 10(2) ECHR. Article 10(2) provides:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

2.4 The relevant public authority, to justify an interference, must show that the restriction is proportionate, in other words that it is appropriate and no more than necessary to address the legitimate aim pursued.

2.5 In Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴ one of the United Nations' core Treaties ratified formally by the UK Government in 1976, the UK agreed to enable people:

to take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; to (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2.6 By Article 4, it is expressly permitted to limited rights under ICESCR "for the purpose of promoting the general welfare in a democratic society". It is also important to record that "while account must be taken of national and regional particularities and various historical, cultural and religious backgrounds, it is the duty of States, regardless of their political, economic or cultural systems, to promote and protect all human rights

⁴ ICESCR, Article 15.

and fundamental freedoms. Thus, no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.”⁵ Furthermore, the following observation is helpful. “The right to take part in cultural life can be characterized as a freedom. In order for this right to be ensured, it requires from the State party both abstention (i.e., non-interference with the exercise of cultural practices and with access to cultural goods and services) and positive action (ensuring preconditions for participation, facilitation and promotion of cultural life, and access to and preservation of cultural goods).”⁶

2.7 Article 19 of the International Covenant on Civil and Political Rights (ICCPR) also ratified in 1976, provides,

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals.”

2.8 The right to freedom of expression has been cited as the “foundation stone for every free and democratic society”.⁷ In

⁵ E/C.12/GC/21, ‘Committee on Economic Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)’, 21 December 2009, at para 18: referring with approval to the Vienna Declaration and Programme of Action, para 5 and the Universal Declaration on Cultural Diversity, Article 4.

⁶ E/C.12/GC/21, ‘Committee on Economic Social and Cultural Rights, General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)’, 21 December 2009, at para 6.

⁷ See e.g. CCPR/C/GC/34, ‘UN Human Rights Committee, General Comment 34: Freedom of Expression’, 29 July 2011, at para 1.

recognition of the value that sharing information, ideas and opinions has in a democratic society, the European Court of Human Rights (ECtHR) has highlighted that the right to freedom of expression enjoys broad application.⁸ For example, in *Handyside v UK*, the ECtHR held that its protection can extend to information or ideas that “offend, shock or disturb the State or any sector of the population”.⁹ The ECtHR has also recognised that “the display of a symbol associated with a political movement or entity, like that of a flag, is capable of expressing identification with ideas or representing them and falls within the ambit of expression protected by Article 10 of the Convention”.¹⁰

2.9 However, as referred to above, Article 10(2) ECHR right is qualified. That means it is not an absolute right but can be restricted under certain circumstances. The ECtHR has adopted a three part test to examine whether an interference with a qualified right such as Article 10 can be justified: it must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society. To determine the necessity of an interference, the ECtHR considers whether it corresponds to a “pressing social need” and is “proportionate to the legitimate aim pursued”.¹¹

2.10 As the NIHRC’s 2013 report identified, the display of flags and emblems can affect the rights of others, particularly where display has a territorial marking or intimidatory effect or restricts access to shared public space and services. These rights include, but are not limited to, the right to a private and family life (Article 8 ECHR), the right to freedom of thought, conscience and religion (Article 9 ECHR) and the right to freedom from discrimination (Article 14 ECHR).¹² Moreover, the ECtHR has held that the protection of the rights of others may be a legitimate aim in relation to restrictions of ECHR rights, stating:

⁸ *Handyside v. the United Kingdom*, (1980) 1 EHRR 737, at 48. See also, for example, *Lehideux and Isorni v. France* (1998) 30 EHRR 665, at 55; *Mouvement Raelien Suisse v Switzerland* (2012) ECHR 1598, at 48.

⁹ *Handyside v. the United Kingdom*, (1980) 1 EHRR 737, at 48

¹⁰ *Faber v Hungary*, Application No. 40721/08, 24 July 2012, at 36.

¹¹ For example, *Wingrove v. the United Kingdom* (1996) ECHR 60, at 53; *Aydin and Ors. v. Turkey*, Application No. 49197/06, 23196/07, 50242/08, 60912/08, 14871/09, 22 January 2013, at 48-49; *Lehideux and Isorni v. France* (1998) 30 EHRR 665, at 51; *Mouvement Raelien Suisse v Switzerland* (2012) ECHR 1598, at 48; *Vejdeland v. Sweden* (2012) ECHR 242, at 51.

¹² NI Human Rights Commission, ‘The Display of Flags, Symbols and Emblems in NI’ (NIHRC, 2013).

it must be accepted that the need to protect [Convention rights] may lead States to restrict other rights or freedoms likewise set forth in the Convention. It is precisely this constant search for a balance between the fundamental rights of each individual which constitutes the foundation of a “democratic society”.”¹³

- 2.11 Having set out the general framework within which this operates, the following analysis considers the key provisions of the current Bill.

3.0 Analysis of Relevant Clauses of the Bill

Clause 1: Removal of flag or emblems in the public interest

- 3.1 Clause 1 places a duty on the Department for Infrastructure to remove a flag or emblem that is displayed in a public place if it is in the public interest to do so. Clause 1(2) sets out that it will be considered in the public interest to remove a flag or emblem where, in the Department's opinion, it is intimidatory or threatening, likely to stir up hatred or arouse fear, or supports/is the flag of a proscribed organisation.
- 3.2 The NIHRC notes that whilst clause 1(1) places a duty on the Department for Infrastructure to remove a flag or emblem, if it is in the public interest to do so, clause 1(2) provides that this duty arises only when ‘in the opinion of the Department’ a number of circumstances arise. The Commission considers that the Committee should give some consideration to how Departmental decisions relating to the removal of a flag or emblem will be taken.
- 3.3 The NIHRC recommends that the Committee for Infrastructure seek clarity as to how decisions under Clause 1 will be taken and communicated. The Committee should consider requiring reasons for the decision to be recorded, and shared if a relevant request is made. In particular the Committee should consider what safeguards should be put in place to ensure appropriate decision making in full**

¹³ Chassagnou and Others v. France (2000) 29 EHRR 615, at 113.

compliance with the Human Rights Act 1998.

3.4 The NIHRC notes the intersection with a number of the NI Executive's existing statutory duties, such as the promotion of "good relations between persons of different religious belief, political opinion or racial group."¹⁴ In addition, there is also relevant the Terrorism Act 2000, insofar as it prohibits demonstrating or inviting support for a proscribed organisation.¹⁵ These are just two of the related statutory provisions.¹⁶ Importantly, Northern Ireland is made up of more than the two traditional communities and the duty is to consider them all.

3.5 The Explanatory and Financial Memorandum of the current Bill sets out its key purpose is to:

provide a clear and fair legal framework governing the circumstances under which other flags or emblems may be displayed – striking a balance between respect for cultural expression while preventing intimidation, territorial marking, and the coercive use of symbols in public places.¹⁷

3.6 As set out in detail in the NIHRC's 2013 report,¹⁸ there are a wide range of international human rights standards requiring the UK Government to promote tolerance and mutual respect among all persons living in their territory and to protect against harassment and intimidation, in particular of those belonging to national minorities.¹⁹ The Organisation for Security and Co-operation in Europe (OSCE) for example in its Ljubljana Guidelines on Integration of Diverse Societies recognise that the "inappropriate use of symbols can cause tensions and incidents that can escalate into conflict and intercommunity violence".²⁰ In respect of flags and

¹⁴ Section 72(2), NI Act 1998.

¹⁵ Sections 12 and 13, Terrorism Act 2000.

¹⁶ See also, Article 9 and Article 19, Public Order (Northern Ireland) Order 1987; Articles 2-4, Protection from Harassment (Northern Ireland) Order 1997; Schedule 2, Planning (Control of Advertisements) Regulations (NI) 1992; Article 73 and Article 87, Roads (NI) Order 1993; Flags (NI) Order 2000.

¹⁷ Explanatory and Financial Memorandum, Display of Flags and Emblems Bill (Bill 44/22-27).

¹⁸ NI Human Rights Commission, 'The Display of Flags, Symbols and Emblems in NI' (NIHRC, 2013), at paras 3.31 – 3.45.

¹⁹ UN Convention on the Elimination of Racial Discrimination, Article 7; UN Convention on Civil and Political Rights, Article 27; UN Convention on the Rights of the Child, Article 30; CoE Framework Convention for the Protection of National Minorities.

²⁰ OSCE High Commissioner on National Minorities, 'The Ljubljana Guidelines on Integration of Diverse Societies' (OSCE, 2012), at 64.

symbols displayed on local government buildings, the OSCE advise recommends that government “consider regulating such displays, based on principles of inclusiveness and good governance, achieving a balance between the reasonable interests of all groups in society.”²¹

- 3.7 The NIHRC recognises that the stated aims of the Bill appear to reflect those set out in Article 10(2) ECHR, namely, to uphold territorial integrity and public safety, prevent disorder or crime, and protect the reputation or rights of others. In any particular case the analysis must be undertaken to determine if the criteria are properly met.

“Prescribed by law”

- 3.8 There must also be consideration of the test that it is prescribed by law. The ECtHR has reiterated that this requires the restrictive measure to not only have some basis in domestic law, but that it must satisfy the requirements of foreseeability and accessibility.²² Thus, the legal basis and/or policy guiding the public authority’s decision-making must be sufficiently clear and “formulated with sufficient precision” to enable a person to “foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.²³ This quality-of-law requirement may include examination of whether the regulatory framework in question provides protection against arbitrariness or the exercise of discretionary power by a non-judicial authority.²⁴
- 3.9 Sub-clauses 1(2)-(3) of the Bill set out a public interest test for when a flag or emblem must be removed and sub-clause 1(4) identifies what factors the Department must take into account when making its decision. Sub-clause 1(3) creates a rebuttable presumption that removal of a flag or emblem is in the public interest where, in the opinion of the Department, it is offensive,

²¹ Ibid.

²² *The Sunday Times v. the United Kingdom (No. 1)* Application No. 6538/74, 26 April 1979, Series A No. 30, at paras 48-49.

²³ *The Sunday Times v. the United Kingdom (No. 1)* Application No. 6538/74, 26 April 1979, Series A No. 30, at para 49.

²⁴ *Karastelev and Others v. Russia*, Application No. 16435/10, 6 October 2020, at paras 78-97; *Zayidov v. Azerbaijan (No. 2)*, Application No. 5386/10, 24 March 2022, at paras 67-74.

abusive or insulting; it is displayed near a sensitive place and is not conducive to good community relations or demarcates the place as belonging exclusively to a particular national or cultural identity; or is a public hazard.

- 3.10 While the NIHRC notes that some of the terminology under clause 1 aligns with existing legislation,²⁵ there are undefined terms that the NIHRC considers should be examined further, perhaps under the anticipated Code of Practice required by Clause 4. The Bill's Explanatory and Financial Memorandum notes that the Code of Practice will "supplement the exercise of judgement required by the Bill by setting clear expectations around what constitutes respectful display of flags and emblems".²⁶ However, there is no express intention to clarify the public interest test articulated under Clause 1, such as "offensive, abusive, or insulting" and "not conducive to good community relations". Significantly, the ECtHR has held that mere offensiveness is not sufficient to justify restricting Article 10 ECHR, unless expression is "gratuitously" or "unwarrantably" offensive such as an infringement on the rights of others which goes beyond legitimate public debate.²⁷
- 3.11 Furthermore, the public interest test, under Clause 1(2)(b) of the Bill, requires the Department to remove a flag or emblem that "is likely to stir up hatred, or arouse fear". That already falls within the scope of existing provisions for dealing with hate offences in NI, namely the Public Order (NI) Order 1987 and the Criminal Justice (No. 2) (Northern Ireland) Order 2004. However, neither the Bill nor the Explanatory and Financial Memorandum specify how these might relate to one another. For instance, there is no duty to refer a suspected hate crime to the Police Service of NI before or alongside removal of a flag or emblem under the Bill. There may be a concern that removal could undermine a police investigation into a hate-motivated display, undermining the likelihood of such conduct being addressed by the criminal justice system.

3.12 The NIHRC recommends that the Committee for

²⁵ Terrorism Act 2000 defines "proscribed organisation"; NI Act 1998 defines "national and cultural identity"; Public Order (NI) Order 1987 defines "stir up hatred or arouse fear". Interface area and troubles-related memorials for example are not defined but may be contentious. Definition would be helpful.

²⁶ Explanatory and Financial Memorandum, Display of Flags and Emblems Bill (Bill 44/22-27), at para 8.

²⁷ Otto-Preminger-Institut v. Austria (1994) 19 EHRR 34, at paras 49 and 59.

Infrastructure ensures that the Code of Practice under Clause 4 of the Bill defines key terms and concepts and sets out how the Department is to apply them in practice.

3.13 The NIHRC recommends that the Committee for Infrastructure clarifies how the removal of a flag or emblem will interact with existing statutory duties to address hate-motivated incidents and crimes, ensuring that criminal investigations are not undermined or interfered with. If, as the NIHRC recommends, additional safeguards that may be required should be included within the legislation rather than solely in the anticipated Code of Practice.

3.14 For an Article 10 ECHR interference to be considered necessary in a democratic society, the ECtHR has held that it must correspond to a “pressing social need” and be proportionate to the legitimate aim pursued.²⁸ The ECtHR observed “every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued.”²⁹ The nature and severity of a penalty is a relevant factor in that assessment. Every assessment must be based on its own particular facts.³⁰ The ECtHR has recognised that historical and political factors may be relevant when the State is making decisions regarding the protection or limitation of rights.³¹

3.15 Under the current Bill, once the Department considers that the removal of a flag or emblem is within the public interest under Clause 1(3), Clause 1(4) then sets out the factors that must be considered before determining whether the presumption to remove has been rebutted. Clause 1(5) requires the Department to consider all relevant circumstances, in their particular context, including the nature of the flag or emblem, the particular place and time of the display and the impact the display might have on a reasonable person.

²⁸ *Handyside v. the United Kingdom*, (1980) 1 EHRR 737.

²⁹ *Ibid.* paragraph 49.

³⁰ Council of Europe, ‘Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression’ (CoE, 2022), at para 88.

³¹ See also, *Zdanoka v. Latvia*, Application No. 58278/00, 16 March 2006, at 33; *Sedjic and Finci v. Bosnia and Herzegovina*, Application Nos. 27996/06 and 34836/06, 22 December 2009, at 38-56; *Lautsi and Others v. Italy* (2011) ECHR 2412, at 68; *Aydin and Ors. v. Turkey*, Application No. 49197/06, 23196/07, 50242/08, 60912/08, 14871/09, 22 January 2013, at 51.

3.16 The NIHRC welcomes this approach that allows the Department to weigh relevant contextual factors, reflecting a fact-sensitive and case-by-case approach. In particular, the NIHRC notes the inclusion of factors such as the purpose and manner of a display, indicating an attempt to distinguish cultural expression from expression that is harmful and an infringement of the rights of others. However, the NIHRC reiterates its advice on the undefined terms within Clause 1(3) and that potential inconsistency with ECtHR jurisprudence.

3.17 It appears to the NIHRC that the rebuttable presumptions under sub-clauses 1(4)-(5) will not apply to mandatory removals under sub-clauses 1(2) and 1(6). Sub-clause 1(6) of the Bill requires the Department to remove a flag or emblem “as soon as possible” once the conditions under sub-clause 1(2) are satisfied. When examining the proportionality of a restrictive measure, the ECtHR is likely to consider whether there is any less restrictive means of achieving the same aim.³² So should a public authority when applying restrictions to an ECHR right.

3.18 The NIHRC suggests further consideration needs to be given to whether this is necessary and if so better articulated together with a clear analysis of whether less restrictive options were considered. That should include consideration of any procedural safeguards that would provide mitigation against arbitrary decision-making.

3.19 The NIHRC encourages the Committee for Infrastructure to seek clarification as to the extent to which less restrictive alternatives and procedural safeguards were considered in the development of the mandatory removal duty under sub-clause 1(2).

Clause 3: Notification procedure

3.20 Clause 3 requires the Department to establish a procedure, for example via an online portal, for notifying the display of flags and emblems, and for this portal to allow members of the public to provide their views on the display of a flag or emblem.

³² *Glor v Switzerland*, Application No. 13444/04, 30 April 2009.

- 3.21 As set out in the NIHRC’s 2013 report, government and public representatives who make decisions regarding the display of expressions of culture are required to promote tolerance and mutual respect and to protect against harassment and intimidation in the decision to display or not to display expressions of culture such as flags, symbols and emblems.³³
- 3.22 In that regard, the ECtHR has explained that the role of the authorities is not to remove the causes of tension but to ensure that competing groups tolerate one another. Furthermore, “democracy does not simply mean that the views of a majority must always prevail”.³⁴ The rights of individuals who are affected by a decision should be considered and “a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position”.³⁵ In finding this balance, it is essential that the views of all groups, both minorities and majorities, are considered and respected.³⁶
- 3.23 Therefore, the NIHRC welcomes the inclusion of a structured mechanism allowing those who display flags and emblems, those who wish to see the flags and emblems removed and the wider public to submit views before a removal decision is made.
- 3.24 The NIHRC notes that the Clause 3 procedure does not extend to removals under sub-clause 1(2), as removal under that provision must take place “as soon as is possible”. The Commission recognises the potentially serious impact on affected individuals of the conduct targeted under that clause: intimidation, stirring up of hatred, and support for a proscribed organisation. It is therefore clear that a procedure inviting views on the merits of removal in those more urgent cases is likely to be incompatible with other statutory provisions and the key aim of the Bill to prevent intimidation, territorial marking, and the coercive use of symbols.

³³ NI Human Rights Commission, ‘The Display of Flags, Symbols and Emblems in NI’ (NIHRC, 2013), at paras 5.14 – 5.20.

³⁴ *Agga v. Greece (No 2)* (2002) ECHR 676, at 60; *Leyla Sahin v. Turkey* (2005) ECHR 819, at 107.

³⁵ *Chassagnou and Others v. France* (2000) 29 EHRR 615, at 112; *Leyla Sahin v. Turkey* (2005) ECHR 819, at 108.

³⁶ NI Human Rights Commission, ‘The Display of Flags, Symbols and Emblems in NI’ (NIHRC, 2013), at para 5.16.

3.25 The NIHRC welcomes the notification procedure established under Clause 3 and the opportunity it provides for the Department to assess the views and circumstances of those affected by a display before a removal decision is made under sub-clause 1(3).

3.26 The NIHRC recommends that the Committee for Infrastructure seek further evidence as to how that removal under sub-clause 1(2) is intended to interact with the investigation of suspected hate crime, including whether a separate notification procedure to the Police Service of NI might be appropriate.

Clause 4: Code of Practice

3.27 Clause 4 requires the Department to issue a code of practice on the display and removal of flags and emblems, following consultation with the NIHRC, the Police Service of NI, the Office of Identity and Cultural Expression, the Community Relations Council, the Equality Commission, the NI Housing Executive, the Executive Office, and district councils, and having regard to the Final Report of the Commission on Flags, Identity, Culture and Tradition. Sub-clause 4(5) sets out a non-exhaustive list of matters the code may address, including guidance on respectful display.

3.28 The NIHRC's 2013 report emphasised the importance of clear, accessible guidance to support consistent decision-making in this area. The ECtHR has similarly recognised that subordinate guidance can supply the precision required by Article 10(2), provided it is itself accessible and sufficiently certain.³⁷ Therefore, the NIHRC welcomes the requirement for a code of practice as an important mechanism for ensuring robust, consistent guidance on the application of the legislation. The NIHRC further welcomes its inclusion as a mandatory consultee under sub-clause 4(3). The NIHRC will remain committed to advising on any such referral.

3.29 The NIHRC notes however that the code of practice is not required

³⁷ *Silver v UK* (1983) 5 EHRR 347, para 90.

to be in place until 12 months after the commencement of Clause 4. That means that should Clause 1 come into force before the code has been finalised and published, the Department would be required to exercise its removal powers, including the mandatory duty under sub-clause 1(2) and the presumption under sub-clause 1(3), without guidance. That should be avoided and both the legislation and guidance should take effect contemporaneously.

- 3.30 Given the significance of sub-clauses 1(4)–(5), it is critical that the code makes clear reference to the relevant human rights standards and jurisprudence. Therefore, the NIHRC encourages the explicit integration of a human rights based approach within the guidance, to ensure the Department's exercise of judgement in individual cases is consistent with its legal requirements.

3.31 The NIHRC recommends that clause 8 is amended so that the Code of Practice is in force as Clause 1 commences.

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